Joel Kurtzberg and Adam Mintz Publish "DC Circuit Holds that Kokesh Does Not Preclude Imposition of Industry Bars" in INSIGHTS: The Corporate & Securities Law Advisor

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In *Kokesh* v. *SEC*, 137 S. Ct. 1635 (2017), the Supreme Court of the United States held that disgorgement is a penalty and, therefore, any attempt by the U.S. Securities and Exchange Commission ("SEC" or "Commission") to seek disgorgement is subject to 28 U.S.C. §2462, which sets forth a five-year statute of limitations that applies to the enforcement of penalties. After *Kokesh*, there was discussion that the decision would curtail or possibly eliminate the SEC's ability to use disgorgement and other equitable remedies, such as industry bars. In *Saad* v. *SEC*, 2020 WL 6533465 (D.C. Cir. Nov. 6, 2020), the Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") held that *Kokesh* does not restrict the SEC's ability to impose industry bars. With this decision, the D.C. Circuit joins several circuits that have refused to apply *Kokesh* beyond §2462.

In an article for the February 2021 issue of *INSIGHTS: The Corporate & Securities Law Advisor*, partner Joel Kurtzberg, and counsel Adam Mintz, discuss the D.C. Circuit's recent decision in *Saad* v. *SEC*, which addresses for the first time, under *Kokesh*'s reasoning, whether industry bars are punitive and would constitute an impermissible sanction under Section 19(e)(2) of the Securities Exchange Act of 1934. The court held that *Kokesh* does not restrict the SEC's ability to impose industry bars.

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