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Client Alert: Practical Implications of Supreme Court's Decision Related to SEC's Disgorgement Remedy

Publications

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Disgorgement is the remedy the US Securities and Exchange Commission (SEC) has traditionally used to obtain alleged illicit gains in enforcement actions against public companies, registered investment advisers and broker dealers, and other market participants. Last week, in *Liu v. S.E.C.*, the Supreme Court held that the SEC may continue to seek disgorgement, but only where it does not exceed the defendant's net profits and where it qualifies as equitable relief. The decision answered a question explicitly left open in 2017, in *Kokesh v. S.E.C,* and preserved the SEC's ability to use disgorgement to obtain alleged illicit gains in enforcement actions. In doing so, the majority discussed the possibility that disgorgement awards may not be an equitable remedy (and thus not allowed under the relevant statute) where courts decline to deduct expenses from the award, impose joint-and-several liability, or fail to return money to investors. Rather than resolve these issues, though, the Court in *Liu* provided some guidance and remanded to the lower court to determine how these principles apply in this case. The precise scope of the limitations to the disgorgement remedy thus remains to be seen and likely will be further defined in future litigation.

To read the full article, please click here.

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