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Client Alert: Two Circuits Hold Statute of Limitations Does Not Apply To SEC Employment, Officer, and Director Bars

Publications

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On November 6, 2020, the Court of Appeals for the DC Circuit held that *Kokesh v. SEC*, 137 S. Ct. 1635 (2017)—in which the court applied the five-year limitations period under 28 U.S.C. § 2462 to SEC claims seeking disgorgement—did not apply to Financial Industry Regulatory Authority (FINRA)'s imposition of an employment, officer, or director bar. In *Saad v. SEC*, No. 19-1214 (DC Cir. 2020), the court narrowly construed *Kokesh*, finding that it arose in a context and on facts distinguishable from Saad's case. The *Saad* decision follows the Third Circuit's earlier decision that also held that *Kokesh* did not time bar the SEC from prohibiting a defendant from serving as an officer or director.

Is a trend brewing? And, if so, will that trend hold? Or are these cases merely outliers that arose in unique circumstances? The answers remain to be seen. In the meantime, litigants should watch closely to see how other courts apply Section 2462 in the context of injunctions that prevent an individual from being employed in the securities industry or serving as an officer or director of a public company.

To read the full alert, please click here.

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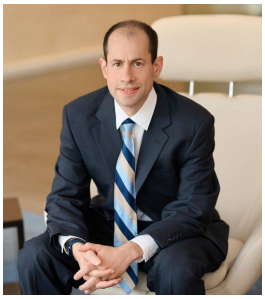

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