

Client Alert: Recent Legislation Expands SEC's Ability to Pursue Disgorgement

Publications

January 8, 2021

On January 1, 2021, Congress made several important changes to the US securities laws that will impact the Securities and Exchange Commission's (SEC) ability to pursue and recover funds through disgorgement.

Specifically, Congress, as part of its vote to enact the National Defense Authorization Act (NDAA) over President Trump's veto, passed a provision titled "Investigations and Prosecution of Offenses for Violations of the Securities Laws." This section amended certain disgorgement-related provisions of the Securities Exchange Act of 1934 to: (1) expressly grant the SEC statutory authority to pursue disgorgement as a remedy for civil enforcement actions in federal court; (2) extend the statute of limitations for all disgorgement actions involving fraud and scienter from five years to ten years; and (3) direct courts to apply a ten-year statute of limitations for all other claims seeking equitable remedies, such as injunctions, bars, suspensions, and cease and desist orders.

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