

## **Alert** | Securities Litigation



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### **Supreme Court to Resolve Circuit Split on SEC Disgorgement Powers**

On Jan. 9, 2026, the U.S. Supreme Court granted *certiorari* in *Sripetch v. SEC*, agreeing to resolve a significant circuit split regarding the standard the Securities and Exchange Commission must meet to obtain disgorgement in enforcement actions.

The Court will consider whether the SEC must demonstrate that investors suffered actual financial harm to obtain disgorgement, or whether it is sufficient to show that a defendant received ill-gotten gains from alleged misconduct.

The Court's decision may have significant implications for SEC enforcement actions and for parties facing potential disgorgement remedies.

#### **Background**

Disgorgement — i.e., the repayment of ill-gotten gains — has long been a primary remedy sought by the SEC in enforcement actions.<sup>1</sup> However, since at least 2024, federal appellate courts have split as to whether the SEC must demonstrate that investors suffered actual losses as a result of a defendant's conduct in order to obtain disgorgement. In 2023, drawing from the Supreme Court's decision in *Liu v. SEC*, the Second Circuit found that the SEC must show "pecuniary harm" to investors in order to obtain

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<sup>1</sup> See 15 USC § 78u(d)(5).

disgorgement, emphasizing that disgorgement is an equitable remedy designed to make “victims” whole rather than to serve as a penalty.<sup>2</sup> However, in decisions rendered in 2024 and 2025, the First and Ninth Circuits allowed the SEC to obtain disgorgement without requiring proof of direct investor harm, reasoning that disgorgement should focus on stripping wrongdoers of their unlawful profits as a deterrent, regardless of whether specific investors can be shown to have lost money.<sup>3</sup>

This Circuit split has led to inconsistent outcomes in SEC enforcement actions across the country, with significant consequences for the SEC’s ability to obtain a fundamental remedy in its actions, as well as for defendants’ ability to argue that the SEC’s burden includes a showing of pecuniary harm to actual victims before disgorgement may be granted. Indeed, the SEC supported Sripetch’s petition for *certiorari* despite having prevailed in the lower court, agreeing that the issue was “recurring and important.”

### Takeaways

- The Supreme Court’s decision may resolve the current split among the circuits, providing needed clarity on the standards governing SEC disgorgement.
- The ruling may impact ongoing and future SEC enforcement actions, particularly in cases where evidence of investor harm is unclear or disputed.
- Parties subject to SEC investigations and enforcement actions should closely monitor the progress of *Sripetch v. SEC* for guidance on potential exposure to disgorgement remedies.

We will continue to monitor the *Sripetch* case.

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<sup>2</sup> See *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023).

<sup>3</sup> See *SEC v. Navellier & Assocs., Inc.*, 108 F.4th 19 (1st Cir. 2024); *SEC v. Sripetch*, 154 F.4th 980 (9th Cir. 2025); see also *SEC v. Hallam*, 43 F.4th 316 (5th Cir. 2022) (in which the Fifth Circuit found that disgorgement is a legal remedy not cabined by equity and governed by principles both established prior to *Liu* and in amendments to 15 USC § 78u(d)(5) set forth in the 2021 National Defense Authorization Act).

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