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## Regulatory Update

# Supreme Court Unanimously Affirms SEC's Right To Seek Disgorgement Without Showing Pecuniary Loss

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In a unanimous decision on June 4, the Supreme Court held that the SEC may obtain disgorgement without demonstrating that investors suffered financial losses. See *Sripetch v. Securities and Exchange Commission*, 608 U.S. \_\_\_\_ (2026). The decision may embolden the SEC to seek larger disgorgement awards and arguably lowers the SEC's burden to do so. But the Court's decision leaves other questions unanswered.

### Background of the SEC's Disgorgement Authority

The SEC's power to seek disgorgement has evolved through a series of judicial opinions and statutory amendments.<sup>1</sup> As the Court recounted in *Sripetch*, beginning in the 1970s, the SEC persuaded courts to order disgorgement "as an exercise of th[e] [courts'] 'inherent equity power to grant relief ancillary to an injunction.'" *Sripetch*, 608 U.S. \_\_\_\_ (slip op. at 2) (quoting *Kokesh v. SEC*, 581 U.S. 455, 458 (2017)). Over time, courts expanded the SEC's disgorgement authority, often to a point where disgorgement "exceed[ed] the profits" the defendant had "gained as a result of [his] violation." *Id.* (citing *Kokesh*, 581 U.S. at 466).

In 2017, the Court expressed skepticism about such expansive disgorgement. See *Kokesh*, 581 U.S. at 457. Then, in 2020, the Court addressed disgorgement directly and applied several limiting principles tied to traditional principles of equity. See *generally Liu v. SEC*, 591 U.S. 71 (2020). In *Liu*, the Court held that (1) any disgorgement "remedy must be limited to the defendant's net profits (not total revenues) derived from his securities-law violations," and (2) the SEC must return defendant's gains to wronged investors (not the Treasury), unless it is infeasible to send disgorged funds to the investors. *Id.* at 79, 88. Six months after *Liu*, Congress reinforced the SEC's remedial powers, expressly adding disgorgement to the SEC's list of enforcement tools in 15 U.S.C. § 78u(d)(7).

*Kokesh*, *Liu*, and Congress left a number of key questions unanswered, including whether, as a condition of obtaining disgorgement relief, the SEC must show that an investor suffered a pecuniary loss from of a securities-law violation. The Court addressed that question in *Sripetch* and held that a showing of pecuniary loss is not required before an investor may qualify as a victim of wrongdoing entitled to compensation. *Sripetch*, 608 U.S. \_\_\_\_ (slip op. at 5).

## The SEC Sought Disgorgement Against Ongkaruck Sripetch

The SEC charged Mr. Sripetch with six counts of securities fraud and one count of selling unregistered securities involving at least 20 penny-stock companies. Mr. Sripetch consented to an entry of judgment and agreed that the court could order disgorgement. But when the SEC requested over \$4.1 million in disgorgement, Mr. Sripetch objected, arguing that the SEC lacked evidence that investors suffered financial losses and so there were no victims to whom the disgorgement proceeds could be awarded. *Sripetch*, 608 U.S. \_\_\_\_ (slip op. at 5). The district court ordered \$4.1 million in disgorgement. The Ninth Circuit affirmed, concluding that “a finding of pecuniary harm is not required” for disgorgement. See *SEC v. Sripetch*, 154 F. 4th 980, 985 (9th Cir. 2025).

The Ninth Circuit’s decision deepened a circuit split. Whereas the Second Circuit required the SEC to prove investor harm to obtain disgorgement, the First and Ninth Circuits held that a showing of investor harm was not necessary. See *Sripetch*, 608 U.S. \_\_\_\_ (slip op. at 6).

## The Supreme Court Affirmed the Disgorgement Award

The Supreme Court agreed with the SEC and affirmed the Ninth Circuit’s decision awarding disgorgement. Citing first principles—here, the Restatement (First) of Restitution § 1—the Court concluded that traditional equity principles do not require a person seeking disgorgement of a wrongdoer’s net profits to prove that he has suffered a corresponding loss. *Id.* at 7. Justice Gorsuch, writing for the Court, explained:

[I]n some instances, a defendant can unjustly enrich himself even without leaving a plaintiff worse off financially, and in those instances, a court must choose between two status quos: It can either restore the defendant to his prior position by stripping him of his unjust gains, or it can allow the defendant to benefit from his misconduct because the plaintiff’s financial position has not changed.

*Id.* “Perhaps in a perfect world every remedy would restore the status quo by putting both a wrongdoer and his victim in the same position they would have occupied absent the wrongful conduct.” *Id.* at 11 (quotations omitted). The Court’s opinion acknowledges that we do not live in a perfect world, and as between the wrongdoer and his victim, the Court unanimously held that courts should favor the latter.

## Looking Ahead

*Sripetch* likely will empower the SEC to seek disgorgement more often and in larger amounts, as defendants can no longer point to the Second Circuit’s restrictions limiting disgorgement to the victims’ pecuniary harm. See *SEC v. Govil*, 86 F. 4th 89 (2nd Cir. 2023).

1. **The SEC may face a lower burden to obtain disgorgement:** After *Sripetch*, the SEC arguably only needs to prove (1) that investors suffered a violation of their legally protected interest and (2) the wrongdoer earned unjust net profits. Proof of pecuniary harm to investors is not necessary, which is significant because investor financial losses do not always exist, and when they do, losses may be attenuated or speculative.
2. **The SEC may seek larger disgorgement awards:** After *Sripetch*, the SEC arguably can choose to base a disgorgement amount on the greater of the investors’ financial losses or the defendant’s unjust net profit.

The Supreme Court's decision in *Sripetch* changed the disgorgement landscape, but a lot remains uncertain. *Sripetch* resolved the circuit split about the scope of disgorgement. But it left key questions unanswered, including whether disgorgement under § 78u(d)(7) is a legal remedy, which, under the Seventh Amendment, would require a jury trial. The Court also expressly declined to resolve (1) whether § 78u(d)(7) frees the SEC from the traditional equitable rule that disgorgement must be awarded for victims (instead of sent to the Treasury); (2) whether the SEC may seek disgorgement when it is infeasible to distribute the collected funds to investors; and (3) what showing the SEC might have to make to prove infeasibility. *Sripetch*, 608 U.S. \_\_\_\_ (slip op. at 3–4) (quotations omitted). The scope of the SEC's powers to seek disgorgement almost certainly will be in front of the Court again to resolve these remaining questions.

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<sup>1</sup> For discussion of the origins and evolution of the SEC's disgorgement remedy, see generally, Paul S. Atkins & Bradley J. Bondi, *Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program*, 13 FORDHAM J. CORP. & FIN. L. 367 (June 2008), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1013&context=jcfl> and Brief for Amicus Curiae Cato Institute in Support of Petitioners, *Liu v. SEC*, No. 18-1501 (S. Ct. Dec. 23, 2019), [https://www.supremecourt.gov/DocketPDF/18/18-1501/126610/20191223154900375\\_Cato%20Institute%20-%20Amicus%20Brief%20in%20Support%20of%20Petitioners.pdf](https://www.supremecourt.gov/DocketPDF/18/18-1501/126610/20191223154900375_Cato%20Institute%20-%20Amicus%20Brief%20in%20Support%20of%20Petitioners.pdf).