

U.S. Supreme Court Docket Oct. 2014 Term— Federal Securities Cases

Docket No.	Date	Opinions of the Court	Subject	Status	Holding
13-1041	3/9/15	Perez v. Mortgage Bankers Association	Federal Regulatory Agencies	<p>Certiorari granted (6/16/14) and consolidated with <i>Nickols</i> (13-1052)</p> <p>Oral Argument held Monday, December 1, 2014. (Transcript)</p>	<p>Held: A Department of Labor Wage and Hour Division “Administrator Interpretation,” which reversed the agency’s stance on whether the Fair Labor Standards Act’s administrative exemption applied to mortgage loan officers, was a valid agency interpretation notwithstanding that it was issued without undertaking notice-and-comment procedures. The plain text of the APA does not require federal agencies to undertake notice-and-comment rulemaking when merely promulgating “interpretive rules” such as the DOL issuance in dispute here.</p>
13-7451	2/25/15	Yates v. U.S.	Sarbanes – Oxley Act "anti shredding" provision	<p>Certiorari granted (4/28/14)</p> <p>Oral argument held Wednesday, November 5, 2014. (Transcript)</p> <p>Petitioner Reply Brief (3/28/14)</p> <p>Amicus briefs: U.S. Chamber of Commerce (7/3/14) Cause of Action (2/5/14)) Nat'l Assoc. of Criminal Defense Lawyers (2/5/14)</p> <p>Petition filed 11/11/13</p>	<p>Held: Sarbanes-Oxley's provision against shredding a "tangible object" in 18 U.S.C. Sec. 1519 is appropriately read to cover only objects one can use to record or preserve information, not any and all physical evidence, however remote from records.</p>
Docket No.	Date filed	Granted Petitions	Subject	Status	Questions
13-435	10/4/13	Omnicare, Inc. v. The Laborers District Council Construction Industry Pension Fund	Securities Act Sec. 11	<p>Certiorari granted (3/3/14)</p> <p>Oral Argument held Monday, November 3, 2014. (Transcript)</p>	<p>For the purposes of a Securities Act Sec. 11 claim, whether a plaintiff may plead that a statement of opinion was "untrue" merely by alleging that the opinion itself was objectively wrong, or must the plaintiff also allege that the statement was subjectively false.</p> <p>Sixth Circuit opinion.</p>
Docket No.	Date Filed	Pending Petitions	Subject	Status	Questions Presented
14-1142	3/17/15	Boudreaux v. SEC	Qualified immunity		Whether a government officer performing discretionary functions

					is entitled to a defense of qualified immunity when facing monetary penalties under a federal statute. Eleventh Circuit opinion.
14-1132	3/17/15	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning	Jurisdiction		Whether Sec. 27 of the Exchange Act provides federal jurisdiction over state-law claims seeking to establish liability based on violations of the Act or its regulations or seeking to enforce duties created by the Act or its regulations. Third Circuit opinion.
14-1052	2/13/15	Belmont Holdings Corp. v. Deutsche Bank AG	Securities Act Section 11.		For purposes of a Sec. 11 claim, whether a plaintiff must plead that a statement of opinion not only contains false statements of material fact or omits material facts required to make the statements in the registration statement not misleading, but also that the speaker actually knew that the statements were false or misleading, even though the Court has held, in <i>Ernst & Ernst v. Hochfelder</i> , that under Sec. 11 “the issuer of the securities is held absolutely liable,” without regard to fault.
14-975	2/9/15	Cohen v. NVIDIA Corp.	Duty to Disclose		Whether Item 303 of Regulation S-K forms the basis for a duty to disclose otherwise material information for purposes of an omission actionable under Exchange Act Section 10(b) and Rule 10b-5 as the 2nd Circuit recently held in direct conflict with the 9th Circuit's holding in this case. Ninth Circuit opinion.
14-967	12/1/14	Coffman v. U.S.	Jurisdiction	Certiorari denied (3/23/15)	Whether the 6th Circuit's application of the "conduct" test specifically overruled in <i>Morrison</i> violates the holding and precedent set out in that case, and whether criminal liability under Exchange Act Section 10(b) extends to conduct in connection with an extraterritorial purchase or sale of securities. Sixth Circuit opinion.
14-771	12/29/14	Laborers' Local 265	Investment	Certiorari denied	Whether the investment adviser to

		Pension Fund v. iShares Trust	Company Act	(3/2/15)	a mutual fund may avoid liability under Section 36(b) of the Investment Company Act of 1940 for overcompensating itself and its affiliates by conducting operations of the mutual fund through an affiliate. Sixth Circuit opinion.
14-736	12/17/14	In re Herald, Primeo, and Thema	SLUSA		Whether <i>Troice</i> prohibits a class action based on state law when the plaintiffs allege: (1) they invested in uncovered securities (that were not traded on any national exchange) and (2) neither they nor anyone else (on their behalf) ever bought, sold, held, or attempted to take a position in covered securities as a result of the plaintiffs' investment. Second Circuit opinion.
14-730	12/17/14	Davis v. JP Morgan Chase & Co.	SLUSA "covered securities"		Whether, consistent with <i>Troice</i> , claims of a Ponzi scheme's victims, who acquired uncovered securities, are precluded merely because the scheme's operator purportedly engaged in the trading of covered securities.
14-696	12/9/14	Smith v. Delta Air Lines, Inc.	Fiduciary duties of trustees	Certiorari denied (2/23/15)	Whether allegations that a defendant has breached the duty of loyalty must allege the "special circumstances" discussed in the Court's decision in Fifth Third Bancorp v. Dudenhoeffer in the context of complaints that allege a breach of the duty of prudence.
14-690	12/3/14	Smith v. Psychiatric Solutions, Inc.	Sarbanes-Oxley attorney fee provision	Certiorari denied (2/23/15)	Whether the Supremacy Clause of the US Constitution permits an attorney fee provision of a state statute to trump the American Rule and the employee-only fee provision of the Sarbanes-Oxley Act. Eleventh Circuit opinion.
14-687	12/6/14	Stiefel Laboratories, Inc. v. Finnerty	Duty to update statements.	Certiorari denied (3/23/15)	Whether Exchange Section 10(b) and Rule 10b-5 impose a duty on a corporation to "update" prior truthful statements. Eleventh Circuit opinion.
14-582	11/19/14	Prousalis v. Moore	"Making" a statement	Certiorari denied (1/12/15)	Whether the Court's decision in <i>Janus</i> applies to criminal cases alleging violations of Rule 10b-5, such that an individual cannot be held criminally liable under Rule 10b-5 for assisting in the preparation of statements for a

					third party who has "ultimate authority" over those statements. Fourth Circuit opinion.
14-541	11/12/14	McGee v. U.S.	Rule 10b5-2	Certiorari denied (2/23/15)	Whether Rule 10b5-2, which purports to define a "relationship of trust or confidence" for purposes of the misappropriation theory of insider trading, directly conflicts with the Court's holdings in <i>U.S. v. O'Hagan</i> , <i>Dirks v. SEC</i> , and <i>Chiarella v. U.S.</i> , and consequently was invalidly promulgated. Third Circuit opinion.
14-535	11/10/14	Gupta v. SEC	Evidence	Certiorari denied (1/12/15)	Whether a district court abuses its discretion when it makes a finding that is directly contrary to its earlier finding on an identical record in a related case without providing any explanation or justification for the discrepancy. Second Circuit opinion.
14-471	10/20/14	Contorinis v. SEC	Equitable remedies: disgorgement		Whether a defendant in an SEC enforcement action can be ordered to disgorge profits that he or she never received, possessed, or controlled, but that instead accrued directly to innocent third parties. Second Circuit opinion.
14-397	9/25/14	Quintanilla v. SEC	Venue	Certiorari denied (11/10/14)	Whether the US may force an individual defendant to defend himself in a forum 3,000 miles away from his residence, and which has no causal connection to the subject matter of the lawsuit, merely because the district court judge has become familiar with the parties, the case's procedural history, and the applicable federal substantive law.
14-389	7/9/14	In re Grand Jury Subpoena Corporation Client	Grand jury proceeding	Certiorari denied (11/10/14)	Application of crime-fraud exception to attorney-client privilege in context of alleged targets of FCPA investigation.
14-379	10/2/14	Nomura Home Equity Loan, Inc. v. National Credit Union Administration Board	Statute of repose	Certiorari denied (1/12/15)	Whether 12 U.S.C. Sec. 1787(b)(14)'s extension of the "statute of limitations" under state law for "contract" and "tort" claims included in any action brought by the National Credit Union Administration Board, displaces the absolute three-year statute of repose established by Congress in Sec. 13 of the Securities Act.

					Tenth Circuit decision.
14-302	9/12/14	Kim v. U.S.	Fugitive Disentitlement	Certiorari denied (10/20/14)	Whether the "fugitive disentitlement doctrine" applies on grounds of "constructive" flight to a foreign national living openly and lawfully in his home country, who has not hidden or fled.
14-264	7/9/14	Schneidmiller v. Physicians Ins. Capital	Arbitration	Certiorari denied (10/20/14)	Whether the appellate court's finding that there was no reason to believe the arbitrators were bound to apply provisions of the PSLRA contrary to the Supreme Court's holdings. Also, whether the PSLRA is subservient to the Federal Arbitration Act.
14-189	8/14/14	Esquenazi v. U.S.	FCPA	Certiorari denied (10/6/14)	Whether the 11th Circuit's definition of "instrumentality" under the FCPA as "an entity controlled by the government of a foreign country that performs the function the controlling government treats as its own" (1) fails to satisfy the constitutional requirement of adequate notice of what specific conduct violates the FCPA, and (2) is erroneously derived from commentary to an unrelated treaty that postdates the FCPA's enactment. Eleventh Circuit decision.
14-183	8/14/14	Aaes v. 4G Companies	Subject matter jurisdiction	Certiorari denied (10/20/14)	Whether district courts erred in ruling that U.S. Securities laws did not apply.
14-135	7/23/14	Haines v. Tremont Group Holdings	Settlements	Certiorari denied (10/6/14)	Whether an unaccepted settlement offer that fully satisfies a plaintiff's claim is sufficient to render the claim moot.
14-88	7/24/14	Grady v. U.S.	Federal regulatory powers	Certiorari denied (10/6/14)	Wide-ranging questions about federal power to regulate stock markets.
14-45	7/11/14	O'Callaghan v. The New York Stock Exchange LLC	Section 10(b)	Certiorari denied (10/6/14)	Whether the NYSE deliberately hide five years of illegal stock trading from the American public, which caused illegal plus and minus ticks, in violation of the Securities laws.
14-32	7/11/14	Watts v. Wells Fargo Advisors, LLC	Arbitration/Due Process	Certiorari denied (10/6/14)	Whether arbitrators' failure to comply with FINRA arbitration rules and failure to enforce orders compelling discovery denied Fifth Amendment Due Process rights and warrant vacating an arbitration award as being procured by fraudulent or undue means.
14-29	7/8/14	Whitman v. U.S.	Insider trading	Certiorari denied (11/10/14)	Whether, in a prosecution for insider trading, the relevant inside

				(with statement of Justice Scalia, joined by Justice Thomas, regarding denial of certiorari)	information must have been a "significant factor" in the defendant's decision to buy or sell, or whether mere "knowing possession" of inside information suffices for a criminal conviction.
14-19	7/3/14	Teo v. SEC	Disgorgement	Certiorari denied (11/17/14)	Whether a court in an SEC civil enforcement action can order defendants to disgorge profits that were not attributable to their violations of the securities laws but were instead earned as a result of an intervening event unrelated to those violations. Third Circuit opinion.
13-7451	11/11/13	Yates v. U.S.	SOX "anti shredding" provision	Decided 2/25/15 Certiorari granted (4/28/14) Petitioner Reply Brief (3/28/14) Amicus briefs: U.S. Chamber of Commerce (7/3/14) Cause of Action (2/5/14)) Nat'l Assoc. of Criminal Defense Lawyers (2/5/14)	Whether SOX Sec. 1519 extends to the destruction of anything meeting the dictionary definition of "tangible objects," or is limited to the destruction of tangible objects related to recordkeeping.
13-1493	4/14/14	Tennant v. U.S.	Federal Rules of Evidence	Certiorari denied (10/20/14)	Mr. Tennant joined the petition filed in <i>Cuti v. U.S.</i>
13-1491	6/13/14	Cuti v. U.S.	Federal Rules of Evidence	Certiorari denied (10/20/14)	Does Federal Rule of Evidence 701(c) bar the admission of lay opinion testimony based on technical or other specialized knowledge in a securities fraud prosecution.
13-1460	6/5/14	Dammeyer v. Municipal Mortgage & Equity, LLC	Statute of Repose	Certiorari denied (10/6/14)	Whether the phrase "after the security is bona fide offered to the public" that commences the statute of repose of Securities Act Section 13 for claims under Section 11, means the date a registration statement is declared effective by the SEC, regardless of whether the subject securities are actually offered to, or available for purchase by, the public on that date. Fourth Circuit decision.
13-1052	2/28/14	Nickols v. Mortgage Bankers Association	Federal Regulatory Agencies	Certiorari granted (6/16/14) and consolidated with <i>Perez</i>	Whether a federal agency must engage in notice-and-comment rulemaking before it can

				(13-1041) Oral Argument held Monday, December 1, 2014. (Transcript)	significantly alter an interpretive rule that articulates an interpretation of an agency regulation.
13-1041	2/28/14	Perez v. Mortgage Bankers Association	Federal Regulatory Agencies	Decided 3/9/15 Certiorari granted (6/16/14) and consolidated with <i>Nickols</i> (13-1052) Oral Argument held Monday, December 1, 2014. (Transcript)	Whether a federal agency must engage in notice-and-comment rulemaking before it can significantly alter an interpretive rule that articulates an interpretation of an agency regulation.
13-791	12/30/13	Moore v. Hildes	Securities Act Section 11	Certiorari denied (10/6/14)	Whether a plaintiff may state a claim under Section 11 of the Securities Act of 1933, which provides for strict liability "on account of" defective registration statements, where he made an irrevocable investment decision to acquire his securities before a registration statement covering the issuance of those securities existed. Ninth Circuit opinion.
13-640	11/22/13	Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc.	Statute of limitations / American Pipe tolling	Certiorari dismissed as improvidently granted (9/29/14) Certiorari granted (3/10/14)	Whether the filing of a putative class action serves, under the <i>American Pipe</i> , rule to satisfy the three-year time limitation in Sec. 13 of the Securities Act with respect to the claims of putative class members. Sixth Circuit opinion.
13-576	11/8/13	Nomura Home Equity Loan, Inc. v. National Credit Union Administration Board	Statute of repose	Certiorari granted and judgment vacated and remanded (6/16/14)	Whether 12 U.S.C. Sec. 1787(b)(14), which sets the "statute of limitations" for "contract" and "tort" claims included in any action brought by the National Credit Union Administration Board, displaces the absolute three-year statute of repose established by Congress in Sec. 13 of the Securities Act. Tenth Circuit decision.