

## U.S. Supreme Court Docket, October 2020 Term — Federal Securities Cases

Issued Opinions	Docket No.	Subject	Status, Transcript, Filings	Holding
<a href="#">Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System</a> (6/21/21)	20-222	Basic presumption	<p><a href="#">Petition</a> filed 8/21/20</p> <p><a href="#">Certiorari granted</a> 12/11/20</p> <p><a href="#">Oral argument</a> held 3/29/21</p> <p>Petitioner brief: <a href="#">11/17/20</a> Respondent brief: <a href="#">10/21/20</a></p> <p>Amicus briefs: <a href="#">Dept. of Justice</a>; <a href="#">Financial Economists</a>; <a href="#">Former SEC Officials and Law Professors</a>; <a href="#">Institutional Investors</a>; <a href="#">SIFMA</a>; <a href="#">State Attorneys General</a>; <a href="#">Washington Legal Foundation</a></p> <p><a href="#">Second Circuit decision</a> (4/7/20)</p> <p>Attorneys: Richard H. Klapper (Sullivan &amp; Cromwell LLP) for Goldman Sachs Group, Inc.</p> <p><a href="#">Supreme Court Docket</a></p>	<p><a href="#">Held</a>: The generic nature of a misrepresentation is important evidence of price impact that should be considered at the class certification stage. At issue was the rebuttal of the <i>Basic</i> presumption in class actions premised on the inflation-maintenance theory. Since the parties no longer disputed whether the generic nature of the alleged misrepresentations was relevant to price impact, the only disagreement was whether the Second Circuit properly considered the nature of Goldman Sachs's statements. It was unclear to the court whether the Second Circuit did so; as a result, the court vacated the judgment and remanded it for the Second Circuit to consider all record evidence relevant to price impact.</p>

<a href="#">Carney v. Adams</a> (12/10/20)	19-309	Article III Standing	<a href="#">Petition</a> filed 9/4/19  <a href="#">Certiorari granted</a> 12/6/19  <a href="#">Oral argument</a> held 10/5/2020  Petitioner briefs: 3/13/20; 1/21/20; 10/22/19 Respondent briefs: 2/20/20; 10/7/19  <a href="#">Third Circuit opinion</a> : 4/10/19  Attorneys: Michael W. McConnell (Wilson Sonsini Goodrich & Rosati) for John C. Carney, Governor of Delaware. David L. Finger (Finger & Slanina, LLC) for James R. Adams.  <a href="#">Supreme Court Docket</a>	<a href="#">Held</a> : a would-be judge failed to show that he was "able and ready" to apply for a judicial vacancy and thus lacked standing to bring a constitutional challenge against Delaware's party-membership requirements for its judiciary. The individual failed to show an "injury in fact" that was more than an abstract, generalized harm in part because he lacked a concrete intention to apply for judicial vacancies.
Granted Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
<a href="#">Pivotal Software, Inc. v. Tran</a> (5/3/21)	20-1541	Federal preemption	<a href="#">Certiorari granted</a> 7/2/21  Respondent brief: <a href="#">6/4/21</a> Petitioner brief: <a href="#">6/7/21</a>  Attorneys: Deanne Elizabeth Maynard (Morrison & Foerster LLP) for the petitioners  <a href="#">Supreme Court Docket</a>	Whether the PSLRA discovery-stay provision applies to a private action under the Securities Act in state or federal court, or solely to a private action in federal court.

<a href="#">Olan v. U.S.</a> (9/4/20)	20-306	Insider trading	<a href="#">Granted, vacated and remanded</a> 1/11/21 (in light of <a href="#">Kelly v. U.S.</a> )  Petitioner brief 12/8/20  Amicus briefs: Alternative Investment Management Association; Law Professors; National Association of Criminal Defense Lawyers  Attorneys: Eric S. Olney (Shapiro Arato LLP) for Robert Olan. Jacobus P. van der Ven (Munger, Tolles & Olson LLP) for Theodore Huber.  <a href="#">Supreme Court Docket</a>	Whether the Court's holding in <i>Dirks v. SEC</i> , requiring proof of "personal benefit" to establish insider-trading fraud, applies to Title 18 statutes that proscribe fraud in language virtually identical to the Title 15 anti-fraud provisions at issue in <i>Dirks</i> .  <a href="#">Second Circuit decision</a> (12/30/19)
Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
<a href="#">Bofl Holding, Inc. v. Houston Municipal Employees Pension System</a> (3/26/2021)	20-1364	Basic presumption	Respondent brief: <a href="#">6/25/21</a>  Amicus briefs: <a href="#">SIFMA</a>  Attorneys: Polly Towill (Sheppard, Mullin, Richter & Hampton LLP) for Bofl Holding, Inc.  <a href="#">Supreme Court Docket</a>	Whether disputed public allegations, without any additional corroborating disclosure or event, reveal to an efficient market the "truth" for purposes of establishing loss causation under <i>Dura</i> .  <a href="#">Ninth Circuit decision</a> (10/8/20)

Denied Petitions	Docket No.	Subject	Status	Holding
<a href="#">Kosinski v. U.S.</a> (2/19/21)	20-1161	Insider trading, fiduciary duty	<a href="#">Certiorari denied</a> 6/14/21  Attorneys: Daniel J. O'Neill (Shapiro Arato Bach LLP) for Edward J. Kosinski. Elizabeth B. Prelogar, United States Department of Justice, for the U.S.  <a href="#">Supreme Court Docket</a>	Whether a simple agreement to keep information confidential by itself can establish the fiduciary or similar relationship of "trust and confidence" required to establish criminal insider trading fraud.  <a href="#">Second Circuit decision</a> 9/22/20
<a href="#">Allen v. Wells Fargo &amp; Company</a> (12/23/20)	20-866	ESOP fiduciary duty	<a href="#">Certiorari denied</a> 5/4/21  Attorneys: Matthew W.H. Wessler (Gupta Wessler PLLC) for Francesca Allen.  <a href="#">Supreme Court Docket</a>	Whether, under Dudenhoeffer, ESOP fiduciaries are effectively immune from duty-of-prudence liability for the failure to publicly disclose inside information.  <a href="#">Eighth Circuit decision</a> 7/27/20
<a href="#">Foxfield Villa Assoc. v. Robben</a> (12/23/20)	20-868	Definition of security	<a href="#">Certiorari denied</a> 2/22/21  Attorneys: Attorneys: John M. Duggan (Duggan Shadwick Doerr & Kurlbaum LLC) for Foxfield Villa Associates, LLC. Robert M. Pitkin (Horn Aylward & Bandy, LLC) for Paul Robben and RDC Holdings, LLC.  <a href="#">Supreme Court Docket</a>	Whether limited liability company interests are "investment contracts" when the investors rely on the promoter's admitted promises that he solely will manage and control the enterprise, the promoter prepares agreements and implementing resolutions providing the promoter such exclusive management control, and the promoter retains veto power over his removal such that the investors rely "solely" on the promoter's efforts to affect the enterprise's profits.  <a href="#">Tenth Circuit decision</a> 7/31/20

<a href="#">Feng v. SEC</a> (12/22/20)	20-862	Broker-dealer registration	<a href="#">Certiorari denied</a> 2/22/21  Attorneys: Robert G. Heim (Tarter Krinsky & Drogin LLP) for Hui Feng and The Law Offices of Feng and Associates PC. Jeffrey B. Wall for the SEC.  <a href="#">Supreme Court Docket</a>	Whether the SEC exceeded its statutory authority under the Exchange Act by applying the Act's broker registration requirements to petitioners, who had no involvement with secondary market transactions.  <a href="#">Ninth Circuit decision</a> 8/23/19
<a href="#">M&amp;T Bank Corporation v. Jaroslawicz</a> (11/15/20)	20-678	Regulation S-K disclosures	<a href="#">Certiorari denied</a> 1/25/21  Attorneys: Tracy Richelle High (Sullivan & Cromwell LLP) for M&T Bank Corp. Bradley R. Wilson (Wachtell, Lipton, Rosen & Katz) for David Jaroslawicz.  <a href="#">Supreme Court Docket</a>	Whether Item 105 of Regulation S-K requires a company with knowledge of a general risk factor to ascertain and disclose facts that may bear on that general risk factor that are not otherwise within the company's actual knowledge.  <a href="#">Third Circuit decision</a> (6/18/20)
<a href="#">Gibson v. SEC</a> (8/31/20)	20-276	Administrative Law Judges, Jurisdiction	<a href="#">Certiorari denied</a> 1/11/21  Petitioner brief 12/21/20 Respondent brief <a href="#">12/4/20</a>  Amicus briefs: Cato Institute; Competitive Enterprise Institute; U.S. Chamber of Commerce; Southeastern Legal Foundation  Attorneys: Gregory G. Garre (Latham & Watkins LLP) for Christopher M. Gibson.  <a href="#">Supreme Court Docket</a>	Whether Congress has implicitly stripped federal district courts of jurisdiction to adjudicate separation-of-powers challenges to the authority of SEC ALJs to preside over enforcement proceedings.  <a href="#">Eleventh Circuit decision</a> (12/30/19)

<a href="#">Jalbert v. SEC</a> (5/18/20)	19-1310	Disgorgement	<a href="#">Certiorari denied</a> 10/5/20  Attorneys: Alex Lipman (Lipman Law PLLC) for Craig R. Jalbert. Noel J. Francisco, U.S. Department of Justice, for the SEC.  <a href="#">Supreme Court Docket</a>	Whether a federal government agency's order imposing unauthorized penalties labeled "disgorgement" is void in relevant respects because the agency did not have the power to impose penalties without explicit congressional authorization.  First Circuit decision (12/20/19)
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