Securities Regulation Daily Wrap Up, ENFORCEMENT—U.S.: SEC asks SCOTUS to decide if disgorgement requires pecuniary harm, (Dec. 19, 2025)

Securities Regulation Daily Wrap Up

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By Anne Sherry, J.D.

The fact that the Court granted certiorari in two other disgorgement cases, *Kokesh* and *Liu*, shows the importance of the issue.

In its response to a petition for writ of certiorari, the SEC asked the Supreme Court to hear an appeal of a case that landed in the agency's favor. The petitioner argues that the Ninth Circuit erred in ordering disgorgement without requiring the SEC to show pecuniary harm to investors. The SEC counters that the Ninth Circuit was correct but that the decision conflicts with one from the Second Circuit. Like several amici who have supported certiorari, the government asks the Court to resolve the conflict (Brief for the Respondent, *Sripetch v. SEC*, No. 25-466 (Dec. 17, 2025)).

The petitioner was charged with manipulating penny stocks. Rejecting the petitioner's argument that disgorgement was improper because the SEC did not identify investors that suffered pecuniary harm, the district court entered a judgment that included a $3.3 million disgorgement award. The Ninth Circuit affirmed this judgment, holding that a finding of pecuniary harm is not a prerequisite to an award of disgorgement.

The SEC in its brief argues both that the Ninth Circuit's decision is correct and that the case is an ideal vehicle for the Supreme Court to resolve the split with the Second Circuit.

Congress authorized the SEC to seek, and district courts to grant, "any equitable relief that may be appropriate or necessary for the benefit of investors." The SEC cites *Liu*'s holding that this equitable relief may include disgorgement. Under these principles, an award of disgorgement does not require a finding of pecuniary harm, the SEC asserts, because disgorgement is a profits-focused remedy based on the principle that a defendant should not profit from his wrongdoing.

"The availability of disgorgement therefore turns on whether the violator has made a profit, not on whether the victim has suffered a loss," the SEC writes.

Independently, a post-*Liu* statute authorizes a district court to order disgorgement; the statute does not couch that remedy in the language that the *Liu* Court interpreted as requiring that disgorgement be awarded for victims. A separate clause in this 2021 appropriations law elaborates that the court may award disgorgement of any unjust enrichment. This makes clear that the award focuses on the enrichment of the defendant, not the loss to the victim, the brief maintains.

The SEC considers the case a clean vehicle to resolve the question because the Ninth Circuit expressly declined to rely on the SEC's argument that pecuniary harm was present, rather affirming the district court solely on the legal ground that such a finding is not required. The question is also important because disgorgement is a central feature of the congressional enforcement scheme.

The case is No. 25-466.

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