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What is New After Liu: Unsettled Questions Surrounding SEC Disgorgement

On June 22, 2020, in *Liu v. SEC*, the Supreme Court held in an 8-1 decision that the SEC is authorized under 15 U.S.C. § 78u(d)(5) (2015) to seek disgorgement as "equitable relief" in district court actions, as long as the disgorgement award "does not exceed a wrongdoer's net profits and is awarded for victims."[1] In reaching this decision, the Court upheld a key piece of the SEC's enforcement arsenal, while at the same time restricting the SEC's ability to obtain disgorgement and raising a number of open questions, including the impact of *Liu* on the Court's 2017 decision in *Kokesh v. SEC*,[2] that will need to be sorted out by lower courts.

This article discusses the holding in *Liu* and a number of these outstanding questions, including the following:

- How will the principles discussed in Liu impact the SEC's ability to obtain disgorgement? In particular, will the SEC be able to transfer disgorged funds to the Treasury rather than returning them to victims, how will Fair Funds be affected, and will the SEC ever be able to obtain disgorgement on a joint-and-several basis?
- Will the manner in which disgorgement is calculated change going forward and will previously disallowed expenses now be permitted?
- Will some types of cases be affected more than others?
- If a disgorgement award qualifies as equitable relief under Liu, does that mean it is not a "penalty" for purposes of the five-year statute of limitations in 28 U.S.C. § 2462?
- Will defendants be able to obtain indemnification, insurance coverage, or tax deductions for disgorgement if it is deemed to be equitable relief, rather than a penalty?
- Will the SEC still be able to obtain disgorgement from relief defendants?

- How, if at all, will the decision affect the calculation and award of disgorgement in administrative proceedings?
- Will defendants be able to challenge previously-entered disgorgement awards that do not comply with *Liu*?

BACKGROUND ON *LIU V. SEC*

In *Kokesh*, the Court held that an SEC disgorgement order in a district court action was a "penalty" for purposes of 28 U.S.C. § 2462, and thus subject to the five-year statute of limitations. In footnote 3 of that opinion, the Court expressly declined to address whether courts had disgorgement authority in SEC enforcement proceedings or whether disgorgement was properly applied.[3] As we have discussed in prior alerts, footnote 3 served as an invitation to challenge the SEC's disgorgement authority, and it was only a matter of time until the Court had to address the issue.[4]

Enter, Charles Liu and Xin Wang ("Petitioners"), participants in the EB-5 United States Immigrant Investor Program, which allows foreigners to seek visas by participating in commercial enterprises. Through a "regional center" that aggregated qualifying investments as securities, Petitioners collected almost $25 million in capital contributions, much of which they allegedly misappropriated by diverting funds to overseas marketing firms and paying themselves nearly $7 million in salaries.[5] The SEC filed suit and moved for summary judgment, which the district court granted on April 20, 2017, holding that Petitioners violated Section 17(a)(2) of the Securities Act.[6] The court issued a permanent injunction barring Liu and Wang from participating in the Immigrant Investor Program, ordered Liu and Wang to pay civil penalties in the amount of their personal gains, and ordered disgorgement of $26,733,018.81. The SEC argued that disgorgement should equal the full amount that Liu and Wang raised from their investors, because this was the "reasonable approximation of profits causally connected to the violation" and Petitioners' "expenses" were not "actual and legitimate" costs but rather payments to themselves or efforts to disguise the fraud.[7]

The Supreme Court decided *Kokesh* shortly after the district court entered final judgment. On appeal, Liu and Wang argued that under *Kokesh*, disgorgement is a form of penalty, and thus the district court lacked statutory authority to award it under the "guise" of equitable relief.[8] A panel of Ninth Circuit judges affirmed the district court, holding that because the Supreme Court had expressly reserved the question of the SEC's statutory authority to seek disgorgement, the district court's disgorgement award was not "clearly irreconcilable" with "longstanding precedent."[9]

Liu and Wang filed a cert petition, which the Court granted on November 1, 2019.

THE COURT'S DECISION

The Court's opinion framed the issue presented in *Liu* as whether the SEC was authorized under 15 U.S.C. § 78u(d)(5) to seek disgorgement "beyond a defendant's net profits from wrongdoing."[10] It referred to the task of determining if a particular remedy falls within "equitable relief" as a "familiar one" that involved analyzing two equity principles. First, that "equity practice long authorized courts to strip wrongdoers of their ill-gotten gains," and second, "to avoid transforming an equitable remedy into a punitive sanction, courts restricted the remedy to an individual wrongdoer's net profits to be awarded for victims."[11]

The opinion then described a history of equity courts depriving wrongdoers of net profits from unlawful activity, "even though that remedy may have gone by different names." The Court concluded that "[n]o matter the label" these cases reflected a "foundational principle" that it would be "inequitable that [a wrongdoer] should make a profit out of his own wrong," while also recognizing the "countervailing equitable principle" that a wrongdoer should not be "punished by paying more than a fair compensation to the person wronged."[12] It also noted that the Court's prior decisions confirmed that a "remedy tethered to a wrongdoer's net unlawful profits, whatever the name, has been a mainstay of equity courts."[13]

The Court discussed several limits courts have imposed on profits remedies to ensure they were not transformed into penalties and focused on profits directly gained by a culpable actor as the barometer to bring such a remedy "comfortably within" categories of relief typically available at equity.[14] First, it noted that profits remedies "often imposed a constructive trust on wrongful gains for wronged victims." Second, it noted that profits-based remedies were generally awarded not under a joint-and-several liability theory, but instead based upon the amount accrued to the wrongdoer. Third, it noted that courts limit awards to net profits, defined as "the gain made upon any business or investment, when both the receipt and payments are taken into account." It did, however, acknowledge an exception to preclude the offset of "unconscionable claims for personal services or other inequitable deductions."[15]

The Court held that Congress incorporated these longstanding equitable principles into 15 U.S.C. § 78u(d)(5), and thereby "prohibited the SEC from seeking an equitable remedy in excess of a defendant's net profits from wrongdoing." The Court then observed that SEC disgorgement cases had originally conformed to that limitation, but over time had expanded in three main ways that "test[ed] the bounds of equity practice": (1) ordering proceeds of fraud to be deposited into the Treasury rather than distributed to victims; (2) imposing joint-and-several liability; and (3) "declining to deduct even legitimate expenses."[16]

The Court summarily rejected the Petitioners' contention that the holding in *Kokesh* meant that disgorgement was a penalty for all purposes, and thus not available as a form of equitable relief.[17] The Court acknowledged that *Kokesh* evaluated a version of disgorgement that "seemed to exceed the bounds of traditional equitable principles," but went on to state that this did not prohibit the SEC from requesting disgorgement that was limited to a wrongdoer's net gains.[18] At the same time, the Court rejected the Government's argument that because the SEC had over time expanded disgorgement beyond net gains, Congress must have explicitly condoned this expansion by favorably referencing disgorgement in statutes enacted after the expansion occurred.[19]

The Court ultimately vacated the district court's disgorgement award and remanded the case to the Ninth Circuit to determine narrower questions it deliberately left unanswered, including whether the present district court's disgorgement award transcended traditional equity bounds because it failed to return funds to victims, imposed joint-and-several liability, and did not allow the deduction of any arguably legitimate business expenses. As further discussed below, the Court discussed "principles that may guide the lower courts' assessment" of these issues on remand, but did not provide definitive answers.[20] The following unanswered questions and others likely will be sources of debate in multiple cases and negotiations between defense counsel and the SEC staff in the years to come.

WHAT QUESTIONS REMAIN OPEN?

1. Do disgorged funds always have to be returned to investors for disgorgement to meet equity standards?

Yes, in most instances. While the Court's decision did not categorically mandate that disgorged funds be returned to victims in order to make an award equitable, it strongly suggested that some form of victim compensation is necessary in light of "the statute's command that any remedy be 'appropriate or necessary for the benefit of investors.'"[21] The Court noted that the Government had not cited any common-law precedent permitting a wrongdoer's profits to be withheld indefinitely without being returned to known victims. The Government argued that, because the SEC brought an enforcement action to deprive a wrongdoer of ill-gotten gains, and because the Treasury earmarks funds to support other investor protection initiatives, those activities were sufficient to satisfy the statute's requirement that the disgorgement be "for the benefit of investors." The Court did not accept that argument, reasoning that "for the benefit of investors" must mean more than a benefit to the public at large.[22]

Liu may prompt the SEC to expand its use of Fair Funds. The Federal Account for Investor Restitution ("FAIR") Funds provision of Sarbanes Oxley empowered the SEC to create a fund consisting of a defendant's disgorgement amount and any civil monetary penalty.[23] By definition, the fund is "for the benefit of investors who were harmed by the violation,"

and the SEC must include a plan to administer the funds. "Unless otherwise ordered" that plan must specify who is potentially eligible to receive fund proceeds, how individuals will be notified of the fund's existence, and procedures for approving claims.[24] It is possible that the SEC will increasingly rely on the creation of Fair Funds to satisfy *Liu*, because they set up a process for returning funds to harmed investors while leaving the determination of who those victims are and how much they are entitled to receive for a later date, after a case has been brought and concluded. If so, this practice may result in additional challenges surrounding distribution plans, who qualifies as a harmed investor, what payment is for their benefit, and when Fair Funds can go to the Treasury.

The Court left as an "open question" the Government's contention that depositing disgorged funds into the Treasury may be warranted in cases "where it is infeasible to distribute the collected funds to investors." [25] As we discuss below, the ultimate answer to this open question will significantly impact the SEC's approach to several categories of cases.

2. Can the SEC obtain joint-and-several liability from co-defendants?

Yes, in some instances. The opinion stated that imposing joint-and-several liability on a wrongdoer for benefits "that accrue to his affiliates" was "sometimes seemingly at odds with the common-law rule requiring individual liability for profits" and "could transform any equitable profits-focused remedy into a penalty."[26] However, the Court noted that the common law provided an exception to this principle for partners engaged in "concerted wrongdoing," which could give rise to circumstances where imposing "collective liability" might be equitable.[27] The Court described a spectrum ranging "from equally culpable codefendants to more remote, unrelated tipper-tippee relationships" and strongly suggested the former might be considered equitable, while the latter would not. The Court also described some factors present in *Liu* that might be relevant to the issue on remand, including that the Petitioners were married, that the wife held herself out as the president of an entity to which her husband directed misappropriated funds, and that Petitioners had not presented evidence that their finances were not commingled.[28]

A related question raised by both *Kokesh* and *Liu* is whether the SEC will continue to be able to obtain disgorgement from relief defendants, who did not engage in wrongdoing, but who have received illicit gains resulting from violations committed by others and have no legitimate claim to the funds.[29] The *Liu* opinion included language that could support both sides of this debate. On the one hand, it endorsed the idea that "collective liability" could be appropriate in some circumstances, while on the other hand it suggested evidence that someone "was a mere passive recipient of profits" could cut against collective liability as an equitable remedy.[30]

3. What qualifies as a "legitimate expense" to deduct from ill-gotten gains in calculating disgorgement?

This will be the subject of future lower court decisions. In the final question remanded, the Court directed the Ninth Circuit to consider what should be classified as a "legitimate expense" that must be deducted from the disgorgement award.[31] The Court here said that courts should consider whether expenses are legitimate or whether they are "wrongful gains 'under another name.'"[32] The Court noted that some of the Petitioners' expenditures, including lease payments and cancer-treating equipment, arguably had value apart from the scheme, but ultimately left it for the lower court to decide whether they were legitimate or not.

This issue has the potential to profoundly impact how disgorgement is calculated. In many Ponzi schemes or offering frauds, victim investments may be used to pay traditional business expenses (like lease and rental equipment in *Liu*) as well as professional fees for legal or accounting services. Absent an entirely fictitious business, defendants are likely to raise these issues. Similarly in insider trading cases, defendants may now assert that brokerage commissions or advisory fees should be deducted from any calculation of their trading profits. In cases against regulated entities such as investment advisers, unless the wrongdoer simply misappropriated client funds for personal use, a multitude of potentially legitimate expenses could theoretically be deducted from the disgorgement amount. Actions against public companies for financial or accounting fraud related matters are also likely to see similar arguments regarding the

corporate use of allegedly illicit proceeds. Under *Liu*, the SEC will now need to evaluate the legitimacy of expenses (instead of dismissing defendants' arguments out of hand) and offset those that are appropriate from profits.

4. *What does Liu mean for the SEC's ability to obtain disgorgement in insider trading cases, FCPA cases, and others where victims are difficult to identify?*

Disgorgement will likely be more difficult for the SEC to obtain in these types of cases. By holding that disgorgement proceeds should be returned to harmed investors in order to qualify as equitable relief, *Liu* appears to have made it significantly harder for the SEC to obtain disgorgement in certain types of cases – including insider trading and Foreign Corrupt Practices Act cases – where identifying victims of the violations and returning funds to them in a cost-effective manner are difficult. Disgorged profits in these two categories of cases, including FCPA disgorgement orders that can total tens or even hundreds of millions of dollars, historically have been transferred to the Treasury.

In "classical" insider trading cases, for example, it may be difficult to trace the precise securities bought or sold to individual sellers or purchasers who were theoretically the victims of the unlawful transaction. And in insider trading cases based on the "misappropriation" theory, the putative victim is not the counterparties to the securities transactions at all, but rather the entity or person from whom the information was misappropriated.

Similarly, the "victims" of an FCPA violation could be a foreign government, citizens of a foreign sovereign where government corruption occurred, or even competing businesses throughout the world who were arguably disadvantaged because they chose not to pursue an illegal bribery scheme. Would the SEC ever set up a disgorgement fund to compensate such "victims"?

The Court in *Liu* declined to decide whether there may be circumstances where transfer to the Treasury would be consistent with 15 U.S.C. § 78u(d)(5) because a distribution to harmed investors would be "infeasible," and this question is certain to be a point of contention in future litigation and settlement discussions between defense counsel and the staff. [33] It also may require the SEC staff to spend more time and resources gathering information about potential victims and the feasibility of victim compensation. One option in cases with hard-to-identify victims might be – as we discussed above – for the SEC to use a Fair Fund. The SEC could establish a disgorgement fund for the benefit of victims and develop criteria for potential victims to submit claims. In the event the fund was not depleted through payment of accepted claims, payment of the remainder to the Treasury might be a more acceptable outcome after all efforts to distribute the ill-gotten gains to actual victims were exhausted.

5. *How does Liu impact Kokesh and the application of the statute of limitations?*

Liu may revive some questions that *Kokesh* supposedly resolved. At first blush, the holding in *Liu* that disgorgement can be an equitable remedy for purposes of 15 U.S.C. § 78u(d)(5) seems at odds with the holding of *Kokesh* that SEC disgorgement is a penalty, and thus subject to the five-year statute of limitations under 28 U.S.C. § 2462. The Court seemed to reconcile this apparent tension, however, by describing the question of whether the SEC may seek disgorgement through its power to obtain "equitable relief" under 15 U.S.C. § 78u(d)(5) as "antecedent" to the question of whether disgorgement is a penalty for purposes of § 2462. [34] In other words, the Court suggested that even if a disgorgement award is determined to be permissible equitable relief under 15 U.S.C. § 78u(d)(2), it still can be deemed a "penalty" within the meaning of § 2462 and subject to the five-year statute of limitations.

This unanswered question is also certain to prompt further litigation and debate. On the one hand, the SEC may argue that if a disgorgement award qualifies as equitable relief, then it is no longer a "penalty" and the statute of limitations does not apply. Defense counsel likely will respond that this reading would essentially nullify *Kokesh*, and that the statute of limitations should continue to apply to disgorgement even if the "antecedent" question of whether it constitutes equitable relief in a particular case is answered affirmatively. After all, *Kokesh* cited three primary reasons for classifying

disgorgement as a penalty under § 2462 – it is imposed as a consequence for a violation of public law that is committed against the United States rather than an aggrieved individual; it is imposed for punitive and deterrent purposes; and it is not always used to compensate victims – only the last of which is now in any tension with *Liu*.

Though not necessarily required under the law post-*Kokesh*, practically, the SEC staff has appeared to apply a "conceptual" five-year statute of limitations to much of their initial case selection and to have increased requests for tolling agreements. If these trends continue, this would reduce the import of any open statute of limitation questions following from *Liu*.

6. Will defendants be able to seek insurance coverage, indemnification, or tax deductions for disgorgement payments?

Liu may reopen these questions, just as the lower courts began to address them. On October 23, 2018, we published an alert analyzing a New York state appellate court decision holding that insurers were not required to cover a $140 million disgorgement award paid by a financial firm in a settlement with the SEC related to late trading and market timing.[35] The court in that case looked at the definition of a covered "loss" under the firms' insurance policies, which excluded "fines or penalties imposed by law" from the definition, and found that *Kokesh*'s decision that disgorgement is a penalty removed this payment from coverage under the insurance policy.[36] We predicted that while the decision turned on the specific language in the insurance policy, insurers would likely seek to broaden these exclusions and deny coverage for disgorgement going forward.

Similarly, the SEC's standard settlement papers have prohibited defendants from seeking indemnification or reimbursement (directly or indirectly) for penalties, which in the wake of *Kokesh* could arguably be read to prevent a settling party from being indemnified for disgorgement payments. This interpretation can be particularly significant for individual defendants.

Furthermore, in prior alerts we discussed the implications of *Kokesh* under tax law, predicting that the Internal Revenue Service would take the position that disgorgement payments were not deductible under Section 162(a) of the tax code due to the operation of Section 162(f) at the time, which prevented deductions for "any fine or similar penalty paid to a government for the violation of any law."[37] The IRS confirmed that it would take this approach in a chief counsel memorandum in December 2017.[38] We noted in our February 14, 2018, alert that, in light of intervening changes to I.R.C. § 162(f) in the new tax reform law, payments to a government would likely be deductible only if they were exactly characterized as restitution or an amount paid to bring the taxpayer into compliance with the law.[39]

The decision in *Liu* potentially re-opens all these issues. Insurers, companies with indemnification obligations, and the IRS likely will argue that SEC disgorgement is still a penalty under the criteria laid out in *Kokesh*, while policyholders and indemnitees will argue that they can seek reimbursement as long as a disgorgement award qualifies as equitable relief under *Liu*. Similarly, parties seeking a tax deduction will argue that any disgorgement award that satisfies the criteria described in *Liu* falls within the "restitution" exception in I.R.C. § 162(f). Of note, the SEC's current settlement papers for both administrative proceedings and district court actions prohibit a respondent from seeking a tax deduction or credit for any penalty amount "regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors."

7. How does Liu impact disgorgement in administrative proceedings?

Although the SEC should, in our view, implement a consistent disgorgement concept across its enforcement actions, *Liu* did not address administrative proceedings. In his dissenting opinion in *Liu*, Justice Thomas asked whether the majority's restrictions on disgorgement will apply to [administrative] enforcement proceedings as well as federal court cases. If not, Justice Thomas observed, the result will be that the disgorgement "has one meaning when the SEC goes to district court and another when it proceeds in-house."[40] Justice Thomas's concern arises from the fact that the Court held that

disgorgement is authorized in district court actions under the "equitable relief" language of 15 U.S.C. § 78u(d)(5), while the Exchange Act specifically authorizes the SEC to impose "disgorgement" in administrative proceedings.[41] Theoretically, this distinction could prompt the SEC to make more frequent and aggressive use of its administrative forum when seeking disgorgement, particularly in settled cases with public companies and regulated entities, although this might provide respondents with other avenues for challenge and appeal.

8. *Will defendants that were ordered to pay disgorgement that does not comport with the requirements for "equitable relief" in Liu be able to recoup any of their money?*

This remains to be seen. To the extent defendants were subject to SEC disgorgement judgments in federal court that did not comply with the parameters outlined in *Liu* (*i.e.*, if their disgorgement payment exceeded their net profits, was based on a theory of joint-and-several liability, and/or was not returned to harmed investors), they may have a plausible basis for moving under Fed. R. Civ. P. 60(b) to vacate the disgorgement portion of their judgment and to demand the return of some or all of the funds they paid. The most-applicable provisions of Rule 60(b) require that a motion must be filed "within a reasonable time," so any defendant considering such an effort would be well-advised to consult counsel soon in the wake of *Liu*. Defendants who settled their cases might plausibly argue that, under *Liu*, federal district courts lacked any lawful power to award disgorgement beyond the limited parameters set out in *Liu*, and thus that any such disgorgement award is either "void" within the meaning of Rule 60(b)(4) or otherwise warrants post-judgment relief under Rule 60(b)(6).[42] However, this may be a difficult argument. The First Circuit held in December 2019 that a defendant waived the right to judicial review of the an SEC order in executing an Offer of Settlement pursuant to Rule 240(a) of the Rules of Practice of the SEC, as Rule 240(c)(4) states "[b]y submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer … [j]udicial review by any court."[43]

CONCLUSION

When the Court granted cert in *Liu*, we hoped that a decision would provide more clear-cut answers to some of the questions we have flagged over the past three years since *Kokesh*. While we can now say for certain that some form of SEC disgorgement is here to stay, the *Liu* decision raises a host of new questions – and potential arguments for defendants and their counsel – about the limits on when the SEC will be able to obtain disgorgement, how much it will be able to obtain, and other collateral issues. These issues may be front and center quite soon. Courts have already begun remanding SEC disgorgement awards for consideration in light of *Liu*.[44] By keeping its opinion in *Liu* so narrowly focused, the Court may have guaranteed that it once again will be forced to interpret the bounds of SEC disgorgement in the near future.

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[1] Liu v. SEC, No. 18-1501, -----S. Ct.----- 2020 WL 3405845, at *2 (June 22, 2020).
[2] Kokesh v. SEC, 137 S. Ct. 1635 (2017).
[3] Kokesh, 137 S. Ct. at 1642, n. 3.
[4] See Reflections on Kokesh v. SEC: On the Lookout for "Elephants in Mouseholes," (Feb. 9, 2018), https://www.kslaw.com/attachments/000/005/640/original/ca020918.pdf?1518193236
[5] Complaint, SEC v. Charles C. Liu, SACV16-00974 CJC (AGRx) (C.D. Cal. May 26, 2016) ECF No. 1.
[6] SEC v. Liu, 262 F. Supp. 3d 957 (C.D. Cal. 2017), aff'd, SEC v. Liu, 754 Fed Appx. 505 (9th Cir. 2018).
[7] Brief for Respondent at 40-41, Liu v. SEC, No. 18-1501 (June 22, 2020).
[8] Brief for Defendants-Appellants at 49-50, SEC v. Liu, No. 17-55849 (9th Cir. Dec. 21, 2017) ECF No. 14.
[9] SEC v. Liu, 754 Fed. Appx. 505, 509 (9th Cir. Oct. 25, 2018).
[10] Liu, 2020 WL 3405845 at *5.
[11] Id. at *5.
[12] Id. (quoting Root v. Ry Co., 105 U.S. 189, 207 (1881) and Tilghman v. Proctor, 125 U.S. 136, 145-146 (1888)) (internal quotations omitted).
[13] Id. (citing Porter v. Warner Holding Co., 328 U.S. 395 (1946)).
[14] Id. at *8 (quoting Mertens v. Hewitt Assocs., 508 U.S. 248, 256 (1993)) (internal quotations omitted).
[15] Id. at 7 (quoting Rubber Co. v. Goodyear, 9 Wall. 788, 804 (1869) and other cases). The Court noted an exception where the "entire profit of a business or undertaking" results from the wrongful activity.
[16] Id. at *8.
[17] Id.
[18] Id.
[19] Id. at *9.
[20] Id.
[21] Id.
[22] Id. at *10.
[23] 15 U.S.C. § 7246(a) (2006).
[24] 17 C.F.R. § 201.1101.
[25] Id.
[26] Liu, 2020 WL 3405845, at *10-11.
[27] Id.
[28] Id.
[29] Reflections on Kokesh v. SEC: Potential Ramifications of SEC Disgorgement Being a Penalty (June 14, 2017) https://s3.amazonaws.com/kslaw-staging/attachments/000/004/567/original/ca061417.pdf?1498139481.
[30] Liu, 2020 WL 3405845, at *11.
[31] Id. at *11-12.
[32] Id. at *11 (citing Rubber Co. v. Goodyear, 9 Wall 788, 803 (1869)).
[33] Id. at *10.
[34] Id. at *2.

[35] The Catch with Kokesh: Insurers Refusing to Cover Disgorgement to SEC (Oct. 23, 2018), https://www.kslaw.com/news-and-insights/the-catch-with-kokesh-insurers-refusing-to-cover-disgorgement-to-sec
[36] J.P. Morgan Sec. Inc., v. Vigilant Ins. Co., 2018 N.Y. Slip Op. 06146, No. 600979/2009 (1st Dept. Sept. 20, 2018); Kokesh v. SEC, 137 S. CT. 1635 (2017).
[37] The Impact of Kokesh So Far, and What's Next: Part 2, Law360 (Feb. 14, 2018, 1:22 PM EST), https://www.kslaw.com/attachments/000/005/655/original/2-14-18_Law360.pdf?1518640833
[38] IRS CCA. 201748008 (Dec. 1, 2017).
[39] 26 U.S.C. § 162(f) (2017)
[40] Liu, 2020 WL 3405845, at *15 (Thomas, J., dissent).
[41] See 15 U.S.C. § 77h-1(e) (2017)
[42] Fed. R. Civ. P. 60(b)
[43] Jalbert v. U.S. Sec. and Exch. Comm'n, 945 F.3d 587 (1st Cir. 2019).
[44] SEC v. Janus Spectrum LLC, ----Fed. Appx. 2020 WL 3578077 (June 29, 2020); de Maison v SEC, -----S. Ct.----, 2020 WL 3578674, (July 2, 2020); Team Resources Inc. v. SEC, -----S. Ct.----, 2020 WL 3578673 (July 2, 2020).