

U.S. Supreme Court Curtails Securities and Exchange Commission's In-House Authority to Penalize Securities Fraud

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On June 28, 2024, the Supreme Court issued a significant decision that could have wide-ranging consequences for administrative agency enforcement actions. In *Securities and Exchange Commission v. Jarkesy*, the Court held that the SEC cannot impose civil penalties for violations of the securities laws' antifraud provisions through in-house administrative proceedings. The Court found that these antifraud enforcement proceedings, under Section 10(b) of the Securities Exchange Act, Section 17(a) of the Securities Act, and Section 206 of the Investment Advisers Act, are akin to common law fraud actions and, thus, require a right to a jury trial in federal court under the Seventh Amendment.

In its analysis, the Court examined the nature of the civil penalties sought by the SEC, the statutory factors considered in imposing those penalties, and the fact that the SEC is not obligated to return any money to victims. Based on those considerations, the Court concluded that the civil penalties sought by the SEC "are designed to punish and deter, not to compensate," and are thus the type of punitive remedy that must be enforced in federal court with a right to a jury trial.

The Court also rejected the government's argument that antifraud actions by the SEC involve "public rights" that can be adjudicated by an administrative agency. Relying on its prior decision holding that fraudulent conveyance actions in bankruptcy are subject to a jury trial in federal court, the Court concluded that SEC antifraud actions do not involve public rights because they are so closely analogous to common law claims, thus they cannot be assigned to an administrative tribunal. This was so even though the SEC, as a sovereign government agency, was acting pursuant to statutory authority from Congress to prosecute, decide, and enforce laws designed to protect investors in the securities markets.

The Supreme Court's decision in *Jarkesy* severely constrains the SEC's ability to enforce the securities laws' antifraud provisions through in-house proceedings, as any enforcement actions seeking monetary penalties under the antifraud provisions must now be heard in federal court. As the dissenting opinion points out, *Jarkesy* could also be read to limit other agencies' in-house enforcement authority.

Particularly combined with the Court's recent decision in *Loper Bright Enterprises v. Raimondo* limiting federal courts' obligation to defer to administrative agencies' interpretations of the laws they enforce, *Jarkesy* has the potential to significantly change the landscape for enforcement proceedings by federal administrative agencies, and to give the companies and individuals targeted by those proceedings more avenues to challenge those enforcement actions in federal court.

If you have questions about how this development may impact your organization, please contact your Miller Canfield attorney or one of the authors of this alert.