BANKING

Milestones: Supreme Court Caps Time For SEC To Pursue Civil Penalties

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Author: GFMag.com Admin

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By Forrest Jones

Should the US Securities and Exchange Commission want to slap civil penalties on anyone involved in any improprieties, it had better get cracking sooner rather than later.

SEC told to speed up claims against fraudsters

The US Supreme Court recently ruled unanimously that the SEC must sue within five years after an alleged fraudulent security action took place.

"This is a big deal because oftentimes securities fraud… may only come to light after five years," says Robert Savage, a law professor at Florida International University in Miami. "Ideally, the SEC's response will be to bring cases sooner or seek tolling agreements [voluntary agreements between regulators and subjects under investigation in which statutes of limitations are waived] with potential defendants to extend the statute of limitations. Of course the SEC may not be able to pursue securities fraud as broadly as they'd like due to practical implications of their budget and personnel."

The Supreme Court ruling stems from a case involving Gabelli Funds' executive Bruce Alpert and former executive Marc Gabelli, who were accused by the SEC of making improper trades. But the Supreme Court agreed with the plaintiffs that regulators took too long to make their case—setting a precedent for future cases.

"A potential impact may simply be that fraudsters, emboldened, redouble their concealment efforts to remain concealed just long enough to benefit from the decision," Savage says.

The ruling means that the SEC has five years to take action once a questionable activity occurs. "If there's a continuing action, the statute doesn't start to run until the action stops," notes University of Miami law professor Stanley Langbein.

The ruling applies to civil money penalties, not necessarily criminal penalties. "They have a right to say 'you broke the law, you have to pay money.' You don't go to jail—it's not a criminal conviction, but it is what we call penal," Langbein says. "That's really the fighting issue with the banking area."

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