

Private Equity Regulatory Update

June 26, 2017

Rules and Regulations

- House Approves Revised Financial CHOICE Act

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- Supreme Court Rules that Five-Year Statute of Limitations Applies to SEC Disgorgement Actions

Rules and Regulations

House Approves Revised Financial CHOICE Act

On June 8, 2017, the U.S. House of Representatives approved the Financial CHOICE Act of 2017 (the “Act”) in a 233-186 vote on near-party lines. [As we reported in April](#), the Act would make sweeping changes to the Dodd-Frank Wall Street Reform and Consumer Protection Act and other financial regulatory laws.¹ Among other things, section 858 of the Act would amend the Advisers Act to exempt private equity fund advisers from the registration and reporting requirements of the Advisers Act. The Act does not define the term “private equity fund,” but rather requires the SEC to define the term by issuing final rules within six months of the enactment of the relevant section of the Act. The Act now faces an uncertain future in the Senate, where it is unlikely to be adopted in full. It is possible, however, that certain aspects of the Act will be approved by the Senate or implemented by the Trump administration, which on June 12, 2017 released a Treasury Department report outlining the administration’s financial regulatory goals.

- ▶ [See a copy of the Act](#)

Litigation

Supreme Court Rules that Five-Year Statute of Limitations Applies to SEC Disgorgement Actions

On June 5, 2017, the Supreme Court unanimously held in *Kokesh v. SEC* that the five-year statute of limitations in 28 U.S.C. § 2462 applies to claims for disgorgement by the SEC. In *Kokesh*, the question turned on whether disgorgement, which requires a defendant to give up ill-gotten gains, constitutes a

¹ For a recent summary of the major provisions of the CHOICE Act, see [Financial CHOICE Act 2.0 Passes House Financial Services Committee](#) on the Davis Polk Financial Regulatory Reform website.

“forfeiture” or “penalty” under § 2462 and is thus within the applicable five-year statute of limitations. The *Kokesh* decision resolved a circuit split between (i) the Tenth, D.C. and First Circuit Courts of Appeals, which found that disgorgement was not a penalty under § 2462, and (ii) the Eleventh Circuit Court of Appeals, which found in a 2016 decision that disgorgement fell within the plain meaning of “forfeiture” and was therefore limited by the five-year statute of limitations.

For a detailed discussion and analysis of the *Kokesh* decision, please see the June 6, 2017 Davis Polk Client Memorandum, [Securities Enforcement Update: Supreme Court Rules that Five-Year Statute of Limitations Applies to SEC Disgorgement Actions](#).

- ▶ [See a copy of the Kokesh decision](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

John G. Crowley	212 450 4550	john.crowley@davispolk.com
Nora M. Jordan	212 450 4684	nora.jordan@davispolk.com
Yukako Kawata	212 450 4896	yukako.kawata@davispolk.com
Leor Landa	212 450 6160	leor.landa@davispolk.com
Gregory S. Rowland	212 450 4930	gregory.rowland@davispolk.com
Jennifer Grant Cooper	212 450 4492	jennifer.cooper@davispolk.com
Oren Gertner	212 450 4227	oren.gertner@davispolk.com
Trevor I. Kiviat	212 450 3448	trevor.kiviat@davispolk.com

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