

Five Takeaways from Congress' Codification and Extension of SEC's Disgorgement Authority

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In this article, Ann Sultan, Margot Laporte and Paul Leder discuss five key takeaways from the U.S. Securities and Exchange Commission's (SEC) authorization by statute to seek court-ordered disgorgement of "unjust enrichment" resulting from violations of the securities laws. "Although the SEC has long sought disgorgement as a form of relief, the remedy had not been expressly authorized by statute and two recent Supreme Court decisions had limited its scope," the authors wrote. The National Defense Authorization Act (NDAA) is Congress's clear response to those limitations: federal courts can now order disgorgement – and other equitable remedies – and in certain cases can do so for a period of up to 10 years from the latest date of violation. The authors explore how this new legislation may impact companies, particularly in FCPA investigations.

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