SEC Disgorged Fund Distribution Is Next Query After Sripetch

By **Daniel Walfish** (June 12, 2026)

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In its June 4 decision in Sripetch v. U.S. Securities and Exchange Commission, the U.S. Supreme Court unanimously held that the SEC does not need to show that victims of a fraud or other violation of the securities laws experienced financial harm in order to obtain disgorgement, the procedure by which a court orders a defendant sued by the SEC to give up ill-gotten profits.

Disgorgement has been a mainstay of SEC enforcement actions for more than half a century, and the decision in Sripetch restores the commission's powers to where they had stood in October 2023, when the U.S. Court of Appeals for the Second Circuit held in SEC v. Govil that disgorgement is not available if the commission fails to identify harmed victims.[1]

However, the issue in Sripetch was just one of several related legal questions, and the Supreme Court did not resolve the others. The other questions are principally: (1) whether the SEC must generally distribute disgorged funds to investors or rather may freely deposit the funds into the U.S. Treasury; and (2) if the SEC is expected to make a distribution, what happens when the SEC contends that a distribution is not feasible.

The answer to these questions will affect the availability of disgorgement, the amount of scrutiny that the SEC will receive — and the efforts it must expend — in proposing monetary sanctions for court approval, and thus the settlement leverage of those in the SEC's crosshairs.

All of these questions — the two left open and the one answered in Sripetch — emerge from what Justice Neil Gorsuch's opinion for the court referred to as the "long and nuanced history" of SEC disgorgement.[2]

The remedy historically was not explicitly authorized by statute, but since 2002, courts have been authorized by Paragraph (d)(5) of Section 21 of the Securities Exchange Act to impose "any equitable relief that may be appropriate or necessary for the benefit of investors."[3]

In June 2020, the Supreme Court held, in Liu v. SEC, that for disgorgement to be permissible, it must be confined within "equitable" parameters, including that the amount disgorged be limited to the amount of net profits, and that the disgorged funds generally be turned over to investors instead of being deposited in the Treasury.[4]

Six months later, on Jan. 1, 2021, Congress amended the Exchange Act to explicitly authorize court-ordered disgorgement.[5] The new authorization is found in, among other places, Paragraph (d)(7) of the same statutory section.[6]

Circuits have divided on whether the SEC enjoys broader latitude under the new Paragraph (d)(7) than it did under (d)(5). Liu based its requirement to distribute disgorged funds in part on the phrase "for the benefit of investors" and in part on background equitable principles.[7]

But Paragraph (d)(7) has no language referring to investor benefit or stating that the remedy must be "equitable." In light of these and other features of the 2021 amendments,

the U.S. Courts of Appeals for the Fifth and Eleventh Circuits subscribe to the view that Paragraph (d)(7) authorizes the type of disgorgement courts were ordering before Liu, which would mean there is no requirement to make a distribution.[8]

The contrary view holds that, when Congress enacted the 2021 amendments, its use of the word "disgorgement" itself imported the equitable limitations outlined in Liu, which would include the investor-distribution requirement. This view has so far been adopted only by the Second Circuit,[9] which reached its circuit-splitting conclusion almost by accident.[10]

In Sripetch, the justices did not resolve these differing views. The petitioning party, Ongkaruck Sripetch, was accused of orchestrating fraudulent pump-and-dump stock promotion schemes, but he argued that the SEC had not produced evidence that any particular investors had suffered losses due to his misconduct.

Sripetch presented the Supreme Court with a choice, in cases without provable investor loss, between either (1) shifting the profits from illegal activity from the wrongdoers to investors, who might thus wind up better off as a result of the fraud, or possibly the U.S. Treasury; or (2) letting wrongdoers keep the profits. The Supreme Court chose the former option.[11]

However, as Justice Clarence Thomas noted in a concurring opinion in Sripetch, given the divided views in the courts of appeals, the Supreme Court "will soon need to address whether disgorgement under §78u(d)(7)" should be classified as an equitable or a legal remedy,[12] a question that will likely determine whether the SEC is required to attempt a distribution of the funds to investors. If Paragraph (d)(7) disgorgement is not equitable, then there is probably no requirement to distribute.

It is not clear how the justices will rule in that eventual case. Noting Justice Gorsuch's comments at oral argument and reading between the lines of his opinion suggests that he is sympathetic to the view that Paragraph (d)(7) disgorgement is no broader than the equitable disgorgement permitted under Paragraph (d)(5).[13]

On the other hand, Justice Thomas stated in his concurrence that he views Paragraph (d)(7) disgorgement as a legal remedy akin to a forfeiture, and comments from multiple other justices at oral argument — Justices Ketanji Brown Jackson, Samuel Alito, and Sonia Sotomayor — suggest that they are receptive to the view that Paragraph (d)(7) frees the SEC from the equitable constraints that apply to Paragraph (d)(5).[14]

Members of the Supreme Court have expressed concern, both in their Sripetch opinions and in their comments during the oral argument,[15] that the SEC will use an "equitable" classification of disgorgement to circumvent the Seventh Amendment right to a jury trial — a right that would otherwise presumably exist if disgorgement is classified as "legal."

This is not much of a practical concern, though. In reality, the SEC almost always couples its disgorgement demands with a demand for the separate remedy of a money penalty, essentially a fine, and the latter triggers a jury right for the whole case. In fact, the SEC's usual practice is to demand a jury in its opening complaint.

It is true that the SEC, for a period of time last decade, was attempting to route more cases through its in-house system of administrative adjudication, in which no jury is available, but the SEC largely abandoned that practice, and two years ago in SEC v. Jarkesy,[16] the Supreme Court imposed additional legal obstacles to recovering penalties in in-house proceedings.

However, if the justices do ultimately rule that, even under Paragraph (d)(7), the funds should be or even must be distributed, the SEC will be chilled or prevented from seeking disgorgement in cases in which it is difficult or impractical to identify and make payouts to victimized investors. In such cases, the SEC will have to rely more heavily on money penalties if it wishes to achieve the same level of deterrent sanction.

And this will not always be possible given that fines are subject to various statutory caps. In several categories of cases where the victims are hard to identify and/or track down, notably those involving market manipulation, the SEC may find it difficult to establish its entitlement to a disgorgement award.

It is sometimes said that insider trading cases would be affected by the requirement to make a distribution, because in an anonymous marketplace of willing buyers and sellers, it is impractical to locate the investors harmed by insider trading.

In reality, the effect on insider trading cases would not actually be that significant. First, if the amounts involved are massive enough, the SEC will in fact go to the trouble of identifying investors who, economically speaking, were on the other side of the insider's trades.[17]

Second, in insider trading cases, the courts have the power to impose a money penalty of up to three times the profits (or avoided losses).[18] In practice, the courts rarely impose penalties that steep, and the SEC usually allows defendants to settle with a total payment of about twice their alleged profits/avoided losses.

In settled cases, these alleged profits are usually paid out once as disgorgement and a second time as a so-called 1x, or one times, penalty. However, nothing prevents the SEC, in a world in which disgorgement is harder to obtain, from requiring settling insider trading defendants to pay a "2x," or "two times," penalty and zero disgorgement, for the same total monetary sanction, and in fact, that is exactly what the SEC was doing for a period of time after Liu came down and before the 2021 National Defense Authorization Act gave the SEC confidence that it could collect disgorgement without attempting a distribution of disgorged amounts.

In all events, if the justices eventually rule — or if the circuit split is eliminated by an en banc ruling from the Second Circuit overruling the prior panels of that court — that the SEC is freed from a distribution requirement, it will streamline procedures and in many cases strengthen the SEC's hand in settlement negotiations and in court.

To sum up: Following Sripetch, investor harm is not required for the SEC to obtain a disgorgement award, and we will have to wait for a future case to find out whether and to what degree the SEC is freed from a requirement to distribute disgorged funds to the victims of alleged misconduct.

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should not be taken as legal advice.

[1] SEC v. Govil, 86 F.4th 89 (2d Cir. 2023).

[2] Sripetch v. SEC, slip op. at 1 (U.S. June 4, 2026).

[3] 15 U.S.C. § 78u(d)(5).

[4] Liu v. SEC, 591 U.S. 71 (2020).

[5] National Defense Authorization Act, Pub. L. 116-283 (Jan. 1, 2021) § 6501.

[6] 15 U.S.C. § 78u(d)(7).

[7] 591 U.S. at 82, 87-90.

[8] SEC v. Spartan Securities Group Ltd., 164 F.4th 1231, 1265-69 (11th Cir. 2026); SEC v. Hallam, 42 F.4th 316, 335-41 (5th Cir. 2022).

[9] Govil, 86 F.4th at 98-102; see also SEC v. Ahmed, 72 F.4th 379, 395-96 (2d Cir. 2023).

[10] The author of Govil, Judge Steven Menashi, appeared to be ambivalent about the decision, calling it "debatable" whether (d)(7) authorized only equitable relief. 86 F.4th at 102 n.12. Judge Menashi seemed sympathetic to the arguments that have swayed the Fifth and Eleventh Circuits. Id. However, Judge Menashi felt bound by his court's prior panel decision in Ahmed, which stated that (d)(7) disgorgement is subject to the "equitable" limitations announced in Liu. Yet in Ahmed, the court was not actually presented with a full treatment of this issue, as the briefs contained virtually no discussion of the differences between (d)(7) and (d)(5) (other than in relation to statutes of limitations), let alone whether (d)(7) requires a distribution to investors. See Ahmed, 72 F.4th at 396 ("the parties assume, and we agree, that Liu's equitable limitations on disgorgement survive the NDAA"); Consol. Brief of SEC, SEC v. Ahmed, No. 21-1686 (2d Cir. Feb. 14, 2022) (Doc. 112); Br. for Iftikar A. Ahmed, SEC v. Ahmed, No. 21-1686, at 15, 34 (2d Cir. Nov. 15, 2021) (Doc. 82).

[11] Sripetch, slip op. at 11-12.

[12] Sriptech, slip. op. at 10 (Thomas, J., concurring).

[13] See Sripetch, slip. op. at 7-8, 12; Oral arg. Tr. 39-40.

[14] Sriptech, slip. op. at 10 (Thomas, J., concurring); Sripetch, Oral arg. Tr. 19, 23-24, 33-39.

[15] Sripetch, slip op. at 12; id. at 1 (Thomas, J. concurring); Oral arg. Tr. 43, 57, 75.

[16] 603 U.S. 109 (2024).

[17] See SEC, CR Intrinsic Investors, et al., Litig. Rel. No. 25022 (Feb. 3, 2021) (noting that investor-compensation fund, which contained $601 million collected as disgorgement and penalties to settle landmark insider trading case, had distributed $531 million to "over 4,800 harmed investors"), at https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25022.

[18] 15 U.S.C. § 78u-1(a)(2).