The Harvard Law School Forum on Corporate Governance and Financial Regulation

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Supreme Court on Statute of Limitations for SEC Enforcement Actions

Posted by Noam Noked, co-editor, HLS Forum on Corporate Governance and Financial Regulation, on Friday March 1, 2013

Editor's Note: The following post comes to us from Jay B. Kasner, head of the Securities Litigation Practice at Skadden, Arps, Slate, Meagher & Flom, and is based on a Skadden memorandum by Mr. Kasner, Matthew J. Matule, Edward B. Micheletti, and Peter B. Morrison.

***Gabelli v. Sec. & Exch. Comm'n*, No. 11-1274 (U.S. Feb. 27, 2013)**

In a unanimous opinion authored by Chief Justice Roberts, the U.S. Supreme Court held that the five-year limitations period that governs SEC enforcement actions begins to run when the alleged fraud is complete. The Court reversed the Second Circuit on the issue, which had held that the discovery rule applied in cases where the defendant allegedly committed fraud. The SEC alleged that two mutual fund managers allowed one of the fund's investors to engage in market timing in the fund in exchange for an investment in a separate hedge fund, but the SEC filed the action more than five years after the conduct was alleged to have taken place. The Court explained that limitations periods ordinarily begin to run upon a party's injury, but in cases of fraud — when the injury itself is concealed — courts have developed the discovery rule to protect individuals, who are after all not required to be in a constant state of investigation. That rationale however does not apply to the SEC, whose mission is to investigate (and prevent) fraud and which has statutory authority to demand detailed records, including those extra-judicial subpoenas. Therefore, the Court concluded the discovery rule does not apply to the SEC.

Click here to view the opinion.