



June 2024

***SEC v. Jarkesy*: A Groundbreaking Supreme Court Decision with Significant Implications for Securities Enforcement**

On June 27, 2024, the U.S. Supreme Court issued its long-awaited decision in *SEC v. Jarkesy*. In its holding, the Court found that when the Securities Exchange Commission seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial and thus the SEC must bring the action in federal court.

The implications of this decision, including its effect on SEC (and other agency) use of administrative tribunals, are considerable.

By way of background, in 2011 the SEC initiated an investigation into George Jarkesy and his firm, Patriot28, LLC. In 2013, the SEC brought an in-house action alleging violations of the antifraud provisions contained in the federal securities laws. After an evidentiary hearing, an administrative law judge found Jarkesy liable for securities fraud and ordered him to pay \$300,000 in civil monetary penalties, among other sanctions. Jarkesy then sought review in the U.S. Court of Appeals for the Fifth Circuit, which reversed and remanded, finding that the SEC's decision to adjudicate the matter in-house (rather than in federal court) violated Jarkesy's Seventh Amendment right to a jury trial.

Yesterday, the Supreme Court affirmed the Fifth Circuit's ruling as to Jarkesy's Seventh Amendment right. Specifically, the court noted that the Seventh Amendment's guarantee of a right to a jury trial

applies to “[s]uits at common law,” which includes statutory claims that are “legal in nature.” The Court went on to say that the type of remedy the SEC sought against *Jarkesy*, *i.e.*, civil monetary penalties, is the “prototypical common law remedy,” making clear that the SEC’s action was legal in nature (as opposed to an action in equity, to which no constitutional jury right is attached). This, according to the Court, follows from the fact that the civil penalties sought by the SEC were designed to “punish and deter” the wrongdoer rather than to enforce some sort of public right or, as the Court put it, to “restore the status quo.”

The Court added that the “public rights” exception to the Seventh Amendment, which allows Congress to assign certain matters that might otherwise be considered “legal in nature” for decision to an agency without a jury (such as matters relating to revenue collection, certain customs and immigration laws, or relations with Native American tribes), did not apply to *Jarkesy*’s case because the SEC’s suit intended to target “the same basic conduct as common law fraud,” which amounts to a “matter[] of private rather than public right.”

Thus, the Court concluded that the SEC’s suit against *Jarkesy* implicated the Seventh Amendment and that *Jarkesy* was entitled to a trial by jury on the SEC’s claims.

The Court’s ruling may have significant implications. As an initial matter, the decision amounted to a partial rejection of the SEC’s administrative forum. Further, while the SEC has limited the number of enforcement actions it brings in the administrative process in recent years, given the substantial costs associated with federal court litigation, *Jarkesy* may force the SEC to be more selective in its future enforcement efforts.

More broadly, the *Jarkesy* decision calls into question whether *any* federal regulatory agency—not just the SEC—can bring in-house proceedings to enforce civil penalties. This is particularly noteworthy, because although some agencies (such as the SEC) may choose whether to pursue civil penalties in federal court or via an in-house administrative proceeding, other agencies, such as the Occupational Safety and Health Review Commission, are only statutorily authorized to pursue enforcement through in-house proceedings.

Thus, some have voiced concern that because of *Jarkesy*, the powers of certain enforcement agencies may be substantially curtailed. Indeed, as Justice Sotomayor noted in her dissent, “the Constitutionality of hundreds of statutes may now be in peril, and dozens of agencies could be stripped of their power to enforce laws enacted by Congress.”

Consequently, *Jarkesy* may be only the beginning.

Authors

This GT Alert was prepared by the following members of the firm’s [White Collar Defense & Investigations](#), [Financial Regulatory & Compliance](#), and [Securities Litigation](#) Practices:

- [Richard M. Cutshall](#) | +1 303.572.6527 | cutshallr@gtlaw.com
- [Barbara A. Jones](#) | +1 310.586.7773 | Barbara.Jones@gtlaw.com
- [William B. Mack](#) | +1 212.801.2230 | mackw@gtlaw.com
- [Steven Malina](#) | +1 312.476.5133 | Steven.Malina@gtlaw.com
- [David I. Miller](#) | +1 212.801.9205 | David.Miller@gtlaw.com

- **Nathan J. Muyskens** | +1 202.331.3164 | Nathan.Muyskens@gtlaw.com
- **Daniel J. Wadley** | +1 801.478.6910 | wadleyd@gtlaw.com
- **Charles J. Berke** | +1 212.801.6436 | berke@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin.⁷ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.⁶ Las Vegas. London.⁸ Long Island. Los Angeles. Mexico City.⁹ Miami. Milan.⁹ Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.⁸ Shanghai. Silicon Valley. Singapore.⁷ Tallahassee. Tampa. Tel Aviv.⁶ Tokyo.⁸ United Arab Emirates.⁶ Warsaw.⁷ Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁷Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁸Operates as a separate UK registered legal entity. ⁹Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [»]Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [̄]Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [‡]Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [◀]Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. [~]Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2024 Greenberg Traurig, LLP. All rights reserved.