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Hawkins: The Regulatory Impact of Jarkesy, Loper Bright, and Corner Post

Introduction

This Hawkins Update reviews three recent Supreme Court decisions – *Jarkesy*, *Loper Bright*, and *Corner Post*.^[1] Although these decisions are likely to substantially affect the rulemaking and enforcement activities of federal administrative agencies generally (including the Department of the Treasury and the Internal Revenue Service), we discuss the cases more specifically with respect to certain potential impacts on the Securities and Exchange Commission (the “SEC”).

No Civil Penalties in Administrative Proceedings

In *Jarkesy*, the Supreme Court considered the manner in which the SEC brings enforcement actions and, more specifically, whether the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties for securities fraud.

In 2011, the SEC commenced an enforcement action against Jarkesy and his investment advisory firm, Patriot28, LLC (“Patriot28”). The SEC alleged that Jarkesy and Patriot28 misled investors in connection with the launch and management of two investment funds by: (i) misrepresenting the funds’ investment strategies; (ii) hiding the identity of the funds’ auditor and prime broker; and (iii) inflating the funds’ claimed value to generate larger management fees. In initiating the enforcement action, the SEC alleged that these actions violated the antifraud provisions of the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. The SEC sought remedies that included civil penalties. The SEC adjudicated the matter in-house, found that Jarkesy and his firm had committed securities violations, and levied a civil penalty of \$300,000. Jarkesy and Patriot28 appealed.

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08.22.2024

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