No. 26-341

In the Supreme Court of the United States

SPARTAN SECURITIES GROUP, LTD.; ISLAND CAPITAL MANAGEMENT LLC; CARL E. DILLEY; AND MICAH J. ELDRED,

Petitioners,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF MANHATTAN INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

This brief addresses the second of the petition's questions presented:

Whether, after *Liu v. SEC*, 591 U.S. 71 (2020) and *Sripetch v. SEC*, 608 U.S. 555 (2026), courts may deviate from traditional equitable principles by awarding the SEC disgorgement in the absence of any harmed investors and directing that the disgorged funds be paid to the Treasury.

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INTEREST OF *AMICUS CURIAE*[1]

Manhattan Institute (MI) is a nonpartisan public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, MI has sponsored scholarship and filed briefs supporting the security of Americans' property rights and access to judicial process to vindicate those rights. This case implicates those concerns because the erroneous decision below risks leaving the targets of agency enforcement actions unable to defend themselves against unconstitutional executive overreach.

SUMMARY OF ARGUMENT

In 2019, the SEC filed a 14-count complaint against petitioners Spartan Securities Group, Ltd. ("Spartan," an SEC-registered broker-dealer), Island Capital Management LLC ("Island," a registered transfer agent), Carl Dilley (Spartan's registered principal officer and Island's president), and Micah Eldred (a registered principal of Spartan and Island's CEO). *SEC v. Spartan Sec. Grp., Ltd.,* 164 F.4th 1231, 1246 (11th Cir. 2026). Petitioners were charged with participating in schemes to package shell companies for sale as public vehicles. *Id*. One of these counts, Count VI, alleged that petitioners "made false statements or misleading omissions about the shell companies to obtain FINRA [Financial Industry Regulatory Authority] clearance and DTC eligibility," in violation of Exchange Act section 10(b) and SEC rule 10b-5(b). *Id*.

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel; no person or entity other than *amicus* funded its preparation or submission.

Petitioner Spartan's alleged involvement in this scheme consisted of gathering information from the issuers of several microcap securities and providing it, along with a Form 211 application confirming its review of the information, to FINRA, as required by SEC Rule 15c2-11. *Id*. at 1241, 1243. Once FINRA approved the application, petitioner Island sought clearance from the Depository Trust Corporation on behalf of one of the issuers, Kids Germ, to obtain electronic trading of Kids Germ's shares. In that process, Island sent emails to DTC opining that Kids Germ was not a shell company. *Id*. at 1244. Unbeknownst to petitioners, Kids Germ was a shell company. *Id*. at 1242, 1246.

Of the 14 counts charged, a jury found petitioners liable only for Count VI. Petitioner Island was found to have made misstatements of material fact to DTC only as to Kids Germ. None of these statements were directed to or seen by any investor. Pet. at 3, 10.

Following the jury verdict, the district court entered final judgment against petitioners. The order as to petitioner Island included both a $250,000 civil penalty and $114,520 in disgorgement (along with $39,874 in prejudgment interest). *Spartan,* 164 F.4th at 1249, 1250. The court ordered the disgorgement award to be paid to the Treasury, based on the SEC's stipulation that directing disgorged funds to victims would be infeasible. This stipulation was hardly surprising. No investors saw petitioners' false statements, so no such victims existed. Despite the lack of victims, the district court nevertheless concluded that ordering disgorgement was "consistent with equitable principles" and permitted by the Exchange Act.

On appeal, the Eleventh Circuit considered whether the Exchange Act permits awarding

disgorgement in the absence of any wronged investors. The claim for disgorgement here was initially brought under Section 21(d)(5) of the Exchange Act, which allows the SEC to seek, and federal courts to grant, "any equitable relief that may be appropriate and necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5). In *Liu v. SEC*, this Court ruled that disgorgement awards under § 78u(d)(5) constituted equitable relief, and that they must therefore be "awarded for victims." 591 U.S. 71, 74 (2020). While *Liu* left open the question of whether depositing disgorged funds with the Treasury when returning them to wronged investors proved infeasible might *constitute* such an award for victims, it firmly held that any disgorgement award under § 78u(d)(5) must ultimately be for the benefit of wronged investors. *Id.* at 89. However, after *Liu*, and before the district court's order here, Congress amended the Exchange Act by adding Section 21(d)(7), under which "in any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement." 15 U.S.C. § 78u(d)(7).

The Eleventh Circuit concluded that because § 78u(d)(7) lacks the "for the benefit of investors" language present in § 78u(d)(5), disgorgement under § 78u(d)(7) may be ordered even when it is not awarded for victims. *Spartan,* 164 F.4th at 1267. The court notably did not hold that disgorgement under § 78u(d)(7) is best understood as a legal remedy. Rather, it concluded that § 78u(d)(7) disgorgement remains an equitable remedy, but that it is exempt from the requirement that it be awarded for victims—a requirement that, the Eleventh Circuit concedes, applies to all other equitable remedies under the Exchange Act: "we simply treat the specific disgorgement authorization

as an exception to the general provision governing all other equitable relief." *Id.* at 1268.

The Eleventh Circuit's reading of § 78u(d)(7) is at odds with that of two other circuits. For this reason alone, this Court should clarify the meaning of the statute to correct the growing circuit split. However, there is a further reason to reject the Eleventh Circuit's interpretation: by categorizing § 78u(d)(7) disgorgement as an equitable remedy while exempting it from a central requirement governing equitable remedies, the lower court allowed the imposition of what is, in reality, a punitive legal remedy—without honoring the procedural requirements that attach to such remedies, including the Seventh Amendment right to trial by jury. Further, because it categorized this remedy as equitable, the court did not consider whether it was proper for the district court to award prejudgment interest. Prejudgment interest can be a permissible addition to equitable remedies, but usually not to punitive ones in the absence of statutory authorization. By allowing the imposition of a legal remedy under the guise of equity, the Eleventh Circuit adopted an untenable hybrid position that this Court should correct.

ARGUMENT

I. THE COURT SHOULD CLARIFY WHETHER DISGORGEMENT IS A LEGAL OR EQUITABLE REMEDY

In the context of the Exchange Act, this Court has addressed the questions of what kind of remedy disgorgement is, and what specific practices it permits. But new questions have arisen because of Congress's 2021 amendment, which introduced a novel section explicitly authorizing disgorgement as a remedy. In the

wake of this amendment, the status of disgorgement under the statute is unclear, as is how to apply precedents governing the remedy prior to the amendment.

Traditionally, disgorgement under the Exchange Act was understood to be an equitable remedy. When the act was first passed, the only statutorily authorized remedy available to courts in SEC enforcement actions was an injunction against future securities law violations. *Kokesh v. SEC,* 581 U.S. 455, 458 (2017). Due to the lack to explicit authorization to grant monetary remedies, federal courts began to grant disgorgement in the 1970s as part of their "inherent equity power to grant relief ancillary to an injunction." *Id.* (quoting *SEC v. Tex. Gulf Sulphur Co.,* 312 F. Supp. 77, 91 (S.D.N.Y.1970)).

In the ensuing years, however, courts began, under the guise of equity, to grant disgorgement remedies that were increasingly punitive in nature. In *Kokesh*, this Court recognized that disgorgement, as it had come to be practiced in SEC proceedings, was, in fact, a penalty (and thus subject to the statute of limitations), for three reasons. First, it was assessed for violations of public law—violations against the United States, not a private party. *Id.* at 463. Second, it was imposed for the purpose of deterrence. *Id.* at 464. And third, the disgorged funds were not required to be paid to victims. *Id.* at 464–65. The Court settled the statute of limitations question by concluding that disgorgement was a penalty, but left open the question of whether such non-equitable, punitive disgorgement was permissible under the Exchange Act, noting that "[n]othing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on

whether courts have properly applied disgorgement principles in this context." *Id*. at 461 n.3.

This Court took up that question in *Liu*. There, the authority to order disgorgement in SEC enforcement actions was found in § 78u(d)(5) of the Exchange Act, which authorizes courts to grant "any equitable relief that may be appropriate and necessary for the benefit of investors." This Court concluded that disgorgement awards under the Exchange Act must adhere to the requirements of § 78u(d)(5) and to the traditional principles governing equitable remedies. *Liu*, 591 U.S. at 83–86. These requirements placed several limits on permissible disgorgement: a disgorgement award was permissible equitable relief as long as, first, it "does not exceed a wrongdoer's net profits," and, relevant here, it is "awarded for victims." *Id.* at 75.

While the requirement that disgorgement awards be awarded for victims was due, in part, to the investor benefit language in § 78u(d)(5), it also has roots in *Kokesh*'s reasoning. There, the Court reasoned that, unless disgorged funds were paid to victims, disgorgement would be a punitive remedy, and, therefore, outside the bounds of equity. *Kokesh*, 581 U.S. at 465. *Liu* softened this requirement by suggesting that payments to the Treasury may not always be punitive (when returning funds to victims proves infeasible), but it also held onto the idea that the award must nevertheless be *for victims* if it is not to be a penalty. *Liu*, 591 U.S. at 87–90. *Kokesh's* reasoning depended only on the nature of equitable remedies in general, not on the language of § 78u(d)(5). Thus, the requirement articulated in *Liu* that disgorgement under § 78u(d)(5) must be awarded for victims comes as much from the fact that § 78u(d)(5) grants equitable power as it does

from the more specific investor benefit language in the provision. As the Court noted, the power to award equitable relief is "a power that historically excludes punitive sanctions." *Id*. at 74. *Liu* therefore established that, as an equitable remedy, disgorgement under § 78u(d)(5) must not be punitive in nature and thus must be awarded for victims.

II. THE UNCLEAR STATUS OF DISGORGEMENT UNDER § 78U(D)(7) HAS GENERATED A THREE-WAY CIRCUIT SPLIT

After *Liu* was decided, Congress amended the Exchange Act. It left § 78u(d)(5) intact but added a new section, § 78u(d)(7), stating that "in any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement." Unlike § 78u(d)(5), § 78u(d)(7) does not explicitly require that such disgorgement be for the benefit of investors.

In the wake of this amendment, there has been considerable confusion among the circuits as to the nature and the requirements of the disgorgement remedy under the Exchange Act. Three competing interpretations of § 78u(d)(7) have emerged: the Fifth Circuit has read disgorgement under § 78u(d)(7) to be a legal, not an equitable remedy; the First, Second, and Ninth Circuits understand § 78u(d)(7) to be an equitable remedy that can be awarded only for the benefit of wronged investors. But the Eleventh Circuit has now introduced a third reading, under which § 78u(d)(7) disgorgement is an equitable remedy, but, unlike all other equitable remedies under the Exchange Act, need not be awarded for victims.

A. The Fifth Circuit Reads § 78u(d)(7) to Authorize Disgorgement as a Legal Remedy

In *SEC v. Hallam*, the Fifth Circuit considered whether the requirements articulated in *Liu* governing disgorgement under § 78u(d)(5)—including the requirement that disgorgement must be awarded for the benefit of wronged investors—apply to disgorgement under § 78u(d)(7). *SEC v. Hallam*, 42 F.4th 316, 338 (5th Cir. 2022). Like the Eleventh Circuit, the Fifth Circuit concluded that disgorgement under § 78u(d)(7) need not comply with the restrictions limiting disgorgement under § 78u(d)(5). In other words, these courts agree that, by amending the Exchange Act, Congress authorized a new kind of remedy, one not subject to the requirement that it be awarded for victims. Despite this similarity, there is a key difference between the Fifth and Eleventh Circuits' interpretations: while the latter read § 78u(d)(7) as exempting disgorgement from the typical requirements governing equitable relief while nevertheless remaining an equitable remedy, the former interpreted § 78u(d)(7) to introduce a new *legal* disgorgement remedy. Section 78u(d)(7), in the Fifth Circuit's view, authorizes "legal 'disgorgement' apart from the equitable 'disgorgement' permitted by *Liu* . . . as amended, Section 78u(d) authorizes disgorgement in a legal—not equitable—sense." *Hallam*, 42 F.4th at 338, 341.

On the Fifth Circuit's reading, then, disgorgement under § 78u(d)(7) need not adhere to *Liu's* requirement that disgorgement under § 78u(d)(5) be awarded for victims because it need not adhere to *any* of *Liu's* requirements. The *Liu* requirements, according to the Fifth Circuit, were born of the fact that § 78u(d)(5) disgorgement is an equitable remedy, and therefore §

78u(d)(7), as a legal remedy, is not subject to the same analysis. Disgorgement under § 78u(d)(7) need not be awarded for victims not because § 78u(d)(7) exempted disgorgement from *one* of the traditional equitable requirements, but because disgorgement under § 78u(d)(7) is not an equitable remedy at all. *Id.* at 341.

The Fifth Circuit's interpretation of § 78u(d)(7) was endorsed by Justice Thomas in his concurrence in *Sripetch v. SEC*. There, this Court held that disgorgement could be awarded to the SEC under § 78u(d)(7) even without demonstrating that the victims suffered pecuniary harm. It reasoned that disgorgement could be "awarded for victims," as required by *Liu*, even if those victims were not shown to have suffered a *pecuniary* loss, so long as defendants were shown to have interfered with victims' legally protected rights. *Sripetch v. SEC*, 608 U.S. 555, 565 (2026). Because the remedy there was in fact permissible under *Liu*, the Court did not need to decide whether disgorgement under § 78u(d)(7) must adhere to the *Liu* requirements. The Court "assume[d] without deciding that disgorgement under § 78u(d)(7) remains an equitable remedy—so that it must comply with traditional equitable rules, including the rule that disgorgement must be awarded for victims." *Id.* at 564.

Meanwhile, Justice Thomas argued that this assumption is at odds with the fact that "Congress amended the statute to separate disgorgement from equitable remedies," and urged the Court, in a future case, to "recognize that disgorgement is now a legal remedy for which the Seventh Amendment requires a jury trial." *Id.* at 570 (Thomas, J., concurring). Like the Fifth Circuit, Justice Thomas takes § 78u(d)(7) to authorize a disgorgement award even when it is not for

victims, because he reads that statute as creating a legal remedy.

Other circuits, however, have interpreted § 78u(d)(7) differently.

B. The First, Second, and Ninth Circuits Read § 78u(d)(7) to Authorize Disgorgement as an Equitable Remedy Subject to all the *Liu* Limitations

The First, Second, and Ninth Circuits have each interpreted § 78u(d)(7) to authorize disgorgement as an equitable remedy, subject to traditional equitable principles. Further, each has held that those traditional equitable principles require that disgorgement be for the benefit of victims as articulated in *Liu*.

In *SEC v. Navellier*, the First Circuit evaluated the permissibility of a disgorgement award under § 78u(d)(7) in an SEC enforcement action under the Investment Advisors Act. *SEC v. Navellier & Assocs., Inc.*, 108 F.4th 19, 27 (1st Cir. 2024). The court described the amendment as a provision authorizing "disgorgement as equitable relief." *Id.* at 41. It went on to consider whether the disgorgement ordered was in line with the limits articulated in *Liu*, stating that all disgorgement awards under the Exchange Act, including awards under § 78u(d)(7), must adhere to those limits and, therefore, be awarded for victims. *Id.* at 42.

The First Circuit confirmed this interpretation of § 78u(d)(7) in *SEC v. Gasarch*, 168 F.4th 11 (1st Cir. 2026). Once again, it treated disgorgement under § 78u(d)(7) as an equitable remedy. *Id.* at 38. As an equitable remedy, the court reasoned, it "lies atop two bedrock principles: it 'strip[s] wrongdoers of their ill-gotten gains'; and it is 'restricted . . . to an individual

wrongdoer's net profits to be awarded for victims.'" *Id.* at 53 (citing *Liu*, 591 U.S. at 79). Because of its status as an equitable remedy, the First Circuit explicitly concluded that disgorgement under § 78u(d)(7) "requires a victim." *Id.*

The Second Circuit has similarly held that disgorgement under § 78u(d)(7) is an equitable remedy subject to the limitations put forth in *Liu*. In *SEC v. Ahmed*, the court explicitly addressed the impact of Congress's addition of § 78u(d)(7), and it concluded that "disgorgement" in § 78u(d)(7) refers to "equitable disgorgement as recognized in *Liu*" and thus "must comport with traditional equitable limitations as recognized in *Liu*." 72 F.4th 379, 395–96 (2d Cir. 2023). In *SEC v. Govil*, the circuit again confirmed that it reads disgorgement under § 78u(d)(7) as an equitable remedy subject to the same traditional equitable principles recognized in *Liu*. 86 F.4th 89, 98 (2d Cir. 2023) (citing *Ahmed*, 72 F.4th at 396). Accordingly, it held that disgorgement, whether under § 78u(d)(5) or § 78u(d)(7), must be awarded for victims. *Id.*

When it first heard *Sripetch*, the Ninth Circuit addressed whether the SEC must demonstrate that investors suffered a *pecuniary* loss to seek disgorgement under the Exchange Act. The court concluded that no pecuniary loss need be identified because a claimant whose legally protected interests are interfered with is a victim even in the absence of pecuniary loss (a conclusion this Court would endorse). *SEC v. Sripetch*, 154 F.4th 980, 986 (9th Cir. 2025), *aff'd*, *Sripetch v. SEC*, 608 U.S. 555 (2026). But the Ninth Circuit's reasoning depended on the fact that victims who did not suffer pecuniary losses are nevertheless victims, such that granting disgorgement in the absence of

pecuniary loss did not violate *Liu's* requirement that disgorgement be awarded for victims. *Id.* It stressed that disgorgement under § 78u(d)(7) must still comport with the equitable limitations set forth in *Liu*, and, thus, held that "disgorgement requires one or more victims." *Id.* at 985.

As the First, Second, and Ninth Circuits see it, then, disgorgement under § 78u(d)(7) is an equitable remedy. Further, these courts consider *Liu's* requirement that disgorgement must be awarded for victims to come from the remedy's equitable status and not solely from § 78u(d)(5)'s language requiring remedies under that provision to be "for the benefit of investors." On this reading, *Liu*'s limits on disgorgement apply with equal force to disgorgement under § 78u(d)(7). These circuits take those requirements to apply to *any* equitable remedy under the Exchange Act, and they see disgorgement as one such equitable remedy.

C. The Eleventh Circuit Reads § 78u(d)(7) to Authorize Disgorgement as an Equitable Remedy That Does Not Require Victims

The Eleventh Circuit has now added a third interpretation, a type of hybrid view. Disgorgement under § 78u(d)(7), it held, is an equitable remedy, but one nevertheless unconstrained by the requirement that equitable remedies be awarded for the victims' benefit.

Here, no statements for which petitioners were found liable were directed to or seen by any investors. Thus, the Eleventh Circuit confronted the question of whether disgorgement under § 78u(d)(7) may be awarded even when no investors were harmed—pecuniarily or otherwise. While *Liu* did not foreclose the possibility of directing disgorged funds to the Treasury

when distributing them to victims is infeasible, it noted that the permissibility of doing so hinges on whether such an award might still be for victims' benefit. *Liu*, 591 U.S. at 88–90. Where, as here, there are no victims at all, disgorging funds to the Treasury clearly cannot be considered an award for victims. Thus, if disgorgement under § 78u(d)(7) were subject to the same limitations articulated in *Liu*, the disgorgement award in this case would be impermissible.

The Eleventh Circuit does not dispute that the *Liu* limits likely foreclose the disgorgement award ordered here. But it holds that disgorgement under § 78u(d)(7) is not subject to the requirement that it be awarded for victims. Under § 78u(d)(7), a defendant may be ordered to disgorge ill-gotten gains even if doing so "wouldn't 'be appropriate or necessary for the benefit of investors' under section 21(d)(5)." *Spartan*, 164 F.4th at 1266. In reaching that conclusion, the court pointed to the fact that, when Congress enacted § 78u(d)(7), it "omitted any investor-benefit language" of the kind that appears in § 78u(d)(5). *Id.* at 1267.

Thus, the Eleventh Circuit allowed disgorgement that was not awarded for victims, as required by *Liu*, because it held that this requirement does not govern disgorgement under § 78u(d)(7). Unlike the Fifth Circuit, the Eleventh Circuit categorized disgorgement under § 78u(d)(7) as an equitable remedy subject to *most* of the traditional equitable principles but one: the requirement that it be awarded for victims. Section 78u(d)(7) is "an exception to the general provision governing all other equitable relief." *Id.* at 1268.

As the lower court reads *Liu*, § 78u(d)(5) disgorgement must be awarded for victims not because it is an equitable remedy, but due to the explicit requirement

that any remedy under that provision must be "for the benefit of investors." Thus, equitable remedies authorized by a *different* provision—§ 78u(d)(7)—need not be awarded for victims. But if the *Liu* requirement that disgorgement be awarded for victims were tied to the remedy's equitable status, such a carve out would not be possible: any equitable remedy under the Exchange Act would have to adhere to that limit.

III. THE ELEVENTH CIRCUIT'S HOLDING RAISES CONSTITUTIONAL AND STATUTORY CONCERNS

Given the proliferation of three distinct interpretations of the status of disgorgement under § 78u(d)(7), and the corresponding requirements when imposing it, this Court should clarify the meaning of the statute. But addressing this issue is essential not just because the circuits disagree, but because the Eleventh Circuit's position is uniquely worrisome.

A. The Eleventh Circuit's Interpretation Risks Violating the Seventh Amendment

The Eleventh Circuit's conclusion that a monetary remedy is an equitable remedy despite not being imposed for the benefit of victims is at odds with traditional equitable principles. If such a remedy can be imposed under § 78u(d)(7), then disgorgement under that section should be recognized for what it is: a legal remedy, carrying with it the Seventh Amendment right to trial by jury. Alternatively, if § 78u(d)(7) authorizes an equitable remedy, it should not be permitted to be awarded unless for the benefit of victims. The worst situation is classifying § 78u(d)(7) as an equitable remedy while skirting the central principle that equitable remedies must be awarded for victims.

While *Liu* recognized that § 78u(d)(5) includes language specifically requiring remedies granted under that provision to be for the benefit of investors, that language was not the only source of the requirement that § 78u(d)(5) disgorgement must be awarded for victims. *Liu*, 591 U.S. at 75. Rather, that requirement is fundamentally grounded in "the equitable nature of the profits remedy." *Id.* at 88; *id.* at 79–85 (discussing the history of how "[e]quity courts have routinely deprived wrongdoers of their net profits from unlawful activity, even though that remedy may have gone by different names"). The power to award equitable relief, this Court noted, is "a power that historically excludes punitive sanctions." *Id.* at 74. Accordingly, this Court required that a disgorgement award under § 78u(d)(5) be awarded for victims for the same reason it required that it not exceed a wrongdoer's net profits—not solely because of the investor-benefit language in § 78u(d)(5), but because restricting the remedy in this way was necessary to keep it from becoming a punitive sanction outside the bounds of equitable relief. But this means that any equitable remedy under the Exchange Act must adhere to the same rule. A remedy that is not awarded for victims is punitive in nature and thus cannot be an equitable remedy under the Exchange Act.

If equitable remedies under the Exchange Act must be awarded for victims, it must either be the case that: 1) disgorgement under § 78u(d)(7) does not allow the kind of remedy ordered in this case or; 2) disgorgement under § 78u(d)(7) is a legal, not an equitable, remedy. The first option is advanced by the First, Second, and Ninth Circuits; the second, by the Fifth Circuit. Whichever of these two interpretations proves correct, the Eleventh Circuit's hybrid view should be rejected.

Allowing courts to order what is actually a punitive sanction under the guise of equity has real consequences. The Seventh Amendment guarantees the right to a jury trial when parties seek legal remedies such as monetary penalties designed to punish and deter rather than to compensate, but not when they seek equitable relief. *SEC v. Jarkesy*, 603 U.S. 109, 123 (2024). The Eleventh Circuit's position would allow a punitive legal remedy to be imposed without granting defendants these rights, merely by inaccurately labeling that remedy equitable. The SEC could seek, and courts could grant, awards that are in no way for victims—while leaving defendants no right to a jury trial—despite such a remedy's punitive nature. Although petitioners' liability here was determined by a jury, the lower court's position implies that this need not have been so. If that view is not corrected, future defendants will be subjected to punitive legal remedies without their Seventh Amendment rights being honored. Such a rule is constitutionally suspect.

In *Liu*, this Court cautioned against determining whether disgorgement constitutes legal or equitable relief "solely 'based on the particular label affixed;'" to do so, it reasoned, would "'elevate form over substance.'" *Liu*, 591 U.S. at 76 (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 214 (2004)). The Eleventh Circuit's position similarly elevates form over substance: it interprets § 78u(d)(7) to authorize a remedy lacking a central hallmark of equitable relief under the Exchange Act—that it be awarded for victims, so as not to operate as a penalty—while clinging to the label of equitable relief. This interpretation risks depriving defendants of their Seventh Amendment rights.

B. Awarding Prejudgment Interest as Part of a Legal Disgorgement Remedy May Not Be Permissible

In addition to raising Seventh Amendment concerns, allowing a legal remedy to be labeled "equitable" risks obscuring the issue of whether ordering prejudgment interest, as the district court did here, is permissible. This Court has held that, generally, prejudgment interest may not be added to civil penalties designed to punish defendants (rather than compensate victims), unless the relevant statute explicitly authorizes the practice. *Rodgers v. United States*, 332 U.S. 371, 373 (1947) ("Since penalties under the Agricultural Adjustment Act are imposed under an Act of Congress, they bear interest only if and to the extent such interest is required by federal law.").

If awarding disgorgement that is not for the victims' benefit, as the court did here, is allowed under § 78u(d)(7), it is because the disgorgement is a legal, not an equitable, remedy. But if this remedy is not equitable, then it is unclear whether prejudgment interest may be awarded. If disgorgement remedy is a punitive legal remedy, courts may not include prejudgment interest in the absence of statutory authorization. *Id.* at 374–75. The Eleventh Circuit's position obscures that issue because it categorized the award here as equitable and thus never considered the propriety of including prejudgment interest in the disgorgement order.

CONCLUSION

In *Liu*, this Court held that the equitable nature of disgorgement under the Exchange Act placed several limits on the remedy, including that disgorgement awards must be for the benefit of victims. However,

Congress's addition of § 78u(d)(7) has raised the question of whether this requirement still applies to disgorgement under this new provision of the Exchange Act. It is possible that § 78u(d)(7) created a punitive legal disgorgement remedy that is not subject to the requirements in *Liu*. If that is the case, then awarding disgorgement in the absence of wronged investors may be permissible, but it would implicate defendants' Seventh Amendment rights and likely prohibit including prejudgment interest in such awards. It is also possible that disgorgement under § 78u(d)(7) remains an equitable remedy, in which case, it must be awarded for victims. But it cannot be that § 78u(d)(7) created an equitable remedy that is somehow exempted from the requirement that it be awarded for victims. That requirement is what prevents a remedy from crossing the line into a punitive one and taking it outside the bounds of equity. The Eleventh Circuit's interpretation would permit the imposition of a punitive remedy without respecting the requirements that attach to such a remedy, merely by labeling it equitable.

For these reasons, this Court should grant the petition and clarify the status of disgorgement under § 78u(d)(7) of the Exchange Act.

Respectfully submitted,

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