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The Gabelli Effect: How The Supreme Court's Decision Is Impacting Enforcement Actions

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The SEC suffered another high-profile loss this month, accepting a settlement with two executives accused of bribing foreign officials without obtaining any monetary penalties. Such "no penalty" settlements may become increasingly common for the SEC as it continues to realize the effects of the Supreme Court's holding in last year's *Gabelli v. SEC*. The widely-publicized *Noble* case involved alleged violations of the Foreign Corrupt Practices Act. The SEC accused Noble, an oil services company, of paying hundreds of thousands of dollars in bribes to Nigerian officials between 2003 and 2007 in order to obtain certain rig permits and project extensions. The SEC further alleged that company executives Mark Jackson and James Ruehlen contributed to this bribery scheme. Under the *Noble* settlement, however, Jackson and Ruehlen admitted no wrongdoing and avoided financial penalties. The final judgments reflecting these terms came down on July 3, less than a week before the case was scheduled to go to trial. The surprising outcome in *Noble* likely resulted, at least in part, from the Supreme Court's decision in *Gabelli*. In that case, the Court unanimously held that the general five-year statute of limitations for civil penalty actions runs from the time a fraudulent act occurs, not when the SEC discovers the fraud. In practice, this means the SEC must work diligently to timely uncover fraudulent conduct because regulators cannot bring actions to impose civil penalties once five years have passed. In *Noble*, the statute of limitations for the civil penalty actions against Jackson and Ruehlen had already run for most of the alleged violations by the time the SEC brought charges in 2012. Indeed, *Gabelli* effectively took the alleged violations occurring from 2003 to 2006 off the table. *Gabelli*, however, did not resolve all of the questions surrounding the application of the civil penalty statute of limitations to the SEC. For example, the case did not allow the Court to address whether the same limitations period applies if the SEC seeks injunctive relief, declaratory relief, disgorgement, or similar remedies. Some lower courts have held that such remedies, which mostly serve to prevent future violations or compensate victims, are not punitive and therefore fall outside the scope of the limitations period for civil penalties. Others, to determine if the period applies, have asked whether the requested relief is intended to punish the defendant or protect the public from harm. It now seems *Gabelli* may tip the balance in favor of the cases holding that the civil penalty period applies to any civil enforcement action brought by the SEC, regardless of the relief sought. As previously reported in this blog, at least one district court has read *Gabelli* to require a broad application of the statute to all SEC civil enforcement actions no matter the requested relief. Other district courts have disagreed and distinguished *Gabelli*, however, and the question thus remains open. In any event, *Gabelli* appears to have demonstrably limited the SEC's ability to successfully pursue civil penalty actions, even before reaching a courtroom. The *Noble* settlement demonstrates that individuals facing civil enforcement actions might avoid the imposition of monetary penalties if the SEC fails to timely uncover fraudulent activity.

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