

Supreme Court Denies Certiorari in SEC Disgorgement Case

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On June 6, the U.S. Supreme Court [denied](#) the petition for certiorari in the case of *Navellier & Associates, Inc. v. Securities and Exchange Commission* (SEC). This decision effectively upholds the lower courts' rulings, allowing the SEC to continue its practice of disgorging profits obtained through fraudulent activities without needing to prove direct financial harm to investors.

Background

As discussed [here](#), Navellier & Associates, Inc., a registered investment advisor, was charged with alleged violations of § 206 of the Investment Advisers Act of 1940. The SEC accused Navellier of misrepresenting the performance of certain investment strategies, claiming that the firm touted hypothetical data as actual performance to attract clients. The district court ruled in favor of the SEC, ordering Navellier to disgorge \$22,734,487 plus pre-judgment interest. The U.S. Court of Appeals for the First Circuit affirmed this decision, prompting Navellier to seek review from the Supreme Court.

Key Issues in the Cert Petition

- Disgorgement and Investor Harm:** Navellier argued that the SEC should demonstrate that investors suffered pecuniary harm to justify disgorgement. The SEC countered that disgorgement is an equitable remedy aimed at stripping wrongdoers of ill-gotten gains, regardless of direct investor loss.
- Materiality Standard:** Navellier contended that the court of appeals applied an incorrect materiality standard, suggesting that proof of investor reliance on misrepresentations should be required. The SEC maintained that the misrepresentations were significant enough to influence a reasonable investor's decision-making process.

Implications

The Supreme Court's denial of certiorari means the SEC's approach to disgorgement remains intact. This decision reinforces the SEC's ability to recover funds obtained through fraud without proving direct financial harm to investors.

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