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RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW: THE IMPACT ON COMMODITIES REGULATION AND ENFORCEMENT

As the Supreme Court continues to issue landmark decisions regarding administrative law, two conflicting trends emerge. Instead of relying on the executive agencies, the Court has established its claim in deciding key legal issues via the judicial review process and interpreting the executive's statutory authority. Yet, the Court is increasingly endorsing a unitary executive. These shifts within the administrative landscape have created both challenges and opportunities for market participants.

By Michael Spafford, Patricia Liverpool, and Nora Logsdon *

Recent Supreme Court decisions in administrative law have had a substantial impact on regulation and enforcement — at times, limiting the powers of executive agencies but also expanding the powers of the executive. In particular, the Court has jealously asserted the primacy of the courts to decide key factual and legal issues in judicial (and not administrative) proceedings and interpret independently the executive's statutory authority without deference to the executive agencies overseeing those statutes. Cases such as *Securities & Exchange Commission v. Jarkesy*¹ and *Loper Bright Enterprises v. Raimondo*² have introduced new limits to executive powers, insisting on due process and judicial oversight. On the other hand, the Court also has seemingly endorsed a unitary executive whose powers cannot be delegated, except in limited circumstances, and whose authority over independent agencies created by Congress has been expanded. These two trends are

increasingly clashing with each other. How the Court resolves them will have an outsized impact on administrative enforcement and litigation going forward, creating both obstacles and opportunities for market participants.

DUE PROCESS AND JURY TRIALS

Recent case law clarifying the bounds of due process places limits on the ability of the executive to impose civil money penalties. The Supreme Court's 2024 decision in *Securities & Exchange Commission v. Jarkesy* involved an enforcement action brought by the Securities and Exchange Commission ("SEC") the agency that oversees securities laws designed to "protect[] investors, maintain[] fair, orderly, and efficient markets, and facilitat[e] capital formation."³ George Jarkesy sued the SEC in federal court after the SEC levied a civil money penalty of \$300,000 against

¹ 144 S. Ct. 2117 (2024).

² 144 S. Ct. 2244 (2024).

³ U.S. Securities and Exchange Commission: About: Mission (last updated Aug. 9, 2023), <https://www.sec.gov/about/mission>.

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