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Memorandum

U.S. Supreme Court Rules That There Is No Implied Private Right of Action to Rescind Contracts That Allegedly Violate the Investment Company Act

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In an important ruling for the registered fund industry, the Supreme Court on June 11, 2026 ruled by a 6-3 majority that Section 47(b) of the Investment Company Act of 1940 ("ICA") does ***not*** provide investors with a private right of action to rescind contracts that allegedly violate the ICA. *FS Credit Opps. Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345, 2026 U.S. LEXIS 2466 (June 11, 2026). Noting that "Congress, not the judiciary, decides who may enforce the law," and that Congress designated the SEC as the ICA's primary enforcer, the Court held that no implied private right of action for rescission could be read into the statute. The decision will be welcomed by regulated fund complexes that have been targeted by lawsuits like this one, which will now be barred, although the ruling does not address other litigation strategies employed by professional arbitrageurs.

Background and Procedural History

The case before the Court, *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, was brought by Saba against 16 registered closed-end funds in which it invested that were organized under Maryland law. The funds had opted into Maryland's Control Share Acquisition Act ("MCSAA"), which restricts an investor who holds more than 10% of a fund's shares from voting shares above that threshold unless approved by a two-thirds vote of other shareholders. Saba argued that the voting restriction violates Section 18(i) of the ICA, which requires that "[e]xcept … as otherwise required by law, every share of stock … shall be a voting stock and have equal voting rights with every other outstanding voting stock." Because the funds' bylaws adopting MCSAA's voting restrictions are contracts, Saba argued that it could sue in federal court to rescind them under Section 47(b) of the ICA, which provides that "a court may not deny rescission" of contracts that violate the ICA "at the instance of any party" unless denial of rescission would be more equitable.

The district court agreed with Saba's arguments, ordering rescission of the funds' bylaws that adopted MCSAA, and the Second Circuit affirmed. On the question of whether a federal court could entertain a private right of action for rescission of a fund's bylaws, the lower courts relied on an earlier Second Circuit ruling (*Oxford University Bank v. Lansuppe Feeder, LLC*) that held that Section 47(b) presupposes a private right of action for rescission of contracts that violate the ICA. Two other Circuit Courts of Appeal had reached the opposite conclusion. The Supreme Court took the case to resolve the Circuit split and on December 10, 2025 heard arguments on the sole question presented: Does Section 47(b) of the ICA provide a private right of action?

The Supreme Court's Ruling

Writing for the majority, Justice Barrett explained that the Supreme Court's prior willingness to imply private rights of action based only on an assessment of whether doing so would serve the statute's purpose was a relic of the past and that, over the last few decades, the Court has steadily moved toward a much more rigorous approach that examines whether a statute's text and structure implicitly provides for a private right of action. That more modern approach has resulted in far fewer instances in which the Court has found an implied private right of action.

Applying that approach here, the majority reasoned that neither the text nor the structure of the statute supported Saba's contention that Section 47(b) of the ICA provides a private right of action. As to its text, the Court noted that the statute does not include "rights-creating language." Addressing the statute's direction that courts "may not deny rescission" of ICA-violating contracts unless equity suggests otherwise, the Court explained that this only guides courts in granting relief in cases where a viable claim is already before the court; the language itself "does not create a cause of action." In other words, private litigants must plead and prove an independent cause of action—Section 47(b) does not supply a cause of action to litigants that do not already have a viable claim.

Next, the Court reviewed the ICA's structure, which it found led to the same conclusion as the text. Specifically, the ICA's designation of the SEC as the primary enforcer, which can bring claims for injunctive relief or civil monetary penalties, "supports the conclusion that private parties generally cannot enforce the ICA." In addition, two *express* private rights of action exist in the ICA—private litigants can sue investment advisers for allegedly excessive compensation and can sue issuers to recover short-swing profits. The existence of those two express private rights of action reinforced the Court's conclusion that "'when Congress wished to provide a private … remedy' to enforce the ICA, 'it knew how to do so and did so expressly.'" Those structural factors reinforced the lack of a private right of action for rescission of contracts under Section 47(b).

Having found that the text and structure of Section 47(b) did not support a private right of action, the Court addressed and rejected other arguments advanced by Saba. This included Saba's reliance on the Court's 1979 decision in the *Transamerica* case that found an implied private right of action under Section 215 of the Investment Advisers Act of 1940 ("IAA"), which provides that contracts violating the IAA "shall be void." The Court reasoned that the statutes are differently worded and that *Transamerica* does not dictate the same result under the ICA.

In dissent, Justice Jackson (joined by Justice Sotomayor and, in part, by Justice Kagan) contended that the text, structure, statutory history, and legislative history of the ICA all support recognition of a private right of action, adopting Saba's arguments on those points. The majority rejected the dissent's reliance on legislative history, pointing out that the history did not necessarily support the dissent's reading and that, in any event, "[w]e are governed by laws, not by the intentions of legislators" and that "[t]he judicial task is to read words, not minds."

Key Takeaways for Registered Fund Professionals

The Supreme Court's ruling will be rightly viewed as a victory by the regulated fund industry and a loss by investors who seek to arbitrage closed-end fund discounts. Key takeaways include that:

- The ruling conclusively forecloses private claims under the ICA that lack an express private right of action.
  - This provides important certainty to advisers and funds that they can look at the body of law developed by the SEC over more than 80 years under the ICA and be confident in their business arrangements and compliance with the law.
  - This includes foreclosing all federal claims by investors challenging control share bylaws and other provisions of funds' constituent documents as contracts that allegedly violate the ICA.
  - Importantly, it also forecloses the principal avenue by which professional arbitrageurs have sought to use the federal courts to pressure closed-end funds into transactions that benefit their short term profit agenda at the expense of the long term returns and investment programs that the vast majority of closed-end fund investors sought by investing in a closed-end fund.
- Private claims for excessive fees under Section 36(b) and for short-swing profits under Section 30(h) remain untouched by the ruling, because the ICA expressly grants investors the right to sue. On Section 36(b), this ruling confirms that plaintiffs must hew to the established framework of Section 36(b) claims and not seek to pursue what are fundamentally excessive fee claims through other less tested and more disruptive avenues. This is critical because the fund industry has built its governance framework around the appropriateness of advisory fees under the Section 36(b) framework that has been developed over decades.
- SEC enforcement actions are also unaffected, because the ICA gives the SEC broad enforcement powers and this ruling only addresses the rights of private litigants. As to the specific claim here, the underlying decisions of the Second Circuit and district court are void, thereby reverting the state of play to the SEC staff's current position (following its 2020 withdrawal of the *Boulder* letter) on how control share statutes can be used appropriately under the ICA—*i.e.*, that closed-end funds opting into state control share statutes do not automatically violate Section 18(i) of the ICA. That said, the underlying decisions of the district court and the Second Circuit will remain in the public domain and could be persuasive to a court that is properly presented with the issue.
  - Notably, the decision does not vacate a prior decision in the U.S. District Court for the District of Maryland, *Neuberger Berman Real Estate Income Fund, Inc. v. Lola Brown Trust*, which had the effect of allowing a closed-end fund organized in Maryland to remain opted in to the MCSAA notwithstanding a counterclaim alleging that opting into the MCSAA violated Section 18(i) of the ICA.
  - Closed-end funds organized as Massachusetts business trusts, however, remain subject to a recent decision by a Massachusetts state court, *Eaton Vance Senior Income Trust v. Saba Capital Master Fund, Ltd.* (Mass. Super. Ct., Jan. 21, 2023), that declared the adoption of control share bylaws by those Massachusetts closed-end funds to violate Section 18(i) of the ICA.

  - There is currently no case law in Delaware related to the control share provisions applicable to regulated closed-end funds organized as Delaware statutory trusts, which are automatically subject to control share provisions by statute—in other words, the Delaware control share statute is an opt-out statute rather than an opt-in statute like the MCSAA applicable to Maryland corporations at issue here and in the *Lola Brown* case.
- The ruling does not address the availability of state law claims that professional arbitrageurs have brought, or may bring, against regulated funds based on alleged violations of state law, *e.g.*, for breach of fiduciary duty; common law fraud; state securities law claims; or state corporation/trust law claims.

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