

JUDGE RAKOFF CONTINUES TO QUESTION ADEQUACY OF JUDICIAL OVERSIGHT OF SEC

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On remand of his rejection of the proposed Consent Judgment between the SEC and Citigroup Global Markets, Judge Jed Rakoff of the United States District Court for the Southern District of New York expressed additional misgivings about effective judicial oversight of the SEC. In his opinion issued August 5, 2014, Judge Rakoff noted that the Court of Appeals “who must be obeyed have spoken, and this Court’s duty is to faithfully fulfill that mandate.” In faithfully fulfilling that mandate and approving the Consent Judgment, however, Judge Rakoff expressed his “fears that, as a result of the Court of Appeal’s decision, the settlements reached by governmental regulatory bodies and enforced by the judiciary’s contempt powers will in practice be subject to no meaningful oversight whatsoever.” He further questioned the Court of Appeal’s direction that the SEC could avoid judicial review entirely by proceeding solely on an administrative basis. “One might wonder: from where does the constitutional warrant for such unchecked and unbalanced administrative power derive?” His question is particularly pertinent in light of the SEC’s statements that it intends to pursue more actions administratively than it has in the past and echoes Judge Rakoff’s July 11, 2011, denial of the SEC’s motion to dismiss in *Gupta v. Securities and Exchange Comm’n* on the grounds that proceeding administratively against one defendant while trying all others in federal court could violate the Equal Protection Clause of the Constitution. The Court of Appeal’s ruling left Judge Rakoff little to review beyond the procedural adequacy of the Consent Judgment. Though Judge Rakoff complied with the ruling of the Court of Appeals, he made clear his distaste that the Court of Appeals “has now fixed the menu, leaving this Court with nothing but sour grapes.”

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