Supreme Court Rejects Private Right of Action Under Section 47(b) of Investment Company Act

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***FS Credit Opportunities Corp. v. Saba Capital Master Fund*, Ltd., 608 U.S. ___ (June 11, 2026)**

On June 11, 2026, the U.S. Supreme Court held that Section 47(b) of the Investment Company Act of 1940 (ICA) does not create a private right of action for rescission of contracts that allegedly violate the ICA. The long-awaited decision in *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.* resolves a circuit split and significantly narrows the avenues available to activist investors and other private litigants seeking to challenge closed-end funds' governance structures under the ICA. At the same time, this decision gives closed-end funds a lot more certainty and defenses against activist investors bent on greenmail.

Factual and Procedural Background

The petitioners — closed-end mutual funds incorporated in Maryland — had adopted resolutions opting into the Maryland Control Share Acquisition Act (MCSAA), a statute that restricts voting rights for shareholders who acquire large ownership positions unless other shareholders approve. The funds adopted these measures to deter activist investors from accumulating outsized positions and influencing fund control and strategy. The respondents, Saba Capital, frequently target closed-end funds they view as undervalued, seeking to alter such funds' investment strategies or convert them into open-end structures.

In 2023, Saba sued the funds in federal court, alleging that the MCSAA-based voting restrictions violated Section 18(i) of the ICA, which requires that "every share of stock … shall be a voting stock and have equal voting rights with every other outstanding stock." To obtain relief, Saba invoked Section 47(b) of the ICA. The district court agreed and granted summary judgement for Saba, holding

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that Section 47(b) impliedly authorizes private parties to sue for rescission of contracts that violate the act. The U.S. Court of Appeals for the Second Circuit summarily affirmed. The Supreme Court granted certiorari to resolve a split among circuits on whether Section 47(b) contains an implied private right of action.

Decision and Court's Reasoning

The Supreme Court reversed the lower court's decision, holding that ICA's Section 47(b) does not impliedly authorize private lawsuits for rescission. Justice Barrett, writing for a six-justice majority, emphasized that Congress — not the courts — determines who may enforce federal statutes. Because Section 47(b) does not contain "rights-creating language" directed at a protected class of individuals, the Supreme Court concluded that it cannot be read to create a private right of action. Instead, the provision is viewed as a directive to courts regarding the availability of rescission when parties are already properly before the court.

The majority stressed that Section 47(b)'s text ("a court may not deny rescission at the instance of any party") focuses on judicial authority rather than on granting rights to private litigants. The provision presupposes the existence of a valid cause of action from another source and merely instructs courts on how to exercise remedial discretion when a contract violating the ICA has been performed.

The Supreme Court also relied heavily on statutory structure. The ICA assigns primary enforcement authority to the Securities and Exchange Commission (SEC), which may investigate violations and bring enforcement actions. The SEC can also pursue injunctive relief or civil monetary penalties in a court action. The court noted, "Congress's decision to create a comprehensive agency enforcement scheme supports the conclusion that private parties generally cannot enforce the ICA."

Furthermore, Congress expressly created two private rights of action within the ICA — one for breaches of fiduciary duty by investment advisers and another incorporated from the Securities Exchange Act of 1934. The majority reasoned that Congress's

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provision of explicit private remedies in some sections of the ICA, but not in Section 47(b), strongly indicates that no additional private rights were intended: "We have traditionally been reluctant to conclude that Congress implicitly created a private remedy in one provision when it explicitly did so in another."

Saba's reliance on *Transamerica Mortgage Advisors, Inc. v. Lewis* (TAMA), which recognized an implied private right of action under Section 215 of the Investment Advisers Act of 1940 (IAA) to void an investment adviser contract, was unavailing. The Supreme Court explained that, even though, as originally enacted, Section 47(b) of the ICA mirrored Section 215 of the IAA, Congress amended Section 47(b) in 1980, removing the "shall be void" language that formed the basis of *TAMA*'s reasoning and replacing it with language focused on judicial remedial authority. The Supreme Court also noted that Congress retained the "shall be void" language in the immediately preceding ICA provision and in the IAA, thus signaling that the amendments were substantive rather than stylistic.

Key Takeaways

- Private litigants now face a significantly narrowed path for ICA enforcement against registered funds, including closed-end funds.
- Activist investors and shareholders can no longer rely on Section 47(b) of the ICA to challenge closed-end funds' governance structures or contractual arrangements.
- Enforcement of most ICA provisions now rests primarily with the SEC.
- Closed-end funds gain greater certainty when adopting anti-takeover measures. Because Section 47(b) can no longer be used to attack, for example, resolutions implementing state control-share statutes, such funds should be more secure in establishing and implementing their defensive plans.

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