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CLIENT ALERT

United States Supreme Court Holds That the Investment Company Act Does Not Create an Implied Private Right of Action

June 12, 2026

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EXECUTIVE SUMMARY

On June 11, 2026, the Supreme Court issued its decision in *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345, holding that Section 47(b) of the Investment Company Act of 1940 (the "ICA") does not impliedly authorize private parties to sue for rescission of contracts that allegedly violate the ICA.[1] Writing for the six-Justice majority, Justice Barrett concluded that Section 47(b) is a directive to courts about the exercise of their remedial authority—not a grant of a private right of action to any party. The decision reverses the Second Circuit's opposite conclusion and resolves a longstanding circuit split. Justices Sotomayor, Kagan, and Jackson dissented.

Willkie served as counsel for BlackRock ESG Capital Allocation Term Trust and BlackRock Municipal Credit Alpha Fund, Inc. (formerly, BlackRock Municipal Income Fund, Inc.) in this matter.

[1] *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345, slip op. (U.S. June 11, 2026).

The Supreme Court's decision eliminates what had become a potentially destabilizing litigation weapon used by private plaintiffs, including activist investors in listed, registered closed-end funds. Section 47(b) of the ICA provides that when a contract made in violation of the ICA "has been performed, a court may not deny rescission at the instance of any party" unless the court finds that denial would be more equitable and consistent with the ICA's purposes.[2] The respondent, an activist hedge fund investor that targets closed-end funds, had invoked this language as a freestanding right to sue a number of closed-end funds over their opt-in to Maryland Control Share Acquisition Act ("MCSAA") protections, which limit voting rights for shareholders who acquire disproportionately large stakes unless other shareholders vote to reinstate those rights.

In its decision, the Court squarely rejected this theory. Justice Barrett's majority opinion emphasized that both the text and structure of the ICA supported this conclusion. The Court concluded that Section 47(b) does not contain the "rights-creating language" that the Court's precedents require before recognizing an implied private cause of action. Instead, it tells courts how they must exercise their remedial discretion when parties already before them seek rescission. Moreover, the statutory structure of the ICA—which designates the Securities and Exchange Commission ("SEC") as its primary enforcer and expressly creates private rights of action in two other provisions—confirms that Congress did not intend Section 47(b) to serve as an open-ended private enforcement mechanism.

The practical significance of this ruling is considerable. Because nearly every aspect of a registered fund's operations is governed by contract—from advisory agreements to distribution arrangements to bylaws—an implied right to rescind any contract that allegedly violates the ICA could have exposed registered funds to burdensome litigation at the hands of contractual counterparties and shareholders, as applicable, willing to allege an ICA violation.[3] With this decision, the Court has significantly minimized many such risks.

KEY TAKEAWAYS

Protection of Closed-End Funds and Their Retail Shareholders

The decision's most immediate beneficiaries are the millions of retail investors and retirees who hold shares in closed-end funds.[4] These funds are designed primarily to buy and hold assets that generate income for long-term investors seeking steady distributions. Activist investors often employ investment strategies that generally focus on buying up a closed-end fund's shares at a discount, and seeking a liquidity event so that activists can make a quick profit. Such activist investors had relied on the Second Circuit's recognition of an implied private right of action under Section 47(b) to challenge certain governance protections that closed-end funds adopted to counter those

[2] 15 U.S.C. § 80a-46(b)(2).

[3] Brief for the Chamber of Commerce of the United States as Amicus Curiae Supporting Petitioners, at 18-19.

[4] *FS Credit Opportunities Corp.*, slip op. at 2 (noting that "long-term investors (like individuals saving for retirement) often favor closed-end funds").

strategies.[5] By rejecting the implied private right of action on which such suits depended, the Court has significantly curtailed the ability to weaponize the ICA against the long-term investors the statute was designed to protect.

No Implied Private Right of Action Under Section 47(b)

The Court held that the phrase "rescission at the instance of any party" is a directive to courts, not a grant of rights to individuals.[6] In its textual analysis, the Court reasoned that "instance" means "at the solicitation" or "suggestion of."[7] Therefore, its use presupposes that the requesting party is already before a court in existing litigation and instructs the court not to deny the remedy of rescission in that context unless the equities favor a different result. The provision says nothing about conferring a standalone right to bring suit.[8]

Rescission Is a Remedy, Not a Cause of Action

The Court emphasized the distinction, rooted in centuries of contract law, between a remedy (rescission) and a cause of action (the legal basis for getting into court).[9] The Court reasoned that Section 47(b) overrides the common-law default that makes rescission unavailable once a contract has been performed, but it does not create the initial right to sue.[10] Consequently, parties may still be able to seek rescission as a remedy in suits brought under other sources of law but they cannot invoke Section 47(b) as an independent basis for filing suit.

The ICA's Statutory Structure Confirms the Result

The Court noted that Congress designated the SEC as the ICA's primary enforcer and granted it broad investigative and litigation authority.[11] Additionally, Congress expressly created narrow private rights of action in two other ICA provisions with detailed procedural specifications.[12] The Court thus concluded that the existence of these targeted, express remedies forecloses the implication of an additional, far broader private enforcement mechanism elsewhere in the statute.[13]

Signals for Implied-Rights-of-Action Litigation Generally

The decision reinforces the Court's continuing commitment to the *Sandoval* framework and its skepticism of judicially created causes of action.[14] Justice Barrett's admonition that the Court has "sworn off the habit" of implying

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[5] *Id.* ("To avoid activist-investor takeovers, closed-end funds . . . limit voting rights for shareholders holding a disproportionate number of shares (like activist investors) unless other shareholders approve. In this way, it prevents rapid shifts in fund control") (internal citations omitted); *see also Oxford University Bank v. Lansuppe Feeder, LLC*, 933 F. 3d 99 (2019)

[6] *Id.* at 5 (citing *Thompson v. Thompson*, 484 U.S. 174, 183 (1988)).

[7] *Id.* at 8-9 (citing 7 *Oxford English Dictionary* 1040 (2d ed. 1989)).

[8] *Id.*

[9] *Id.* at 5 (citing H. Black, *Rescission of Contracts and Cancellation of Written Instruments* § 1 (1916)).

[10] *Id.* at 6.

[11] *Id.* at 7.

[12] 15 U.S.C. § 80a-35(b) (fiduciary duty claims by security holders); 15 U.S.C. § 80a-29(h) (recovery of short-swing profits).

[13] *FS Credit Opportunities Corp.*, slip op. at 7–8 (citing *Touche Ross & Co. v. Redington*, 442 U.S. 560, 572 (1979)).

[14] *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001).

private rights of action and "will not accept [the] invitation to have one last drink," signals that litigants in other statutory contexts should not expect the Court to find implied causes of action absent unambiguous rights-creating language.[15]

CONCLUSION

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd. is a landmark ruling for the investment management industry and for the separation of powers principles that govern implied private rights of action under federal law. By holding that Section 47(b) does not, as a stand-alone provision, empower private parties to sue, the Court has removed a potent method closed-end fund activist investors had used to challenge fund governance protections and subject closed-end funds to burdensome litigation. The decision restores the ICA's enforcement architecture in which the SEC bears primary responsibility for ensuring compliance with the ICA, and private rights of action are limited to the specific, carefully prescribed causes of action that Congress created expressly. Funds, their boards, and their counsel should take note that the litigation landscape has shifted materially in favor of fund stability and long-term shareholder interests.

[15] *FS Credit Opportunities Corp.*, slip op. at 8.

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