

24-345 FS CREDIT CORP. V. SABA CAPITAL MASTER FUND, LTD.

DECISION BELOW: 2024 WL 3174971

LOWER COURT CASE NUMBER: 23-8104, 24-79, 24-80, 24-82, 24-83, 24-116, 24-189

QUESTION PRESENTED:

The courts of appeals have split 2-1 over whether Congress created an implied private right of action in Section 47(b) of the Investment Company Act (ICA), which provides:

(1) A contract that is made, or whose performance involves, a violation of this subchapter ... is unenforceable by either party

(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this subchapter.

15 U.S.C. § 80a-46(b)(1)-(2).

The Third and Ninth Circuits, relying on statutory text and structure, hold that Section 47(b) does *not* create an implied private right of action, and a panel of the Fourth Circuit has agreed in an unpublished opinion. Only the Second Circuit-where plaintiffs may be able to sue most investment funds subject to the ICA, given New York's and the New York Stock Exchange's roles in financial operations- holds the opposite based on an "inference": parties may bring a lawsuit under Section 47(b), even though Congress never said so.

The question presented is whether Section 47(b) of the ICA, 15 U.S.C. § 80a-46 (b), creates an implied private right of action.

CERT. GRANTED 6/30/2025