Labaton Keller Sucharow

Investor Alert

The Supreme Court Pushes Enforcement of the Investment Company Act Away from Investors and Towards the SEC

On June 11, 2026, the Supreme Court curtailed the private enforcement landscape under the Investment Company Act of 1940 (the "1940 Act"), holding in *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.* that Section 47(b) of the 1940 Act does not create an implied private right of action.[1] The 6-3 decision resolved a long-standing split among the federal Courts of Appeal and eliminates a key mechanism that investors and shareholders had used to challenge fund governance arrangements. For institutional investors with exposure to and holdings in investment companies such as mutual funds and exchange-traded funds ("ETFs"), the decision narrows available legal remedies and shifts enforcement authority towards the Securities and Exchange Commission ("SEC").

Background of the 1940 Act

The 1940 Act is the principal federal statute governing the organization and operation of investment companies. Enacted in the aftermath of the Great Depression, the 1940 Act establishes a comprehensive regulatory framework that was designed by Congress to protect investors in such funds from conflicts of interest, self-dealing, and insider mismanagement.[2] The SEC defines an investment company as a business that pools money from multiple investors to collectively invest in securities, whereby each investor shares in the profits and losses in proportion to the investor's interest in the company. This typically includes investment companies like mutual funds, ETFs, and closed-end funds.[3]

The *Saba Capital* Decision

The dispute before the Supreme Court arose from investor Saba Capital's challenge to 16 closed-end investment company funds organized under Maryland law.[4] The challenged funds adopted resolutions opting into the Maryland Control Share Acquisition Act ("MCSAA"), a state statute that limits voting rights for shareholders holding a disproportionate number of shares unless other shareholders approve, thereby preventing rapid shifts in fund control.[5] These provisions were allegedly adopted by the challenged funds specifically in response to

[1] *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. ___, No. 24-345, 2026 WL 1686059 (June 11, 2026).

[2] *See* 15 U.S.C. § 80a-1(b) (congressional findings regarding necessity for regulation of investment companies).

[3] SEC, INVESTMENT COMPANIES, (last accessed June 18, 2026).

[4] *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. ___, No. 24-345, 2026 WL 1686059, at *3 (June 11, 2026). The 16 funds were ClearBridge Energy Midstream Opportunity Fund Inc.; ClearBridge MLP and Midstream Total Return Fund Inc.; ClearBridge MLP and Midstream Fund Inc.; Western Asset Intermediate Muni Fund Inc.; Tortoise Midstream Energy Fund, Inc.; Tortoise Energy Independence Fund, Inc.; Tortoise Pipeline & Energy Fund, Inc.; Tortoise Energy Infrastructure Corp.; Adams Diversified Equity Fund, Inc.; Adams Natural Resources Fund; Municipal Income Fund, Inc.; FS Credit Opportunities Corp.; Royce Global Value Trust, Inc.; Ecofin Sustainable and Social Impact Term Fund; BlackRock ESG Capital Allocation Trust; and BlackRock Innovation and Growth Term Trust. *See Saba Capital Master Fund, Ltd. v. ClearBridge Energy Midstream Opportunity Fund Inc.*, No. 1:23-cv-05568-JSR (S.D.N.Y. June 29, 2023), ECF No. 1.

[5] *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. ___, No. 24-345, 2026 WL 1686059, at *3 (June 11, 2026).

investors such as Saba Capital that had been acquiring large positions in underperforming closed-end funds with the goal of altering the fund's investment strategies, including through electing new directors and advocating for share buybacks.[6]

In June 2023, Saba Capital sued multiple closed-end funds alleging that the contractual control-share resolutions violated Section 18(i) of the 1940 Act. That section requires that "every share of stock . . . shall be a voting stock and have equal voting rights with every other outstanding stock."[7] Saba Capital invoked Section 47(b) of the Act, which provides that "a court may not deny rescission" of contracts that violate the 1940 Act "at the instance of any party" unless the court finds that doing so would be consistent with equity and the Act's purposes.[8] The federal district court granted summary judgment in Saba Capital's favor, and the Second Circuit summarily affirmed.[9] The Supreme Court granted certiorari to resolve a conflict among the Courts of Appeal on whether Section 47(b) creates an implied private right of action.

In a 6-3 decision authored by Justice Barrett and joined by Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, and Kavanaugh, the Supreme Court reversed and held that Section 47(b) of the 1940 Act does not impliedly empower private parties to sue for rescission of contracts that allegedly violate the 1940 Act. The Supreme Court noted in its decision that "Congress, not the Judiciary, decides who may enforce the law."[10] It also emphasized that although courts once inferred private causes of action from statutory text under expansive interpretive frameworks, the Supreme Court has since rejected the practice of "fashioning rights of action" for private litigants.[11]

Applying these principles, the Supreme Court held that Section 47(b)'s text does not create a private cause of action. The Supreme Court found that Section 47(b) is directed to courts rather than to a particular class of protected persons—and its wording "presupposes that parties are already before the court and directs the court's use of its remedial authority" rather than conferring a right to initiate suit.[12]

The Court also commented that the overall statutory structure of the 1940 Act supported a finding that Congress delegated compliance with the 1940 Act primarily to the SEC. The Court stated that because the SEC bears primary responsibility for ensuring compliance with the 1940 Act and may investigate and bring enforcement actions in response to violations, Congress's decision to create a comprehensive agency enforcement scheme supports the

[6] *See* Petition for Writ of Certiorari at 9-13, *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345, 2026 WL 1686059 (Sept. 24, 2024).

[7] *Id.* at *3 (citing 15 U.S.C. § 80a–18(i)) (alteration in original).

[8] *Id.* (citing 15 U.S.C. § 80a–46(b)(2)).

[9] *Id.*

[10] *Id.* at *2.

[11] *Id.* at *4.

[12] *Id.*

conclusion that private parties generally cannot enforce the 1940 Act.[13] Specifically, the Supreme Court pointed to how, under the 1940 Act, the SEC "may investigate and bring enforcement actions in response to violations of 'any provision of [the 1940 Act] or of any rule, regulation, or order' issued under the Act," (citing §80a–41(a)), and the SEC "may also 'bring an action in . . . court' for injunctive relief or civil monetary penalties" (citing §§80a–41(d), (e)).[14] Moreover, the Court noted that the 1940 Act contains two other express private rights of action—under Sections 35(b) and 29(h)—demonstrating that when Congress wished to authorize private enforcement, it did so explicitly.[15] According to the Court, the existence of these targeted express remedies reinforced the inference that Congress did not intend to create a broader, implied private remedy through Section 47(b).

Implications for Institutional Investors

The Court's decision in *Saba Capital* reshapes the enforcement landscape under the 1940 Act and carries several practical consequences for institutional investors that invest in regulated investment companies.

First, the ruling eliminates what had been (at least in some courts), a primary vehicle for private parties to challenge fund contracts alleged to violate the 1940 Act. Investors can no longer invoke Section 47(b) as an independent basis for filing suit in federal court to seek rescission of fund governance arrangements or other contractual structures that may contravene the 1940 Act. For institutional investors with significant holdings in closed-end funds, mutual funds, or ETFs, this means that direct legal challenges to fund governance decisions—particularly those adopted by boards to limit shareholder influence—will be more difficult to pursue.

Second, the decision further concentrates enforcement authority towards the SEC. Investors who believe a fund's contractual arrangements violate the 1940 Act will need to look primarily to the SEC for relief.

Third, institutional investors that relied on Section 47(b) as a tool to challenge entrenched fund governance will now need to pursue alternative avenues, including potentially state law claims (for rescission of contracts) or proxy contests. Institutional holders in investment companies should further assess whether the shift following *Saba Capital* alters the balance of power towards fund management in ways that affect their corporate governance expectations.

[13] *Id.* at *5.
[14] *Id.*
[15] *Id.* at *6.

Labaton Keller Sucharow's lawyers are available to address any questions you may have regarding these developments. Please contact the Labaton Keller Sucharow lawyer with whom you usually work or the contacts below.

Guillaume Buell:
Partner
GBuell@labaton.com
+1 212.907.0873

David Saldamando:
Associate
DSaldamando@labaton.com
+1 212.907.0724