

How 2nd Circ. Gave Loper Bright Real Force In SEC Cases

By **Emily Renshaw, Michael Hacker and Patrick Keating** (April 9, 2026, 4:29 PM EDT)

The U.S. Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo* overruled the long-standing Chevron deference that required courts to defer to an agency's reasonable interpretation of a statute it administers when the statute is unclear or ambiguous. The U.S. Court of Appeals for the Second Circuit has now offered an early and significant look at how *Loper Bright* may affect litigation brought by the U.S. Securities and Exchange Commission.[1]

The Second Circuit's message is straightforward: Courts can no longer treat the SEC's reading of an ambiguous statute as controlling, but instead must exercise independent judgment in determining statutory meaning.

In *SEC v. Amah*, the Second Circuit on Feb. 24 vacated in part and remanded a U.S. District Court for the Southern District of New York order imposing liability under the Investment Advisers Act, holding that the district court had improperly relied on the SEC's interpretation of the act's definition of "investment adviser" — and specifically the phrase "for compensation" — rather than independently analyzing the statutory text as *Loper Bright* now requires.

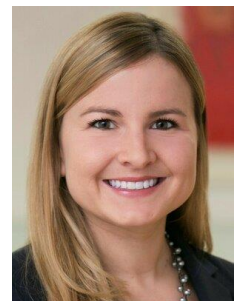
Importantly, the Second Circuit did not decide that the SEC's interpretation was wrong, nor did it adopt a narrower construction of the Advisers Act. It did, however, make clear that more is required after *Loper Bright*.

When liability turns on the meaning of ambiguous statutory language, courts must independently assess the statute. Courts may ultimately agree with the SEC, but they must support that determination through independent judicial analysis, not deference.

For defendants — and potential defendants — in SEC litigation, *Amah* is significant because it confirms that *Loper Bright* can directly shape the outcome of an enforcement proceeding.

Tracking the Litigation

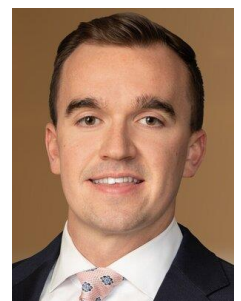
Amah arose out of an SEC enforcement action against Evarist Amah, a pro se defendant whom the SEC accused of soliciting investments from members of his religious community through materially false and misleading statements.[2] In September 2023, the district court granted summary judgment in favor of



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the SEC on liability under the Securities Exchange Act, the Securities Act and the Advisers Act, and imposed a permanent injunction, disgorgement and civil penalties.

On appeal, the Second Circuit affirmed liability under the Exchange Act and Securities Act, concluding that the defendant's misstatements and omissions fell squarely within well-established anti-fraud provisions.

The Advisers Act claim, however, presented "a novel and important issue of statutory construction" because, unlike the anti-fraud provisions, the SEC's Advisers Act theory depended on whether Amah qualified as an "investment adviser" within the meaning of the statute. That, in turn, depended on the meaning of the statutory phrase "for compensation."

On that issue, the Second Circuit vacated and remanded, holding that the district court had improperly relied on the SEC's interpretation without conducting the independent analysis required by *Loper Bright*. The Second Circuit also vacated the portions of the injunction and civil penalties tied to the Advisers Act ruling, underscoring that the court's application of *Loper Bright* had real consequences for liability and remedies alike.

The District Court's Deference to the SEC's Definition

Liability under the Advisers Act turned on whether Amah qualified as an "investment adviser" within the meaning of the statute. The Advisers Act defines an "investment adviser" as "any person who, for compensation, engages in the business of advising others" about securities.

The central issue in Amah was how to interpret "for compensation" where the defendant had not received compensation directly in connection with the investments at issue, but the SEC argued that an expectation of compensation was enough.

The district court accepted the SEC's interpretation that investment advice may be rendered for compensation where the adviser expects to receive compensation, thereby bringing the adviser within the ambit of the Advisers Act even if the adviser has not yet received compensation in connection with the conduct at issue. The court also accepted the SEC's position that, once a person qualifies as an investment adviser by receiving compensation from any client, the Advisers Act can apply across that person's client relationships, including those for which no compensation was received.

The Second Circuit determined that the interpretation of "for compensation" was an important and novel issue of statutory construction, and that the district court improperly deferred to the SEC's interpretation in contradiction to *Loper Bright*. Thus, it remanded the matter for the district court to determine the meaning of "for compensation" using its independent judgment, rather than simply deferring to the SEC.

Loper Bright and the End of Agency Deference

The Second Circuit held that the district court improperly deferred to the SEC's interpretation in contradiction to *Loper Bright* when interpreting "for compensation" and thus whether the defendant qualified as an investment adviser. The Second Circuit noted that neither the parties nor the court had identified any Second Circuit or Supreme Court precedent interpreting the relevant statutory language, making the issue a "novel and important" question of statutory construction.

Importantly, in remanding to the district court, the Second Circuit did not interpret "for compensation" itself. The Second Circuit emphasized that, while the district court may ultimately reach the same statutory interpretation as the SEC, the lower court's decision must reflect an independent analysis. In other words, *Loper Bright* does not prevent courts from agreeing with agency interpretations.

But the Second Circuit held that the district court's key error was methodological: It treated the SEC's interpretation as effectively controlling, rather than engaging in its own analysis of the statutory text, structure and context. The Second Circuit's decision reinforces that under *Loper Bright*, that approach is no longer permissible, even where the agency has expertise or a consistent historical position.

This distinction is more than semantic. Under the prior *Chevron* deference framework, courts often upheld agency interpretations so long as the statute was ambiguous and the agency's interpretation was reasonable.

Now, courts must determine the best reading of the statute, even in the face of ambiguity, using traditional tools of statutory construction. That shift places greater emphasis on textual analysis, statutory context and judicial reasoning, reducing the practical influence of agency interpretations.

The Second Circuit also framed the issue as one of "independent judgment," signaling that district courts must build a record of analysis rather than rely on shorthand references to agency interpretations. This may require more extensive briefing and more detailed judicial opinions in cases involving ambiguous and disputed statutory terms.

In short, *Amah* signals that the SEC must now defend its statutory interpretations in court, potentially creating new opportunities for defendants to challenge agency positions, particularly where — as in *Amah* — there were no controlling judicial precedents interpreting the term.

Takeaway: Amah May Affect SEC Enforcement and Litigation Strategy

The Second Circuit's decision in *Amah* offers one of the first clear indications of how courts will operationalize *Loper Bright* in the securities enforcement context. By vacating the *Advisers Act* ruling and requiring independent judicial analysis, the court signaled that SEC enforcement theories resting on ambiguous definitional provisions or contested interpretations of statutory text, even long-standing ones, may now be subject to more rigorous judicial scrutiny.

For defendants and potential defendants, this may create a meaningful opportunity to challenge SEC actions that relied on interpretations that might previously have been upheld under *Chevron* deference. Arguments that a statutory term should be read narrowly, that the SEC's interpretation stretches beyond the text, or that an SEC rule promulgated under that statute is not supported by the statutory text may carry greater weight in the post-*Loper Bright* landscape.

This is true for litigated actions, as well as in connection with negotiated resolutions with the SEC itself. The application of *Loper Bright* as expressed by the Second Circuit in *Amah* is particularly relevant in areas where the SEC has — at least in the past — pushed the boundaries of existing statutes to address new market developments or novel fact patterns.

For the SEC, the decision suggests that enforcement actions may require more robust statutory grounding and more explicit engagement with textual arguments. The agency must persuade courts — and, to some extent, in connection with negotiated resolutions, respondents — that its interpretation is

the best reading of the statute, not merely a reasonable one.

The Amah decision may also affect the practical weight market participants give to SEC pronouncements more broadly, because courts are now required to independently assess the statutory basis for those views. That point may be especially relevant in areas such as digital assets and related transactions, where legal disputes often turn on interpretations of older statutory text.

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[1] Although Amah was issued as a summary order and therefore lacks precedential effect, it remains noteworthy as an early indication of how the Second Circuit is applying Loper Bright in the SEC enforcement context.

[2] The Second Circuit sua sponte raised Loper Bright, relying on liberal interpretations of the pro se defendant's arguments. The Second Circuit even suggested that the district court consider appointing counsel — potentially signaling that the Second Circuit wants a robust record on remand regarding the proper definition of "for compensation."