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## Supreme Court Agrees to Review *Jones v. Harris Associates*

2009-03-09

Today, the Supreme Court agreed to review *Jones v. Harris Associates*, a Seventh Circuit decision rejecting the *Gartenberg* standard in litigation under § 36(b) of the Investment Company Act of 1940 and adopting a new test for reviewing advisory fee challenges under § 36(b).<sup>1</sup> (The decision was previously covered in a WilmerHale client alert, dated May 27, 2008.)<sup>2</sup> Petitioner asked the Supreme Court to review whether the Seventh Circuit "erroneously held, in conflict with the decisions of three other circuits, that a shareholder's claim that the fund's investment adviser charged an excessive fee—more than twice the fee it charged to funds with which it was not affiliated—is not cognizable under § 36(b), unless the shareholder can show that the adviser misled the fund's directors who approved the fee."<sup>3</sup> The case will be heard and decided in the next Term, opening October 5, 2009.

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<sup>1</sup> *Jones v. Harris Assoc.*, 527 F.3d 627 (7th Cir. 2008). The Court's Order List to date for the upcoming Term is available at [www.supremecourtus.gov/orders/courtorders/030909zor.pdf](http://www.supremecourtus.gov/orders/courtorders/030909zor.pdf). Additional information on the Jones Supreme Court filings is available at [www.supremecourtus.gov/docket/08-586.htm](http://www.supremecourtus.gov/docket/08-586.htm).

<sup>2</sup> Available at [www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8329](http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8329).

<sup>3</sup> Petition for Certiorari at i, available at [www.scotusblog.com/wp/wp-content/uploads/2009/02/08-586\\_pet.pdf](http://www.scotusblog.com/wp/wp-content/uploads/2009/02/08-586_pet.pdf).

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