

May 8, 2007

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chairman Cox:

As you know, the Supreme Court is expected to decide this year whether those who knowingly participate in a scheme to defraud investors can be held liable for their actions. We are writing to urge you to maintain the Securities and Exchange Commission's past support for scheme liability and submit an *amicus brief* in support of that position in the pending case (*Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc*, No. 06-43).

The question to be decided in that case is of utmost importance to investors and to the integrity of the capital markets. Put simply, it will determine whether those who participate in a scheme to defraud investors under §10(b) and Rule 10b-5(a) and (c) can be held liable where the participants engaged in contrived financial transactions with a public corporation to distort and falsify its financial statements but did not themselves make public statements concerning those transactions. As you know, the SEC has in the past consistently taken the side of defrauded investors, maintaining that both the statute and Rule 10b-5 create liability for deceptive conduct even in the absence of a false statement. In keeping with that position, the SEC filed an *amicus brief* in support of plaintiffs in the Enron case (*Regents v. Merrill Lynch Pierce Fenner & Smith, Inc.*, No. 06-1341), as did 27 state Attorneys General.

This issue is of particular importance to the investors who lost tens of billions of dollars in the Enron fraud. The independent court examiners in the Enron bankruptcy proceeding concluded that the investment banks were knowing participants in the Enron fraud. With settlements to date totaling \$7.3 billion, the litigation against the investment banks has been the most important source of compensation for the many victims of that fraud. But the case also has wider implications for the integrity of the markets. If the Court were to decide against investors in this case it would send the message that banks, auditors, lawyers and other professionals investors rely on can engage in fraud with impunity so long as they keep their manipulations behind the scenes.

Given the SEC's early support for plaintiffs in the Enron case, it seems logical to assume that the agency would continue its support as the issue of scheme liability moves to the Supreme Court. We recognize, however, that the Commission has been under enormous pressure lately from members of the business community to use its regulatory authority to weaken defrauded

investors' right to redress through private lawsuits. We urge you not to bow to that pressure and instead to reassert the Commission's support for scheme liability by submitting an *amicus brief* in support of plaintiffs.

Respectfully submitted,

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cc: Commissioner Paul Atkins
Commissioner Roel Campos
Commissioner Kathleen Casey
Commissioner Annette Nazareth