

## 09-525 JANUS CAPITAL GROUP V. FIRST DERIVATIVE TRADERS

DECISION BELOW: 566 F.3d 111

LOWER COURT CASE NUMBER: 07-1607

### QUESTION PRESENTED:

There is no aiding-and-abetting liability in private actions brought under Section 10(b) of the Securities Exchange Act of 1934. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994). Thus, a service provider who provides assistance to a company that makes a public misstatement cannot be held liable in a private securities-fraud action. *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 128 S. Ct. 761 (2008). In the decision below, however, the Fourth Circuit held that an investment adviser who allegedly "*helped* draft the misleading prospectuses" of a different company, "*by participating* in the writing and dissemination of [those] prospectuses," can be held liable in a private action "even if the statement on its face is not directly attributed to the [adviser]." App., *infra*, 17a-18a, 24a (emphases added). The questions presented are:

1. Whether the Fourth Circuit erred in concluding--in direct conflict with decisions of the Fifth, Sixth, and Eighth Circuits--that a service provider can be held primarily liable in a private securities fraud action for "help[ing]" or "participating in" another company's misstatements.

2. Whether the Fourth Circuit erred in concluding--in direct conflict with decisions of the Second, Tenth, and Eleventh Circuits--that a service provider can be held primarily liable in a private securities-fraud action for statements that were not directly and contemporaneously attributed to the service provider.

CERT. GRANTED 6/28/2010