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United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

August 13, 2007

The President
The White House
Washington, D. C. 20500

Dear President Bush:

I am writing to express my disappointment that the Solicitor General has chosen not to file an amicus brief with the Supreme Court that was recommended by the United States Securities and Exchange Commission in a case on appeal from the Eighth Circuit, *Stoneridge Investment Partners, L.L.C. v. Scientific-Atlanta, Inc.*, 443 F.3d 987 (8th Cir. 2006), *cert. granted*, 127 S.Ct. 1873, (U.S. Mar. 26, 2007) (No. 06-43), and to urge that he not file an amicus brief advocating any position other than the well-established position of the Commission that parties who contribute to defrauding investors should be held accountable.

The *Stoneridge* case raises a significant issue affecting private rights of action and civil liability under Section 10(b) of the Securities Exchange Act of 1934 ("the Act") and Rule 10b-5 thereunder. This case is particularly important because the Supreme Court's decision could resolve differences among the Fifth, Eighth and Ninth Circuits regarding the application of Section 10(b) of the Act.

The Commission has analyzed issues raised by *Stoneridge* and, earlier this year, voted that, under Section 10(b) of the Act and Rule 10b-5 thereunder, a deceptive act is not limited to making false or misleading statements or failing to speak when there is a duty to speak, but includes non-verbal conduct that creates a false or misleading appearance. The Commission also voted that a person uses or employs a deceptive device or contrivance within the meaning of Section 10(b) of the Act if, in a transaction with an issuer of securities, the person engages in conduct that has the principal purpose and effect of conveying a false appearance of material fact about the transaction.

These votes are consistent with the positions that the Commission unanimously took in 2004 in the amicus curiae briefs it filed in *Simpson v. AOL Time Warner, Inc. (In re Homestore.com, Inc., Sec. Litig.)*, 452 F. 3d 1040 (9th Cir. 2006), petition for *cert. filed sub nom. Avis Budget Group, Inc. v. California State Teachers' Retirement System*, 75 U.S.L.W. 3236 (U.S. Oct. 29, 2006) (No.06-560) (Chairman Donaldson not participating).

These standards, and similar standards that the SEC has adopted in amicus briefs filed in other cases, are , in my view, meritorious. As a co-author of the Private Securities Litigation Reform Act, I have worked to protect businesses from frivolous and meritless lawsuits. At the same time, I have supported efforts to protect the rights of investors who have been defrauded.

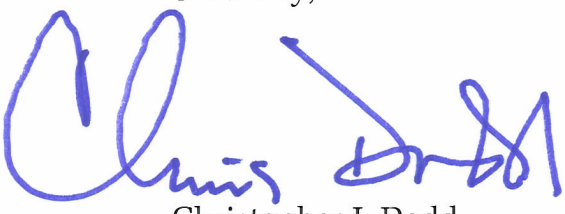
The position of the Commission has strong support. Its view is shared or supported by former SEC chairmen, law professors, institutional investors, and numerous others who have filed amicus briefs with the Supreme Court in this case.

The Solicitor General, by declining to advocate the position of the SEC in this case, has deprived the Commission of the opportunity to participate in an important securities case and prevented the Supreme Court from receiving views from the Commission as the Court interprets the Federal securities laws in *Stoneridge*.

It is my view that when the Supreme Court considers a case involving securities law, it should have the benefit of the views of the Federal regulatory agency with expertise in securities law and practice. The SEC has built its expertise on decades of interpreting and administering the Exchange Act and other statutes with a view to protecting investors and maintaining fair and efficient markets.

It has been reported that the Solicitor General plans to file an amicus brief advocating views inconsistent with the views of the SEC. If this occurs, it would compound the damage already caused by the Solicitor in declining to advocate a position consistent with the SEC's. I urge you to take appropriate steps to discourage any such plans.

Sincerely,



Christopher J. Dodd
Chairman