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

August 13, 2007

The Honorable Paul D. Clement
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530

Dear Mr. Clement:

I am writing to express my disappointment that you have not filed an amicus brief with the Supreme Court expressing the views of 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). Since you have not filed as of today such a brief, I urge that you 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 were 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 advocated 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. The 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.

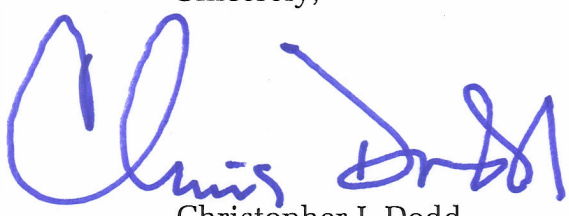
Your decision thus far to not advocate the Commission's position has in effect deprived the Commission of the opportunity to participate in an important securities case. It has also prevented the Supreme Court from receiving views from the Commission as the Court interprets the Federal securities laws in *Stoneridge*.

It is my view that when the Supreme Court considers a case involving securities law, it should have the 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 along with other statutes to protect investors and maintain fair and efficient markets.

It has been reported that your office may file an amicus brief advocating views inconsistent with the views of the SEC. If this occurs, it would In my view compound the damage already caused to the investing public by the failure thus far to advocate the views of the Commission in the *Stoneridge* case. I would encourage the rejection of any such plan.

Thank you for your attention to these views.

Sincerely,



Christopher J. Dodd
Chairman