

Supreme Court Limits False Statement Liability Under Rule 10b-5 To Those Who Actually Make Misstatements

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On June 13, 2011, the U.S. Supreme Court issued an important decision clarifying the scope of liability for “making” false statements under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. While some lower courts previously had held that a person can only be liable for making a statement when it is publicly attributed to him or her at the time of dissemination, other courts had held that a person could be liable for substantially participating in formulating the statement, at least where the person knew or should have known that the representation would be communicated to investors.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Michael S. Flynn

+1 212 450 4766
michael.flynn@davispolk.com

Nora M. Jordan

+1 212 450 4684
nora.jordan@davispolk.com

Edmund Polubinski

+1 212 450 4695
edmund.polubinski@davispolk.com

Lawrence Portnoy

+1 212 450 4874
lawrence.portnoy@davispolk.com

Neal Potischman

+1 650 752 2021
neal.potischman@davispolk.com

James P. Rouhandeh

+1 212 450 4835
rouhandeh@davispolk.com

Daniel J. Schwartz

+1 212 450 4581
daniel.schwartz@davispolk.com

Robert F. Wise, Jr.

+1 212 450 4512
robert.wise@davispolk.com

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