
The Supreme Court Holds That Mutual Fund Investment Advisers Are Not Statement "Makers" for the Purposes of Rule 10b-5 Liability

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On June 13, 2011, in *Janus Capital Group, Inc. v. First Derivative Traders*, the Supreme Court of the United States addressed the issue of whether a mutual fund investment adviser may be held liable in a Rule 10b-5 private cause of action for false and misleading statements contained in the fund's prospectuses. In reversing the United States Court of Appeals for the Fourth Circuit, the Court held, in a sharply divided 5-4 decision, that the defendant investment adviser was not the "maker" of the challenged statements to satisfy a securities fraud claim under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and SEC Rule 10b-5.

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