Cahill

Supreme Court Upholds Securities Fraud Liability for Defendant Who Did Not "Make" False Statements

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In a 6-2 decision on March 27, 2019, the Supreme Court of the United States held that a person who disseminates false or misleading statements to potential investors with the intent to defraud can be found to have violated Rule 10b-5(a) or (c) of the Securities Exchange Act of 1934 (the “Exchange Act”), even where the person was not the “maker” of the misleading statements under Rule 10b-5(b). The decision is a victory for the Securities and Exchange Commission (the “SEC”), and will be cited by civil plaintiffs, as it makes clear that primary violations of Rules 10b-5(a) and (c) may be brought against defendants even where they do not “make” the alleged misstatement, though litigants still must plead a strong inference of scienter, which continues to be a high hurdle in many cases.

Attached is the memorandum discussing the Court's ruling.

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