Federal Department of Education, with some of the most radical ideas in education in it, like, for example, whole math or new math or new new math, where kids are not expected to do multiplication problems or addition or subtraction problems because they might fail those, that is really true. That is in the version of the national test that is already written, but if teachers understand that their students are going to be expected to take this one national test they have got to teach to that one national test.

What does that mean? That means the curriculum, what kids get taught in your school, right down the street from where they will go tomorrow morning when the alarm clock goes off and you get them dressed and send them to school, what they will be taught in that classroom in your district, in your neighborhood, will not be decided by the principal at your school or by you and the school site council, it will not be decided by the local school board. It will not even be decided by the superintendent of public instruction or by the state legislature. It will be decided and dictated here in Washington, D.C.; once again, the Federal government telling people what is best for them, the Federal Government saying the only way to educate our kids is the way that we say to educate our kids in Washington, D.C., because they have got to pass this national test. It is a bad idea. It would hurt education.

I grant that the proponents of this idea may believe it is a good idea but, in fact, it is a very dangerous idea that would nationalize student curriculum and this legislation blocks the idea of a one-size-fits-all national test written here in Washington, D.C.

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To our negotiators, I think that is a huge step forward for education in America and it will protect our kids and make sure that they do not get a curriculum crammed down their throats from Washington, D.C.

Mr. KINGSTON. Mr. Speaker, if the gentleman would yield, I wanted to say one other story about nationalizing education. I have in my area Saint Marys, Georgia, a small coastal community. And I was down there last year and a teacher told me she had just returned from Athens, Georgia, my hometown where the University of Georgia is, and there she went to a seminar on how to behave around kids.

It was the bureaucrats telling the teachers in Saint Marys, Georgia, do not be alone with the kids. Do not go to the bathroom with the kids, because they might accuse you of improper advance and so forth. And I can understand that. But it kind of got worse. I think that the teacher could probably use her own common sense of when it is appropriate to be alone with the child. But one of the things they said was, if a kid stays after class for punishment or tutorial help, do not meet with the child alone.

Imagine how awkward and difficult that would be. If a student needs a little help with math and can go in to see the teacher, they do not want to have to make a big production out of it. There should not have to be a witness to learn how to do a quadratic formula.

But it went on from there. They said do not ever hug kids. In her particular case, she was teaching small children and she said some of them come from a broken family. They need a hug more than they need an A or a B, and it is very important for her to show some affection to the kids. But when we have big bureaucracies telling teachers how to do it.

Mr. Speaker, I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Speaker, I thank the gentleman. I just want to make it clear, we talk here on the floor about nationalizing education. I am sure a lot of people are going, What does that mean?

What it really means is the sad fact of moving all the decisions about education to Washington, D.C. If my colleagues think every decision that is made in Washington, D.C. is a wise and prudent decision and they would like to surrender control over education to Washington, D.C., then they like national testing, they like the President's agenda of hiring all of those teachers here in Washington.

If they think sometimes they can make wiser decisions at home about their own life, including their children's education at their own school, then they have to oppose the President on that issue.

I want to turn, in the time that is remaining, to talking about the drug war. I mentioned earlier that there are six pieces of legislation in this bill that I think dramatically advance our fight against drugs. I want to talk last about one that is personally important to me. Let me just first rattle them off or list them off.

Number one, there is a ban on needle exchanges. There is a prohibition against the Federal Government taking American taxpayers' hard-earned money and giving free needles to drug addicts across America. I think that is a tremendous step forward. The idea of giving free needles to drug addicts is crazy.

There is a prohibition against medical marijuana. I think that is another important step in the right direction.

There is a provision called the Life Imprisonment for Speed Trafficking Act. Nobody in America cannot be concerned about this crime. I know in my own State of Arizona, and in my own community of Phoenix, there are many labs where this drug is created. It is doing immeasurable damage to our kids across America and we need tough penalties for it.

There are also some programs that help kids in this area. There is the Drug Demand Reduction Act which block grants funds to the State for Drug-free Communities Act and other community-based programs. And there is also a Drug-Free Workplace Act to support small businesses that have drug-free workplaces. My brother is in the construction business and drugs are a serious safety threat on the job.

But the most important bill I want to talk about has impact on me personally. It is called the Western Hemisphere Drug Elimination Act. And there is a significant piece of this bill that I care about.

Earlier this year, I had the good fortune to go to Central America and to visit Colombia. We flew into Bogota, Colombia, and while we were there we met with Jose Serrano, General Serrano, who is a legend in that country for his fight against drugs. He is the head of the Colombian National Police and a true hero in the fight against drugs.

He took us on a tour of the hospital he built for his troops who were engaged in the fight against drugs there in Colombia. We have to understand that in Colombia, the drug war is literally a war with machine guns and rockets and anti-aircraft missiles and lives being lost every day. As we toured the hospital and witnessed and talked to his colleagues who had been shot and hurt, he made a plea to us. He said, Congressman, we desperately need Blackhawk helicopters. And in this bill, we give the Colombian National Police and General Serrano six Blackhawk helicopters to fight the drug war. It is a gigantic step forward.

Mr. Speaker, some of us have been fighting to get those helicopters to Colombia for now over a year, almost going on 2 years, and this is just critically important.

Mr. KINGSTON. Mr. Speaker, I thank the gentleman from Arizona. And let me close with this, Mr. Speaker. This Congress has brought us the balanced budget, that has cut taxes for the first time in 16 years, that has on a bipartisan basis reformed Medicare, and on a bipartisan basis reformed welfare, with 40 percent of the people who were on it in 1994 now being off of it.

This year we have accomplished greater drug laws, greater education laws, greater opportunities for our school kids, protected Social Security, modernized our military and our government. Next year we are going to go on to reduce taxes further, increase the quality of education and health care protection. It is an exciting time to be an American.

CORRECTION TO THE CONGRESSIONAL RECORD OF TUESDAY, OCTOBER 13, 1998, AT PAGES H10771–H10776

CONFERENCE REPORT ON S. 1260, SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

Mr. BLILEY. Mr. Speaker, I move to suspend the rules and agree to the conference report on the Senate bill (S.

1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

The Clerk read the title of the Senate bill.

(For conference report and statement, see Proceedings of the House of Friday, October 9, 1998, at page H10266.)

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

Mr. BLILEY. Mr. Speaker, I yield myself 5 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. BLILEY. Mr. Speaker, I rise in support of the conference report on the Senate bill, S. 1260, Securities Litigation Uniform Standards Act of 1998. This legislation we are considering today will eliminate State court as a venue for meritless securities litigation.

This legislation has broad bipartisan support. We recognize that the trial bar should not make an end run around the work we did in 1995 in overriding the President's veto of litigation reform in State court. This legislation will protect investors from baseless securities class action lawsuits in the capital markets.

The premise of this legislation is simple: lawsuits alleging violations that involve securities that are offered nationally belong in Federal court. This premise is consistent with the national nature of these markets that we recognize in the National Securities Market Improvement Act of 1995.

The legislative history accompanying the legislation makes clear that we are not disturbing the heightened pleading standard established by the 1995 Act.

The economic disruptions around the globe are reflected by the volatility that affects our markets. Stock prices are up one day, down the next. The prices are not falling due to fraudulent statements, which are the purported basis of many strike suits. The fall is due to economic conditions.

If there is intentional fraud, there is nothing in this legislation or in the Reform Act to prevent those cases from proceeding. We do not need to exacerbate market downturns by allowing companies to be dragged into court every time their stock price falls. The 1995 Reform Act remedied that problem for Federal courts, and this legislation will remedy it for State courts.

I would like to thank the gentleman from Ohio (Mr. OXLEY), the chairman of the Subcommittee on Finance and Hazardous Materials, for his hard work and leadership. I thank the gentleman from Michigan (Mr. JOHN DINGELL), the ranking member of the committee, for his constructive participation as we move the bill through committee.

I commend the gentleman from New York (Mr. TOM MANTON), the ranking member of the subcommittee, not only for his work on this legislation, but his valued service on the committee. It has been a pleasure working with him, and he will be missed.

I also commend the gentleman from Washington (Mr. RICK WHITE), the original cosponsor of the legislation, for his tireless efforts and willingness to compromise that has kept this legislation on track to becoming law.

Likewise, the gentlewoman from California (Ms. ANNA ESHOO) has been a leading proponent of this legislation, and has worked to ensure its passage, and certainly the gentleman from California (Mr. COX), the chairman of the Republican policy committee who has been working on this issue for many years.

Finally, I also commend our colleagues in the other body for their work on this important legislation. Mr. Speaker, I urge my colleagues to join me and support S. 1260.

Mr. Speaker, I ask unanimous consent to include for the RECORD a complete copy of the conference report on S. 1260.

When the conference report was filed in the House, a page from the statement of managers was inadvertently omitted. That page was included in the copy filed in the Senate, reflecting the agreement of the managers. We are considering today the entire report and statement of managers as agreed to by conferees and inserted in the RECORD.

The SPEAKER pro tempore. Since the Chair is aware that the papers filed in the Senate contain that matter as part of the joint statement, its omission from the joint statement filed in the House can be corrected by a unanimous consent request.

Is there objection to the request of the gentleman from Virginia?

There was no objection.

* * *

The text of the Joint Statement of managers on S. 1260 is as follows:

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

THE SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

UNIFORM STANDARDS

Title 1 of S. 1260, the Securities Litigation Uniform Standards Act of 1998, makes Federal court the exclusive venue for most securities class action lawsuits. The purpose of this title is to prevent plaintiffs from seeking to evade the protections that Federal law provides against abusive litigation by filing suit in State, rather than in Federal, court. The legislation is designed to protect the interests of shareholders and employees of public companies that are the target of meritless ''strike'' suits. The purpose of these strike suits is to extract a sizeable settlement from companies that are forced to settle, regardless of the lack of merits of the suit, simply to avoid the potentially bankrupting expense of litigating.

Additionally, consistent with the determination that Congress made in the National Securities Markets Improvement Act[1] (NSMIA), this legislation establishes uniform national rules for securities class action litigation involving our national capital markets. Under the legislation, class actions relating to a ''covered security'' (as defined by section 18(b) of the Securities Act of 1933, which was added to that Act by NSMIA) alleging fraud or manipulation must be maintained pursuant to the provisions of Federal securities law, in Federal court (subject to certain exceptions).

''Class actions'' that the legislation bars from State court include actions brought on behalf of more than 50 persons, actions brought on behalf of one or more unnamed parties, and so-called ''mass actions,'' in which a group of lawsuits filed in the same court are joined or otherwise proceed as a single action.

The legislation provides for certain exceptions for specific types of actions. The legislation preserves State jurisdiction over: (1) certain actions that are based upon the law of the State in which the issuer of the security in question is incorporated[2]; (2) actions brought by States and political subdivisions, and State pension plans, so long as the plaintiffs are named and have authorized participation in the action; and (3) actions by a party to a contractual agreement (such as an indenture trustee) seeking to enforce provisions of the indenture.

Additionally, the legislation provides for an exception from the definition of ''class action'' for certain shareholder derivative actions.

Title II of the legislation reauthorizes the Securities and Exchange Commission (SEC or Commission) for Fiscal Year 1999. This title also includes authority for the SEC to pay economists above the general services scale.

Title III of the legislation provides for corrections to certain clerical and technical errors in the Federal securities laws arising from changes made by the Private Securities Litigation Reform Act of 1995[3] (the ''Reform Act'') and NSMIA.

The managers note that a report and statistical analysis of securities class actions lawsuits authored by Joseph A. Grundfest and Michael A. Perino reached the following conclusion:

The evidence presented in this report suggests that the level of class action securities fraud litigation has declined by about a third in federal courts, but that there has been an almost equal increase in the level of state court activity, largely as a result of a ''substition effect'' whereby plaintiffs resort to state court to avoid the new, more stringent requirements of federal cases. There has also been an increase in parallel litigation between state and federal courts in an apparent effort to avoid the federal discovery stay or other provisions of the Act. This increase in state activity has the potential not only

[1] Public law 104–290 (October 11, 1996).

[2] It is the intention of the managers that the suits under this exception be limited to the state in which issuer of the security is incorporated, in the case of a corporation, or state of organization, in the case of any other entity.

[3] Public Law 104–67 (December 22, 1995).

to undermine the intent of the Act, but to increase the overall cost of litigation to the extent that the Act encourages the filing of parallel claims.[4]

Prior to the passage of the Reform Act, there was essentially no significant securities class action litigation brought in State court.[5] In its Report to the President and the Congress on the First Year of Practice Under the Private Securities Litigation Reform Act of 1995, the SEC called the shift of securities fraud cases from Federal to State court ''potentially the most significant development in securities litigation'' since passage of the Reform Act.[6]

The managers also determined that, since passage of the Reform Act, plaintiffs' lawyers have sought to circumvent the Act's provisions by exploiting differences between Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the Reform Act's procedural or substantive protections against abusive suits are available.[7] In California, State securities class action filings in the first six months of 1996 went up roughly five-fold compared to the first six months of 1995, prior to passage of the Reform Act.[8] Furthermore, as a state securities commissioner has observed:

It is important to note that companies can not control where their securities are traded after an initial public offering. * * * As a result, companies with publicly-traded securities can not choose to avoid jurisdictions which present unreasonable litigation costs. Thus, a single state can impose the risks and costs of its pecular litigation system on all national issuers.[9]

The solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving nationally traded securities.

SCIENTER

It is the clear understanding of the managers that Congress did not, in adopting the Reform Act, intend to alter the standards of liability under the Exchange Act.

The managers understand, however, that certain Federal district courts have interpreted the Reform Act as having altered the scienter requirement. In that regard, the managers again emphasize that the clear intent in 1995 and our continuing intent in this legislation is that neither the Reform Act nor S. 1260 in any way alters the scienter standard in Federal securities fraud suits.

Additionally, it was the intent of Congress, as was expressly stated during the legislative debate on the Reform Act, and particularly during the debate on overriding the President's veto, that the Reform Act establish a heightened uniform Federal standard on pleading requirements based upon the pleading standard applied by the Second Circuit Court of Appeals. Indeed, the express language of the Reform Act itself carefully provides that plaintiffs must ''state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'' The Managers emphasize that neither the Reform Act nor S. 1260 makes any attempt to define that state of mind.

The managers note that in Ernst and Ernst v. Hochfelder[10], the Supreme Court left open the question of whether conduct that was not intentional was sufficient for liability under the Federal securities laws. The Supreme Court has never answered that question. The Court expressly reserved the question of whether reckless behavior is sufficient for civil liability under section 10(b) and Rule 10b–5 in a subsequent case, Herman & Maclean v. Huddleston[11], where it stated, ''We have explicitly left open the question of whether recklessness satisfies the scienter requirement.''

The managers note that since the passage of the Reform Act, a data base containing many of the complaints, responses and judicial decisions on securities class actions since enactment of the Reform Act has been established on the Internet. This data base, the Securities Class Action Clearinghouse, is an extremely useful source of information on securities class actions. It can be accessed on the world wide web at http://securities.stanford.edu. The managers urge other Federal courts to adopt rules, similar to those in effect in the Northern District of California, to facilitate maintenance of this and similar data bases.

TOM BLILEY,
M.G. OXLEY,
BILLY TAUZIN,
CHRIS COX,
RICK WHITE,
ANNA G. ESHOO,

Managers on the Part of the House.

ALFONSE D'AMATO,
PHIL GRAMM,
CHRIS DODD,

Managers on the Part of the Senate.

Mr. BLILEY. Mr. Speaker, In 1995, during the consideration of the Private Securities Litigation Reform Act and the override of the President's veto of that Act, Congress noted that in Ernst and Ernst v. Hochfelder,[1] the Supreme court expressly left open the question of whether conduct that was not intentional was sufficient for liability under section 10(b) of the Securities Exchange Act of 1934. The Supreme Court has never answered that question. The Court specifically reserved the question of whether reckless behavior is sufficient for civil liability under section 10(b) and Rule 105–5[2] in a subsequent case, Herman & Maclean v. Huddleston,[3] where it stated, ''We have explicitly left open the question of whether recklessness satisfies the scienter requirement.''

The Reform Act did not alter statutory standards of liability under the securities laws (except in the safe harbor for forward-looking statements). As Chairman of the Conference Committee that considered the Reform Act and as the bill's author, respectively, it is our view that non-intentional conduct can never be sufficient for liability under section 10(b) of the Exchange Act. We believe that the structure and history of the securities laws indicates no basis for liability under this section for non-intentional conduct. The following is a discussion of the legal reasons supporting our view that non-intentional conduct is insufficient for liability under section 10(b) of the Exchange Act.[4]

In Ernst & Ernst v. Hochfelder, the Supreme Court held that scienter is a necessary element of an action for damages under Section 10(b) and Rule 10b–5. The Supreme Court defined scienter as ''a mental state embracing intent to deceive, manipulate, or defraud.'' Hochfelder, 425 U.S. at 194 n. 12.

A. NEITHER THE TEXT NOR THE LEGISLATIVE HISTORY OF SECTION 10(B) SUPPORT LIABILITY FOR RECKLESS BEHAVIOR

''The starting point in every case involving construction of a statute is the language itself.''[5] Because Congress ''did not create a private §10(b) cause of action and had no occasion to provide guidance about the elements of a private liability scheme,'' the Supreme Court has been forced ''to infer how the 1934 Congress would have addressed the issue[s] had the 10b–5 action been included as an express provision in the 1934 Act.''[6]

The inference from the language of the statute is clear: Congress would not have created Section 10(b) liability for reckless behavior. Section 10(b) prohibits ''any manipulative or deceptive device or contrivance'' in contravention of rules adopted by the Commission pursuant to Section 10(b)'s delegated authority. The terms ''manipulative,'' ''device,'' and ''contrivance'' ''make unmistakable a congressional intent to proscribe a type of conduct quite different from negligence.'' Hochfelder, 425 U.S. at 199. The intent was to ''proscribe *knowing or intentional* misconduct.'' Id. (emphasis supplied). In addition, the use of the word manipulative is ''especially significant'' because ''[i]t is and was virtually a term of art when used in connection with securities markets. It connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.'' Id. (footnote omitted).

Section 10(b) of the Exchange Act cannot be violated through inadvertence or with lack of subjective consciousness. Nor can one construct a device or contrivance without willing to do so. The words ''manipulate,'' ''device,'' or ''contrivance,'' by their very nature, require conscious intent and connote purposive activity.[7] The mental state consistent with the statute can be achieved only if a defendant acts with a state of mind ''embracing''—an active verb—''intent''—requiring a conscious state of mind—''to deceive, manipulate or defraud.''[8]

The legislative history compels the same conclusion. ''[T]here is no indication that §10(b) was intended to proscribe conduct not involving scienter.'' *Hochfelder*, 425 U.S. at 202; *see also Aaron v. SEC*, 446 U.S. 680, 691 (1980) (same). Indeed, ''[i]n considering specific manipulative practices left to Commission regulation * * * the [Congressional] reports indicate that liability would not attach absent scienter, supporting the conclusion that Congress intended no lesser standard under §10(b). ''*Hochfelder*, 425 U.S. at 204. Congress thus ''evidenced a purpose to proscribe only *knowing and intentional misconduct*.'' *Aaron*, 446 U.S. at 690 (emphasis supplied).

B. THE STRUCTURE OF THE STATUTE UNDERSCORES THAT THERE CAN BE NO SECTION 10(B) LIABILITY FOR RECKLESSNESS

In drafting the federal securities laws, Congress knew how to use specific language to

[4] Grundfest, Joseph A. & Perino, Michael A., *Securities Litigation Reform: The First Year's Experience: A Statistical and Legal Analysis of Class Action Securities Fraud Litigation under the Private Securities Litigation Reform Act of 1995*, Stanford Law School (February 27, 1997).

[5] *Id.* n. 18.

[6] *Report to the President and the Congress on the First Year of Practice Under the Private Securities Litigation Reform Act of 1995*, U.S. Securities and Exchange Commission, Office of the General Counsel, April 1997 at 61.

[7] Testimony of Mr. Jack G. Levin before the Subcommittee on Finance and Hazardous Materials of the Committee on Commerce, House of Representatives, Serial No. 105–85, at 41–45 (May 19, 1998).

[8] *Id.* at 4.

[9] Written statement of Hon. Keith Paul Bishop, Commissioner, California Department of Corporations, submitted to the Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Securities'' ''Oversight Hearing on the Private Securities Litigation Reform Act of 1995,'' Serial No. 105–182, at 3 (July 27, 1998).

[10] 425 U.S. 185 (1976).

[11] 459 U.S. 375 (1983).

Footnotes at end.

impose liability for reckless or negligent behavior and how to create strict liability for violations of the federal securities laws.[8] But Congress did not use such language to impose Section 10(b) liability on reckless behavior. Therefore, just as there is no liability for aiding and abetting a violation of Section 10(b) because Congress knew how to create such liability but did not,[10] and just as there is no liability under Section 12(l) of the Securities Act, 17 U.S.C. §771(l), for participants who are merely collateral to an offer or sale because Congress knew how to create such liability but did not,[11] and just as there is no remedy under Section 10(b) for those who neither purchase nor sell securities because Congress knew how to create such a remedy but did not,[12] there can be no liability for reckless conduct under Section 10(b) because Congress clearly knew how to impose liability for reckless behavior but did not.

The Supreme Court has, moreover, emphasized that the securities laws ''should not be read as a series of unrelated and isolated provisions.''[13] The federal securities laws are to be interpreted consistently and as part of an interrelated whole.''[14] In *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083 (1991), the Court reserved ''the question whether scienter was necessary for liability under §14(a).''[15] The Court nonetheless held that statements of ''reasons, opinions or belief'' are actionable under §14(a), 15 U.S.C. 78n(a), and Rule 14a–9, 17 C.F.R. §240.14a–9, as false or misleading only if there is proof of (1) subjective ''disbelief or undisclosed motivation,'' and (2) objective falsity. 501 U.S. at 1095–96. Justice Scalia explained the Court's holding as follows:

As I understand the Court's opinion, the statement ''In the opinion of the Directors, this is a high value for the shares'' would produce liability if in fact it was not a high value and the Directors knew that. It would not produce liability if in fact it was not a high value but the Directors honestly believed otherwise. The statement ''The Directors voted to accept the proposal *because* they believe it offers a high value'' would not produce liability if in fact the Directors' genuine motive was quite different—except that it would produce liability if the proposal in fact did not offer a high value and the Directors knew that.[16]

It follows that, if: (A) a statement must be subjectively disbelieved in order to be actionable under Section 14(a), a provision that may or may not required scienter, then: (B) *a fortiori*, under Section 10(b), a provision that clearly requires scienter, plaintiffs must show subjective awareness of a scheme or device.

Any other result would lead to the anomalous conclusion that statements actionable under Section 10(b), the more restrictive ''catchall'' provision of the federal securities laws, *Hochfelder*, 425 U.S. at 203, would not be actionable under Section 14(a). Indeed, ''[t]here is no indication that Congress intended anyone to be made liable [under §10(b)] unless he acted other than in good faith [and] [t]he catchall provision of §10(b) should be interpreted no more broadly.'' *Id.* at 206[17]

The language of the text, the legislative history, and the structure of the statute therefore each compel the conclusion that intentional conduct is a prerequisite for liability under Section 10(b).

Additionally, the Reform Act established a heightened pleading standard for private securities fraud lawsuits. The Conference Report accompanying the Reform Act stated in relevant part:

The Conference Committee language is based in part on the pleading standard of the Second Circuit. The standard also is specifically written to conform the language to rule 9(b)'s notion of pleading with ''particularity.''

Regarded as the most stringent pleading standard, the Second Circuit requirement is that the plaintiff state facts with particularity, and that these facts intern must give rise a strong inference of the defendant's fraudulent intent. Because the Conference Committee intends to strengthen existing pleading requirements, it does not intend to codify the Second Circuit's case law interpreting this pleading standard. Footnote: For this reason, the conference Report chose not to include in the pleading standard certain language relating to motive, opportunity, or recklessness.[18]

The Conference Report accompanying S. 1260 is consistent with that heightened pleading standard articulated in 1995.

FOOTNOTES

[1] 425 U.S. 185 (1976).

[2] 17 C.F.R. §240.10b–5.

[3] 459 U.S. 375 (1983).

[4] We are grateful to Professor Joe Grundfest and Ms. Susan French of Stanford University for guidance to us on these questions.

[5] *Hochfelder,* 425 U.S. at 197 (quoting *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 756 (1975) (Powell, J., concurring). *See also Gustafson v. Alloyd Co.,* 115 S. Ct. 1061, 1074 (1995) (Thomas, J., Dissenting). *Central Bank,* 114 S. Ct. at 1446; *Landreth Timber Co. v. Landreth,* 471 U.S. 681, 685 (1985); *Santa Fe Indus., Inc. v. Green, 430* U.S. 462, 472 (1977).

[6] *Central Bank,* 114 S. Ct. at 1441–42 (quoting *Musick, Peeler* 113 S. Ct. at 2089–90).

[7] *See Hochfelder,* 425 U.S. at 199 n. 20 (''device'' means '''that which is devised, or formed by design; a contrivance; an invention; project; scheme; often a scheme to deceive; a strategem; an artifice'''') (quoting Webster's International Dictionary (2d ed. 1934)); *id* (defining ''contrivance'' as '' '[a] thing contrived or used in contrivance; a scheme . . . .'').

[8] *Hochfelder,* 425 U.S. at 193 n. 12. *Cf. Santa Fe Industries,* 430 U.S. at 478; *Schreiber* v. *Burlington Northern Inc.,* 472 U.S. 1, 5–8 (1985).

[9] Section 11 of the Securities Act of 1933, 15 U.S.C. §77k. for example, imposes strict liability on the issuer for material misstatements or omissions in a registration statement and a ''sliding scale'' negligence standard on other participants in the offering process. *See Hochfelder,* 425 U.S. at 208. Sections 17 (a)(2) and (3) of the Securities Act, 15 U.S.C. §77q(a) (2),(3), impose liability for negligent or reckless conduct in the sale of securities. *Aaron,* 446 U.S. at 697.

[10] *Central Bank, 114 S. Ct.* at 1448 (''Congress knew how to impose aiding and abetting liability when it chose to do so.'') (citing statutes).

[11] *Pinter v. Dahl,*486 U.S. 622, 650 & n.26 (1988) (Congress knew how to provide liability for collateral participants in securities offerings when it chose to do so).

[12] *Blue Chip,* 421 U.S. at 734 (''When Congress wished to provide a remedy for those who neither purchase nor sell securities, it has little trouble doing so expressly.'').

[13] *Gustafson v. Alloyd Co.,* 115 S. Ct. 1061, 1067 (1995).

[14] *See, e.g, Hochfelder,* 425 U.S. at 206 (*citing Blue Chip,* 421 U.S. at 727–30; *SEC v. National Sec., Inc., 393 U.S. 453, 466 (1969)).*

[15] 501 U.S. at 1090 n. 5 (*citing TSC Indus. Inc. v. Northway, Inc.,* 426 U.S. 438, 444 n. 7 (1976) (reserving the same question).

[16] 501 U.S. at 1108–09 (Scalia, J., concurring in part and concurring in the judgment).

[17] The Supreme Court has previously extended holdings from §14(a)'s proxy antifraud provisions to §10(b)'s general antifraud provision. *See, e.g., Basic, Inc. v. Levinson,* 485 U.S. 224, 231–32 (1988) (adopting for purposes of §10(b) liability the standard for materiality initially defined under §14(a) by *TSC,* 426 U.S. at 445).

[18] Conference Report accompanying the Private Securities Litigation Reform Act of 1995, p. 41, 48.

OMISSION FROM THE CONGRESSIONAL RECORD OF OCTOBER 14, 1998, PAGE H10875

ANNOUNCEMENT OF LEGISLATION TO BE CONSIDERED UNDER SUSPENSION OF THE RULES ON THURSDAY, OCTOBER 15, 1998

Mr. FOLEY. Mr. Speaker, pursuant to House Resolution 589, I hereby give notice that the following suspensions will be considered on Thursday, October 15, 1998:

1. S. 1733—To Require the Commissioner of Social Security and Food Stamp State Agencies to Take Certain Actions to Ensure that Food Stamp Coupons are not Issued for Deceased Individuals.

2. H.R. 4821—A bill to extend into fiscal year 1999 the visa processing period for diversity applicants whose visa processing was suspended during fiscal year 1998 due to embassy bombings.

3. S.J. Res. 35—granting the consent of Congress to the Pacific Northwest Emergency Management Arrangement.

4. S. 1134.—granting the consent and approval of Congress to an interstate forest fire protection compact.

S. 610.—Chemical Weapons Convention Implementation.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. GREEN (at the request of Mr. GEPHARDT) for today, on account of official business in the district.

Mr. THOMPSON (at the request of Mr. GEPHARDT) for today, on account of official business in the district.

Mr. HUTCHINSON (at the request of Mr. ARMEY) for today until 7 p.m., on account of official business.

Mr. SCARBOROUGH (at the request of Mr. ARMEY) for October 14, on account of personal reasons.

Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Mr. GEPHARDT) for today and October 16, on account of events in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:

Mr. FILNER, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. BECERRA, for 5 minutes, today.

Mr. MINGE, for 5 minutes, today.

The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:

Mr. GOODLING, for 5 minutes, today.

Mr. SAXTON, for 5 minutes, today.