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Cy Pres Settlements

by Theodore H. Frank

The idea of *cy pres* (pronounced "see pray" or "sigh pray," from the French *cy pres comme possible*—"as near as possible") originated in the trust context, where courts would reinterpret the terms of a charitable trust when literal application of those terms resulted in the dissolution of the trust because of impossibility or illegality.[1] In a classic nineteenth century example, a court repurposed a trust that had been created to abolish slavery in the United States to instead provide charity to poor African-Americans.[2] The California Supreme Court endorsed the use of cy pres or "fluid recovery" mechanism in class action settlements in 1986, to distribute proceeds to a "next best" class of consumers, and many other courts have gradually adopted the procedure.[3] Cy pres settlements arise in one of three circumstances:

- There is a fixed settlement fund that exceeds the amount paid out because only a few class members have registered to be claimants;
- The court (often at the parties' behest) decides that administering a settlement by paying class members directly would be too expensive;
- The parties otherwise agree that a case shall be settled by paying a third party.

While original cy pres class action settlements provided that left-over money be distributed to a different set of consumers who may or may not coincide with the class, in recent years, left-over or specifically earmarked funds are typically given directly to a third-party charity.

Plaintiffs' lawyers have recently shown renewed interest in the cy pres mechanism in class action settlements.[4] The interest of the class attorney in a class action settlement does not entirely coincide with the interests of the class members. A defendant may be willing to spend a certain amount of money to settle a class action to avoid the expense and risk of litigation, but that money must be divided between the class and their attorneys. At the same time, a class action settlement must be approved by the court. One mechanism often used to maximize attorneys' fees are "coupons," which, if structured improperly, act to exaggerate the size of class recovery to maximize the return to plaintiffs' lawyers at a lower cost to defendants. The parties represent to the court that the value of the settlement to the class is the nominal value of the coupons; in fact, both parties expect the coupons to have a low redemption rate because

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The Supreme Court Rejects "Scheme Liability" in Securities Class Actions

by Larry Obhof

On January 15, 2008, the Supreme Court issued its decision in *Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc.*, a case heralded by commentators as the "most important securities case in decades."[1] The five-to-three *Stoneridge* majority rejected a theory of "scheme liability" that would have greatly expanded the universe of potential class action defendants.

What makes *Stoneridge* so important? In simple terms, the plaintiff sought to expand the scope of Section 10(b) actions beyond the securities markets and into the realm of ordinary

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business operations. The defendants were customers and suppliers to Charter Communications, Inc., the company that issued the securities in question. They did not directly mislead investors, "but were business partners with those who did."[2] If accepted by the Court, the plaintiff's theory of scheme liability could have extended the Section 10(b) private right of action to cover any transactions involving publicly-traded companies, so long as those transactions are later incorporated into the public company's financial statements. Such a "sweeping expansion" of the right of action would have exposed customers, suppliers, and other secondary actors to billions of dollars in liability when *other parties* make misstatements to the market.[3]

The Supreme Court prudently declined to extend the private right of action. It is well established that a plaintiff seeking to impose primary liability for securities fraud must prove reliance on *the defendant's* deceptive conduct, not on the conduct of other parties. This requirement ensures that there is a causal connection between the defendant's misrepresentation and the plaintiff's injury. The *Stoneridge* plaintiff, however, did not rely on the defendants' alleged acts when purchasing or selling securities. Congress has repeatedly declined to extend the private right of action to cover such circumstances. The Court's decision in *Stoneridge* respects that choice. The opinion also sends a strong signal that policymaking, including the decision to create or expand a cause of action, is properly left to Congress.

Section 10(b) of the Securities and Exchange Act makes it unlawful "[t]o use or employ, in connection with the purchase or sale of any security… any manipulative device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe."[4] Pursuant to this section, the SEC promulgated Rule 10b-5, which makes it unlawful "[t]o employ any device, scheme, or artifice to defraud… [or] engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person … in connection with the purchase or sale of any security."[5] Rule 10b-5 encompasses only conduct already prohibited by Section 10(b).[6]

Although the text of the Securities and Exchange Act does not provide for a private cause of action for Section 10(b) violations, the Supreme Court has found an implied private right of action in the statute and Rule 10b-5.[7] A plaintiff bringing a Section 10(b) private action must prove "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation."[8]

The Supreme Court has made clear that the implied private right of action does not extend to aiders and abettors of securities fraud. In *Central Bank of Denver, N.A., v. First Interstate Bank of Denver, N.A.*, the Court held that "a private plaintiff may not maintain an aiding and abetting suit under § 10(b)."[9] The lack of a private action for aiding and abetting is not an oversight—Congress imposed other forms of secondary liability as part of the 1934 Act. Thus, *Central Bank* points to the "deliberate congressional choice" against imposing secondary liability in private securities fraud actions.[10]

This does not mean that secondary actors are always free from liability. Any person or entity that "employs a manipulative device or makes a material misstatement (or omission) on which a purchaser or seller of securities relies" may still be liable as a *primary* violator under Rule 10b-5, as long as all of the usual requirements for liability are met.[11] For example, primary liability could attach where the secondary actor himself disseminates or transmits false information to investors, such as when an accountant knowingly certifies false financial statements or an attorney knowingly prepares false opinion letters.[12] Aiding and abetting, however, falls short of the mark. A plaintiff "must show reliance on *the defendant's* misstatement or omission to recover under 10b-5."[13] By its very nature, a claim for aiding and abetting seeks to impose liability on a secondary actor for facilitating the primary actor's misstatements or omissions. Investors rely upon *those* misstatements or omissions—which are made only by the primary actor—when purchasing or selling securities. Investors are not aware of, and thus do not rely on, the conduct of the secondary actor. A plaintiff's reliance on representations made by someone other than the defendant cannot form the basis of liability.[14]

Congress specifically considered the issue of secondary liability in the aftermath of *Central Bank*. "Instead of heeding calls for the restoration of private aiding-and-abetting liability, Congress sought to 'remov[e] the plaintiffs' class action bar from the equation.'"[15] Congress therefore enacted Section 20(e), which gives the SEC,

but not private litigants, the authority to prosecute parties who provide "substantial assistance" to those engaged in securities fraud.[16] "Congress decided, both when it enacted Section 20(e) in 1995 and again when it enacted Sarbanes-Oxley in 2002—*not* to extend the right to enforce this liability to private plaintiffs."[17] Thus, Congress has consistently rejected the idea of secondary liability in private securities fraud actions, both before and after *Central Bank*.

The *Stoneridge* complaint alleged that Charter Communications, Inc. engaged in a pervasive fraudulent scheme intended to artificially boost its reported financial results.[18] Among other things, Charter overstated its operating cash flow by hundreds of millions of dollars for both 2000 and 2001.[19] The market price of Charter's securities fell substantially when its financials were eventually restated to reflect economic reality.[20] Stoneridge Investment Partners subsequently brought a securities fraud class action on behalf of Charter's shareholders. In addition to Charter and its executives, the plaintiff named as defendants Arthur Anderson, LLP, which had served as Charter's independent auditor during the class period, and two equipment vendors, Scientific-Atlanta, Inc. and Motorola, Inc. (the "Vendors").

How could the plaintiff sue the Vendors for *Charter's* misstatements? Stoneridge Investment Partners attempted to circumvent the limitations of *Central Bank* by pleading a theory of "scheme liability." The plaintiff alleged that the Vendors entered into "wash" transactions with Charter—transactions that had no economic substance but enabled Charter's overstatement of its revenue and operating cash flow. Charter agreed to pay the Vendors excessive amounts for the set-top cable boxes they provided, with the understanding that the Vendors would then use the additional funds to purchase advertising from Charter.[21] The companies drafted documents to make it appear as though the transactions were unrelated. For example, "Scientific-Atlanta sent documents to Charter stating—falsely—that it had increased production costs."[22] The set-top box agreements were backdated to make it appear as though they were negotiated a month before the advertising agreements.[23]

According to Stoneridge Investment Partners, the Vendors' actions had the purpose and effect of furthering Charter's scheme to overstate its revenue and cash flow.[24] Charter improperly capitalized its increased equipment expenses, but treated the returned advertising fees as immediate revenue.[25] This allowed Charter to inflate its revenue and operating cash flow by approximately $17 million in the fourth quarter of 2000.[26] Stoneridge Investment Partners argued that the Vendors were more than aiders and abettors of Charter's fraud—they were *primary* violators because "they engaged in classic fraudulent behavior themselves."[27]

Although Stoneridge Investment Partners labeled its theory "scheme liability," the allegations set out a model example of the type of secondary liability already prohibited by *Central Bank*.[28] The plaintiff alleged "fraudulent practices engaged in *by Charter*… to present a false picture of financial growth and success."[29] The Vendors' deceptive acts did not relate to the purchase or sale of securities—they involved the sale of goods and the purchase of advertising. The Vendors played no role in preparing Charter's misleading financial statements;[30] they "did not themselves disseminate the false information to the securities market."[31]

The plaintiff's claims closely resembled the statutory definition of aiding and abetting. Section 20(e) defines aiding and abetting liability, for the purposes of SEC enforcement actions, as "knowingly provid[ing] substantial assistance" to one who commits securities fraud. Stoneridge Investment Partners used similar terms to describe its allegations against Scientific-Atlanta and Motorola: "Respondents engaged in… deceptive conduct in transactions with a public corporation… that *enabled the publication* of artificially inflated financial statements *by the public corporation*, but… Respondents themselves made no public statements."[32] In short, Stoneridge and its lawyers sought to impose liability against the Vendors because they engaged in business transactions with Charter, and *Charter* later accounted for those transactions improperly.[33]

The *Stoneridge* decision makes clear that this chain of events is too remote to impose liability on the Vendors. Secondary actors can be held liable for securities fraud where *all* of the requirements for primary liability are met. The *Stoneridge* complaint, however, is deficient in at least one regard: it does not allege that Stoneridge Investment Partners (or any other investors) relied upon the Vendors' statements when purchasing or selling Charter's stock.[34] Reliance is an essential element of the Section 10(b) cause of action. The requirement ensures that there is a causal connection between the defendant's misrepresentation and the plaintiff's injury.[35]

While courts will often presume reliance on the part of shareholders, neither reason for that presumption applies to the facts in *Stoneridge*.[36] The Vendors had no duty to disclose facts to Charter's shareholders.[37] Because the Vendors' deceptive acts were not communicated to

the public, the fraud-on-the-market doctrine does not apply.[38] Thus, the only possible reliance in *Stoneridge* is indirect. It was Charter, not the Vendors, which filed the fraudulent financial statements. Investors relied only on *Charter's* deceptive acts when purchasing or selling its stock. Stoneridge Investment Partners tried to sidestep this problem by arguing that in an efficient market investors rely not only upon the public documents relating to a security but also upon the transactions those statements reflect.[39] Under this theory, the cause of action could reach any company with which the issuer does business, because all transactions with the issuer are ultimately incorporated into its financial statements. The *Stoneridge* decision rejects this expansive theory of indirect reliance, bluntly stating that "there is no authority" for such a rule.[40]

Like the Court in *Central Bank*, the *Stoneridge* majority emphasizes that Congress has considered the issue of secondary liability and made a deliberate choice not to extend the private right of action. "Petitioner's theory," Justice Kennedy writes, "would put an unsupportable interpretation on Congress' specific response to *Central Bank*."[41] "Were we to adopt this construction… we would undermine Congress' determination that this class of defendants should be pursued by the SEC and not by private litigants."[42] The majority also sends a strong signal that courts should not be in the business of creating or expanding causes of action. The Court will not find an implied cause of action unless the underlying statute demonstrates the intent to create one.[43] Where courts have already created a cause of action—such as the implied private right of action found in Section 10(b) and Rule 10b-5—the decision to extend the cause of action must be made by Congress, not the courts.[44]

In retrospect, of course, the claim that *Stoneridge* is the "most important securities case in decades" may seem a bit hyperbolic. That is only true because we know the outcome. Adopting the plaintiff's theory of scheme liability would have been a significant departure from settled law. The Section 10(b) cause of action would have extended beyond the securities markets into the realm of ordinary business operations.[45] As the Court aptly states, "the federal power would be used to invite litigation beyond the immediate sphere of securities litigation and in areas already governed by functioning and effective state-law guarantees."[46]

The practical results of this change would have been significant. If securities class actions were untethered from the element of reliance, there would be little limitation on the number of potential class action defendants or the scope of their potential liability. Any transaction ultimately accounted for in a public company's financial statements could become the subject of a claim for securities fraud. Section 10(b)'s implied cause of action would effectively reach "the whole marketplace in which the issuing company does business."[47] The consequences of such an expansive rule are not lost on the Court. The *Stoneridge* majority emphasizes that scheme liability would "expose a new class of defendants," including innocent parties, to increased "uncertainty and disruption."[48] According to the Court, this would effectively raise the cost of doing business in the United States, thereby deterring foreign investment and shifting securities offerings away from domestic capital markets.[49]

Of course, whether "scheme liability" would cause unintended harm is a separate question from whether the plaintiff's theory properly fits within Section 10(b). Even where *Stoneridge* discusses the practical consequences of the plaintiff's theory, it is clear that the Court bases its decision on law rather than policy. For example, although the majority worries aloud that scheme liability would "reach the whole marketplace," the Court does not rely on that fact. The majority rejects the plaintiff's theory because "there is no authority" for such a broad expansion of the implied right of action.[50] "Congress rather than the courts controls the availability of remedies for violations of statutes."[51] Congress has chosen not to extend the private right of action to cover this type of liability, and the *Stoneridge* decision respects that choice, properly deferring to the legislative branch.[52]

It is worth mentioning what *Stoneridge* does *not* do. The Court does not absolve secondary actors from all liability. Parties engaging in or facilitating securities fraud can (and should) be punished. Secondary actors are still subject to criminal penalties and civil enforcement by the SEC.[53] The SEC may obtain injunctive relief, issue administrative orders, and impose large civil penalties on any companies engaged in aiding and abetting fraud.[54] These enforcement mechanisms are not toothless. In fiscal year 2006 alone, the Commission initiated 914 investigations, 218 civil proceedings, and 356 administrative proceedings.[55] That same year, the Commission recouped over $3.3 billion in disgorgement and other penalties.[56] Similarly, the Department of Justice's Corporate Fraud Task Force has obtained more than 1,200 corporate fraud convictions in the past five years.[57] Some states' securities laws also permit state authorities to seek fines and restitution from aiders and abettors.[58]

Nor are secondary actors immune from private suit. *Stoneridge* does not affect shareholders' ability to pursue actions against secondary actors who commit primary violations.[59] As before, a plaintiff may allege primary liability where all of the usual requirements, including reliance, are met. The securities statutes also provide an express private right of action against accountants and underwriters in certain circumstances.[60] Where a party's fraud involves transactions unrelated to the purchase or sale of securities—such as the sale of goods or purchase of advertising—plaintiffs will have causes of action for fraud. They just will not have claims for *securities* fraud. That limitation is consistent with the statutory scheme, which was designed to provide remedies for securities-related misconduct, and not as a catchall federal remedy for fraud.[61]

Although *Stoneridge* had the potential to be the "most important securities case in decades," the Court's decision is perhaps best viewed as an affirmation of the status quo. The plaintiff's theory of scheme liability, if accepted by the Court, would surely have had far-reaching effects. The Court, however, dutifully applied *Central Bank* and respected Congress' decision not to extend the private right of action to cover this type of liability. The decision places noticeable emphasis on the separation of powers. Indeed, the majority suggests that the courts, moving forward, must be more respectful of Congress' role as the creator of federal statutory claims.

Stoneridge shows the Supreme Court's reluctance to find new implied causes of action or to expand existing ones. Congress, not the courts, determines the remedies for violations of federal statutes. And the majority opinion correctly leaves that kind of policymaking to the legislative branch.

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Endnotes

1 Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008); *see* Richard A. Epstein, *Primary and Secondary Liability Under Securities Law: The Stoneridge Investment Saga*, Oct. 9, 2007, *available at* <http://www.pointoflaw.com/columns/archives/004373.php> (describing *Stoneridge* as "one of the most important securities law cases in decades"); Edward Iwata, *Fewer Lawsuits Charge Securities Fraud*, ABC News, Oct. 7, 2007, *available at* <http://abcnews.go.com/Business/story?id=3700843&page=1> (describing *Stoneridge* as "the most important securities-fraud case in decades").

2 *See* Lyle Denniston, *Court Limits Securities Fraud Lawsuits*, Jan. 15, 2008, *available at* <http://www.scotusblog.com/wp/uncategorized/court-limits-securities-fraud-law> ("The Supreme Court, in one of the most important securities law rulings in years, decided Tuesday that fraud claims are not allowed against third parties that did not directly mislead investors but were business partners with those who did.").

3 Brief for the United States as Amicus Curiae at 9, Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008) (Case No. 06-43)[*hereinafter* "Brief for the United States"].

4 15 U.S.C. § 78j(b).

5 17 C.F.R. § 240.10b-5.

6 *Stoneridge*, 128 S. Ct. at 768; *see also* United States v. O'Hagan, 521 U.S. 642, 651 (1997) ("Liability under Rule 10b-5… does not extend beyond conduct encompassed by § 10(b)'s prohibition.").

7 *Stoneridge*, 128 S. Ct. at 768 (citing Superintendent of Ins. of N.Y. v. Bankers Life & Casualty Co., 404 U.S. 6, 13 & n.9 (1971)).

8 *Id.* (citing Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 341-42 (2005)).

9 511 U.S. 164, 191 (1994).

10 *See id.* at 184 ("The fact that Congress chose to impose some forms of secondary liability, but not others, indicates a deliberate congressional choice with which the courts should not interfere.").

11 *Id.* at 191.

12 *See* Brief for Richard I. Beattie, et al., as Amici Curiae at 14, Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008) (Case No. 06-43) ("[T]he sort of liability-producing conduct by a secondary actor that the [*Central Bank*] Court had in mind … was the dissemination or transmission of materially inaccurate information to investors by the secondary actor itself, such as an accountant's act of certifying misleading financial statements or an attorney's preparation of false opinion letters.") (quotations and alterations omitted).

13 *Central Bank*, 511 U.S. at 180 (emphasis added).

14 *See* Anixter v. Home-Stake Production Co., 77 F.3d 1215, 1225 (10th Cir. 1996) (quoting *Central Bank*, 511 U.S. at 177).

15 Brief of the Washington Legal Foundation as Amicus Curiae at 20, Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008) (Case No. 06-43) (quoting 4 Bromberg & Lowenfels, Securities Fraud & Commodities Fraud § 7:308, at 7-506 (2d ed. 2006)).

16 *See id.*; *see also* 15 U.S.C. § 78t(e) ("For purposes of *any action brought by the Commission*… any person that knowingly provides substantial assistance to another person in violation of a provision of this chapter… shall be deemed to be in violation of such provision ….") (emphasis added).

17 *See* Brief for Former SEC Commissioners and Officials and Law and Finance Professors as Amici Curiae at 12, Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008) (Case No. 06-43)[*hereinafter* "Brief for Former SEC Commissioners"] (citing S. Rep. No. 104-98, at 48 (1995); H.R. Rep. No. 107-414, at 54 (2002); 148 Cong. Rec. S6584 (daily ed. July 10, 2002)). Congress has been explicit in rejecting private aiding and abetting liability. For example, according to the Senate Committee Report

accompanying the 1995 bill, "provid[ing] for private aiding and abetting liability actions under Section 10(b) would be contrary to [the bill's] goal of reducing meritless securities litigation." S. Rep. No. 104-98, at 48 (1995).

18 *In re* Charter Communications, Inc., Securities Litigation, 443 F.3d 987, 989 (8th Cir. 2006).

19 *See, e.g.*, Brief for the United States at 23 (noting that Charter's operating cash flow was overstated by $195 million in 2000 and by $292 million in 2001).

20 *See* Brief for Petitioner at 9, Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008) (Case No. 06-43)[hereinafter "Brief for Petitioner"].

21 *Stoneridge*, 128 S. Ct. at 766.

22 *Id.* at 767.

23 *Id.*

24 *See, e.g.*, Brief for Petitioner at 14 ("Respondents' deceptive acts had the purpose and effect of furthering the fraudulent scheme."); *id.* at 38 ("the scheme in which Respondents engaged had the purpose and effect of artificially increasing Charter's revenue and cash flow reflected in Charter's financial statements").

25 It is worth noting that Charter could have accounted for these transactions in a way that would have rendered its financial statements accurate. Indeed, the Vendors properly accounted for the transactions in their financial statements. They "booked the transactions as a wash, under generally accepted accounting principles." *Stoneridge*, 128 S. Ct. at 767.

26 *Id.*; *see also In re* Charter Communications, Inc., 443 F.3d at 989-90.

27 Brief for Petitioner at 26; *see id.* ("They participated in transactions that they knew to be shams, and they falsified records about those transactions…. This is just the kind of conduct that the language of Section 10(b) and Rule 10b-5 forbids.").

28 This point was made succinctly in a brief filed by a group of former SEC officials and prominent law and finance professors: "Petitioner's 'scheme liability' theory is simply a semantic ploy designed to recast secondary conduct as a primary violation." Brief for Former SEC Commissioners at 5; *id.* at 10 (same).

29 Brief for Petitioner at 5 (emphasis added).

30 *Stoneridge*, 128 S. Ct. at 767.

31 Brief for Petitioner at 38.

32 *Id.* at i (emphasis added).

33 *See In re* Charter Communications, Inc., 443 F.3d at 991 ("plaintiffs contend that the Vendors are liable to Charter's investors on the basis that they engaged in a business transaction that Charter improperly accounted for") (citation and alteration omitted).

34 *See Stoneridge*, 128 S. Ct at 769 ("[R]espondents' acts or statements were not relied upon by the investors … as a result, liability cannot be imposed upon respondents.").

35 *Id.*

36 Courts will presume reliance in two circumstances. First, if there is an omission of material fact by one who has a duty to disclose, an investor to whom the duty was owed need not prove reliance. *Id.* (citing Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 153-54 (1972)). Second, under the fraud-on-the-market doctrine, reliance is presumed when a defendant's misstatements become public because that information is reflected in the market price of the security. *See id.* (citing Basic Inc. v. Levinson, 485 U.S. 224, 247 (1988)).

37 *Id.*

38 *See id.* ("their deceptive acts were not communicated to the public"); *id.* at 770 ("respondents' deceptive acts… were not disclosed to the investing public").

39 *See id.* at 770.

40 *Id.*

41 *Id.* at 771.

42 *Id.*

43 *See id.* at 772 ("Though the rule once may have been otherwise … it is settled that there is an implied cause of action only if the underlying statute can be interpreted to disclose the intent to create one.") (citations omitted).

44 *Id.* at 773 ("Concerns with the judicial creation of a private cause of action caution against its expansion. The decision to extend the cause of action is for Congress, not for us.").

45 *See id.* at 770 ("The petitioner invokes the private cause of action under § 10(b) and seeks to apply it beyond the securities markets—the realm of financing business—to purchase and supply contracts—the realm of ordinary business operations.").

46 *Id.* at 771.

47 *Id.* at 770.

48 *Id.* at 772.

49 *Id.*

50 *Id.* at 770.

51 *Id.* at 773 (quoting Wilder v. Virginia Hospital Assn., 496 U.S. 498, 509 n.9 (1990)).

52 *Id.* ("The decision to extend the cause of action is for Congress, not for us.")

53 *See id.* at 773 (citing 15 U.S.C. § 78ff (providing for criminal penalties) and 15 U.S.C. § 78t(e) (providing or civil enforcement by the SEC)).

54 *See, e.g.*, 15 U.S.C. §§ 78u, 78u-3.

55 U.S. Securities and Exchange Commission, 2006 Performance and Accountability Report 8 (2006).

56 *Id.*

57 Department of Justice, Fact Sheet: President's Corporate Fraud Task Force Marks Five Years of Ensuring Corporate Integrity (July 17, 2007).

58 *Stoneridge*, 128 S. Ct. at 773 (citing Del. Code Ann., Tit. 6, § 7325 (2005)).

59 *Id.* at 773-74 (citing *Central Bank*, 511 U.S. at 191).

60 *Id.* at 773 (citing 15 U.S.C. § 77k).

61 *See* Marine Bank v. Weaver, 455 U.S. 551, 556 (1982) ("Congress, in enacting the securities laws, did not intend to provide a broad federal remedy for all fraud.")