

## Wolters Kluwer weighs in on Supreme Court's Janus decision

By Editor Test      Thu, Jun 16, 2011

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*In its 5-4 decision on Janus Capital Group, Inc. v. First Derivatives Traders, a lawsuit first filed in 2003, the high court held that liability for allegedly misleading statements in Janus' mutual fund prospectuses did not extend to the funds' investment advisers.*

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The Supreme Court's recent 5-4 ruling in the eight-year-old shareholders' lawsuit against Janus Capital Group, which tested the precise boundaries of liability for misleading prospectus statements, is "significant and far-reaching," according to a new [Briefing](#) by Wolters Kluwer Law & Business.

The decision in *Janus Capital Group, Inc. v. First Derivatives Traders*, (U.S. Supreme Court, docket No. 09-525) was seen as a victory for Janus' investment advisers as well as for independent auditors of public company financial statements. The Court ruled that the adviser did not make any of the statements in the prospectuses, the fund did, and only the fund had the statutory duty to file the prospectuses with the SEC.

The Court stated that any reapportionment of liability in the securities industry in light of the close relationship between investment advisers and mutual funds is properly the responsibility of Congress and not the courts.

"Basically, the Court is saying it will not waver from its previous decision that Rule 10b-5's implied private right of action does not include actions against aiders and abettors," said Wolters Kluwer Law & Business principal federal securities law analyst Jim Hamilton.

In that previous decision, the 1994 *Central Bank* decision, the high court ruled that a mutual fund investment adviser cannot be held liable in a private action under Rule 10b-5 for false statements included in its client mutual funds' prospectuses

The decision, split on ideological lines, was written by Justice Clarence Thomas. Liberal-leaning Justices Stephen Breyer, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan all dissented.

"The Court emphasized that for the *Central Bank* rule to have any meaning, there must be some distinction between those who are primarily liable (and may be pursued in private suits) and those who are secondarily liable (and may not be pursued in private suits)," Wolters Kluwer said in a release. "The Court has drawn a clean line between the two – the statement issuer is the person or entity with ultimate authority over that statement and others are not."

Attorneys for the First Derivative Traders were bitter after the decision, which was also seen as a setback for the Obama administration, the Securities and Exchange Commission, and shareholders' ability to penetrate the corporate veil.

"This is a roadmap for fraud," said David Frederick, a leading plaintiffs' advocate at the high court. "That's what the majority has sanctioned. If the Court allows false statements to issue through intermediaries, it will undoubtedly unleash bad actors."