Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JANUS CAPITAL GROUP, INC., ET AL. *v.* FIRST DERIVATIVE TRADERS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 09–525. Argued December 7, 2010—Decided June 13, 2011

Respondent First Derivative Traders (First Derivative), representing a class of stockholders in petitioner Janus Capital Group, Inc. (JCG), filed this private action under Securities and Exchange Commission (SEC) Rule 10b–5, which forbids "any person . . . [t]o make any untrue statement of a material fact" in connection with the purchase or sale of securities. The complaint alleged, *inter alia,* that JCG and its wholly owned subsidiary, petitioner Janus Capital Management LLC (JCM), made false statements in mutual fund prospectuses filed by Janus Investment Fund—for which JCM was the investment adviser and administrator—and that those statements affected the price of JCG's stock. Although JCG created Janus Investment Fund, it is a separate legal entity owned entirely by mutual fund investors. The District Court dismissed the complaint for failure to state a claim. The Fourth Circuit reversed, holding that First Derivative had sufficiently alleged that JCG and JCM, by participating in the writing and dissemination of the prospectuses, made the misleading statements contained in the documents. Before this Court, First Derivative continues to argue that JCM made the statements but seeks to hold JCG liable only as a control person of JCM under §20(a).

Held: Because the false statements included in the prospectuses were made by Janus Investment Fund, not by JCM, JCM and JCG cannot be held liable in a private action under Rule 10b–5. Pp. 5–12.

(a) Although neither Rule 10b–5 nor the statute it interprets, §10(b) of the Act, expressly creates a private right of action, such an "action is implied under §10(b)." *Superintendent of Ins. of N. Y.* v. *Bankers Life & Casualty Co.*, 404 U. S. 6, 13, n. 9. That holding "remains the law," *Stoneridge Investment Partners, LLC* v. *Scientific-*

Atlanta, Inc., 552 U. S. 148, 165, but, in analyzing the question at issue, the Court is mindful that it must give "narrow dimensions . . . to a right . . . Congress did not authorize when it first enacted the statute and did not expand when it revisited" it, *id.,* at 167. Pp. 5–10.

(1) For Rule 10b–5 purposes, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it. Without control, a person or entity can merely suggest what to say, not "make" a statement in its own right. This rule follows from *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 180, which held that Rule 10b–5's private right of action does not include suits against aiders and abettors who contribute "substantial assistance" to the making of a statement but do not actually make it. Reading "make" more broadly, to include persons or entities lacking ultimate control over a statement, would substantially undermine *Central Bank* by rendering aiders and abettors almost nonexistent. The Court's interpretation is also suggested by *Stoneridge,* 552 U. S., at 161, and accords with the narrow scope that must be given the implied private right of action, *id.,* at 167. Pp. 6–8.

(2) The Court rejects the Government's contention that "make" should be defined as "create," thereby allowing private plaintiffs to sue a person who provides the false or misleading information that another person puts into a statement. Adopting that definition would be inconsistent with *Stoneridge, supra*, at 161, which rejected a private Rule 10b–5 suit against companies involved in deceptive transactions, even when information about those transactions was later incorporated into false public statements. First Derivative notes the uniquely close relationship between a mutual fund and its investment adviser, but the corporate formalities were observed, and reapportionment of liability in light of this close relationship is properly the responsibility of Congress, not the courts. Furthermore, First Derivative's rule would read into Rule 10b–5 a theory of liability similar to—but broader than—control-person liability under §20(a). Pp. 8–10.

(b) Although JCM may have been significantly involved in preparing the prospectuses, it did not itself "make" the statements at issue for Rule 10b–5 purposes. Its assistance in crafting what was said was subject to Janus Investment Fund's ultimate control. Pp. 10–12.

566 F. 3d 111, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and ALITO, JJ., joined. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.