

The Supreme Court - March 27, 2019

The Supreme Court of the United States issued the following decision this morning:

Lorenzo v. SEC, No. 17-1077: The Securities and Exchange Commission charged petitioner Francis Lorenzo, an investment banker, with violations of Securities and Exchange Commission Rule 10b-5 and other related provisions. The basis for the charge was two emails that Lorenzo had sent to prospective investors in the company Waste2Energy describing a \$15 million debenture offering. Those emails – which Lorenzo signed, but sent at the direction of his boss, who had supplied and approved the emails' content – identified Waste2Energy as having \$10 million in confirmed assets, despite the company having revealed (and Lorenzo knowing) its assets were actually worth less than \$400,000. The Commission found Lorenzo had violated Rule 10b-5. On appeal, the D.C. Circuit found that Lorenzo could not be held liable under subsection (b) of Rule 10b-5, under which it is unlawful "[t]o make any untrue statement of a material fact." Relying on *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), the D.C. Circuit held that Lorenzo's boss, not Lorenzo himself, had been the one to "make" the untrue statement. The D.C. Circuit, however, sustained the Commission's finding that Lorenzo, by knowingly disseminating the false information, had violated the other subsections of Rule 10b-5, which make it unlawful to "employ any device, scheme, or artifice to defraud," subsection (a), or "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit," subsection (c). Today, the Court affirmed, holding that dissemination of false or misleading statements with intent to defraud can fall within the scope of subsections (a) and (c) of Rule 10b-5, as well as relevant statutory provisions, even if the disseminator did not "make" the statements and consequently falls outside of subsection (b) of the Rule.

The Court's decision is available [here](#).

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