

# THE FINANCIAL SERVICES ROUNDTABLE

*Impacting Policy. Impacting People.*



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The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Jeff Sessions  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The Financial Services Roundtable (Roundtable) opposes S. 1551, "Liability for Aiding and Abetting Securities Violations Act of 2009." While the Roundtable shares the goal of strong investor protection we disagree with the approach conceptualized by this legislation.

In 1995, Congress refused to grant a private right of action against aiders and abettors of corporate fraud, entrusting enforcement instead to the federal government. The Securities and Exchange Commission (SEC) and Department of Justice (DOJ) are currently empowered to bring enforcement actions against aiders and abettors. In 2002, the Sarbanes-Oxley Act authorized the SEC to establish a "Fair Fund" to recover moneys from securities law violators and distribute them to injured investors. Since then, the SEC has recovered some \$8.4 billion and distributed over \$3 billion. This established authority, combined with ongoing efforts to step up enforcement and DOJ-led criminal prosecutions, addresses the offenders targeted by S. 1551.

S. 1551 contains two provisions that are particularly troublesome, and may serve to further compromise the recovery of the financial industry. First, it would create a private right of action to pursue aiders and abettors who are already subject to Federal oversight and enforcement. Second, it would impose a recklessness fault standard. Thus, financial firms could be liable for all ensuing damages *even where they did not know a fraud was being committed*. In effect, standard for fraud liability would be lowered significantly, since just the filing of the suit and the consequent reputation hit, whether merited or not, would impose an enormous financial burden on the defendant firm and virtually guarantee windfall damages for plaintiffs since many firms would settle rather than engage in bet-the-company litigation. This broad-based and unprecedented liability might cripple an otherwise resilient financial services industry.

The Roundtable appreciates the intentions of S. 1551. We must stamp out fraud wherever possible, and protect investors and companies who play by the rules. However, creating a private right of action is an indirect and inefficient means of pursuing a worthy goal. In this environment, as in any, we must proceed cautiously. We appreciate your consideration of these views, and look forward to working with you on this important matter.

Best Regards,

Steve Bartlett  
President and CEO