



## Markets

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### SEC Brief Favors Limiting Investor Suits

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WASHINGTON — Recent action by the Securities and Exchange Commission puts the agency on record in favor of a legal standard that could make it tougher for shareholders to win lawsuits against public companies.

The SEC move comes at a time when business interests are pushing for restraints on class-action suits against corporations and executives, contending that laws and rules enacted amid the corporate scandals nearly five years ago are overly onerous and costly.

The SEC filed a brief last Friday in a case before the Supreme Court, *Tellabs Inc. v. Makor Issues & Rights Ltd.*, supporting the adoption of more stringent legal hurdles for shareholders to win in litigation alleging securities fraud and seeking damages from companies and executives.

Separately, the agency's chief accountant, Conrad Hewitt, has recently expressed concern about the extent of liability of accounting firms in suits by companies whose books they audit and by shareholders. Hewitt said at a conference in December that "there is a concern about the litigation, regulatory and prosecutorial risks faced by the public accounting firms."

The SEC's brief in the high court case was first reported by The New York Times in Tuesday's editions.

"The SEC's position is investor protection," agency spokesman John Nester said Tuesday. "Everyone agrees that it is not safe for the investing public to have only four (major accounting firms) when any one of them could cease becoming a public auditor for any reason."

Regarding lawsuits against companies, Nester said that unfounded litigation "harms the shareholders that we're here to protect."

Barbara Roper, director of investor protection for Consumer Federation of America, called the agency's filing of the brief "a very troubling sign that the SEC may be increasingly looking to intervene in these cases to restrict the rights of investors."

The head of a group that represents trial lawyers said it was "the latest in a series of audacious moves by some in corporate America to roll back the Enron reforms and avoid accountability."

"The SEC is supposed to be the watchdog of Wall Street that protects shareholders, pension funds and the public's confidence in the integrity of the markets," said Jon Haber, chief executive of the American Association for Justice.

With the demise of Arthur Andersen LLP after its conviction in 2002 for destroying Enron Corp. audit documents, the Big Five accounting firms became the Big Four — which audit the books of some 80 percent of the public companies in the United States.


The Supreme Court case concerns the interpretation of a provision of a 1995 law limiting shareholder suits, which sets the legal standard that a shareholder fraud suit against a company must meet in order to be allowed to proceed.

In the *Tellabs* case, the manufacturer of fiber optic equipment was sued by shareholders. The SEC's brief in the case refutes a January 2006 ruling by a federal appeals court, maintaining that it set the legal bar too low for the investors in terms of demonstrating the company's intent to violate securities laws.

On the Net:

Securities and Exchange Commission: <http://www.sec.gov>



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