impose liability for reckless or negligent behavior and how to create strict liability for violations of the federal securities laws.[8] But Congress did not use such language to impose Section 10(b) liability on reckless behavior. Therefore, just as there is no liability for aiding and abetting a violation of Section 10(b) because Congress knew how to create such liability but did not,[10] and just as there is no liability under Section 12(l) of the Securities Act, 17 U.S.C. § 771(l), for participants who are merely collateral to an offer or sale because Congress knew how to create such liability but did not,[11] and just as there is no remedy under Section 10(b) for those who neither purchase nor sell securities because Congress knew how to create such a remedy but did not,[12] there can be no liability for reckless conduct under Section 10(b) because Congress clearly knew how to impose liability for reckless behavior but did not.

The Supreme Court has, moreover, emphasized that the securities laws ''should not be read as a series of unrelated and isolated provisions.''[13] The federal securities laws are to be interpreted consistently and as part of an interrelated whole.''[14] In *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083 (1991), the Court reserved ''the question whether scienter was necessary for liability under § 14(a).''[15] The Court nonetheless held that statements of ''reasons, opinions or belief'' are actionable under § 14(a), 15 U.S.C. 78n(a), and Rule 14a–9, 17 C.F.R. § 240.14a–9, as false or misleading only if there is proof of (1) subjective ''disbelief or undisclosed motivation,'' and (2) objective falsity. 501 U.S. at 1095–96. Justice Scalia explained the Court's holding as follows:

As I understand the Court's opinion, the statement ''In the opinion of the Directors, this is a high value for the shares'' would produce liability if in fact it was not a high value and the Directors knew that. It would not produce liability if in fact it was not a high value but the Directors honestly believed otherwise. The statement ''The Directors voted to accept the proposal *because* they believe it offers a high value'' would not produce liability if in fact the Directors' genuine motive was quite different—except that it would produce liability if the proposal in fact did not offer a high value and the Directors knew that.[16]

It follows that, if: (A) a statement must be subjectively disbelieved in order to be actionable under Section 14(a), a provision that may or may not required scienter, then: (B) *a fortiori*, under Section 10(b), a provision that clearly requires scienter, plaintiffs must show subjective awareness of a scheme or device.

Any other result would lead to the anomalous conclusion that statements actionable under Section 10(b), the more restrictive ''catchall'' provision of the federal securities laws, *Hochfelder*, 425 U.S. at 203, would not be actionable under Section 14(a). Indeed, ''[t]here is no indication that Congress intended anyone to be made liable [under § 10(b)] unless he acted other than in good faith [and] [t]he catchall provision of § 10(b) should be interpreted no more broadly.'' *Id.* at 206[17]

The language of the text, the legislative history, and the structure of the statute therefore each compel the conclusion that intentional conduct is a prerequisite for liability under Section 10(b).

Additionally, the Reform Act established a heightened pleading standard for private securities fraud lawsuits. The Conference Report accompanying the Reform Act stated in relevant part:

The Conference Committee language is based in part on the pleading standard of the Second Circuit. The standard also is specifically written to conform the language to rule 9(b)'s notion of pleading with ''particularity.''

Regarded as the most stringent pleading standard, the Second Circuit requirement is that the plaintiff state facts with particularity, and that these facts intern must give rise a strong inference of the defendant's fraudulent intent. Because the Conference Committee intends to strengthen existing pleading requirements, it does not intend to codify the Second Circuit's case law interpreting this pleading standard. Footnote: For this reason, the conference Report chose not to include in the pleading standard certain language relating to motive, opportunity, or recklessness.[18]

The Conference Report accompanying S. 1260 is consistent with that heightened pleading standard articulated in 1995.

FOOTNOTES

[1] 425 U.S. 185 (1976).

[2] 17 C.F.R. § 240.10b–5.

[3] 459 U.S. 375 (1983).

[4] We are grateful to Professor Joe Grundfest and Ms. Susan French of Stanford University for guidance to us on these questions.

[5] *Hochfelder*, 425 U.S. at 197 (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring). *See also Gustafson v. Alloyd Co.*, 115 S. Ct. 1061, 1074 (1995) (Thomas, J., Dissenting). *Central Bank*, 114 S. Ct. at 1446; *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985); *Santa Fe Indus., Inc. v. Green, 430* U.S. 462, 472 (1977).

[6] *Central Bank*, 114 S. Ct. at 1441–42 (quoting *Musick, Peeler* 113 S. Ct. at 2089–90).

[7] *See Hochfelder*, 425 U.S. at 199 n. 20 (''device'' means '''that which is devised, or formed by design; a contrivance; an invention; project; scheme; often a scheme to deceive; a strategem; an artifice''') (quoting Webster's International Dictionary (2d ed. 1934)); *id* (defining ''contrivance'' as '' '[a] thing contrived or used in contrivance; a scheme . . . .'').

[8] *Hochfelder*, 425 U.S. at 193 n. 12. *Cf. Santa Fe Industries*, 430 U.S. at 478; *Schreiber* v. *Burlington Northern Inc.*, 472 U.S. 1, 5–8 (1985).

[9] Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k. for example, imposes strict liability on the issuer for material misstatements or omissions in a registration statement and a ''sliding scale'' negligence standard on other participants in the offering process. *See Hochfelder*, 425 U.S. at 208. Sections 17 (a)(2) and (3) of the Securities Act, 15 U.S.C. § 77q(a) (2),(3), impose liability for negligent or reckless conduct in the sale of securities. *Aaron*, 446 U.S. at 697.

[10] *Central Bank, 114 S. Ct.* at 1448 (''Congress knew how to impose aiding and abetting liability when it chose to do so.'') (citing statutes).

[11] *Pinter v. Dahl*,486 U.S. 622, 650 & n.26 (1988) (Congress knew how to provide liability for collateral participants in securities offerings when it chose to do so).

[12] *Blue Chip*, 421 U.S. at 734 (''When Congress wished to provide a remedy for those who neither purchase nor sell securities, it has little trouble doing so expressly.'').

[13] *Gustafson v. Alloyd Co.*, 115 S. Ct. 1061, 1067 (1995).

[14] *See, e.g, Hochfelder*, 425 U.S. at 206 (*citing Blue Chip*, 421 U.S. at 727–30; *SEC v. National Sec., Inc., 393 U.S. 453, 466 (1969)).*

[15] 501 U.S. at 1090 n. 5 (*citing TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 444 n. 7 (1976) (reserving the same question).

[16] 501 U.S. at 1108–09 (Scalia, J., concurring in part and concurring in the judgment).

[17] The Supreme Court has previously extended holdings from § 14(a)'s proxy antifraud provisions to § 10(b)'s general antifraud provision. *See, e.g., Basic, Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (adopting for purposes of § 10(b) liability the standard for materiality initially defined under § 14(a) by *TSC*, 426 U.S. at 445).

[18] Conference Report accompanying the Private Securities Litigation Reform Act of 1995, p. 41, 48.

OMISSION FROM THE CONGRESSIONAL RECORD OF OCTOBER 14, 1998, PAGE H10875

ANNOUNCEMENT OF LEGISLATION TO BE CONSIDERED UNDER SUSPENSION OF THE RULES ON THURSDAY, OCTOBER 15, 1998

Mr. FOLEY. Mr. Speaker, pursuant to House Resolution 589, I hereby give notice that the following suspensions will be considered on Thursday, October 15, 1998:

1. S. 1733—To Require the Commissioner of Social Security and Food Stamp State Agencies to Take Certain Actions to Ensure that Food Stamp Coupons are not Issued for Deceased Individuals.

2. H.R. 4821—A bill to extend into fiscal year 1999 the visa processing period for diversity applicants whose visa processing was suspended during fiscal year 1998 due to embassy bombings.

3. S.J. Res. 35—granting the consent of Congress to the Pacific Northwest Emergency Management Arrangement.

4. S. 1134.—granting the consent and approval of Congress to an interstate forest fire protection compact.

S. 610.—Chemical Weapons Convention Implementation.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. GREEN (at the request of Mr. GEPHARDT) for today, on account of official business in the district.

Mr. THOMPSON (at the request of Mr. GEPHARDT) for today, on account of official business in the district.

Mr. HUTCHINSON (at the request of Mr. ARMEY) for today until 7 p.m., on account of official business.

Mr. SCARBOROUGH (at the request of Mr. ARMEY) for October 14, on account of personal reasons.

Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Mr. GEPHARDT) for today and October 16, on account of events in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:

Mr. FILNER, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. BECERRA, for 5 minutes, today.

Mr. MINGE, for 5 minutes, today.

The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:

Mr. GOODLING, for 5 minutes, today.

Mr. SAXTON, for 5 minutes, today.