

## **05-1157 CREDIT SUISSE FIRST BOSTON V. BILLING**

DECISION BELOW:426 F3d 130

LOWER COURT CASE NUMBER: 03-9284, 03-9288

### **QUESTIONS PRESENTED:**

Plaintiffs accuse defendants, 16 of the country's largest underwriters and institutional investors, of a vast antitrust conspiracy to manipulate the aftermarket prices of some 900 technology stocks sold in initial public offerings. The Securities and Exchange Commission, relying on this Court's decisions in *United States v. National Ass'n of Securities Dealers*, 422 U.S. 694 (1975), and *Gordon v. New York Stock Exchange*, 422 U.S. 659 (1975), informed the courts below that application of the antitrust laws here would conflict with and seriously disrupt its regulation of the securities offering process under the Securities Act of 1933 and Securities Exchange Act of 1934. The district court agreed with the SEC that implied antitrust immunity is required and dismissed the complaints. The court of appeals reversed, ruling that immunity is unavailable because Congress did not specifically consider and decide to immunize one practice challenged in the complaints— tie-in agreements allegedly requiring recipients of stock in an IPO to engage in other transactions.

The question presented is:

Whether, in a private damages action under the antitrust laws challenging conduct that occurs in a highly regulated securities offering, the standard for implying antitrust immunity is the potential for conflict with the securities laws or, as the Second Circuit held, a specific expression of congressional intent to immunize such conduct and a showing that the SEC has power to compel the specific practices at issue.

CERT. GRANTED 12/7/2006

CHIEF JUSTICE ROBERTS TOOK NO PART  
JUSTICE KENNEDY TOOK NO PART  
HAVING BEEN ADVISED BY JUSTICE KENNEDY THAT HE NOW REALIZES THAT HE SHOULD HAVE RECUSED HIMSELF FROM PARTICIPATION IN THIS CASE, AND DOES NOW RECUSE HIMSELF, THE COURT VACATES ITS ORDER OF THURSDAY, DECEMBER 7, 2006. THE COURT HAS RECONSIDERED THE PETITION FOR CERTIORARI, AND THE PETITION IS GRANTED. THE CHIEF JUSTICE AND JUSTICE KENNEDY HAVE NOT PARTICIPATED IN THE VOTE TO WITHDRAW THE ORDER OF DECEMBER 7, 2006, OR IN THE INSTANT RECONSIDERATION OF THE PETITION FOR CERTIORARI.