No. 17-664

IN THE

Supreme Court of the United States

PETRÓLEO BRASILEIRO S.A. - PETROBRAS, ET AL.,

Petitioners,

v.

UNIVERSITIES SUPERANNUATION SCHEME LIMITED, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF LAW PROFESSORS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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December 4, 2017

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INTEREST OF *AMICI CURIAE*

Amici are law professors whose scholarship and teaching focuses on corporate law and federal securities law.[1] Amici have an interest in ensuring that the securities laws are interpreted to accurately reflect current financial economic scholarship and the law's historical underpinnings. Amici have filed amicus briefs in *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804 (2011), *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455 (2012), and *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014), each addressing the consideration of price impact and the fraud-on-the-market theory at the class certification stage of Rule 10b-5 securities fraud lawsuits.

Amici include Adam C. Pritchard, the Frances and George Skestos Professor of Law at the University of Michigan Law School, and M. Todd Henderson, Professor of Law at the University of Chicago Law School, in their individual capacity.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a compelling opportunity for the Court to correct the Second Circuit's irrational decoupling of the presumption of reliance that this Court

[1] Pursuant to Rule 37.6, *amici* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. The parties were timely notified of *amici*'s intent to file this brief and consented to its filing.

has allowed in securities fraud litigation from the economic reality of how securities markets actually operate. The Second Circuit has taken a path that is contrary to the economic rationale underlying the rebuttable presumption of reliance developed in *Basic Inc. v. Levinson,* 485 U.S. 224 (1988), and in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014) (*Halliburton II*), and that compounds the growing confusion among the lower courts on this issue. Although plaintiff purchasers of a particular security can establish a presumption of reliance on an issuer's misrepresentations by demonstrating that the market for the security is efficient, a market is efficient only if the security's price moves in a directionally appropriate way upon announcement of unexpectedly good or bad news about the firm. The Second Circuit has adopted an approach that allows a presumption of reliance even absent such appropriate directionality, however, leading to class action determinations rooted in economically irrational justifications.

Under the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78a *et seq*., a plaintiff seeking damages in a securities fraud case must establish, *inter alia*, that the defendant made a "material misrepresentation or omission" and that the plaintiff relied on the misrepresentation. *Halliburton II*, 134 S. Ct. at 2407. This Court has held that a plaintiff seeking to certify a class action of purchasers of the security in such a damages action may invoke a rebuttable presumption that the purchasers relied on the alleged misrepresentation based on a "fraud-on-the-market" theory. *Basic*, 485 U.S. at 245–47. That presumption is based on the economic rationale that "'the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations.'" *Halliburton II*, 134 S. Ct. at 2408 (quoting *Basic,* 485 U.S. at 246). By purchasing at a market price that incorporates all public and material information, "an investor's reliance on any public material misrepresentations … may be presumed," *Basic*, 485 U.S. at 247, subject to rebuttal.

"The 'fundamental premise' underlying the presumption is 'that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction.'" *Halliburton II*, 134 S. Ct. at 2414 (quoting *Halliburton I,* 563 U.S. at 813). To be reflected in the price, the misrepresentation must have "affected the market price in the first place." *Halliburton I*, 563 U.S. at 814. "Price impact is thus an essential precondition for any Rule 10b–5 class action." *Halliburton II*, 134 S. Ct. at 2416.

The surest and simplest way to demonstrate price impact is through an "event study"—a regression analysis of the impact of a specific event on stock price—that shows that the alleged misrepresentation effected a change in the price of the stock in the expected direction. This Court has permitted plaintiffs also to demonstrate price impact indirectly with evidence of "market efficiency." *Halliburton II*, 134 S. Ct. at 2415. Event studies can be used to show that the market is efficient as well, i.e., that the market incorporates all public, material information.

Event studies therefore can provide important evidence in securities class actions as both direct or indirect evidence of price impact. Indeed, event studies are recognized as the "gold standard" for establishing purchaser reliance on misrepresentations. But event studies are probative evidence of reliance *only* if they account for the direction of price movements. Absent directionality, an event study cannot provide evidence that a market is efficient or that a misrepresentation had an impact on a stock's price.

Accordingly, the Second Circuit erred in holding that reliance can be presumed and a class action certified based on an event study that lacked directionality analysis and thus could not demonstrate that the securities at issue "predictably moved up in response to good news and down in response to bad news." Pet. App. 62a. By holding that the lack of directionality analysis in plaintiff's empirical evidence was "irrelevant," the Second Circuit departed from the fundamental underpinnings of *Basic* and *Halliburton II*, and it created damaging precedent for securities markets that should be reviewed by this Court and reconciled with its own precedent.

The Second Circuit's error exacerbates the growing disagreement among the lower courts on the role of directionality analysis and the evidentiary standard for market efficiency. The lower courts have relied on an array of different tests and standards due to the absence of a definitive statement from this Court on the evidentiary standard for market efficiency in securities fraud litigation. A number of lower courts specifically disagree on whether directionality is necessary for an event study to provide evidence of price impact or market efficiency. This Court's intervention is necessary to resolve the disagreement and clarify this area of the law.

ARGUMENT

I. EVENT STUDIES CAN BE THE MOST IMPORTANT EVIDENCE IN SATISFYING THE PRESUMPTION OF RELIANCE IN FEDERAL SECURITIES CLASS ACTIONS, BUT ONLY IF SUCH STUDIES ASSESS THE DIRECTION OF PRICE MOVEMENTS.

A. If done appropriately, event studies are the "gold standard" for establishing a causal relationship to support a presumption of reliance.

"An event study is a regression analysis that measures the effect of an event, such as a firm's earnings announcement, on a firm's stock price." Allen Ferrell & Atanu Saha, *The Loss Causation Requirement for Rule 10B-5 Causes of Action: The Implications of Dura Pharmaceuticals, Inc. v. Broudo*, 63 Bus. Law. 163, 166 (2007). *See also In re Fed. Home Loan Mortg. Corp. (Freddie Mac) Sec. Litig.*, 281 F.R.D. 174, 178 (S.D.N.Y. 2012) (describing event studies).

The event study has become the "gold standard" technique for determining whether a price movement in a securities market was caused by a particular misrepresentation. Madge S. Thorsen et al., *Rediscovering the Economics of Loss Causation*, 6. J. Bus. & Sec.

L. 93, 109 (2006). Courts, academics, and the SEC all rely on event studies for that purpose. *See George v. China Auto. Sys.*, Inc., No. 11 Civ. 7533, 2013 WL 3357170, at *10 (S.D.N.Y. July 3, 2013) ("As courts have noted, event studies are the most reliable way of demonstrating market efficiency."); Mark L. Mitchell & Jeffry M. Netter, *The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission*, 49 Bus. Law. 545, 572–84 (1994) (describing SEC enforcement actions using event study analysis).

Event studies are routinely employed at the class certification stage of securities fraud cases to assess whether the market for the security at issue is efficient. *See, e.g.*, *In re Countrywide Fin. Corp. Sec. Litig.*, 273 F.R.D. 586, 614–15 (C.D. Cal. 2009); *Plumbers & Pipefitters, Nat. Pension Fund v. Burns*, 967 F. Supp. 2d 1143, 1150–51 (N.D. Ohio 2013). Event studies examine the market effect of various news items relating to an issuer; if the security "change[s] rapidly, and in the expected direction, in response to new information," those changes support a finding of market efficiency. *Schleicher v. Wendt*, 618 F.3d 679, 684 (7th Cir. 2010). Thus, when properly conducted, an event study serves as persuasive evidence regarding both the impact of a particular event on the price of the security in question and, more broadly, the efficiency of the market for the security. *See Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 310 F.R.D. 69, 80 (S.D.N.Y. 2015) ("[E]mpirical evidence of price changes in response to unexpected information—is often highly probative of efficiency [and] … is often proven with an event study." (citing *Cammer v. Bloom*, 711 F. Supp. 1264, 1286–87 (D.N.J.1989)); *see also id.* at 89 (plaintiffs typically seek to provide such "cause-and-effect" evidence through event studies).

In many cases, plaintiffs would not be able to satisfy the presumption of reliance allowed by the Court under *Basic* and *Halliburton II* without an event study showing either that the particular misrepresentation affected the stock's price or that the market generally incorporates all public, material information. Without evidence in the form of a valid event study demonstrating a causal relationship between unexpected news and market price, "it is difficult to presume that the market will integrate the release of material information about a security into its price." *Teamsters Local 445 Freight Div. Pension v. Bombardier Inc.*, 546 F.3d 196, 207 (2d Cir. 2008); *see also In re Xcelera.com Sec. Litig.*, 430 F.3d 503, 512 (1st Cir. 2005) (without "a historical cause-and-effect relationship between company disclosures and an immediate response in stock price … there is little assurance that information is being absorbed into the market and reflected in its price.").

B. An event study must analyze whether prices moved in the expected direction to be probative of reliance.

An event study that fails to consider whether the price of a security moves in the expected *direction* upon the release by the company of public, material information is of no value in determining whether a market for that security is efficient.

An event study can provide a basis to draw causal inferences from data that show temporal correlation only if the study is properly conducted. "[B]ecause there are potentially many other bits of firm-specific news and general background noise affecting an issuer's share price on the same day that the item of interest is announced," an economist cannot immediately "determine with certainty whether the item of interest had any negative impact on price." Edward G. Fox, Merritt B. Fox, Ronald J. Gilson, *Economic Crisis and the Integration of Law and Finance: The Impact of Volatility Spikes*, 116 Colum. L. Rev. 325, 352 (Mar. 2016). The conducting of an event study addresses this limitation "by providing a probabilistic assessment" of whether the item had such effect. *Id.*

For example, a causal inference may be appropriate in some cases when information is released and, shortly thereafter, there is a statistically significant deviation from the expected stock price in the direction expected in light of the information. If the economic model has properly controlled for other potential causes of the price deviation, a remaining possible cause would be the release of the material information. *See In re Diamond Foods, Inc., Securities Litig.*, 295 F.R.D. 240, 248–49 (N.D. Cal. 2013) (crediting expert report as evidence of causal connection between disclosure and price change when expert identified disclosure events, "categorized [them] as positive or negative based on the likely market response," and then "calculated abnormal returns for each event date and compared those figures against their expected results").

That causal inference breaks down, however, if the price deviation occurs in the *opposite* direction than was predicted. Suppose a company releases unexpected positive material news and then the stock price makes a statistically significant deviation downward. It would not be reasonable to conclude on those facts that the fall in the price of the security resulted from the positive news. Indeed, a negative price movement upon release of unequivocally positive news tends to prove either that (1) some other factor is the cause of the downward price movement, and/or (2) the market for the particular security is *not* efficient.

A central tenet of market efficiency is that public information relevant to the issuer of the security is already incorporated into the price of the security, i.e., that, the price "transmit[s] the information" throughout the market. *Schleicher*, 618 F.3d at 682. But positive information is not likely to have been transmitted throughout the market via price if the price moves down after the unexpected positive information is released.

Some lower courts have correctly recognized that "[t]he very purpose of requiring market efficiency before applying the fraud-on-the-market presumption is severely undercut by ignoring the direction of price movement in response to new information." *Bell v. Ascendant Solutions, Inc.*, 2004 WL 1490009, at *4 (N.D. Tex. July 1, 2004), *aff'd* 422 F.3d 307 (5th Cir. 2005); *see also In re Fed. Home Loan Mortg. Corp.*, 281 F.R.D. at 179 (identifying "serious errors" in expert's event study when that expert "failed to recognize the relationship between the direction of the price movement and the relevant news").

Even when the price of a company's securities is generally trending downward, a properly conducted event study should still show movement in the predicted direction from the baseline to be probative of reliance or efficiency. *See Schleicher*, 618 F.3d at 684 ("That [defendant's] stock was falling during the class period is irrelevant; fraud could have affected the speed of the fall."). If an officer of a company made material misrepresentations designed to slow a decline in share value, one still would expect to see a positive deviation from the stock price that would have occurred in the absence of such misrepresentations. In that situation, the observed stock price should be higher than the expected price in an event study if that study is considered to be probative of efficiency. *See id.* (crediting event study as evidence of efficiency when "expert verified that the price of [defendant's] stock changed rapidly, *and in the expected direction*, in response to new information") (emphasis added). Although there may be instances where a stock price deviates from expectations because positive news is not as good as expected or negative news is not as bad as expected, *see* Opp. at 19, a proper event study could control for this possibility.

In sum, to be probative of market efficiency, a properly constructed event study must show that a statistically significant deviation in the price of a stock occurred in the expected direction, i.e., true price impact. Without evidence of such directionality, there is no basis to conclude that the movement in the stock price was caused by the event in question or that, more generally, the market for that security is efficient.

II. REVIEW IS WARRANTED TO AVOID HARM TO THE SECURITIES MARKETS AND TO RESOLVE CONFUSION AMONG THE LOWER COURTS.

A. The Second Circuit's opinion departs from the economic rationale of, and conflicts with, *Basic* and *Halliburton II*.

The Second Circuit erred by relying on an event study that lacked analysis of directionality and thus provided neither probative nor reliable evidence of price impact or market efficiency. By holding that directionality is "irrelevant," the opinion conflicts with the rationale of *Basic* and *Halliburton II* and substantially lowers the evidentiary bar for class action plaintiffs in securities litigation.

The need for such directionality analysis is inherent in this Court's opinions. The "fundamental premise" underlying the "fraud-on-the-market" theory in federal securities litigation is that all public and material statements (including the misrepresentations that are alleged in the litigation) are incorporated into and affect the market price of a stock. *Halliburton II*, 134 S. Ct. at 2414. In that way, the market price is presumed to transmit material misrepresentations or omissions throughout the market. That is the rationale on which the Court has relied in securities fraud cases to allow plaintiffs who traded at the market price to be presumed to have relied on the misrepresentations. *See Basic*, 485 U.S. at 247. *Halliburton*

II discusses this phenomenon in terms of "price impact," noting that whether proven directly or indirectly, the "essential precondition" of a Rule 10-b-5 action is "price impact." 134 S. Ct. at 2414, 2416.

As explained above, an event study that fails to account for directionality does not prove that public, material information was incorporated into the market price. If a price of a stock does not change in the expected direction following unanticipated information, there is no basis for inferring that the market price has accounted for the information, such that anyone who traded in the market relied on the information. Under such circumstances, "*Basic*'s fraud-on-the-market theory and presumption of reliance collapse." *Halliburton II*, 134 S. Ct. at 2414. If the alleged misrepresentation (or other public, material statements more broadly) had no impact on the price of the stock, "then there is no grounding for any contention that the investor indirectly relied on that misrepresentation through his reliance on the integrity of the market price." *Id*.

Not only has this Court never held that event studies that are incapable of demonstrating price impact can be considered by courts as probative evidence for satisfying the presumption of reliance, the entire concept of such an event study is anathema in securities law. A purported "event study" that does not show directionally appropriate price movement tends to prove, if anything, that the market is *inefficient*, i.e., that the presumption of reliance should not apply. Indeed, the event study in *Halliburton II*, which this Court found permissible, included directionally appropriate price movement. *See id*. at 2415; *see also id*.

Joint Appendix, Vol. I, at 217-230. The plaintiff had "submitted an event study of various episodes that might have been expected to affect the price of Halliburton's stock, in order to demonstrate that the market for that stock takes account of material, public information about the company." *Id.*

In describing "event studies" in *Halliburton II*, the court cited to a prior brief by these *amici* filed in that case. *See id.* (citing Brief for Law Professors as Amici Curiae 25–28). The "event studies" described in that brief are studies that account for directionality. The Court quoted that discussion approvingly: "[s]uch studies examine the market effect of various news items relating to an issuer; if the security 'change[s] rapidly, *and in the expected direction*, in response to new information,' it supports a finding of market efficiency." Brief for Law Professors as Amici Curiae, at 27 (quoting *Schleicher*, 618 F.3d at 684).

The Second Circuit's misunderstanding of *Basic* and *Halliburton II* is particularly concerning given the Second Circuit's significant role in development of securities law because of the high volume of securities litigation it receives. *See Pub. Pension Fund Grp. v. KV Pharm. Co.*, 679 F.3d 972, 987 (8th Cir. 2012) ("[T]he two circuit courts that traditionally see the most securities cases [are] the Second and Ninth Circuits." (quoting Nicholas Fortune Schanbaum, *Scheme Liability: Rule 10B–5(A) and Secondary Actor Liability After Central Bank*, 26 Rev. Litig. 183, 197 (Winter 2007))). The Second Circuit's decision will have a substantial impact on securities class actions unless this Court intervenes.

Further, the Second Circuit is unlikely to correct course any time soon. That court recently reaffirmed the errors of the opinion below, digging its heels in harder to hold that not only do event studies not need to account for directionality, but that securities fraud plaintiffs need not provide event studies *at all* to establish an efficient market. *See Waggoner v. Barclays PLC*, 875 F.3d 79, 97 (2d Cir. 2017) ("Here, building on *Petrobras*, we conclude that a plaintiff seeking to demonstrate market efficiency need not always present direct evidence of price impact through event studies"). This recent decision reaffirms the significance of the opinion below and the need for this Court's review now rather than later.

B. Confusion among the lower courts regarding directionality and the evidentiary standard for market efficiency warrants this Court's intervention.

The Second Circuit has adopted its erroneous and economically unsound approach to evidentiary development in securities fraud cases in the absence of a definitive statement from this Court of "a precise evidentiary standard for market efficiency." App. 63a. *See also Barclays*, 875 F.3d at 94 ("We have repeatedly—and recently—declined to adopt a particular test for market efficiency." (citing *In re Petrobras Sec.*, 862 F.3d 250, 276 (2d Cir. 2017))).

Absent a clear standard from this Court for market efficiency in securities fraud litigation, lower courts have relied on an array of different tests and factors. In the opinion below, the Second Circuit relied on a New Jersey district court decision, *Cammer v. Bloom*, which sets out five factors for determining market efficiency. 711 F. Supp. at 1285–87. But even the courts that rely on *Cammer* are inconsistent about how to weigh each factor and have come to disparate conclusions when evaluating similar facts. *See* Geoffrey C. Rapp, *Proving Markets Inefficient: The Variability of Federal Court Decisions on Market Efficiency in Cammer v. Bloom and Its Progeny*, 10 U. Miami Bus. L. Rev. 303, 309–17, 328 (2002). The result is "a massive hodgepodge of * * * outcomes." Paul A. Ferillo et al., *The "Less Than" Efficient Capital Markets Hypothesis: Requiring More Proof from Plaintiffs in Fraud-on-the-Market Cases*, 78 St. John's L. Rev. 81, 102 (2004) ("most courts will come to very individual conclusions" on efficiency and find different factors persuasive).

More importantly, the Second Circuit's finding below that directionality is irrelevant compounds the disagreement among lower courts on whether directionality is required for an event study to provide probative evidence of a causal relationship as part of satisfying the presumption of reliance.

A number of courts have held that directionality is necessary for an event study to provide evidence of price impact or market efficiency. In *Bell v. Ascendant Solutions, Inc.*, 2004 WL 1490009, at *4, for example, the district court excluded an event study because it relied on testing the absolute value of excess returns instead of considering the directionality of those returns. The Fifth Circuit affirmed that ruling. The district court explained that "[t]he very purpose of requiring market efficiency before applying the fraud-on-the-market presumption is severely undercut by ignoring the direction of price movement in response to new information." *Id*. "Indeed, if stock price is inversely related to the content of new information (for example, stock price decreases upon the announcement of good news, and increases on the announcement of bad news), a plaintiff class cannot be presumed to have relied upon positive statements in purchasing stock." *Id*.; *see also Bricklayers and Trowel Trades International Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181, 188 (D. Mass. 2012), *aff'd sub nom. Bricklayers and Trowel Trades International Pension Fund v. Credit Suisse Securities (USA) LLC*, 752 F.3d 82 (1st Cir. 2014) (excluding plaintiff's event study that was "replete with event days that appear to have been selected more for their volatility than for their actual relationship to defendants' alleged fraud," including days on which defendant released positive news and yet its stock declined).

Indeed, some district courts in the Second Circuit, itself, have previously excluded event studies that failed to analyze whether the stock price moved in the expected direction. In *In re Federal Home Loan Mortgage Corp*., 281 F.R.D. 174 (S.D.N.Y. 2012) the district court concluded, despite the fact that all of the other *Cammer* factors indicated market efficiency, that plaintiffs had not adequately demonstrated that the market for defendants' stock was efficient because the plaintiffs' event study did not adequately show a cause-and-effect relationship between unexpected news and market price. The court explained that this type of empirical evidence is "the critical factor—the *sine qua non* of efficiency"; [i]t speaks to the 'essence' of the efficient market hypothesis, and it is the foundation of the fraud on the market theory." *Id*. at 182. The court held that plaintiff's event study could not provide the requisite "cause-and-effect" evidence because the expert "failed to recognize the relationship between the direction of the price movement and the relevant news," and "did not correct the numbers for the days improperly included because price movements were in the wrong direction given the news." *Id*. at 179–80.

In contrast to these opinions, "several courts have rejected the notion that a failure to include a directional hypothesis is fatal to an event study on market efficiency for purposes of securities litigation." *Willis v. Big Lots, Inc.*, No. 2:12-CV-604, 2017 WL 1074048, at *5 (S.D. Ohio Mar. 17, 2017) (collecting cases). In *Willis*, for example, the district court denied the defendants' motion to exclude the opinion of plaintiffs' expert despite defendant's argument that the expert failed to provide an "expected direction" of price movement for each event considered. *Id*.

In *Petrie v. Elec. Game Card, Inc.*, 308 F.R.D. 336, 354 (C.D. Cal. 2015), defendants similarly argued that plaintiff's event study was unreliable because it "did not show whether the price movement's direction correlated with the news, i.e., that good news was correlated with an increase in price and bad news was correlated with a decrease in price." The court, however, "agree[d] with Plaintiffs that there is no absolute requirement to show that certain information caused prices to move in a specific direction." *Id*. at 354–55

("[L]ack of evidence about the direction of the price impact is not necessarily fatal to an event study, [but] it can be relevant to how much weight the study is given."); *see also Forsta AP-Fonden v. St. Jude Med., Inc.*, 312 F.R.D. 511, 521 n.5 (D. Minn. 2015) (holding that directionality analysis "is not necessary," although it could make an event study "more helpful").

Lower courts further disagree on the weight afforded to empirical evidence of a "cause-and-effect" relationship between unexpected news and price—typically demonstrated through event studies—in establishing market efficiency. *Compare Barclays*, 875 F.3d at 97 ("a plaintiff seeking to demonstrate market efficiency need not always present direct evidence of price impact through event studies"), *and Local 703, I.B. of T. Grocery & Food Employees Welfare Fund v. Regions Fin. Corp.*, 762 F.3d 1248, 1256 (11th Cir. 2014) (cause-and-effect factor is not an "unwavering evidentiary requirement"), *with In re Xcelera.com*, 430 F.3d at 512 ("In the absence of such a [cause-and-effect] relationship, there is little assurance that information is being absorbed into the market and reflected in its price."); *IBEW Local 98 Pension Fund v. Best Buy Co.*, 818 F.3d 775, 782 (8th Cir. 2016) (considering only cause-and-effect empirical evidence under *Halliburton II* to reverse class certification); *Cammer v. Bloom*, 711 F. Supp. at 1287 (cause-and-effect factor is "the essence of an efficient market and the foundation for the fraud on the market theory.").

Absent this Court's intervention, the confusion among lower courts on how to assess evidence of market efficiency and price impact will continue to spread. The Court should at least clarify that event studies that do not analyze the direction of price movements are not probative of an efficient market or price impact and therefore cannot be relied on to satisfy the presumption of reliance. If left uncorrected, the Second Circuit's opinion will enable plaintiffs to rely on flawed evidence to demonstrate reliance, lowering the bar for class action plaintiffs in securities litigation far beyond the standard established by *Basic* and *Halliburton II*.

CONCLUSION

For the foregoing reasons, and those set forth in the petition for a writ of *certiorari*, the Court should grant the petition.

Respectfully submitted,

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December 4, 2017