No. 20-222

In The Supreme Court of the United States

GOLDMAN SACHS GROUP, INC., ET AL.,

Petitioners,

v.

ARKANSAS TEACHER RETIREMENT SYSTEM, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF AMICI CURIAE STATES NEW MEXICO, DELAWARE, HAWAI'I, ILLINOIS, MAINE, MICHIGAN, MINNESOTA, NEBRASKA, NEW JERSEY, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON SUPPORTING RESPONDENTS

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INTEREST OF THE AMICI

The Amici States of New Mexico, Delaware, Hawai'i, Illinois, Maine, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington have important interests in the fair and efficient operation of the United States' securities laws. Most directly, as large investors through pension and other funds, States have an interest in securities fraud class actions. Indeed, because state funds often have the largest monetary claims in such cases, they are regularly appointed by courts as lead plaintiffs under the Private Securities Litigation Reform Act of 1995 (PSLRA).[1] *See* 15 U.S.C. § 78u-4(B)(iii)(I)(bb). These state funds depend on their investment portfolios to serve crucial roles for their States, including meeting their commitments to provide retirement benefits and health care. State funds also provide money for schools, as with New Mexico's Land Grant Permanent Fund,[2] and make payments to state citizens, as with the Alaska Permanent Fund.[3]

In addition, state attorneys general are the chief legal officers of their States. In this role, the attorneys general are typically charged with bringing civil

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[1] *See* PwC, "A Rising Tide or a Rogue Wave?," 2016 Securities Litigation Study (April 2017), Figures 17 & 21 (listing number of public pensions as lead plaintiffs from 2012-16), https://www.pwc.com/us/en/forensic-services/assets/313021-2017-securities-litigation-2017-v9.pdf.

[2] https://www.sic.state.nm.us/land-grant-permanent-fund.aspx.

[3] https://pfd.alaska.gov/Division-Info/Historical-Timeline.

actions to recover damages to state agencies and state citizens.[4] Attorneys General have historically played an important role in ensuring fair and non-deceptive marketplaces for all citizens of their States and are generally responsible for protecting their citizens from fraud of all types. States were the first to regulate securities markets. Today, they still regulate securities markets and enforce securities fraud to ensure that markets operate fairly and efficiently.[5]

Accordingly, States have an important interest in the continued vitality of the fraud-on-the-market presumption adopted by this Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). The practical reality is that the *Basic* rule and its progeny are critical both to the feasibility of private securities actions and for securing proper enforcement of the securities laws, which protect both States' pension funds and the investments of state residents.

SUMMARY OF ARGUMENT

Amici States have a strong interest in protecting our citizens from fraud, including securities fraud. Such fraud threatens more than just the efficiency

[4] *See* Nat'l Ass'n Attys. Gen., *State Attys. Gen. Powers & Responsibilities* (4th Ed. 2019), at 91 ("The attorney general is typically charged, by Constitution or statute, with representing the state in all cases in which the state has an interest, in all courts of the state and in federal courts.").

[5] *See generally, id.*, Ch. 14 ("Securities Regulation").

of markets and the economy, but directly affects the viability of state funds, which secure our citizens' retirement, education, and in some cases, their very livelihoods. Thus, robust and effective enforcement of securities law is of paramount importance to the Amici States.

Petitioners and their Amici ask the Court to hold that a defendant can rebut the *Basic* presumption of class-wide reliance in cases of fraud on the market by arguing that its challenged statements are immaterial, so long as it labels that argument a "price impact" rather than a "materiality" defense. If a statement is sufficiently "generic," Petitioners contend, courts should be able to recognize as a matter of "common sense" that it had no effect on a stock's price, without considering actual evidence of how the misstatement affected stock prices. Petitioners further argue that even if they have some duty to rebut the presumption created by *Basic* with actual evidence, as opposed to legal argument, they need only meet a lenient burden of production, not the burden of persuasion, on price impact.

The Court should not endorse this further limit on securities fraud claims. Rather, it should uphold the framework set forth first in *Basic*, and confirmed both in *Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455 (2013) and *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014) (*Halliburton II*) for evaluating price impact at the class certification stage. *Halliburton II* permits a defendant at the class certification stage to rebut the presumption of reliance by demonstrating with factual evidence, typically in

the form of an expert report and analysis, that its alleged misstatement did not affect the price of its stock. By contrast, Petitioners propose that a judge not rely on such factual evidence, and instead exercise "common-sense" alone to "intuit" whether an alleged misstatement might have impacted the price of the stock—a considerable step backward from fact-based determinations of reliance—and of the purpose of remedying actual losses suffered by investors as a result of securities fraud.

Petitioners additionally ask this Court to hold that once a plaintiff has established the *Basic* presumption, a defendant may rebut the presumption by only meeting a burden of production, rather than the burden of persuasion that *Halliburton II* requires. Instead of requiring a defendant to show that a statement did not affect the price of its security, Petitioners would place the burden on a plaintiff to establish price impact once a defendant offered any probative evidence against price impact. To adopt Petitioners' framework would upend the well-established operation of the presumption, based in market realities, set forth in *Basic* and its progeny.

ARGUMENT

The current framework for establishing the fraud-on-the-market presumption in securities class actions analyzes the actual effects that alleged misstatements have on markets and investors. When investors,

including States and their funds, have been harmed by false statements that affected securities prices, class litigation allows investors to recoup their losses and deter future wrongdoing. In *Basic*, the Court established a presumption that reflected the reality of capital markets: an investor class can establish a class-wide presumption of reliance on a defendant's misrepresentation by showing that 1) the alleged misrepresentations were publicly known; 2) shares of defendant's stock were traded in an efficient market; and 3) the plaintiffs traded the stock on that market between the time of the misrepresentation and discovery of the truth. That presumption accurately reflects the manner in which financial markets and investors operate. When a statement fraudulently affects the price of a security, it harms all investors who purchased that security at a fraudulently-inflated price. Similarly, any rebuttal of the *Basic* presumption should likewise reflect the actual operation of and impact on the capital markets, not courts' intuition of what a statement's impact on market price may have been. Both the presumption created by *Basic* and any rebuttal thereto is grounded in factual evidence of how markets operate and how a statement affected a security's price. The Court should reject Petitioners' invitation to replace this inquiry with a legal assessment of judges' and litigants' "common sense" impressions. Petr. Br. at 27.

I. Class Actions are Necessary to Effectively Enforce Securities Laws

A. Private Actions are a Valuable Enforcement Tool and Have a Critical Deterrent Effect

The Court has recognized the dual function of governmental and private securities enforcement. It has noted that "[t]he SEC enforcement program and the availability of private rights of action together provide a means for defrauded investors to recover damages and a powerful deterrent against violations of the securities laws." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 174 n.10 (2008) (quoting S. Rep., at 8, U.S. Code Cong. & Admin. News 1995, pp. 679, 687). And that "private litigation under § 10(b) continues to play a vital role in protecting the integrity of our securities markets." *Id.* at 174. State securities regulators also play an important role in protecting investors from fraud, responding to complaints from constituents.

Congress likewise has recognized the important role institutional investors play, including state and local governments. Indeed, as this Court has recognized, in the PSLRA, Congress reaffirmed that "private securities litigation [i]s an indispensable tool with which defrauded investors can recover their losses—a matter crucial to the integrity of domestic capital markets." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 320 n.4 (2007) (brackets in original and internal quotation marks omitted). When it enacted the PSLRA, Congress adopted provisions favoring the

selection of institutional investors as lead plaintiffs in private actions. *See id.* at 331.

Empirical research—in fact, that of Petitioners' own expert—confirms the need for private actions. A study conducted by Dr. Stephen J. Choi, found that private class actions are more effective than SEC investigations in policing securities fraud.[6] In this study, Dr. Choi, professor of law at NYU, and A.C. Pritchard, professor of law at the University of Michigan, compared SEC-only investigations with class action-only lawsuits and found a greater deterrent effect and higher incidence of top officer resignation as a result of class actions. The study was notable because it explained that conventional analyses comparing class actions and SEC enforcement actions compare apples and oranges. SEC enforcement actions are brought only after the SEC has completed a substantial investigation into the alleged wrongdoing, aided by the SEC's subpoena power, which yields cooperation from defendants even when it is not invoked. By contrast, plaintiffs filing securities class actions must do so on the basis of publicly-available information. Accordingly, the more relevant comparison is between SEC investigations and class actions. On that score, the study concluded that there is "little support to commentators who call for a shift from private actions to greater public enforcement."[7] In particular, "the incidence of top officer

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[6] *See* Stephen J. Choi & A.C. Pritchard, *SEC Investigations and Securities Class Actions: An Empirical Comparison*, 13 J. of Empirical Legal Studies 27 (Mar. 2016).

[7] *Id.* at 41.

resignation," which the authors identify as a proxy for serious securities fraud, "is greater for class-action-only lawsuits relative to SEC-only investigations."[8] The authors concluded "Our findings are consistent with the private enforcement targeting disclosure violations at least as precisely as (if not more so than) SEC enforcement."[9]

The utility of securities class actions as a method of both deterring wrongdoing and compensating investors is also shown by their effectiveness compared to other types of class actions. The first comprehensive empirical study of all types of class action settlements showed securities class actions recovering more compensation for plaintiffs than any other type by a startling amount.[10] For the two years studied, securities class action settlements constituted 73% and 76% of the amount of monetary value recovered in all class actions.[11] The closest comparator in both years constituted only 7% of the total.[12] Even setting aside blockbuster securities settlements and focusing on average and median values, securities class action settlements are in the top tier alongside commercial and antitrust

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[8] *Id*. at 27.

[9] *Id*.

[10] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 825-30 (2010).

[11] *Id.* at 825 (table 4).

[12] *Id.* at 827-29 & table 6 (explaining that the commercial and antitrust averages are distorted by huge outlier settlements and a small total number of settlements).

class action settlements.[13] The study found that "securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class," as opposed to in-kind or "coupon" relief.[14]

This research illustrates that securities class actions do not facilitate nuisance settlements, as Petitioners contend, but are able to return more value to plaintiffs than other types of class actions, and as compared to the SEC, both in the aggregate and in the average or median case. By allowing investors to bring claims based on fraud that has affected the market price of a security, the *Basic* presumption provides relief to States and other investors harmed by fraud on the market.

Despite this historical record of securities class actions benefitting investors, Petitioners insist that depriving defendants of the chance to re-litigate materiality at class certification in the guise of a judicial assessment of the impact of a "generic" statement on price "will encourage vexatious litigation and produce coerced settlements" (Pet. Br. at 36) and "impose serious costs on public companies and their shareholders." Petr. Br. at 22. Yet, Petitioners point to no evidence that district courts routinely allow immaterial claims to

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[13] *Id.* at 825.

[14] Amir Rozen, et al., Cornerstone Research, Opt-Out Cases in Securities Class Action Settlements 2 (2013).

proceed to class certification. In fact, courts routinely dismiss claims on the basis of materiality.[15]

Further, if the Court adopted Petitioners' rule, it would provide defendants a chance to reargue legal theories that either should have been raised at the motion to dismiss stage, or that should await resolution at summary judgment. Essentially, by asking the Court to conclude that purportedly generic statements cannot, as a matter of law, impact the trading price of securities, Petitioners would have the Court replace a factual inquiry of price impact with a (mistaken) legal conclusion. *See infra* Part II.

B. Class Actions are Critical to State Funds' Ability to Recover When Defrauded

Class actions are essential to States' ability to recover losses. For most State funds, bringing an individual action is not feasible. Even for States and state funds with typically more resources than private investors, individual actions are hindered by insufficient resources. For example, despite having three public investment funds, New Mexico rarely brings its own

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[15] *See*, *e.g.*, David A. Hoffman, The "Duty" To Be a Rational Shareholder, 90 Minn. L. Rev. 537, 542 (2006) (of all Rule 12(b)(6) opinions addressing materiality, half dismissed claims for lack of materiality); Stephen M. Bainbridge & G. Mitu Gulati, How Do Judges Maximize? (The Same Way Everybody Else Does—Boundedly): Rules of Thumb in Securities Fraud Opinions, 51 Emory L.J. 83, 116 n.94 (2002) (in one survey, 70% of securities dismissals held that at least one alleged misstatement was immaterial). *See also* Goldman C.A. Opening Br. 4 & n.1, 43-46 (providing cases dismissed on materiality grounds).

enforcement actions due primarily to resource constraints. Only rarely, when New Mexico's funds have an outsize loss will they petition to be appointed the lead plaintiff in a class action. More typically, these smaller funds are able to recover their losses from securities fraud by being a member of a class led by others, often larger institutional investors, with larger losses. Since 2018, the three New Mexico public funds recovered more than $4,000,000 in securities class actions without having to serve as a lead plaintiff. Class actions thus provide significant value to the States. Ensuring that public funds have a feasible mechanism to recover the monies lost helps ensure that those funds can continue to pay for the pensions of teachers, judges, and public employees and fund public education, health care, and other public needs.

Petitioners' re-writing of the *Basic* presumption would insulate corporations that commit securities fraud. It would prevent investors who do not have the independent resources to join together with other investors to seek relief. And even if investors could pursue individual claims, it would be a burden to the courts and the litigants. For example, in cases where there are many investors with multimillion-dollar losses, the inability to certify a class may result in dozens, if not hundreds, of lawsuits over the same conduct in dozens of jurisdictions. It is far more efficient, and more effective in deterring and remedying securities fraud, for such claims to proceed as a class.

II. This Court Should Adhere to Its Workable, Evidence Based Framework for Class Certification

In seeking class certification, Plaintiffs are "not required to prove the materiality of [a defendant's] alleged misrepresentations and omissions," *Amgen*, 568 U.S. at 469-70. This Court reaffirmed *Amgen's* holding in *Halliburton II*, clarifying that "materiality . . . should be left to the merits stage, because it does not bear on the predominance requirement of [Fed. R. Civ. P.] 23(b)(3)." 573 U.S. at 282. The Court in *Halliburton II* did however clarify that while a defendant may not re-litigate materiality at the class certification stage, it may rebut reliance by presenting evidence that a statement did not affect a stock's price. As the Court explained, "[a]ny showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance." *Halliburton II*, 573 U.S. at 269 (citing *Basic*, 485 U.S. at 248). Therefore, under *Halliburton II* a defendant may contest reliance at class certification by providing evidence that the alleged misrepresentation did not alter the security's price, including by providing evidence that the alleged misrepresentation was immaterial to investors.

Halliburton II makes clear, however, that the price impact rebuttal requires an *evidentiary* showing, not a repackaged legal argument about materiality. While the ruling does not provide specific guidance as to precisely what evidence is required to sever the link

between a misrepresentation and changes in a stock's price, *Halliburton II* offers the example of an event study as a possible method for showing that an alleged misrepresentation had no price impact. 573 U.S. at 280. And in practice, defendants ordinarily offer evidence that reasonable investors would not have relied on particular statements as part of an evidentiary inquiry as to whether those statements actually moved the market. While logically relevant to this price-impact analysis when coupled with evidence, simply characterizing the statement as "generic" cannot be dispositive. Under existing law, defendants are well equipped to contest price impact—and thus, reliance—at class certification.

The *Halliburton II* framework allows for the appropriate inquiry into the actual effect of a defendant's statements. The Court should follow *Halliburton II's* inquiry into whether a particular statement or omission actually affected a stock price, rather than relying on the purportedly "generic" nature of a statement. As the Court recognized in *Amgen*, the focus of the class certification stage is whether "common issues of law or fact common to the class will predominate," *Amgen*, 568 U.S. at 1195, not whether the underlying assertions have merit. Permitting the shift proposed by Petitioners would undermine the purpose and function of Rule of Civil Procedure 23, which is to assess the suitability of a case for class adjudication, not the merits of that case.

Petitioners' request that courts be permitted to assess the effect of "generic" statements as a matter of

law would effectively overrule *Basic/Amgen/Halliburton II*. A defendant's legal argument that a statement is "generic," is not the kind of evidence *Halliburton II* permits. *See* 573 U.S. at 280-81 (citing event study as an example of proper evidence). This is especially true once Plaintiffs have shown the evidence of market efficiency and publicity needed to invoke the *Basic* presumption.

Rather than looking to actual evidence of price impact, Petitioners endorse the suggestion that a court can consider alone the purported generic nature of a statement as evidence that such a statement had no price impact. Petitioners, in fact, go on to argue that a judge should use "common sense" to determine that "the more generic the challenged statement, the less likely it is to affect the price of the stock" Petr. Brief at 27. This is not an accurate reflection of how securities markets work. Depending on the particular context, investors may sometimes attach significance to even very general statements about a company's practices, or by the notable absence of boilerplate statements. For instance, Bitcoin's value jumped more than 20% to $38,566 in January 2021 after Elon Musk, the world's richest person at the time, changed his personal Twitter bio to #bitcoin, fueling speculation that he had bought more of the cryptocurrency.[16] The market also responds to statements about a company's position on

[16] Sam Shead, "Elon Musk's Tweets Are Moving Markets—And Some Investors Are Worried," CNBC (Feb. 1, 2021), https://www.cnbc.com/2021/01/29/elon-musks-tweets-are-moving-markets.html.

environmental, social and governance issues, because those are increasingly important to investors, even if purportedly generic in nature.[17] False statements, even generic ones, about a company's culture or stance on environmental issues may affect market demand for that company's securities.

Effectively overruling *Halliburton II* by allowing Petitioners to rebut reliance at the class certification stage by simply pointing to the purported generic nature of a statement would be extraordinarily detrimental to private securities enforcement. As explained in the United States' Amicus brief, reasonable investors can still rely on generic statements in making trading decisions. Br. United States Amicus Supporting Neither Party at 17–19. In these cases where a purportedly "generic" fraudulent statement or omission affected securities prices, States, their pension funds, and resident investors would effectively lose the benefit of securities enforcement and class recovery.

Petitioners' argument is also amorphous: what makes a statement so generic that it cannot move stock prices, and how anodyne must a statement be before a court can assume investors did not rely on it? Petitioners' suggestion would shift the class certification inquiry from whether a putative class of investors actually did rely on a statement, to a recapitulation of the materiality question of whether a reasonable

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[17] *See* Robert G. Eccles & Svetlana Klimenko, "The Investor Revolution," Harv. Bus. Rev. (May-June 2019), https://hbr.org/2019/05/the-investor-revolution.

investor could have relied on the statement, which this Court explicitly prohibited in *Amgen*. 568 U.S. at 474-78. Petitioners' standard effectively would allow defendants to make public statements that affected stock price but to, nonetheless, defeat class certification, thereby transmuting legal argument into fact, and making materiality a trump card to defeat class certification.

Petitioners provide no sound reason for the Court to revisit the evidentiary framework set forth in *Basic* and instead turn it into an unworkable legal inquiry. This legal inquiry has no standard that would provide lower courts with the ability to decide which statements are legally too generic to qualify for the *Basic* presumption and which statements are sufficiently non-generic. The Court should adhere to its established and workable framework, as it did in the face of a nearly identical argument in *Halliburton II*. *See* 573 U.S. at 279.

III. Once a Plaintiff Establishes the *Basic* Presumption, a Defendant Should Bear the Burden of Persuasion to Rebut that Presumption

Relying on Federal Rule of Evidence 301, Petitioners contend (Petr. Br. at 40-44) that, once a defendant produces any evidence suggesting a lack of price impact, the burden of persuasion on that issue shifts to the plaintiff. That position cannot be reconciled with *Basic's* statement that a defendant must sever the link between a statement and price impact to rebut the

presumption by *proving* a lack of price impact, not by merely introducing evidence on the issue. *See Basic*, 485 U.S. at 248; *Halliburton II*, 573 U.S. at 279. Nor does Rule of Evidence 301 require such burden shifting.

Basic provides that once a plaintiff has met the prerequisites to establish the fraud-on-the-market presumption, the burden of persuasion shifts from the plaintiff to the defendant to rebut the presumption of reliance. Specifically, *Basic* allows a defendant to rebut such a presumption by "[a]ny showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price. . . ." *Basic*, 485 U.S. at 992. Petitioners rely on the Court's use of "any showing" to support their argument that they only bear the burden of production. Petr. Brief at 41. However, Petitioners place undue emphasis on the word "any" in this phrase. As the remainder of that paragraph in *Basic* reveals, and as *Amgen* and *Halliburton II* make clear, the term "any" that precedes "showing" describes the types of evidence that a defendant can offer, not a defendant's burden.

Petitioners also ignore the second half of this phrase that explains the standard by which a defendant must make its "showing." A defendant must make a showing that severs the link between the alleged misrepresentation and the affected price. This language requires not only that a defendant come forward with, or show, evidence, but also that the evidence be so significant that it completely "severs the link"

between the alleged misstatement and price impact. Thus, not only does the defendant bear the burden of production (it must make "any showing"), but it also bears the burden of persuasion (that showing must "sever[] the link"). Petitioners' interpretation of this language would effectively read out the phrase "severs the link" by deeming a defendant's burden met when the defendant comes forward with any evidence regarding price impact, regardless of whether it shows that a statement had no effect on price. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (rejecting interpretation that would render terms "nonsensical and superfluous" as one of "the most basic interpretive canons"). Had the Court intended to lessen defendants' burden, it might have merely required "a showing" of evidence that "may" or would "tend to" sever the link. Instead, it requires evidence that does "sever[] the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price. . . ." *Basic*, 485 U.S. at 992.

In *Halliburton II*, the Court allowed defendants "to rebut the presumption by showing, among other things, that the particular misrepresentation at issue did not affect the stock's market price." 573 U.S. at 279; *see also id.* at 282 (defendants may present "direct, more salient evidence showing that the alleged misrepresentation did not actually affect the stock's market price"). Thus, the Court reaffirmed defendant's burden of persuasion—the defendant must show that the misrepresentation did not *in fact* affect the stock's price,

rather than merely introducing evidence that the statement may not have affected the stock's price. Those words convey the obligation to actually rebut the presumption through evidence that persuasively shows a lack of price impact. Indeed, in the same section of the opinion, the Court used the word "show" as a synonym for "prove" in describing a plaintiff's initial burden of establishing the prerequisites for the *Basic* presumption. Compare *id*. at 279 (presumption of reliance applies "if a plaintiff shows" prerequisites) (emphasis added), with *id.* at 277 ("[T]o invoke the *Basic* presumption, a plaintiff must prove" the prerequisites) (emphasis added). Thus, the court, within *Haliburton II*, makes clear that Petitioners' reading of the "any showing" as merely requiring petitioners to bear the burden of production, is incorrect.

Similarly, Petitioners overstate the significance of this Court's use of the term "presumption" to describe the doctrine adopted in *Basic*. As this Court explained in declining to apply Rule of Evidence 301 to a statutory provision declaring certain patents "'presumed valid,'" "the word 'presumption' has often been used when another term might be more accurate." *Microsoft Corp. v. i4i Ltd. Partnership*, 564 U.S. 91, 104 n.6 (2011); *see*, *e.g.*, *In re G-I Holdings, Inc.*, 385 F.3d 313, 318 (3d Cir. 2004) (Alito, J.) (rejecting the argument that "the term 'presumption' [must have been used] in the technical sense expressed in Rule 301 of the Federal Rules of Evidence"). What the *Basic* Court described as a "presumption" of price impact could be (and indeed has been) characterized instead as an

"indirect proxy for price impact," "an indirect way of showing price impact," or a "way to demonstrate the causal connection" between an alleged misstatement and a monetary loss. *Halliburton II*, 573 U.S. at 281; *Basic*, 485 U.S. at 243. The content of this "substantive doctrine of federal securities-fraud law," *Amgen*, 568 U.S. at 462, does not depend on the Court's choice among those equally suitable labels. To rebut the *Basic* presumption, a defendant must offer evidence establishing that a statement did not affect a security's price.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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