No. 23-970

In the Supreme Court of the United States

NVIDIA CORPORATION, ET AL., PETITIONERS

v.

E. OHMAN J: OR FONDER AB, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTIONS PRESENTED

1. Whether plaintiffs seeking to allege scienter under the Private Securities Litigation Reform Act of 1995 (PSLRA) based on allegations about internal company documents must plead with particularity the contents of those documents.

2. Whether plaintiffs can satisfy the PSLRA's falsity requirement by relying on an expert opinion to substitute for particularized allegations of fact.

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INTEREST OF THE UNITED STATES

This case concerns the heightened requirements for pleading falsity and scienter in private securities-fraud class actions under the Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 737. Meritorious private actions are an essential supplement to criminal prosecutions and civil enforcement actions brought by the Department of Justice and the Securities and Exchange Commission. The United States therefore has a strong interest in the proper construction of the PSLRA and has previously participated as amicus curiae in cases regarding the interpretation and application of the PSLRA. See, *e.g.*, *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258 (2014); *Amgen Inc.* v. *Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455 (2013); *Matrixx* v. *Siracusano*, 563 U.S. 27 (2011); *Merck & Co., Inc.* v. *Reynolds*, 559 U.S.

633 (2010); *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reprinted in an appendix to this brief. App., *infra*, 1a.-5a.

STATEMENT

1. a. Section 10(b) of the Securities Exchange Act of 1934, ch. 404, 48 Stat. 881 (15 U.S.C. 78a et seq.), makes it unlawful to "use or employ, in connection with the purchase or sale of any security * * * , any manipulative or deceptive device or contrivance in contravention of" SEC rules and regulations. 15 U.S.C. 78j(b). SEC Rule 10b-5 implements Section 10(b) and provides that it is unlawful for any person, in connection with the purchase or sale of securities, to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. 240.10b-5(b). Private parties may sue to enforce Section 10b and Rule 10b-5 under an implied right of action recognized by this Court and "ratified" by Congress. *Stoneridge Inv. Partners, LLC* v. *Scientific-Atlanta, Inc.*, 552 U.S. 148, 165 (2008).

In order to prove a Section 10(b) violation, a plaintiff must establish that the defendant made a material misrepresentation or omission with scienter—"a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 194 n.12 (1976). In addition, a plaintiff must show that the material misrepresentation or omission was made in connection with the purchase or sale of a security, and

a private plaintiff must show that she relied on the defendant's misrepresentation and suffered economic loss as a result. *Dura Pharmaceuticals, Inc.* v. *Broudo,* 544 U.S. 336, 341-342 (2005).

b. The Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737, establishes a set of "control measures" designed to ensure that "[p]rivate securities fraud actions" are not "employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law." *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Congress enacted these measures in 1995 in response to evidence of abusive practices by private plaintiffs' attorneys, who would "race to the courthouse" after only "minimal time preparing complaints," often based on no more than a stock-price drop or "a failed product development project." S. Rep. No. 98, 104th Cong., 1st Sess. 8, 10-11 (1995); see H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. 31 (1995) (criticizing "the routine filing of lawsuits * * * without regard to any underlying culpability of the issuer").

The PSLRA imposes "[e]xacting pleading requirements" for private securities-fraud claims. *Tellabs*, 551 U.S. at 313. In a typical fraud action, a plaintiff must "state with particularity the circumstances constituting fraud," but the defendant's state of "mind may be alleged generally." Fed. R. Civ. P. 9(b). In two respects, the PSLRA imposes more demanding pleading requirements on private plaintiffs in securities-fraud actions. First, the PSLRA provides that, where private plaintiffs allege that the defendants have made misleading statements or omissions, the complaint "shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and,

if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed." 15 U.S.C. 78u-4(b)(1). Second, the PSLRA imposes a stricter-than-usual standard for pleading scienter, requiring private plaintiffs to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. 78u-4(b)(2)(A).

2. a. This case involves allegations of securities fraud against petitioners NVIDIA Corporation (NVIDIA) and its CEO, Jensen Huang. Pet. App. 5a. NVIDIA is a global corporation that sells graphics processing units (GPUs) that may be incorporated into a range of electronic devices, including computers and video game systems. *Id.* at 9a. GPUs make it possible for electronic devices to perform computational tasks more efficiently. *Id.* at 7a. That increased computational capacity can be used to render the detailed graphics prized by video gamers. *Ibid.* During the relevant period, NVIDIA's primary GPU for video gamers was known as the "GeForce GPU." *Id.* at 9a.

GPUs can also be useful in the crypto industry, where crypto "miners" obtain crypto assets by using computers to perform complex mathematical puzzles. Pet. App. 8a. Because GPUs' computational power is useful for crypto mining, high crypto demand can lead to soaring revenues for GPU manufacturers. *Ibid.* These revenue surges are not all good news, however, because once crypto prices fall, GPU demand drops and crypto miners may further weaken the price of GPUs by attempting to sell their used products on the secondary market. *Ibid.* A notable example occurred in 2013, when the price of the crypto asset "bitcoin" skyrocketed

before falling dramatically the next year. *Id.* at 8a-9a. During that period, demand for GPUs from NVIDIA's chief rival, Advanced Micro Devices, also rose sharply before falling during bitcoin's price crash. *Id.* at 9a.

b. In 2017, the price of another crypto asset—"ether"—began a similar rise and fall. Pet. App. 10a. Between January 2017 and January 2018, the price of ether increased more than 13,000%, only to fall sharply during 2018. *Id.* at 10a, 13a. During this period, NVIDIA experienced a massive surge in revenues in its "Gaming" segment, *id.* at 11a, where the company records income from the sale of its GeForce GPUs, *id.* at 9a. In May 2017, NVIDIA reported that gaming-segment revenues were $1.02 billion, a 49% increase from the prior year. *Id.* at 11a.

That same month, NVIDIA launched a GPU specifically designed for crypto mining called the "Crypto SKU." Pet. App. 11a. The company recorded revenues from sales of that product in a separate "Original Equipment Manufacturer and Intellectual Property" segment. *Id.* at 9a; see *id.* at 11a. Even after NVIDIA introduced the Crypto SKU, however, its gaming-segment revenues continued to increase. *Ibid.* In May 2018, NVIDIA announced $1.723 billion in gaming-segment revenues, representing a 67% year-over-year increase. *Ibid.*

c. Between May 2017 and November 2018, petitioner Huang made several public statements about the effect of crypto mining on NVIDIA's revenues. Pet. App. 25a-29a. In August 2017, for example, the website *VentureBeat* published a transcript of an interview with Huang in which he was asked whether he was saying "a hallelujah for cryptocurrency." *Id.* at 26a. Huang responded "No? Cryptocurrency is around. But it

represented only a couple hundred million dollars, maybe $150 million or so. * * * But our core business is elsewhere." *Id.* at 95a (citations omitted).

In November 2017, another *VentureBeat* article quoted Huang as saying that cryptocurrency "is small but not zero. For us it is small because our overall GPU business is so large." Pet. App. 95a (citation omitted). In February and March of 2018, two other publications —*Barron's* and *TechCrunch*—published articles that included statements from Huang describing crypto-related revenues as a "small" part of NVIDIA's overall business. *Ibid.* (citation omitted). In March 2019, Huang delivered a similar message in an appearance on CNBC's *Mad Money*, stating that the company's "core growth drivers" were other areas of NVIDIA's business, including gaming, and that "cryptocurrency just gave it that extra bit of juice." *Id.* at 28a-29a.

d. In August 2018, as the profitability of crypto declined, NVIDIA lowered its revenue guidance for the upcoming quarter by 2.2%. Pet. App. 13a. On November 1, 2018, NVIDIA announced that it had missed its revenue projections for the previous quarter by almost 2% and that it was expecting a 7% year-to-year decline in its total revenues for the next quarter. *Ibid.* In prepared remarks the same day, NVIDIA's Chief Financial Officer stated that "Gaming was short of expectations as post crypto channel inventory took longer than expected to sell through," and Huang referred to this excess inventory as a "crypto hangover." *Ibid.* NVIDIA's stock price fell by 28.5% over the next two trading days. *Ibid.*

e. Throughout this period, NVIDIA also filed with the Securities and Exchange Commission (SEC) Form 10-Qs that attributed the company's increased GPU

revenues primarily to "sales of GeForce GPU products *for gaming*." Pet. App. 26a-27a. On May 6, 2022, the SEC entered an order settling charges that NVIDIA had failed to disclose, in two Form 10-Q filings for its fiscal year 2018, that "cryptomining was a significant factor in the year-over-year growth in revenue from the sale of GPUs that NVIDIA designed and marketed for gaming." *In re NVIDIA Corp.*, Release No. 33-11060, 2022 WL 1442621, at *1 (SEC May 6, 2022). Without admitting or denying the SEC's findings, NVIDIA consented to sanctions that included a civil penalty of $5.5 million for violating Sections 17(a)(2) and (3) of the Securities Act of 1933 (Securities Act), ch. 38, Tit. I, 48 Stat. 85; 15 U.S.C. 78q(a)(2) and (3), and other federal securities-law provisions that establish reporting and disclosure requirements. 2022 WL 144262 at *4-*5.

3. a. On December 21, 2018, respondents filed a class-action complaint against petitioners and other NVIDIA executives in the United States District Court for the Northern District of California. Respondents brought the action on behalf of a putative class of all persons or entities who had purchased or otherwise acquired NVIDIA stock between May 2017 and November 2018. Pet. App. 5a, 9a. Respondents' complaint alleged that petitioners had defrauded investors, in violation of Section 10(b) and Rule 10b-5, by making materially false or misleading public statements about the extent to which NVIDIA's sales revenues depended on crypto mining. *Id.* at 6a.

The district court dismissed the first complaint with leave to amend based on the court's determination that respondents had not adequately pleaded falsity or scienter. Pet. App. 6a; see *id.* at 123a-164a. The district court found that, although the allegations of falsity

relied on an expert report by an economic consulting group, Prysm, respondents had not described Prysm's "assumptions and analysis with sufficient particularity." *Id.* at 6a. The court also found that respondents' allegations of scienter "depended on" the accounts of "confidential witness[es]" that were insufficient to establish that "any particular statement * * * was knowingly or recklessly false or misleading." *Ibid.*

b. Respondents filed an amended complaint that included 133 pages of detailed pleadings. J.A. 1-133. Attached to the complaint was a more than 200-page chart setting out each statement that was alleged to be false or misleading; the date, speaker, and context of the statement; the reasons why the statement was false or misleading when made; and the facts giving rise to a strong inference of scienter. J.A. 134-377.

The allegations in the amended complaint again relied heavily on the accounts of several former employees. In response to the prior dismissal, however, respondents added further details about NVIDIA's collection and tracking of data regarding the sales and usage of its GeForce GPUs, Huang's familiarity with those data, and NVIDIA's awareness of crypto mining's major role in boosting its GPU sales. J.A. 40-67; see Pet. App. 111a.[1] The amended complaint also alleged that the former employees' accounts were "[c]orroborate[d]"

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[1] Some of the new allegations in the amended complaint came from an additional confidential witness, FE 5, who subsequently signed an affidavit denying that he had made some of the statements attributed to him. Pet. App. 36a n.2. The district court declined to consider the effect of that affidavit at the pleading stage, but the court of appeals disregarded the allegations from FE 5 in analyzing the sufficiency of the complaint. *Ibid.* The government has similarly disregarded those allegations here.

by a 2019 report from the Royal Bank of Canada finding that "NVIDIA had understated its cryptocurrency-related revenue by $1.35 billion" between February 2017 and July 2018. J.A. 71 (emphasis omitted). The amended complaint further alleged that the Royal Bank of Canada Report was "confirm[ed]" by Prysm's expert report, which provided a similar estimate of the extent to which NVIDIA's revenues were dependent on crypto mining. J.A. 73. In response to the district court's earlier critiques, the amended complaint also revised and expanded respondents' explanation of the basis for Prysm's estimates. J.A. 71-83.

c. The district court dismissed respondents' amended complaint with prejudice, this time relying solely on the determination that the complaint did not adequately plead scienter. Pet. App. 89a-122a; see *id.* at 122a. The court explained that respondents' allegations of scienter relied on the accounts of former employees who described petitioners' "access to copious sales and technical usage data showing the dramatic surge in cryptocurrency-related sales during the Class Period." *Id.* at 111a (quoting J.A. 110). In the court's view, those allegations did not "raise a strong inference of scienter, largely because" the court believed that respondents had not "adequately tie[d] the specific contents of any of these data sources to particular statements so as to plausibly show that [the speaker] made each specified statement knowingly or recklessly." *Id.* at 112a.

4. The court of appeals affirmed in part and reversed in part. Pet. App. 5a-57a. The court concluded that a statement made by one of Huang's co-defendants was not false or misleading, *id.* at 34a, and that respond-

ents had not adequately alleged scienter with respect to another of Huang's co-defendants, *id.* at 35a, 43a. With respect to NVIDIA and Huang, however, the court determined that respondents had adequately alleged falsity, *id.* at 25a-29a, and scienter, *id.* at 41a-43a.

The court of appeals first explained that the PSLRA establishes a "heightened pleading standard" for claims of securities fraud, under which a plaintiff must plead with particularity and must "'specify each statement alleged to have been misleading and the reason or reasons why the statement is misleading.'" Pet. App. 14a (quoting 15 U.S.C. 78u-4(b)) (brackets omitted). The court found that, "even under th[is] demanding pleading standard," *id.* at 25a, respondents had sufficiently alleged that NVIDIA and Huang had made statements during the class period that were "materially false or misleading because they failed to state or substantially understated the extent to which NVIDIA's [g]aming-segment revenues were based on sales of GeForce units to crypto miners," *id.* at 17a. The court explained that the complaint had adequately alleged falsity based on a "combination" of the "very similar analyses" of the Royal Bank of Canada and Prysm, the accounts of former employees, and the "fact that NVIDIA's earnings collapsed when cryptocurrency prices collapsed and crypto miners quit purchasing NVIDIA's GeForce GPUs." *Id.* at 25a.

Based on the statements of former NVIDIA employees who had "direct knowledge of the degree of * * * Huang's knowledge," the court of appeals further found that respondents had adequately alleged scienter with respect to Huang. Pet. App. 36a. The court recognized

that, under the PSLRA, a plaintiff must "state with particularity facts giving rise to a strong inference" of scienter. *Id.* at 35a. The court found that respondents had satisfied this exacting standard with respect to Huang because the former employees had provided detailed accounts regarding the sales and usage data collected by NVIDIA, Huang's "access to" and "close[] monitor[ing]" of those data, and the data's reflection of the fact that "a large portion of GPU sales were being used for crypto mining." *Id.* at 42a; see *id.* at 37a-42a.

c. Judge Sanchez dissented. In his view, the falsity allegations were "based entirely" on Prysm's expert report, Pet. App. 58a, which he found unreliable and unsubstantiated, *id.* at 67a-76a. Judge Sanchez further asserted that the allegations of scienter were not "cogent or compelling enough to survive under the PSLRA," *id.* at 86a, in part because he believed that Huang would have no motive to conceal his company's dependence on cryptocurrency when a crypto crash was "inevitable," *id.* at 87a.

SUMMARY OF ARGUMENT

Petitioners argue that the court of appeals flouted the stringent pleading requirements imposed by the PSLRA by permitting respondents to allege falsity and scienter based entirely on an unsubstantiated expert opinion concerning the extent of NVIDIA's dependence on crypto mining. Treating an expert's unsubstantiated opinion as a sufficient ground for inferring falsity or scienter would indeed be inconsistent with the PSLRA. But that is not what occurred here. Instead, the court of appeals found that respondents had established a strong inference of scienter based primarily on the de-

tailed allegations of two former NVIDIA employees. And the court held that respondents had adequately pleaded falsity based in part on particularized allegations drawn from an expert report, and in part on other particularized allegations that corroborated the report's conclusions. The court's judgment should be affirmed.

I. A. The PSLRA requires private securities plaintiffs to establish "a strong inference" of scienter. 15 U.S.C. 78u-4(b)(2). In *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007), this Court held that the PSLRA's demanding standard for pleading scienter is satisfied only when the facts, taken as true and viewed collectively, support "an inference of scienter" that is "cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Id.* at 314.

The PSLRA further requires that the facts supporting an inference of scienter must be pleaded "with particularity." 15 U.S.C. 78u-4(b)(2). The particularity requirement prevents plaintiffs from relying on "vague or ambiguous" allegations that omit or obscure the information a court needs to assess how the allegations support scienter. *Tellabs*, 551 U.S. at 325. Whether a complaint's allegations are sufficiently particularized is a fact-specific inquiry that turns on the nature of the claim and the chain of reasoning through which the plaintiffs seek to establish scienter.

B. The court of appeals correctly held that respondents had satisfied the PSLRA's demanding standard for pleading scienter through detailed allegations drawn from the accounts of two former employees with "direct knowledge of the degree of [petitioner] Huang's knowledge." Pet. App. 36a. The former employees pro-

vided specific information about NVIDIA's collection of crypto-mining sales and usage data during the class period, Huang's intimate familiarity with the internal data, and the data's reflection of the extent to which NVIDIA's GPU sales were driven by crypto miners. *Id.* at 37a-42a. Because these allegations greatly weakened the competing inference that Huang had inadvertently understated his company's reliance on crypto mining, the court properly found that the inference of scienter was "at least as strong as any opposing inference." *Id.* at 35a (citation omitted).

Contrary to petitioners' assertion (Br. 33), the court of appeals did not permit respondents to establish scienter based "entirely" on generalized allegations about internal company documents. That contention appears to be predicated on the absence of employee statements specifying the precise sales numbers reflected in NVIDIA's data. The absence of those numbers does not render the employees' detailed accounts "vague or ambiguous," nor are specific numbers necessary for the employee accounts to support the inference of scienter in the circumstances of this case. *Tellabs*, 551 U.S. at 325. To be sure, petitioners may ultimately persuade a factfinder that the discrepancy between Huang's public statements and the sales estimates provided by respondents' experts and the Royal Bank of Canada resulted from NVIDIA's internal miscalculations. But the PSLRA does not require plaintiffs to eliminate any possibility of an innocent explanation. It is enough for plaintiffs to allege—as respondents have done here—particularized facts that make the inference of scienter

"at least as strong as any opposing inference." *Id.* at 326.

II. A. The PSLRA also requires particularity with respect to allegations of falsity. Petitioners are therefore correct (Br. 41) that plaintiffs may not substitute an unsubstantiated expert opinion for particularized allegations of fact. That principle follows directly from the plain text of the PSLRA, which provides that allegations based on "information and belief" must "state with particularity all facts on which that belief is formed." 15 U.S.C. 78u-4(b)(1). The rule is no different when the "belief" in question is expressed in an expert report. Plaintiffs may therefore rely on expert reports only to the extent that the reports incorporate particularized allegations of fact.

B. Again, however, petitioners are wrong to suggest (Br. 44-48) that the court of appeals disregarded the PSLRA's pleading standard. The court did not permit respondents to allege falsity based on an unsubstantiated expert opinion. To the contrary, the court emphasized that Prysm had "provided a detailed analysis to support its conclusions," and that respondents' "complaint provided detailed information about Prysm's methodology as well as a particularized recitation of facts upon which Prysm relied." Pet. App. 20a-21a. And in concluding that respondents had adequately pleaded falsity, the court relied on the expert report in "combination" with an outside report, the accounts of former employees, and the drop in NVIDIA's revenues after the crypto crash—each of which reinforced Prysm's conclusion that crypto demand had accounted for a higher proportion of NVIDIA's sales revenues than Huang had publicly suggested. *Id.* at 25a.

ARGUMENT

I. SECURITIES-FRAUD PLAINTIFFS MAY NOT ESTABLISH SCIENTER BASED EXCLUSIVELY ON GENERALIZED OR CONCLUSORY ALLEGATIONS ABOUT INTERNAL COMPANY DOCUMENTS, BUT THE COURT OF APPEALS DID NOT HOLD THAT SUCH ALLEGATIONS ARE SUFFICIENT

A. The PSLRA Requires Plaintiffs To Plead "With Particularity" Facts That Support A "Strong Inference" Of Scienter

The PSLRA "unequivocally raised the bar for pleading scienter" in private securities-fraud class actions. *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007) (brackets and citation omitted). Long before the PSLRA was enacted, this Court had recognized that a private cause of action for damages under Section 10(b) and Rule 10b-5 cannot go forward "in the absence of any allegation of 'scienter'"—that is, the "intent to deceive, manipulate, or defraud." *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 193 (1976) (citation omitted). Pre-PSLRA courts therefore required securities class-action plaintiffs to plead scienter, but they applied the general pleading standard for fraud claims set forth in Federal Rule of Civil Procedure 9(b). *Tellabs*, 551 U.S. at 319. Under that Rule, most fraud allegations must be pleaded with "particularity," but "[m]alice, intent, knowledge and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). The PSLRA replaced that more permissive standard for allegations of scienter with the directive that private securities-fraud plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant

acted with the required state of mind." 15 U.S.C. 78u-4(b)(2).[2]

1. In *Tellabs*, this Court provided guidance about the proper application of the PSLRA's "'strong inference' standard." 551 U.S. at 314 (citation omitted). In that case, a company and its CEO were sued for securities fraud, based on the allegation that the CEO had falsely stated that the company was continuing to enjoy strong demand for its products and record revenues when he knew the opposite was true. *Id.* at 315. The court of appeals found that the plaintiffs had established a "strong inference" of scienter by alleging facts from which "a reasonable person could infer that the defendant acted with the required intent." *Id.* at 317 (citation omitted).

This Court held that the PSLRA's "strong inference" standard imposes a "stricter" requirement that is satisfied only if a reasonable person would deem the inference of scienter "cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs*, 551 U.S. at 314 (citation omitted). The Court further explained that, in assessing whether the "strong inference" standard is met, courts must "accept all

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[2] While the PSLRA set out a heightened pleading standard for scienter, it did not clarify whether plaintiffs must establish actual knowledge or whether recklessness suffices. See *Matrixx Initiatives, Inc.* v. *Siracusano*, 563 U.S. 27, 48 (2011). In this case, the court of appeals applied a "deliberate recklessness" standard, Pet. App. 35a (citation omitted), which requires "a form of intentional or knowing misconduct," *Zucco Partners, LLC* v. *Digimarc Corp.*, 552 F.3d 981, 991 (9th Cir. 2009). Because petitioners do not challenge that standard, the Court may "assume, without deciding, that the standard applied by the Court of Appeals is sufficient to establish scienter," as the Court has previously done in similar circumstances. *Matrixx*, 563 U.S. at 48.

factual allegations in the complaint as true." *Id.* at 322. In addition, "courts must consider the complaint in its entirety," including any "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Ibid.*

2. *Tellabs* also provided guidance about the proper application of the PSLRA's requirement that the facts supporting scienter must be pleaded "with particularity." 15 U.S.C. 78u-4(b)(2). While the *Tellabs* Court's analysis focused primarily on the "strong inference" requirement, the defendants alleged that some of the plaintiffs' allegations also violated the particularity requirement because those allegations were "too vague or ambiguous to contribute to a strong inference of scienter." 551 U.S. at 325. Specifically, the defendants characterized the complaint in that case as alleging the CEO's knowledge of a practice called "channel stuffing" without specifying "whether the channel stuffing allegedly known to [the CEO] was the illegitimate" or the "legitimate kind"—a distinction that was significant in assessing whether the channel-stuffing allegations helped to establish scienter. *Ibid.* The Court "agree[d] that omissions and ambiguities count against inferring scienter, for plaintiffs must 'state with particularity facts giving rise'" to the requisite strong inference. *Id.* at 326.

Tellabs confirms that the PSLRA's standard for pleading scienter should be applied in accordance with the traditional legal meaning of "particularity," which is generally understood as the "quality" of being "both reasonably detailed and exact." *Black's Law Dictionary* 1344 (12th ed. 2024). An allegation does not satisfy the PSLRA's particularity requirement if it is pitched at too high a level of generality—*i.e.*, if a plaintiff

asserts that the defendant would have known that his statements were false, without making any effort to specify the "who, what, when, where[,] and how." 5A Charles Alan Wright et al., *Federal Practice and Procedure* § 1297, at 46 (4th ed. 2018) (citation omitted). An allegation may also violate the particularity requirement if—as in *Tellabs*—it omits or obscures a particular detail that is necessary to determine how the allegation supports scienter. See 551 U.S. at 325-326.[3]

Whether an allegation satisfies the particularity requirement will frequently depend not simply on the level of detail the allegation contains, but also on the nature of the fraud claim. Some allegations of scienter are so vague and general that they will violate the particularity requirement no matter what the claim. Often, however, the particularity problem arises because an otherwise detailed allegation omits specific information that is essential given the nature of the alleged fraud. Thus, in *Tellabs,* it was essential that the allegation about "channel stuffing" specify whether the legitimate or the illegitimate version of that practice was involved, since allegations of legitimate "channel stuffing" would not have contributed to an inference of scienter. See

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[3] In his *Tellabs* concurrence, Justice Alito expressed the view that, once a court finds that certain allegations are "nonparticularized," those "allegations cannot be taken into account" at all in determining whether the "strong inference" of scienter standard is satisfied. 551 U.S. at 334. Justice Alito recognized, however, that dicta in the Court's opinion was in tension with his reading of the statute, *ibid.*, and petitioners do not ask the Court to revisit the question here. In any event, because in this case there are enough particularized allegations of fact to give rise to a strong inference of scienter, the outcome here does not turn on whether nonparticularized allegations may be considered as part of the mix. See pp. 26-28, *infra.*

551 U.S. at 325-326. By the same token, even minor imprecision about the specific date when a CEO is alleged to have acquired particular information might preclude a strong inference of scienter if the allegation leaves it unclear whether the CEO received the information before or after making an allegedly inconsistent public statement.

Whether a particular allegation satisfies the particularity requirement may also turn on the chain of reasoning the plaintiff uses to establish scienter. There are no "bright-line rule[s]" regarding how a plaintiff may establish the "strong inference" of scienter that the PSLRA requires. *Matrixx Inititiatives, Inc.* v. *Siracusano*, 563 U.S. 27, 49 (2011). In *Matrixx*, the Court considered whether the plaintiffs had adequately pleaded scienter with respect to their claim that a pharmaceutical company had fraudulently concealed evidence that its cold remedy caused people to lose their sense of smell. *Id.* at 30, 48-49. The defendants asserted that the plaintiffs could not establish a "strong inference" of scienter without alleging that the company "knew of statistically significant evidence of causation." *Id.* at 48. The Court rejected that assertion, explaining that the PSLRA does not specify any single method of proof by which a plaintiff must establish scienter. Rather, the pleading standard is satisfied so long as the "allegations, 'taken collectively,' give rise to a 'cogent and compelling' inference" of scienter. *Id.* at 50 (quoting *Tellabs*, 551 U.S. at 323, 324).

Just as the PSLRA does not mandate specific kinds of allegations to establish a "strong inference" of scienter, it does not specify the types of details that a securities-fraud complaint must include in order to plead scienter "with particularity." The *Matrixx* defendants

would have fared no better if they had asserted that the complaint's allegations of scienter lacked particularity because those allegations failed to specify the statistical significance of the adverse reports. So long as the allegations contained enough details to establish scienter under the plaintiffs' own theory, the absence of details about statistical significance could not violate the particularity requirement.

B. The Court Of Appeals In This Case Did Not Disregard The Particularity Requirement

1. In the decision below, the court of appeals correctly articulated the PSLRA's demanding standard for pleading scienter. The court explained that it was required to assess whether respondents' allegations, "accepted as true and taken collectively," establish an "inference of scienter at least as strong as any opposing inference." Pet. App. 35a. The court further observed that, because respondents had "rel[ied] on the statements of confidential witnesses," the court was required to evaluate both whether those witnesses were "'described with sufficient particularity to establish their reliability and personal knowledge'" and whether the witnesses' statements were "'indicative of scienter.'" *Ibid.* (citation omitted). And the court also explained that, to decide whether the allegations regarding the former employees were pleaded "with sufficient particularity," it was necessary to consider "the level of detail * * * , the corroborative nature of the other facts alleged . . . , the coherence and plausibility of the allegations, the number of sources, the reliability of the sources, and similar indicia." *Id.* at 36a (citation omitted).

Petitioners do not dispute any of these legal principles. They agree that a plaintiff's allegations of scienter

"should be considered 'holistically,'" Pet. Br. 40 (citing *Tellabs*, 551 U.S. at 326), to determine whether the inference of scienter is "'cogent' and 'at least as compelling as any opposing inference,'" *id.* at 19 (quoting *Tellabs*, 55 U.S. at 324). They also agree that "[p]articularity requires detail," *id.* at 24, and they quote approvingly from a Second Circuit decision recognizing that "a complaint must allege facts 'with sufficient particularity to support the probability that a [confidential witness] would possess the information alleged,'" *id.* at 50 (quoting *Novak* v. *Kasaks*, 216 F.3d 300, 314 (2d Cir.), cert. denied 531 U.S. 1012 (2000)) (brackets in original).

2. Rather than challenging these principles, petitioners ask this Court to establish a new rule for pleading scienter that would cover all securities-fraud claims that are "based on allegations about internal company documents." Pet. Br. i. Petitioners' request conflicts with *Matrixx*'s holding that there are no "bright-line rule[s]" for pleading scienter under the PSLRA. 563 U.S. at 48. Moreover, the scope of petitioners' rule is unclear but potentially broad. Imagine an allegation that a company's CEO had stated to his subordinates that internal company documents showed a particular subsidiary to be struggling, but had announced to the public the next day that the subsidiary was earning record profits. That would naturally be characterized as an "allegation[] about internal company documents," but it could not reasonably be viewed as an insufficient ground for inferring scienter simply because the complaint did not allege further details about the internal documents' "contents." Pet. Br. i; cf. Resp. Br. 30.

To be sure, a plaintiff could not satisfy the PSLRA's requirements for pleading scienter simply by alleging, on information and belief, that the CEO had made a

statement like the one described above. The plaintiff would instead be required to plead, with particularity, subsidiary facts (*e.g.*, accounts provided by corporate employees who had attended the meeting, or a recording or contemporaneous notes) indicating that the statement had actually been made. But while a private securities-fraud plaintiff who alleges scienter must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind," 15 U.S.C. 78u-4(b)(2), the PLSRA does not specify any single way in which the plaintiff's allegations about scienter must be "particulari[zed]." The statute therefore does not support the pleading rule that petitioners advocate.

3. Petitioners' case-specific challenges to the court of appeals' scienter decision are also unavailing. Petitioners assert that the court of appeals erroneously permitted respondents to establish scienter based "entirely on their allegations about internal NVIDIA documents and data," even though respondents "did not allege 'with particularity the contents of *any* internal report or data source.'" Pet. Br. 33 (citation omitted). Petitioners are correct that, when a securities-fraud plaintiff seeks to plead scienter by alleging that a company's public statements were inconsistent with information contained in the company's files, the complaint must set forth particularized factual bases for its assertions about what those files contained. See Br. in Opp. 18-19 (recognizing that "'generalized assertions' about what internal data showed are insufficiently particularized to support an inference of scienter").

Contrary to petitioners' assertion (Br. 31-35), however, the court of appeals did not suggest that respondents could adequately plead scienter simply through

generalized or conclusory allegations about unspecified NVIDIA documents. To the contrary, the court explained that respondents' "scienter allegations rely on the statements of confidential witnesses," Pet. App. 35a —specifically, "two unnamed Former Employees, FE 1 and FE 2"—who have "direct knowledge of the degree of [petitioner] Huang's knowledge," *id.* at 36a. The two former employees' accounts provided numerous details about the contents of company databases and documents, as well as the topics of discussion at meetings that Huang had attended. See *id.* at 36a-41a.

FE 1 provided details regarding what sales data NVIDIA had tracked, how the company had collected and stored that information, and whether the data reflected sales of GeForce GPUs for crypto mining. Pet. App. 37a. FE 1 described a "centralized global sales database," into which NVIDIA managers had entered data they collected about "who was buying [NVIDIA's] GPUs—not simply directly from the Company, but also from its partners and others down the distribution chain." *Ibid.* FE 1 further explained that the sales data "explicitly identified and quantified crypto-miners' burgeoning demand for GeForce GPUs throughout the Class Period." *Ibid.* FE 1 also explained that "NVIDIA Vice Presidents presented sales data reflecting GeForce sales to miners at [their] quarterly meetings with Huang in 2017." *Id.* at 38a. And FE 1 further described how NVIDIA had used "GeForce Experience" software, bundled with its GeForce GPUs, to collect "data" that allowed NVIDIA managers to "underst[and] the market change—specifically, the increased demand—brought on by cryptocurrency mining." *Ibid.*

FE 2 provided further details about the content of company records and the discussions that had occurred

at internal meetings. Pet. App. 39a-40a. FE 2 explained that at quarterly meetings, Huang had "reviewed everybody's sales data in detail" and had "closely reviewed the GeForce data at these events because GeForce revenues were larger than that of any other group." *Id.* at 39a. FE 2 also "stated that Huang brought up miners' preference for GeForce GPUs during at least two different Quarterly Business Reviews," and FE 2 described in detail the content of Huang's remarks about crypto demand. *Ibid.*; see *id.* at 40a (emphasizing that "FE 2's statements were not only about Huang's general practices and knowledge," but "specifically concerned what Huang knew about the issue at the heart of this case—the large volume of sales of GeForce GPUs to crypto miners").

The former-employee accounts described above belie petitioners' contention (Br. 40) that respondents "built their entire scienter case around NVIDIA's internal documents and data" without "alleg[ing] with particularity what those documents and sources said and how they supported [respondents'] preferred inferences of scienter." Indeed, petitioners barely acknowledge the complaint's extensive reliance on the former employees' statements, dismissing (Br. 36) the employees' accounts as establishing only the "*kinds* of records that NVIDIA allegedly keeps." But the employees' accounts do far more than that: They specify how NVIDIA collected and tracked data reflecting sales of GeForce GPUs to crypto miners and how closely Huang himself monitored those data.[4]

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[4] Petitioners assert (Br. 49) that FE 2's account does not support scienter because FE 2 left the company shortly before the class period began. But FE 2's account provides first-hand evidence that, immediately before the start of the class period, Huang was closely

Petitioners suggest (Br. 36) that the allegations bearing on scienter nonetheless lack particularity because petitioners did not specify the "numbers" reflected in the various data sources the employees described. The factual premise of this argument is only partially correct. While FE 1 and FE 2 did not provide NVIDIA's exact sales or usage data, the complaint alleges that FE 1 (who worked in China) "reported that throughout 2017, [NVIDIA's] data reflected that 60% to 70% of NVIDIA's GeForce revenue in its most critical market, China, came from sales to crypto-miners." J.A. 44 (emphasis omitted). That allegation is consistent with the sales estimates produced by Prysm and the estimates contained in the Royal Bank of Canada's report. See Pet. App. 19a-25a.

In any event, petitioners are wrong in suggesting that, without more specific numbers, respondents' allegations lack particularity. Where a defendant alleges that an otherwise detailed allegation violates the particularity requirement because specific information has been omitted, the court must consider the plaintiff's allegations to determine whether they are sufficiently particularized without the missing information. See pp. 17-20, *supra*. Here, despite the absence of specific numbers, the allegations regarding the former employees' statements contain sufficient details to support an inference of scienter. By explaining exactly what mining-related data NVIDIA collected and tracked, FE 1's

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monitoring NVIDIA's sales data in general and the company's dependence on crypto-mining sales in particular. It is reasonable to infer that Huang continued to monitor the same sales data during the class period. Petitioners do not offer any "opposing inference"—still less an equally compelling one—that should be drawn instead. *Tellabs*, 551 U.S. at 314.

description of the global sales database and GeForce Experience software negates the possible alternative explanation that Huang understated the extent of NVIDIA's dependence on crypto sales due to NVIDIA's lack of relevant data. Similarly, by providing specific information about Huang's knowledge of the company's sales and usage data, FE 2's account negates any hypothesis that Huang himself was unaware of the data NVIDIA had collected. And by providing an approximation of the sales data reflected in NVIDIA's records that accords with expert and outside estimates, FE 1's 60-70% estimate diminishes the possibility that NVIDIA simply miscalculated the extent of crypto sales.

4. "[C]ollectively" and taken "as true," *Tellabs*, 551 U.S. at 322-323, respondents' allegations also support the court of appeals' conclusion that respondents' complaint satisfies the PSLRA's "strong inference" standard. While it remains possible that Huang was unaware of the true extent of NVIDIA's dependence on crypto mining, the inference that Huang knew this information when he made his public statements is "cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Id.* at 314. Petitioners' contrary arguments lack merit.

Petitioners assert (Br. 35), for example, that respondents' "preferred inference" of scienter is undermined by the absence of any "clear motive" for Huang to lie, given that his deception would be revealed as soon as crypto prices crashed and demand for NVIDIA's products fell with them. The same might be said, however, of any organizer of a Ponzi scheme that will eventually run out of marks. The organizer proceeds in the hope that he will think of something before that day comes, and Huang might similarly have believed that he

would find a way to avoid the eventual crash by, for example, sparking sufficient gaming demand to offset the loss of mining customers. In any event, this Court has repeatedly explained that "[t]he absence of a motive allegation, though relevant, is not dispositive." *Matrixx*, 563 U.S. at 48 (citing *Tellabs*, 551 U.S. at 325).

Petitioners are likewise wrong in asserting various inadequacies in some of the complaint's other allegations. Petitioners contend (Br. 37), for example, that the allegations about NVIDIA's GeForce Experience software do not support an inference of scienter because the software tracks usage and thus does not "shed light on GPU *sales*." But where a GPU is used primarily or partially for crypto mining rather than gaming, it is at least reasonable to infer that the GPU was sold for that purpose. In any event, regardless of what NVIDIA expected or intended when particular GeForce GPUs were sold, evidence that Huang became aware of the GPUs' *actual* use would support an inference that Huang's false statements regarding the company's lack of dependence on cryptocurrency were made with scienter. Petitioners also suggest that the allegations that Huang had "access" to the GeForce Experience data and the "centralized sales database" do not establish that he took advantage of that access. Pet. Br. 37 (citation omitted). That suggestion disregards the allegations that "Huang reviewed everybody's sales data in detail" at quarterly meetings attended by FE 2. Pet. App. 39a.

This does not mean that all of respondents' allegations contribute to the inference of scienter or that respondents will be able to prove scienter when the case moves forward. Petitioners may well be correct that some of the allegations—such as those regarding the

"Top 5" emails and anecdotal accounts of in-person mining purchases, see Br. 37-38—lack the details necessary to satisfy the PSLRA's particularity requirement or otherwise fail to contribute to the strong inference of scienter. And petitioners may ultimately be able to persuade a factfinder that Huang lacked knowledge of the falsity of his statements. But while the PSLRA's pleading standards are demanding, they are not intended to weed out every suit that might ultimately fail on the merits. At this stage of the case, respondents have "state[d] with particularity" enough facts to "give[] rise to a strong inference" of scienter. 15 U.S.C. 78u-4(b)(2).

II. PLAINTIFFS IN PRIVATE SECURITIES-FRAUD SUITS MAY NOT SUBSTITUTE CONCLUSORY EXPERT OPINIONS FOR PARTICULARIZED ALLEGATIONS OF FACT, BUT THE COURT OF APPEALS DID NOT ALLOW RESPONDENTS TO PROCEED BASED ON A CONCLUSORY EXPERT OPINION HERE

The PSLRA also imposes specific requirements for alleging falsity. In any private securities-fraud action, the complaint must "specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation * * * is made on information and belief, the complaint shall state with particularity all facts on which the belief is formed." 15 U.S.C. 78u-4(b)(1). Petitioners assert (Br. 41-51) that the court of appeals violated these pleading requirements by permitting respondents to substitute an unsubstantiated expert opinion for particularized allegations of fact demonstrating falsity.

Petitioners are correct about the basic legal principle but wrong about what occurred in this case. A plaintiff cannot use an expert opinion to evade the PSLRA's particularity requirement, but the court of appeals did

not permit respondents to misuse an expert opinion in that way. Instead, the court held that respondents had adequately pleaded falsity because Prysm's expert report incorporated detailed factual analysis of the bases on which Prysm had reached its bottom-line conclusion, and because Prysm's conclusion was corroborated by multiple other allegations suggesting falsity.

A. When a plaintiff alleges falsity based on "information and belief," the PSLRA requires the complaint to "state with particularity all facts on which the belief is formed." 15 U.S.C. 78u-4(b)(1). The particularity requirement ensures that plaintiffs do not allege that a statement is false without a sufficient factual basis for making that claim. That requirement for securities-fraud suits supplements Federal Rule of Civil Procedure 8's general pleading standard, under which a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007)). That plausibility requirement cannot be met where a plaintiff's allegations are "conclusory" or where they otherwise fail to include enough "factual content" to "allow[] the court to draw [a] reasonable inference" of falsity. *Ibid.*

An allegation that would otherwise lack particularity cannot pass muster merely because it appears in an expert report. Here, for example, Prysm's "ultimate conclusion" (Pet. Br. 42) was that NVIDIA had "understated its crypto-related revenues by $1.126 billion" over a fifteen-month period. Pet. App. 23a. Respondents could not have satisfied the PSLRA's pleading requirements simply by alleging, on information and belief, that a disparity in that dollar amount existed.

Rather, the PSLRA would have required them to plead "with particularity" the subsidiary facts that supported that bottom-line conclusion. 15 U.S.C. 78u-4(b)(1). And an allegation that would be rejected as conclusory if it were pleaded on information and belief does not become adequately particularized simply because an expert has endorsed it.

While even a conclusory factual allegation may appear somewhat more plausible if it is endorsed by an expert in the field, an expert's endorsement can neither satisfy, nor substitute for compliance with, the PSLRA's specific pleading requirements. Accordingly, when a court considers a complaint that relies on an expert report, the court should ask whether the allegations set forth in the report would be sufficiently particularized and nonconclusory if the allegations had been made by the plaintiffs themselves. If that test is not satisfied, the allegations cannot support an inference of falsity, no matter how illustrious the expert.

It is equally true, however, that particularized factual allegations do not become *less* persuasive simply because they are incorporated into an expert report rather than presented in a complaint as the plaintiffs' (or their attorneys') own work. See Resp. Br. 45-46. Plaintiffs therefore are not precluded from relying on experts' analyses, and courts need not disregard allegations regarding an expert's beliefs. Petitioners acknowledge the former point, specifically disavowing any contention "that expert opinions are categorically forbidden at the pleading stage." Pet. Br. 48. The courts of appeals are in accord, uniformly recognizing that "it is permissible for a plaintiff to bolster a complaint by including a nonconclusory opinion to which an expert may potentially testify," so long as "that opinion was based

on particularized facts sufficient to state a claim for fraud." *Arkansas Pub. Emp. Ret. Sys.* v. *Bristol-Myers Squibb Co.*, 28 F.4th 343, 354 (2d Cir. 2022).

Petitioners assert (Br. 42) that, to determine whether a securities-fraud complaint adequately alleges falsity, the court must "strip" the complaint of any allegations that are phrased in terms of an expert's "*opinions*." That is incorrect. The PSLRA specifically allows plaintiffs to make allegations based on "information and belief," so long as the complaint sets out the facts underlying the "belief" "with particularity." 15 U.S.C. 78u-4(b)(1). Again, the rule does not change merely because the "belief" in question was formed by an expert.

B. The court of appeals' decision adheres to the principles set forth above. The court conducted a detailed analysis of the allegations supporting falsity before concluding that, "even under the demanding pleading standard of the PSLRA," the complaint adequately alleged that petitioners had made materially misleading statements regarding the extent to which NVIDIA's revenues from GeForce GPU sales were dependent on crypto mining. Pet. App. 25a. Petitioners assert (Br. 44-51) that the court's determination was flawed because respondents' allegations of falsity depended on an unsubstantiated expert opinion. In fact, the court emphasized that Prysm's ultimate conclusion was predicated on particularized factual allegations, and that the expert report was corroborated by other particularized allegations of falsity.

1. The court of appeals relied on three different sets of allegations to support its determination that the complaint adequately alleged falsity. First, the court looked to the "very similar analyses" of NVIDIA's estimated revenues from crypto mining that had been prepared by

the Royal Bank of Canada (an organization that is not affiliated with respondents) and Prysm, the economic consulting firm that respondents had hired to prepare an expert report. Pet. App. 18a, 25a. Second, the court looked to the statements of former employees, including FE 1 and FE 2, which "confirmed * * * that crypto miners purchased enormous quantities of GeForce GPUs." *Id.* at 23a. Third, the court relied on "the fact that NVIDIA's earnings collapsed when cryptocurrency prices collapsed and crypto miners quit purchasing NVIDIA's GeForce GPUs." *Id.* at 25a. The court concluded that in "combination" these allegations establish a "sufficient likelihood" that Huang's statements minimizing the extent to which NVIDIA's gaming revenues were tied to crypto mining were materially false or misleading. *Ibid.*

2. Petitioners contend (Br. 44-48) that the court of appeals should not have relied on the estimates in Prysm's expert report because the estimates were "opinions" unsupported by sufficiently particularized allegations of fact. That is incorrect. The court explained that "Prysm provided a detailed analysis to support its conclusions," and that respondents' "complaint provided detailed information about Prysm's methodology as well as a particularized recitation of facts upon which Prysm relied." Pet. App. 20a-21a. The allegations explained that Prysm had used publicly available data about the amount of crypto mining that occurred during the class period, the number of new GPUs that miners would have needed to acquire to perform that mining, and NVIDIA's likely market share of new GPU purchases for crypto mining. *Id.* at 21a-22a. The complaint further explained that Prysm had used these data to estimate NVIDIA's sales to crypto miners, and then had

used publicly available data about NVIDIA's prices to calculate estimated revenues from those sales. *Id.* at 23a.

Thus, in assessing respondents' compliance with the PSLRA, the court of appeals did not suggest that Prysm's "expert opinion," Pet. Br. i—*i.e.*, Prysm's bottom-line conclusion that NVIDIA had "understated its crypto-related revenues by $1.126 billion" for fifteen months during the class period in this case, Pet. App. 23a—could "substitute for particularized allegations of fact," Pet. Br. i. Rather, the court emphasized that both the expert report itself and respondents' complaint provided detailed factual bases for Prysm's ultimate conclusion. And in determining that respondents had adequately pleaded falsity, the court properly considered the allegations related to the Prysm report in combination with additional allegations suggesting that "a very substantial part of NVIDIA's revenues during the Class Period came from sales of GeForce GPUs for crypto mining." Pet. App. 25a.

3. Petitioners offer (Br. 45-48) a number of fact-specific arguments about why Prysm's method of estimating NVIDIA's revenues may have produced artificially inflated results. To the extent petitioners question the validity of the factual assertions on which the expert opinion was based, their arguments contravene the basic principle that allegations in a complaint must be "accepted as true." *Iqbal*, 556 U.S. at 678; see *Tellabs*, 551 U.S. at 322 ("[F]aced with a Rule 12(b)(6) motion to dismiss a § 10(b) action, courts must * * * accept all factual allegations in the complaint as true."). And while a defendant is of course free to challenge an expert's reliance on "conclusory" or "speculative" premises at the pleading stage, *Iqbal*, 556 U.S. at 678, there

is no reason for this Court to revisit the court of appeals' fact-specific determination that petitioners have not succeeded in challenging the validity of the detailed factual basis Prysm provided for its report.

The court of appeals further explained that "the essential correctness of" the expert's analysis "is confirmed" not only by the estimates of the Royal Bank of Canada and the accounts of former employees, but also "by events in the market." Pet. App. 24a. When crypto-mining demand plummeted in 2018, NVIDIA's sales revenues experienced a 7% decline. *Id.* at 13a. NVIDIA's Chief Financial Officer explained that "[g]aming was short of expectations as post crypto channel inventory took longer than expected to sell through," and Huang himself attributed the decline to a "crypto hangover." *Ibid.* In addition to respondents' allegations about the expert report and the former employees' accounts, the complaint's allegations about the observed correlation between crypto-mining demand and NVIDIA's commercial success belie Huang's prior public statements suggesting that crypto mining was only a "small" part of NVIDIA's business. *Id.* at 28a.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 15 U.S.C. 78j(b) provides:

Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement[1] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

2. 15 U.S.C. 78u-4(b) provides:

Private securities litigation

(b) Requirements for securities fraud actions

(1) Misleading statements and omissions

In any private action arising under this chapter in which the plaintiff alleges that the defendant-

> (A) made an untrue statement of a material fact; or
>
> (B) omitted to state a material fact necessary in order to make the statements made, in the light

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[1] So in original. Probably should be followed by a comma.

of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

(2) Required state of mind

(A) In general

Except as provided in subparagraph (B), in any private action arising under this chapter in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(B) Exception

In the case of an action for money damages brought against a credit rating agency or a controlling person under this chapter, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed-

(i) to conduct a reasonable investigation of the rated security with respect to the factual el-

ements relied upon by its own methodology for evaluating credit risk; or

(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.

(3) Motion to dismiss; stay of discovery

(A) Dismissal for failure to meet pleading requirements

In any private action arising under this chapter, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of paragraphs (1) and (2) are not met.

(B) Stay of discovery

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(C) Preservation of evidence

(i) In general

During the pendency of any stay of discovery pursuant to this paragraph, unless otherwise ordered by the court, any party to the action with actual notice of the allegations con-

tained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

(ii) Sanction for willful violation

A party aggrieved by the willful failure of an opposing party to comply with clause (i) may apply to the court for an order awarding appropriate sanctions.

(D) Circumvention of stay of discovery

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.

(4) Loss causation

In any private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages.

3. 17 C.F.R. 240.10b-5 provides:

Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.