No. 25-

IN THE

Supreme Court of the United States

JOHNSON & JOHNSON, ET AL.,

Petitioners,

v.

SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION; FRANK HALL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Securities-fraud class actions overwhelmingly rely on the "inflation-maintenance" theory, which posits that misrepresentations maintain an inflated stock price until "corrective disclosures" reveal their falsity and cause the price to drop. Plaintiffs in these cases pursue class certification by invoking the efficient-market hypothesis adopted in *Basic Inc.* v. *Levinson*, 485 U.S. 224 (1988). They argue that reliance can be presumed classwide because stock prices in efficient markets incorporate all publicly available information, including misstatements. Based on this presumption, lower courts grant 90% of class-certification motions.

This Court's decision in *Goldman Sachs Group, Inc.* v. *Arkansas Teacher Retirement System*, 594 U.S. 113 (2021), installed guardrails on these cases. It required courts to evaluate the match between the "contents of the misrepresentation and the corrective disclosure," to ensure the disclosure "actually corrected" the misrepresentation. *Id.* at 123. Where a "mismatch" exists, class certification is "inappropriate." *Id.* at 119, 123.

Here, the Third Circuit concluded that *Goldman*'s match requirement is satisfied where the misrepresentation and corrective disclosure merely touch the same subject matter, regardless of whether the disclosure actually reveals the misstatement's falsity. It also concluded that disclosures may have price impact even when they only republish already-public information.

The questions presented are:

1. Under *Goldman*, must the contents of corrective disclosures actually reveal the falsity of misrepresentations, as the Second Circuit requires; or is it sufficient if the misrepresentations and disclosures merely relate to the same general subject, as the Third and Ninth Circuits allow?

2. Under this Court's *Basic* precedents, may a securities-fraud class action be certified where the plaintiff invokes the efficient-market hypothesis to establish classwide reliance, but the corrective disclosures repeat information that was already publicly available?

RELATED PROCEEDINGS

United States District Court (D.N.J.):

Hall v. *Johnson & Johnson*, No. 18-1833 (Dec. 29, 2023)

United States Court of Appeals (CA3):

San Diego Cnty. Emps. Ret. Ass'n v. *Johnson & Johnson*, No. 24-1409 (July 30, 2025)

PARTIES TO THE PROCEEDINGS BELOW

Petitioners (Defendants-Appellants below) are Johnson & Johnson, Alex Gorsky, Joan Casalvieri, Tara Glasgow, and Carol Goodrich.

Respondent (Plaintiff-Appellee below) is San Diego County Employees Retirement Association, individually and on behalf of all others similarly situated. Frank Hall, listed in the caption as an Appellee by the Third Circuit, did not participate in the Third Circuit proceeding and is no longer a party to the district court proceeding.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Johnson & Johnson discloses that it has no parent corporation and that no publicly held company owns 10% or more of its stock.

For the avoidance of doubt, Johnson & Johnson also discloses that it does not own any shares of Kenvue Inc.'s common stock. Kenvue is not a party to, and has no interest in, this litigation.

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INTRODUCTION

This case presents an ideal vehicle for the Court to resolve two related splits of authority on how class-certification analysis should proceed in inflation-maintenance securities-fraud cases.

In such cases, plaintiffs do not contend that misrepresentations *increased* a company's stock price at the time they were made, *i.e.*, on the front end of the alleged fraud. Instead, the theory is that the false statements *maintained* the price at a higher level than if the truth had been disclosed, and the inflated price persisted until a corrective disclosure revealed the truth and caused the price to fall. The misrepresentation's impact on the stock price is then inferred solely from the stock drop on the back end.

Of the roughly 200 securities-fraud class actions filed each year, the overwhelming majority are inflation-maintenance cases. See Richard A. Booth, *Price Maintenance and Price Inflation*, 30 Stan. J.L. Econ. & Bus. 133, 135 (2025). They follow a familiar playbook. Some crisis or controversy occurs; the stock price falls; multiple plaintiffs' firms rush to the courthouse. The negative event – say, adverse press coverage or a jury verdict or unwanted regulatory action – is dubbed a corrective disclosure that revealed prior statements to have been false. The stakes in these cases are extraordinary: $1.8 trillion in exposure for cases filed in the first half of 2025 alone. See Cornerstone Rsch., *Securities Class Action Filings: 2025 Midyear Assessment* at 10 (July 30, 2025), https://perma.cc/S6R7-6853. With incentives like that, well-financed litigation follows almost any time a company "does something bad, or something bad happens to it"; now, "everything everywhere is securities fraud." Matt Levine, *Everything Everywhere Is Securities Fraud*, Bloomberg (June 26, 2019), https://tinyurl.com/5hcepuc6.

The vast majority of securities cases settle. On average, fewer than 1 goes to trial per year. See Cornerstone Rsch., *Securities Class Action Filings: 2024 Year In Review* at 16 (2025), https://tinyurl.com/yh3ydp48. One of the few checkpoints on the road to settlement is class certification. If a class is certified, damages claims are typically astronomical – as are defense costs – and all but the most well-funded defendants knuckle under, often settling for tens or hundreds of millions. Those figures, though huge in their own right, generally reflect a single-digit percentage of claimed damages, and thus imply a low probability that the plaintiffs ultimately would have succeeded on the merits.

Securities-fraud class actions typically can be certified only by applying the presumption of classwide reliance endorsed by this Court in *Basic Inc.* v. *Levinson*, 485 U.S. 224 (1988). "The *Basic* presumption is premised on the theory that investors rely on the market price of a company's security, which in an efficient market incorporates all of the company's public misrepresentations." *Goldman Sachs Grp., Inc.* v. *Ark. Tchr. Ret. Sys.*, 594 U.S. 113, 117 (2021). "[W]ithout the presumption of reliance, a [securities fraud] suit cannot proceed as a class action." *Halliburton Co.* v. *Erica P. John Fund*, 573 U.S. 258, 281 (2014) (*Halliburton II*). But with the *Basic* presumption in hand, plaintiffs, historically, have almost always obtained class certification, especially when the defendant company is traded on a national stock exchange.

This Court has long sought to balance the *Basic* framework by emphasizing that defendants must have an opportunity to rebut the *Basic* presumption and defeat class certification by showing a lack of "price impact" – *i.e.*, that the alleged misrepresentations did not actually affect the stock price. *Halliburton II*, 573 U.S. at 284. Then, in *Goldman*, this Court underscored that

courts must consider "*all* evidence relevant to price impact." 594 U.S. at 122. In particular, *Goldman* taught that courts must evaluate whether there is a "mismatch" between "the contents of the misrepresentation and the corrective disclosure." *Id.* at 123. If the contents of the disclosure did not "actually correct[]" the misrepresentation, "there is less reason to infer front-end price inflation – that is, price impact – from the back-end price drop." *Id.* And without that inference, the Court explained, class certification is not warranted. *Id.*

This case underscores the need for further guidance on the pivotal question of when securities class actions may be certified under *Goldman* and *Basic*. Plaintiff here claims that J&J's public statements defending the safety of its talc products in separate tort litigation[1] maintained the company's stock at an inflated price until a series of corrective disclosures revealed the "truth" and caused the stock to drop. The alleged corrective disclosures are three plaintiffs-lawyer advertisements (out of thousands) soliciting clients; two articles (out of thousands) about product-liability trials; and one jury verdict (out of dozens, mostly won by J&J). Each disclosure came after years of heavily publicized litigation thoroughly airing the parties' positions.

As relevant to class certification, the central flaw in Plaintiff's contention is that none of the disclosures actually revealed new information that corrected J&J's prior statements. As a result, the "inference" necessary for price impact and thus certification – that the "back-

[1] The talc lawsuits are ongoing, and J&J disputes the claims alleged in that litigation. But that litigation is wholly separate from this securities class action, which does not resolve talc's safety or implicate consumer protection whatsoever.

end price drop equals front-end inflation" – "break[s] down." *Id.*

The district court certified a class anyway. In direct conflict with *Goldman*, the district court said it "need not determine whether the disclosures are corrective at this stage." Pet. App. 63a. Though that was plainly wrong, a divided panel of the Third Circuit affirmed. It did so on the theory that the alleged corrective disclosures matched the "subject" of J&J's alleged misrepresentations. *Id.* at 10a. The panel held *Goldman* was satisfied because "each disclosure contained information relating to J&J's alleged misrepresentations concerning the presence of asbestos in its talc product, its commitment to safety, or its potential asbestos-related liability." *Id.* at 9a-10a. Further, though J&J proved through exhaustive fact and expert evidence that every piece of purportedly corrective information in the disclosures was previously publicly available, the panel deemed that showing irrelevant. It reasoned that re-publishing information that was *not new* could nonetheless "communicate a new signal to the market." *Id.* at 8a. Judge Chung dissented, explaining that *Goldman* requires explicit findings that corrective disclosures both disclose *new* information and *correct* prior misstatements. Judge Bibas and Judge Krause joined Judge Chung in calling for en banc rehearing.

Both the correctiveness and newness aspects of the Third Circuit's decision warrant review.

First, the Third Circuit's correctiveness standard squarely conflicts with *Goldman*. Under *Goldman*, the test is whether the contents of the corrective disclosure "actually correct[]" the misrepresentation by revealing its falsity. The Third Circuit held instead that it suffices if the misrepresentation and corrective disclosure concern the same general "subject matter," *i.e.*, talc safety. That much looser standard cannot be

reconciled with *Goldman* – which involved alleged misstatements and corrective disclosures about the same general subject, *i.e.*, conflicts of interest – and makes it trivially easy for securities plaintiffs to construct a "match" for any large stock drop.

For much the same reason, the decision below creates a circuit conflict. Carefully implementing this Court's *Goldman* mandate, the Second Circuit held "it was clear error for the district court to rely on [a] subject-matter match" between the alleged corrective disclosures and misstatements. See *Ark. Tchr. Ret. Sys.* v. *Goldman Sachs Grp., Inc.*, 77 F.4th 74, 93 (CA2 2023). After extended analysis of their informational contents, the Second Circuit found an "insufficient link between the corrective disclosures and the alleged misrepresentations" even though they related to "the same subject matter." *Id.* at 103-05. A similar analysis would have defeated class certification in this case. The Third Circuit's lax approach thus conflicts directly with the Second Circuit's correct reading of *Goldman*.

Second, the Third Circuit's decision deepens a distinct (but related) circuit conflict on newness. A plaintiff who invokes *Basic*'s presumption necessarily adopts *Basic*'s efficient-market premise that "*all* publicly available information is rapidly incorporated into, and thus transmitted to investors through, the market price." *Amgen Inc.* v. *Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013) (emphasis added). And as most circuits have held, a plaintiff cannot "embrace the efficient market theory for purposes of proving one element of a § 10(b) claim," and then "turn around and contend that the market is not efficient for [other] purposes." *Meyer* v. *Greene*, 710 F.3d 1189, 1199 (CA11 2013). But the Third Circuit (following the Ninth) allowed Plaintiff to discard *Basic*'s premise where the disclosures merely republished old, already-available

information – for example, "information revealed during a then-recent trial" and addressed in "articles published days earlier." Pet. App. 10a n.11. The facts of this case starkly illustrate the resulting incoherence. Under the Third Circuit's decision, the market was sufficiently efficient to incorporate all alleged misstatements published on J&J's factsabouttalc.com website, yet insufficiently efficient to recognize that the alleged corrective disclosures were already made public *on that same website*. That asymmetric application of market efficiency cannot be reconciled with *Basic*, with the approach of most other circuits, or with common sense.

The questions presented here are a matter of pressing national importance because of the magnitude and ubiquity of inflation-maintenance securities claims. These cases often seek (as here) double-digit billions in damages. See *2025 Midyear Assessment*, *supra* at 11. When class-certification decisions place sums that large at stake, appropriate guardrails are indispensable. The decision below erases the limits *Goldman* imposed and distorts the logic underpinning *Basic*.

Moreover, if allowed to stand, the decision leaves companies exposed – in some circuits but not others – to class actions reverse-engineered from stock drops, as some "corrective disclosure" can always be found when the stock price falls. Worse still, companies face a litigation double-whammy: defending themselves in underlying litigation, whether product-liability or environmental or antitrust, becomes fodder for securities-fraud claims. Securities plaintiffs can claim anything except a confession is a misrepresentation, and adverse verdicts as well as self-serving plaintiffs-lawyer advertising and publicity become corrective disclosures. No valid class action or securities law purpose is served by this.

The Court should grant certiorari and reverse.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) has not been published in the Federal Reporter, but is reported at 2025 WL 2176586. The opinion of the district court (Pet. App. 31a-69a) is unpublished but is reported at 2023 WL 9017023.

JURISDICTION

The judgment of the court of appeals was entered on July 30, 2025. A timely petition for rehearing was denied on October 7, 2025 (Pet. App. 70a-71a). On January 5, 2026, Justice Sotomayor extended the time to file this petition until February 4, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL RULE INVOLVED

Federal Rule of Civil Procedure 23 provides in relevant part:

> (a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

* * *

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

STATEMENT

I. BACKGROUND

A. Legal Background

Federal law prohibits securities fraud. 15 U.S.C. § 78j(b); 15 C.F.R. § 240.10b-5(b). The reliance element of the implied private right of action for securities fraud would normally entail individualized questions precluding class certification. Fed. R. Civ. P. 23(b)(3).

Basic Inc. v. *Levinson*, 485 U.S. 224 (1988), created an alternative and bespoke framework for securities-fraud class actions. Securities plaintiffs may seek class certification by invoking a "rebuttable presumption of reliance, rather than proving direct reliance on a misrepresentation." *Halliburton II*, 573 U.S. at 268. This approach rests on the assumption that an "efficient market" "reflects *all publicly available information*, and, hence, any material misrepresentations." *Basic*, 485 U.S. at 246 (emphasis added). *Basic*'s embrace of the efficient-market hypothesis turned securities-fraud class actions against companies that trade on highly efficient national stock exchanges into a multi-billion-dollar industry.

The use of "the efficient capital markets hypothesis" in securities class actions has "'garnered substantial criticism since *Basic*.'" *Halliburton II*, 573 U.S. at 272 (quoting *id.* at 289 (Thomas, J., concurring in the judgment)). Critics have argued that "efficiency is not a binary, yes or no question" because the market "can process different kinds of information more or less efficiently, depending on how widely the information is disseminated and how easily it is understood," and so "the price of a stock may be inaccurate" even in an efficient market. *Id.* at 271-72 (cleaned up).

The Court nonetheless upheld *Basic* as a matter of *stare decisis*, reasoning that certain of these criticisms "fail to take *Basic* on its own terms." *Id.* at 271. *Basic* did not "'conclusively [] adopt any particular theory of how quickly and completely publicly available information is reflected in market price[s].'" *Id.* at 272 (quoting *Basic*, 485 U.S. at 248 n.28). Instead, it adopted the "modest premise" that "public information generally affects stock prices." *Id.* Accordingly, "[d]ebates about the precise *degree* to which stock prices accurately reflect public information are thus largely beside the point." *Id.*

Halliburton II also emphasized that defendants must have a meaningful "opportunity to rebut the presumption by showing" that there was no "price impact" (*i.e.*, "the particular misrepresentation at issue did not affect the stock's market price"). *Id.* at 279. "In the absence of price impact," the Court explained, the "presumption of reliance collapse[s]." *Id.* at 278. Of course, price impact evidence "is also highly relevant" to the merits questions of loss causation and materiality. *Id.* at 283. But that overlap does not preclude courts from considering such evidence at the class-certification stage, and defendants must be allowed to present

"direct as well as indirect price impact evidence" to "defeat the *Basic* presumption at that stage." *Id.*

Since *Halliburton II*, defendants have sometimes sought to defeat class certification by showing that the stock price did not increase in response to the alleged misstatement, thus demonstrating that there was no front-end price impact. But that approach is unavailable in inflation-maintenance cases because, by definition, the price did not move at the time of the alleged misstatement. Instead, inflation-maintenance plaintiffs point to a later disclosure and an associated price drop on the back end, claiming that the new disclosure corrected the alleged misstatement and that "the price drop is equal to the amount of inflation maintained by the earlier misrepresentation." *Goldman*, 594 U.S. at 123. And plaintiffs' lawyers are adept at characterizing almost any news or event associated with a stock drop as correcting some prior statement. These dynamics have made class certification in inflation-maintenance cases "all but a certainty." *Ark. Tchr. Ret. Sys.* v. *Goldman Sachs Grp., Inc.*, 955 F.3d 254, 278 (CA2 2020) (Sullivan, J., dissenting); see also *Securities Litigation Trends: Key Takeaways from a 2025 PLUS D&O Symposium Panel*, Woodruff Sawyer (Mar. 12, 2025) https://tinyurl.com/46jhds3t (noting that courts ruling on class-certification motions certify a class in roughly nine out of ten cases).

Goldman supplied a vital check on the inflation-maintenance theory by requiring courts to scrutinize whether back-end corrective disclosures "actually correct" front-end misstatements.[2] Courts should do this, *Goldman* held, by comparing "the contents of the

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[2] *Goldman* pointedly "expressed no view on [the] validity or [] contours" of the inflation-maintenance theory. 594 U.S. at 120 n.1.

misrepresentation and the corrective disclosure" to ensure there is no "mismatch." 594 U.S. at 123. Where a mismatch exists and the later statements do not falsify the earlier ones – *e.g.*, because "the earlier misrepresentation is generic" and "the later corrective disclosure is specific" – then the back-end price *drop* does not imply price *impact* and class certification is inappropriate. *Id.*

B. Facts and Procedural History

J&J first released its talc-based baby powder in 1894. In the 1970s, concerns arose that consumer talc products across the industry were contaminated with asbestos. A194 ¶ 51.[3] Those concerns were highly publicized, fully investigated, and thoroughly refuted. But in the early 2010s, product-liability plaintiffs revived the asbestos claims, and mass tort litigation proliferated. By early 2020, plaintiffs' lawyers had spent tens of millions on TV ads touting their allegations. By October 2021, more than 38,000 talc lawsuits were pending against J&J. See *In re LTL Mgmt., LLC*, 64 F.4th 84, 94 (CA3 2023). Tens of thousands of additional claims have since been asserted.

The initial complaint in this case was filed in February 2018. It alleged securities fraud on behalf of a putative class of investors who purchased J&J stock between February 22, 2013, and February 7, 2018. The complaint alleged that J&J had "known for decades" that its talc products were contaminated with asbestos and caused cancer, and had committed fraud by arguing that talc was safe during the product-liability litigation, thereby maintaining an inflated stock price. A137, A155. The initial complaint alleged that the

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[3] Citations to "A###" are to the appendix filed in *San Diego County Employees Retirement Association* v. *Johnson & Johnson*, No. 24-1409 (3d Cir. July 26, 2024), Dkt. 21.

"truth" was "revealed" by three disclosures: a September 21, 2017, Bloomberg article about an upcoming talc trial; a February 5, 2018, CNBC article about a blog post funded by a product-liability plaintiffs' firm; and a February 7, 2018, press release by a product-liability plaintiffs' firm. These disclosures were functionally indistinguishable from the tens of thousands of articles, posts, tweets, and attorney advertisements regarding the talc product-liability litigation.

Ten product-liability cases went to trial by the end of 2018. One of those cases, *Ingham*, produced a $4.69 billion jury verdict (later reduced to $2.24 billion). The trials were public and closely watched. Most were broadcast live online by Courtroom View Network. Between 2016 and 2018, approximately 40,000 articles about the litigation were published by national, local, and legal industry news organizations.

Thousands of internal J&J documents produced in the product-liability litigation were also posted on two publicly available websites: asbestosandtalc.com, which was run by an expert witness for the product-liability plaintiffs, and factsabouttalc.com, which was run by J&J to provide factual and scientific information in response to the litigation. This J&J website is the source of many of the alleged misrepresentations in this securities case.

Ten months after the initial complaint was filed, Reuters published an article about the product-liability litigation. A1829-45. The article adopted and sensationalized the plaintiffs' theories, and claimed to reveal "never-before-seen" J&J documents. The journalist's claim was wrong: every one of those documents was already publicly available. That was proved during class-certification discovery, where J&J and its expert traced every single internal J&J document linked or quoted in the Reuters article and showed that all of

them were publicly available before the article was published. Discovery also revealed that the reporter's primary source was the lead plaintiffs' lawyer in the *Ingham* case. The lawyer stated that his interests in the product-liability litigation were served by the publicity putting pressure on J&J's stock price, and that everything he gave Reuters "was publicly available prior to the publication." A5094-95. Following the Reuters article, J&J's stock dropped 10%.

To capture this stock drop, Plaintiff amended the complaint. A176. The new complaint alleged that the "truth" about J&J's talc products was not *fully* revealed until the Reuters article. This additional stock drop nearly trebled the alleged damages to more than $10 billion. The amended complaint also alleged five more corrective disclosures related to the tort litigation: two press releases by plaintiffs' firms, a blog post funded by a plaintiffs' firm, a Law360 article about a trial, and the bare fact of the *Ingham* jury verdict. A264-83; A5193-94.

Plaintiff sought class certification based on the *Basic* presumption, offering expert evidence that the market for J&J stock was efficient. J&J sought to rebut the presumption by painstakingly tracing the facts in each alleged corrective disclosure – including every document quoted, linked, or referenced therein – to public trials, publicly accessible websites, and contemporaneous press coverage, demonstrating that none contained new information that revealed the falsity of any alleged misrepresentation. J&J argued that its comprehensive evidence severed the link between the back-end stock drop and the alleged misrepresentations, and therefore there was no basis to infer price impact.

The district court certified Plaintiff's proposed class. Pet. App. 31a-69a. Contrary to *Goldman*, the court

held that it did not need to decide whether the disclosures were in fact "corrective." *Id.* at 63a. The court also rejected J&J's argument that the efficient-market hypothesis invoked by Plaintiff requires corrective disclosures to reveal *new* information, asserting: "the fact that the information was previously made public does not preclude the possibility that any later disclosure of that information could impact a stock's price." *Id.* at 58a.

J&J sought interlocutory review by the Third Circuit under Federal Rule of Civil Procedure 23(f). A motions panel granted review, but a divided merits panel affirmed.

On correctiveness, the majority addressed J&J's *Goldman* argument in just three sentences. It found there was "no mismatch between the *subject* of the alleged misrepresentation[s] and the content of the disclosures." Pet. App. 9a-10a (emphasis added). This subject-matter test was met, the panel explained, because the disclosures "contained information *relating to* J&J's alleged misrepresentations" about talc. *Id.* (emphasis added). The court did not analyze whether the information contained in any particular disclosure actually conflicted with any of J&J's alleged misstatements. Indeed, the panel did not even explain which specific alleged J&J misstatements it thought were "matched" to any disclosure.

On newness, the panel agreed with the district court. The panel did not dispute J&J's factual showing that the corrective disclosures "contained information that was already public and thus not new," Pet. App. 8a, but rejected J&J's position as a matter of law. The panel concluded that "disclosures based on public information may nevertheless communicate a new signal to the market in certain situations," including where there is "re-publication of information by a more

credible source to a broader audience." *Id.* For example, the panel concluded that a client-solicitation press release issued by a small, 14-person plaintiff-side product-liability firm – though it concededly republished information from a six-day-old Bloomberg article – nonetheless "communicated something new to the marketplace, namely that [the] Bernstein Liebhard [law firm] viewed the total body of unsealed documents as sufficiently credible and compelling to merit the filing of additional suits making similar claims." *Id.* at 10a n.11. The panel reached similar conclusions about the other alleged corrective disclosures.

Judge Chung dissented. She would have held that the district court failed to "assess evidence introduced by J&J showing that the disclosures did not contain newly public information and were not corrective," and failed to make necessary factual findings. Pet. App. 14a, 25a-26a. And she criticized the majority's approach as functionally turning on bare price reaction – the simple movement of the stock price on the date of the disclosures – which "does not address whether newly publicly known information in the disclosure related to and corrected a prior misrepresentation." *Id.* at 27a.

J&J timely but unsuccessfully sought en banc rehearing. Judge Bibas, Judge Krause, and Judge Chung dissented.

This petition followed.

REASONS FOR GRANTING THE PETITION

This case warrants review for three reasons.

First, the decision below deepens interlocking circuit splits on correctiveness and newness. On correctiveness, the Second Circuit requires that the information contained in an alleged corrective disclosure

actually reveals the falsity of an alleged misstatement, while the Third and Ninth Circuits accept a mere subject-matter match as sufficient. On newness, the Third and Ninth Circuits permit class certification based on corrective disclosures that do not disclose *new* information. Nearly every other court of appeals has required corrective disclosures to disclose new information in the overlapping loss-causation context. These positions conflict because both are grounded in the same efficient-market hypothesis.

Second, the decision below departs from this Court's precedent. By allowing class certification based solely on subject-matter overlap and supposed "new signals," the Third Circuit disregarded *Goldman*'s "match" requirement, abandoned the economic logic underpinning *Basic*, and adopted a standard that makes defeating class certification in inflation-maintenance cases all but impossible.

Third, this case is an ideal vehicle for resolving these exceptionally important questions. Both questions presented were thoroughly briefed below and are outcome-determinative. Together, the two issues squarely present the systemic problem of high-exposure inflation-maintenance suits fueled by recycled or lawyer-generated publicity. Only this Court's intervention can restore uniformity and maintain safeguards on inflation-maintenance cases.

I. THE CIRCUITS ARE DIVIDED ON TWO ASPECTS OF HOW TO ASSESS CLASS-CERTIFICATION DISPUTES IN INFLATION-MAINTENANCE CASES.

There is a clear circuit split concerning how to apply *Goldman*'s mismatch analysis. And there is a related split over whether the efficient-market hypothesis underlying the *Basic* presumption necessarily requires

that corrective disclosures contain *new* information. Together, these conflicts have created significant uncertainty regarding the proper analysis of defendants' attempts to rebut the *Basic* presumption in inflation-maintenance cases.

A. The circuits are split on what constitutes a sufficient match under *Goldman*.

Five years ago, *Goldman* instructed lower courts to police class certification by comparing "the contents of the misrepresentation and the corrective disclosure" to ensure there is no "mismatch" between the front-end statement and the back-end disclosure. 594 U.S. at 123. The circuits have divided over *what constitutes a sufficient match*. The Second Circuit has held that a mere subject-matter match is inadequate. The Third and Ninth Circuits have adopted the opposite position.

The Second Circuit. On remand from *Goldman*, the court of appeals illustrated what it means for a truth-revealing disclosure to "match" (*i.e.*, correct) an inflation-maintaining misstatement. *Ark. Tchr. Ret. Sys.*, 77 F.4th at 80. A "clean match," the court explained, occurs when "the earlier statement is precisely negated, or rendered false, by the later news." *Id.* For example, when a car manufacturer tells the market that its vehicle "passed all safety tests," but it is later revealed "that, in fact, the car failed several crash tests," there is a "clean match" because the crash-test news precisely falsifies the manufacturer's prior statement. *Id.* Put differently, a corrective disclosure must provide "the truthful substitute for the [initial] lie." *Id.* at 98. Where such a match exists, a back-end price drop can "operat[e] as an indirect proxy for the front-end inflation." *Id.* at 80.

The Second Circuit also explained what is plainly insufficient for correctiveness after *Goldman*: a mere subject-matter match. "[R]equiring only a general front-end—back-end subject matter match," the court explained, "does not meaningfully account for the Supreme Court's guidance." *Id.* at 100-01. After all, this Court had reversed in *Goldman* even though it was undisputed that the specific disclosures and general statements at issue concerned the same subject. *Id.* at 81. Thus, if the car manufacturer in the above example had said only that "it strives to ensure that all its vehicles are road-ready," then "the later news of failed crash tests" would not necessarily suggest "that, in fact, the manufacturer did not seek to make its automobiles safe to drive." *Id.* at 80-81. In that circumstance, a court could not "infer that the back-end price drop equals the front-end inflation" even though the front-end statement and the alleged corrective disclosure both concerned road safety. *Id.* at 81. Accordingly, after "a searching review" of the substantive "contents," the Second Circuit found an "insufficient link between the corrective disclosures and the alleged misrepresentations," despite their subject-matter overlap. *Id.* at 89, 104-05.

The Third and Ninth Circuits. In the decision below, the Third Circuit adopted a view of correctiveness that squarely conflicts with the Second Circuit's. The panel held there was a sufficient match "between the *subject* of the alleged misrepresentation and the content of the disclosures," because the disclosures "contained information *relating to* J&J's alleged misrepresentations concerning the presence of asbestos in its talc product, its commitment to safety, or its potential asbestos-related liability." Pet. App. 9a-10a (emphasis added). Having found a mere subject-matter match, the panel declined to analyze whether the contents of

particular disclosures actually revealed the falsity of any specific alleged misrepresentations. *Id.*

The Third Circuit's rule necessarily produces different outcomes than the Second Circuit's test. This is a case in point. Plaintiff claimed, for example, that the *Ingham* jury verdict, in and of itself, was corrective even though J&J had never claimed the company would prevail in every single product-liability trial. The verdict was nevertheless deemed corrective because it concerned the general subject of J&J's talc.[4] The same was true of the Reuters article. Plaintiff claimed it was corrective because it noted that J&J had not "adopted a concentration method for preparing talc samples before asbestos testing." A3906. But that detail did not contradict any of J&J's prior statements because J&J had never represented that it used concentration testing. The article was deemed corrective simply because it addressed the same broad subject matter of asbestos testing.

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[4] The panel's treatment of the *Ingham* jury verdict highlights the asymmetrical and illogical nature of the Third Circuit's approach. Plaintiff alleges that mid-trial coverage of an earlier product-liability trial in the form of the January 30, 2018, Law360 article and the February 5, 2018, blog post from Mesothelioma.net – both of which commented on the ongoing *Lanzo* trial – constituted corrective disclosures, but does *not* allege that the *Lanzo* verdict for plaintiffs was a corrective disclosure. None of Plaintiff, the Third Circuit, or the district court have ever explained why the inverse is true for *Ingham*: why the mid-trial coverage of the *Ingham* trial by a huge number of different sources was *not* a corrective disclosure, but the *Ingham* verdict *was*. The answer, of course, is that J&J's stock price dropped in the middle but not at the end of the *Lanzo* trial, and at the end but not in the middle of the *Ingham* trial. Plaintiff cherry-picked the corrective disclosures based on the stock drops, not the allegedly corrective information.

The Ninth Circuit has announced a similarly loose standard for correctiveness. In *Jaeger* v. *Zillow Group, Inc.*, plaintiffs brought an inflation-maintenance case based on stock drops following Zillow's closure of its home-buying business. 2025 WL 2741642, at *2 (CA9 Sep. 26, 2025). Plaintiffs argued that Zillow maintained an inflated stock price by (mis)stating that it "had made progress … in strengthening [its] pricing models," and that this statement was corrected when Zillow later shut down its home-buying business because it could not "accurately forecast future home prices." *Id.* But as Zillow explained, that sequence did not undermine its earlier assertion that it "had made progress"; the company could have made progress while still falling short of what was needed for long-term viability. Under the Second Circuit's test, there would have been no "match" because the supposed correction did not reveal the falsity of the front-end statements. Indeed, Zillow's statements fit the crash-test analogy used by the Second Circuit in rejecting a subject-matter rule.

For the Ninth Circuit, however, "Zillow's front-end and back-end statements are *matched enough*." *Id.* (emphasis added). The panel reached that conclusion because the two sets of statements concerned the same general subject matter. In this way, the Ninth Circuit aligned itself with the Third Circuit, holding that a back-end disclosure "matches" a front-end statement so long as both address the same subject. See *id.* ("The back-end disclosures thus revealed new information about how Zillow's home-pricing struggles threatened the business and suggested that its earlier statements *may* have obscured how Zillow's pricing model misfired." (emphasis added)). Under this approach, a rigorous comparison of the "contents" of the alleged misstatements and corrective disclosures, as applied by

the Second Circuit, is not necessary. The Ninth Circuit (and the Third) stop after finding a loose subject-matter link.

B. The circuits are also divided over whether corrective disclosures must contain *new* information.

The panel's decision also reflects a division on a second issue, which goes to the heart of *Basic*'s application to inflation-maintenance cases. Namely, must a corrective disclosure actually reveal *new* information?

Most circuits have addressed this question in the analogous loss-causation context[5] and have held that corrective disclosures must indeed disclose something new. These circuits hold that the efficient-market hypothesis necessarily means that all publicly available information is presumed incorporated into the stock price such that later repetition of the *same information* cannot, by definition, cause a price decline – *i.e.*, impact the stock price. The Third and Ninth Circuits have now taken the polar opposite position, holding that at class certification, the republication of old information *can* constitute a corrective disclosure by sending a "new signal" to the market.

The Newness Requirement. Circuits addressing this issue in the loss-causation context have generally held that corrective disclosures must "reveal some *then-undisclosed fact* with regard to the [] misrepresentations alleged in the complaint." *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 511 (CA2 2010)

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[5] Loss causation and price impact are "closely related" inquiries, with a "conceptual and evidentiary overlap," because market efficiency affects both elements. *See In re Allstate Corp. Sec. Litig.*, 966 F.3d 595, 600, 606 (CA7 2020). As a result, argument and facts potentially "refuting the *Basic* presumption" must be considered as part of both inquiries. *Id.* at 600.

(emphasis added). This means that a corrective disclosure "cannot be merely confirmatory" of already public facts. *MacPhee* v. *MiMedx Grp., Inc.*, 73 F.4th 1220, 1243 (CA11 2023). It "must reveal some information not already known to the market." *Emps.' Ret. Sys.* v. *Whole Foods Mkt., Inc.*, 905 F.3d 892, 904 (CA5 2018); see also *Rand-Heart of N.Y., Inc.* v. *Dolan*, 812 F.3d 1172, 1180 (CA8 2016) ("Corrective disclosures must present facts to the market that are new, that is, publicly revealed for the first time."); *Katyle* v. *Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 473 (CA4 2011) (quoted by *Rand-Heart*).

A necessary consequence of this newness requirement is that the "mere repackaging of already-public information by an analyst … is simply insufficient to constitute a corrective disclosure," because "if the information relied upon in forming an opinion was previously known to the market, the only thing actually disclosed to the market when the opinion is released *is the opinion itself*, and such an opinion, standing alone, cannot 'reveal[ ] to the market the falsity' of a company's prior factual representations." *Meyer*, 710 F.3d at 1199. The Second Circuit agrees: A "negative journalistic characterization of previously disclosed facts does not constitute a corrective disclosure of anything but the journalists' opinions." *Omnicom*, 597 F.3d at 512; see also *Bricklayers & Trowel Trades Int'l Pension Fund* v. *Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 95 (CA1 2014) (affirming finding that disclosure "would not have moved AOL's share price" where it "did no more than [] provide gloss on public information").

These circuits strictly enforce this newness requirement because they believe, correctly, that *Basic* demands it. *Basic*'s efficient-market hypothesis – taken "on its own terms" as this Court has instructed – dictates that "the market price of shares traded on well-

developed markets reflects *all publicly available information*." *Halliburton II*, 573 U.S. at 268, 270 (emphasis added). And a "corollary of the efficient market hypothesis is that disclosure of confirmatory information – or information already known by the market – will not cause a change in the stock price." *MiMedx*, 73 F.4th at 1243. Unless information is new, "the market will have processed and reacted to that information already." *Norfolk Cnty. Ret. Sys.* v. *Cmty. Health Sys., Inc.*, 877 F.3d 687, 695 (CA6 2017).

In this way, these courts have affirmed that the efficient-market hypothesis "is a Delphic sword: it cuts both ways." *Meyer*, 710 F.3d at 1198. Thus, plaintiffs "cannot contend that the market is efficient for purposes of [proving] reliance and then cast the theory aside when it no longer suits their needs." *Id.* at 1198-99. They must instead "take the bitter with the sweet." *Id.* at 1199.

The "New Signals" Rule. The Third Circuit broke with this near-uniform approach to the efficient-market hypothesis. It held that, for purposes of assessing price impact at class certification, republishing old information – such as information already revealed in televised trials that received daily press coverage, or that had been posted on the same webpage containing alleged misrepresentations – may constitute a corrective disclosure. The panel theorized that "disclosures based on public information may nevertheless communicate a *new signal* to the market," in part because "re-publication of information by a more credible source to a broader audience may convey to the market that the information is particularly significant and worthy of monitoring." Pet. App. 8a (emphasis added). This created out of whole cloth a subjective "credibility" inquiry. And, without explanation or evidence, the panel treated certain self-serving statements by

product-liability lawyers as "more credible" than functionally identical, but earlier, press articles and statements by competing product-liability lawyers. That approach is arbitrary and irreconcilable with the conclusions drawn from the efficient-market hypothesis by the other circuits.

Class certification could not have been affirmed without this "new signals" hypothesis. J&J showed that every allegedly corrective *fact* identified in the complaint was already publicly available prior to Plaintiff's cherry-picked "corrective disclosures." Most obviously, the record here contains unrebutted declarations from authors of two of the "corrective disclosures" who stated that their "disclosures" contained no new content and had instead been based on publicly available information. One author even admitted to having googled the allegedly corrective information before posting it on their blog. A5193-94. And in other circuits, such disclosures – including the Reuters article – could not qualify as corrective disclosures because they are "negative journalistic characterization[s]," *Omnicom*, 597 F.3d at 512 (CA2), and "mere repackaging of already-public information by an analyst," *Meyer*, 710 F.3d at 1199 (CA11). The Third Circuit was undeterred.

In so holding, the Third Circuit aligned itself with the Ninth Circuit. Like the panel here, the Ninth Circuit has held that "some information, although nominally available to the public, can still be 'new' if the market has not previously understood its significance." *In re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781, 794 (CA9 2020). Thus, publicly available information "tucked in a deep corner of the internet" may, if more widely publicized, subsequently prove corrective. *In re Genius Brands Int'l, Inc. Sec. Litig.*, 97 F.4th 1171, 1186 (CA9 2024). In *Zillow*, the Ninth Circuit

extended its view of efficient markets to the class-certification context, rejecting Zillow's newness argument because the information in the alleged corrective disclosure had not previously been "widely discussed or accessible." 2025 WL 2741642, at *2.

Neither the panel below nor the Ninth Circuit has attempted to reconcile this approach with this Court's teaching that classwide treatment of the reliance element is possible only if one "take[s] *Basic* on its own terms" and holds firm to the premise that an efficient market "reflects *all* publicly available information." *Halliburton II*, 573 U.S. at 268, 271 (emphasis added). The "*all*" part is essential for plaintiffs, because it allows them to assume that *every* alleged misrepresentation and *every* alleged corrective disclosure was fully incorporated into the market price, without themselves having to address relative questions like credibility or breadth of distribution. But the Third and Ninth Circuits let plaintiffs take the sweet without the bitter.[6]

The decision below underscores the extraordinary implications of the Third and Ninth Circuits' approach. Just take the panel's holding as to the press releases and blog post produced by product-liability

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[6] Nor did the panel attempt to reconcile its price-impact analysis with the Third Circuit's prior precedent affirming a newness requirement at the merits stage. *See In re Merck & Co. Sec. Litig.*, 432 F.3d 261, 269 (CA3 2005). It is difficult to know what the panel could have said on that score. Although the merits and class-certification inquiries are separate, the efficient-market hypothesis applies to both. So there is no reason that a newness requirement should apply to one inquiry but not the other. In this respect, at least, the Ninth Circuit is consistent – shunning a strict newness requirement at both stages. *See BofI Holding*, 977 F.3d at 794 (merits); *Zillow*, 2025 WL 2741642, at *2 (class certification).

plaintiffs' firms. Pet. App. 10a & n.11. Those "disclosures" were lawyer advertisements crafted by product-liability lawyers to sensationalize their claims, posture about filing more suits, and attract additional clients to ongoing litigation. Yet to the panel, the advertisements were truth-revealing "new signals" that could serve as indirect evidence that J&J's statements about the safety of its talc made months and in some cases years earlier had price impact. The notion that two press releases and a blog post – plucked post hoc from a sea of lawyer-generated publicity about the talc litigation – could disclose anything new about the scientific dispute in which J&J had been embroiled for years is not the least bit rational, let alone consistent with *Basic*, and there is no evidence in this record to support it. Indeed, the only apparent basis for the Third Circuit's conclusion that these were "new signals" is the stock price decline, which as Judge Chung observed, confuses bare price reaction with price impact. *In re Allstate Corp. Sec. Litig.*, 966 F.3d 595, 612 (CA7 2020) ("[P]rice *reaction* (the simple movement of the price in response to a given statement) is quite different from the legal concept of price *impact*.").

In practice, the "new signals" approach means that courts in the Third and Ninth Circuits will recognize *Basic*'s market-efficiency assumptions to presume classwide reliance for plaintiffs, yet deny defendants the benefit of those same assumptions when they attempt to rebut it. The result is disagreement between the circuits over whether *Basic*'s market-efficiency logic applies consistently in the inflation-maintenance context or is merely a one-way ratchet favoring plaintiffs and class certification.

II. THE DECISION BELOW CONTRADICTS THIS COURT'S PRECEDENTS.

On correctiveness, the panel declined to apply the rigorous matching inquiry required by *Goldman*, substituting a bare subject-matter comparison that requires no actual contradiction between front- and back-end statements. On newness, the panel abandoned *Basic*'s efficient-market logic for defendants opposing class certification. Each error effectively nullifies crucial limits this Court has imposed on securities-fraud cases after *Basic*.

A. *Goldman* forecloses the Third Circuit's subject-matter test for correctiveness.

The Third Circuit's subject-matter test for correctiveness cannot be reconciled with *Goldman*.

Goldman makes clear that a subject-matter match is not enough to establish correctiveness. There, the plaintiffs alleged that "Goldman maintained an inflated stock price by making repeated misrepresentations about its conflict-of-interest policies," and that the stock dropped when the "market learned the truth about Goldman's conflicts." 594 U.S. at 120. No one disputed that both the alleged misstatements and the supposed corrective disclosures concerned the same subject (Goldman's conflicts). Yet the Court held that this overlap was insufficient to establish correctiveness because the front-end statements were generic (*e.g.*, "Our clients' interests always come first"), while the back-end disclosures were specific (*e.g.*, reports of "several allegedly conflicted transactions"). *Id.* If the Third Circuit's rule were correct – and a subject-matter match suffices for correctiveness – that should have been the end of *Goldman*'s analysis. Thus, as the Second Circuit recognized on remand, a subject-matter

test "does not meaningfully account for the Supreme Court's guidance." *Ark. Tchr. Ret. Sys.*, 77 F.4th at 100-01.

Goldman instead requires a more searching analysis to ensure "the earlier statement is precisely negated, or rendered false, by the later news." *Id.* at 80. This rigorous correctiveness inquiry is essential to ensure a valid inference of price impact in inflation-maintenance cases. Under that theory, the back-end price drop serves as an indirect proxy for front-end inflation; the model works only if the later disclosure actually conflicts with the earlier statement. Where the front- and back-end statements are connected only loosely by subject matter, and the latter does not negate or render false the former, then the inference of price impact from the back-end price drop "break[s] down." 594 U.S. at 123.

Without a clear connection between the front- and back-end statements, there is no reason to believe the back-end disclosures actually falsified the front-end statements. And without that, there is no reason to believe that the front-end statements actually affected the stock price in the first place. By definition in an inflation-maintenance case, the price did not rise at the time of the misrepresentations. And the only reason to think the back-end price drop is evidence of front-end price impact is if the back-end disclosure revealed the falsity of the front-end statement. Otherwise, the "back-end price drop" does not "equal[]" the "front-end inflation," *cf. id.* at 123, but rather reflects any number of unrelated developments from adverse publicity, litigation setbacks, or other new risks.

When courts like the Third and Ninth Circuits treat subject-matter overlap as sufficient, they convert what should be a narrow and economically grounded inference into an all-purpose mechanism for backfilling

price impact and creating a securities class action anytime negative news coincides with a stock decline. This eviscerates *Goldman*'s "match" requirement, and explodes an important limit on the *Basic* presumption.

B. *Basic* requires corrective disclosures to contain *new* information.

The panel also erred by holding that a corrective disclosure need not disclose new information – a rule irreconcilable with *Basic*.

Basic held – and this Court has repeated multiple times – "that in an efficient market, *all publicly available information* is rapidly incorporated into … the market price." *Amgen*, 568 U.S. at 466 (emphasis added); *Halliburton II*, 573 U.S. at 283; *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U.S. 804, 811 (2011) (*Halliburton I*). That "is '*Basic*'s fundamental premise.'" *Halliburton II*, 573 U.S. at 283. Taking "*Basic* on its own terms," *id.* at 271, requires accepting that "all" means "all."

Of course, the *Basic* premise is a simplifying assumption – and one that does not always align with intuition. Markets may not be efficient, and "market efficiency is a matter of degree." *Id.* at 272. It is no doubt true, as the Third Circuit stated below, that "republication of information by a more credible source to a broader audience" may affect a stock's price in a particular market even if prior disclosure under different circumstances did not. Pet. App. 8a. But where that is true, the *Basic* presumption cannot apply and class certification is inappropriate because reliance on a misrepresentation cannot be inferred from assumed reliance on the price of the stock: the presumption is "rebuttable" precisely because "*Basic* recognized that market efficiency is a matter of degree and accordingly made it a matter of proof." *Halliburton II*, 573 U.S. at

272. Indeed, the Third Circuit's "broader audience" observation directly echoes the criticism of *Basic* advanced in *Halliburton II* that a "market can process different kinds of information more or less efficiently, depending on how widely the information is disseminated." *Id.* at 271. That criticism, this Court said, is "beside the point," as it "fail[s] to take *Basic* on its own terms." *Id.*

Thus, if the Third Circuit was right to conclude that the repetition of already-available information created a "new signal" because it reached a "broader audience," then *Basic* should not have applied at all. If, on the other hand, plaintiffs are entitled to use the efficient-market theory to prove the reliance element with classwide evidence and thus satisfy the requirements of Rule 23, then defendants must equally be permitted to use the exact same theory to establish that a putative "corrective disclosure" had no price impact because it disclosed nothing new. The Third Circuit's "new signals" approach preserves *Basic*'s benefit for plaintiffs but creates an illogical carve-out that handicaps defendants.

Evenhanded application of the efficient-market hypothesis has led the vast majority of courts of appeals, at the merits stage, to reject a new-signals-type approach and affirm that corrective disclosures must reveal new substantive information; "otherwise the market will have processed and reacted to that information already." *Norfolk Cnty. Ret. Sys.*, 877 F.3d at 695; see also *supra* at 21-23 (citing cases). There is no logical reason for the efficient-market hypothesis to preclude a connection between the back-end stock drop and the alleged fraud at the merits stage but not at the class-certification stage. Plaintiffs "must take the bitter with the sweet," and cannot "cast the [efficient

market hypothesis] aside when it no longer suits their needs." *Meyer*, 710 F.3d at 1199.

Because the Third Circuit allowed Plaintiff to do just that, its "new signals" rule cannot be reconciled with "*Basic*'s fundamental premise." *Halliburton II*, 573 U.S. at 283. Review is warranted to restore a coherent and evenhanded application of this Court's precedents.

III. THIS COURT SHOULD CORRECT THE PANEL'S ERRORS AND AFFIRM CRUCIAL GUARDRAILS ON INFLATION-MAINTENANCE CASES.

Granting certiorari to resolve the questions presented would clarify the standard for rebutting the *Basic* presumption in inflation-maintenance cases. And it would dispel the costly lower-court confusion that predated *Goldman* and has persisted since. The importance of these issues merits action by this Court, and this case is an excellent vehicle.

A. Checking the abuse of inflation-maintenance cases is exceptionally important.

Both questions presented target doctrinal moves the plaintiffs' bar has leveraged to twist *Basic* to effectively guarantee class certification in inflation-maintenance cases.[7]

Today, "[m]ost securities fraud class actions are based on" theories like the one asserted here. Booth, *supra* at 135. By 2018 (just four years after *Halliburton II*), 71% of cases involved inflation-maintenance

[7] Because these questions concern the proper interpretation of the federal securities laws, the views of the Solicitor General may assist the Court in considering this petition.

theories. Note, *Congress, the Supreme Court, and the Rise of Securities-Fraud Class Actions*, 132 Harv. L. Rev. 1067, 1077 (2019). Such cases have grown more "prevalent in recent years." Merritt B. Fox & Joshua Mitts, *Event-Driven Suits and the Rethinking of Securities Litigation*, 78 Bus. Law. 1, 1 (2023).

Plaintiffs now routinely convert stock price declines into billion-dollar securities lawsuits by arguing that some adverse event that is accompanied by a stock reaction – ranging from natural disasters to regulatory changes to outlier litigation verdicts – "corrects" some prior company statement. In practice, this means that whenever a public company experiences a setback, "a plaintiff's law firm files a securities class action alleging that the company previously deceived shareholders by concealing a risk that led to the disaster." *Id.* at 3. With these suits proliferating, "everything, everywhere is securities fraud." Levine, *supra*; see also Emily Strauss, *Is Everything Securities Fraud*?, 12 U.C. Irvine L. Rev. 1331, 1331 (2022) (noting that these cases "have become more common and have drawn increasing criticism on the grounds that they are opportunistic and generally lack merit").

And, of course, class certification in these securities actions is often functionally dispositive. The sheer magnitude of potential classwide damages frequently creates overwhelming pressure "to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability." See *Lab'y Corp. of Am. Holdings* v. *Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting); *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011) (same); Amanda M. Rose, *A Response to Calls for SEC-Mandated ESG Disclosure*, 98 Wash. U. L. Rev. 1821, 1852-53 (2021) ("costs of discovery and extremely large potential

damage awards . . . means that the risk of vexatious litigation is high").

Under the Third and Ninth Circuits' rules, inflation-maintenance claims are dangerously easy to manufacture. Plaintiffs find a stock drop and then can pick and choose any tangentially related tweet, article, blog post, or lawyer advertisement based solely on whether it coincides with the price movement. The bare price reaction then does the work – as it did for the Third Circuit – of suggesting there must have been some "new signal" even if there was no new substance. And so price reaction becomes both necessary *and* sufficient for price impact – and the *Basic* presumption becomes irrebuttable as a practical matter. That is what the Seventh Circuit warned against in *Allstate*.

Allowing the Third and Ninth Circuit's rulings to stand will thus invite abusive litigation. Indeed, they strengthen the incentive for aggressive plaintiffs' lawyers to create events that "driv[e] the stock down" because that serves their self-interest – as the lead *Ingham* plaintiffs' lawyer admitted on national TV. A5095-96, ¶ 6.

B. This case presents an ideal vehicle.

This case is the ideal vehicle to bring coherence and evenhandedness to the law governing *Basic*'s application to inflation-maintenance cases. Both the newness and correctiveness questions were extensively developed in the record, fully briefed, and carefully argued in the district court and the court of appeals. Indeed, in both courts below, "the parties dispute[d] only whether common questions of reliance on J&J's alleged misrepresentations predominate over individual questions." Pet. App. 3a-4a. The panel's resolution of those issues was outcome-determinative: agreeing with J&J on either correctiveness or newness would

have required the panel to reverse the district court's class-certification order. And there are no vehicle problems that might prevent the Court from reaching and resolving the legal questions.

Nor does the panel's choice not to publish its opinion diminish the significance of the Third Circuit's decision or the need for this Court's review. The decision below is only the second court of appeals opinion – after the Second Circuit's remand decision – to interpret and apply *Goldman*. See Jessica Corso, *Securities Class Actions Had A Late Summer Appellate Bloom*, Law360 (Sep. 8, 2025), https://tinyurl.com/wjja2s93. The Ninth Circuit's decision in *Zillow* is the third and latest such opinion. For this reason, the Third and Ninth Circuits' opinions, though unpublished, will have outsized importance in shaping how courts across the country view the newness and correctiveness issues presented here. At a minimum, district courts in those circuits, with no other on-point, in-circuit precedent to look to, are likely to view the panel's decision and *Zillow* as strongly persuasive authority.

The rarity of circuit court opinions addressing these issues is explained by the massive exposure in these cases and the concomitant settlement pressure. Securities class action cases routinely involve multi-billion-dollar damages claims, with one financial estimate placing the maximum potential damages against private securities fraud defendants at roughly $1.8 trillion – for just the first half of 2025. See *2025 Midyear Assessment*, *supra* at 10. Here, the exposure is over $10 billion. So it is little wonder cases seldom progress past the district court.

In all events, the frequency with which these issues are disputed, and the infrequency with which they are litigated through appeal, underscores the importance of taking this case now rather than waiting for another

opportunity that may not arrive for years. The court of appeals itself signaled the importance and difficulty of the issues: one judge dissented, and three judges would have granted rehearing en banc. En banc disagreement in a leading commercial circuit, in a case that directly implicates this Court's controlling precedents, underscores this is not a one-off error.

Ultimately, there is no reason the standard for rebutting *Basic* should differ so dramatically depending on which side of the Hudson River a case is filed. This case is uniquely suited to restore uniformity.

CONCLUSION

The Court should grant the petition.

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