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Supreme Court Holds that Generic Nature of Alleged Misstatements Should Be Considered at Class Cert in Securities Cases

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On Monday, June 21, 2021, the U.S. Supreme Court issued its highly anticipated decision in *Goldman Sachs Group Inc. v. Arkansas Teachers Retirement System*, which clarified that "the generic nature of a misrepresentation often is important evidence of price impact that courts should consider at class certification" in determining if a company's stock price was impacted by the alleged misrepresentation and thus relied upon by the investor class. The Supreme Court remanded the case to the Second Circuit, with eight justices finding that it was unclear whether the Second Circuit had considered the generic nature of the alleged misstatements about avoiding conflicts of interest in its earlier affirmance of the district court's class certification order in the case. While the opinion addresses the nuances of the class certification process, it is important because it gives courts wider latitude in determining whether to certify a securities fraud class premised on generic or aspirational statements of the sort made by virtually every public company.

The Court's decision clarified a perceived conflict between two prior Supreme Court decisions. In *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U. S. 455 (2013), the Court had held that the materiality of alleged misstatements should not be decided at the class certification stage because it is a merits issue that is common to the entire class. But in *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014) (*Halliburton II*), the Court held that defendants could rebut the presumption of class-wide reliance at class certification by showing that the alleged misstatements did not impact the company's stock price and, accordingly, could not have been relied upon by the investor class. The Court's opinion in *Goldman*, authored by Justice Barrett, acknowledged that "materiality and price impact are overlapping concepts," but held that "a district court may not use the overlap to refuse to consider" evidence of price impact that also bears on the materiality of the alleged misstatement.

The Court's decision was largely expected as the parties themselves had agreed in briefing and at oral argument that the nature of the statement was relevant to whether the statement had an impact on stock price. Nevertheless, as the Court recognized, its decision will be particularly meaningful in "event-driven" securities litigation in which plaintiffs rely on a so-called "inflation-maintenance theory" of stock price inflation. As the Court described, under that theory, plaintiffs allege that a company's stock price is

"maintained" by alleged misrepresentations and that a later negative disclosure about the company (and its associated stock price drop) reveals the earlier misrepresentations. The Court noted that the inference plaintiffs seek to draw—"that the back-end price drop equals front-end inflation—starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure." In particular, "[t]hat may occur when the earlier misrepresentation is generic *(e.g.*, 'we have faith in our business model') and the later corrective disclosure is specific (*e.g.*, 'our fourth quarter earnings did not meet expectations')." Now free to consider the content of the alleged misstatements themselves, courts may find that statements such as "[i]ntegrity and honesty are at the heart of our business," if not immaterial as a matter of law, could not possibly have impacted a company's stock price, rebutting the *Basic* presumption of reliance at class certification. The Court stated in a footnote that it "expressed no view" on the validity of the inflation-maintenance theory "or its contours."

The Court also held, 6-3, that defendants bear the ultimate burden of persuasion on price impact, but cautioned that this holding "will have bite only when the court finds the evidence in equipoise—a situation that should rarely arise."

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