

June 23, 2021

Supreme Court Confirms that “All” Evidence Rebutting Price Impact
Must Be Considered on Motions to Certify Securities-Fraud Classes

Over the past decade, as we [have noted](#), the Supreme Court has guided lower courts on how they should evaluate defense challenges to efforts by shareholder plaintiffs to certify putative classes in federal securities-fraud claims against corporate issuers. On Monday, the Court waded back into these troubled waters, emphasizing that lower courts must consider “all probative evidence” in evaluating whether alleged corporate misstatements were so “generic” that they could not have had an impact on a stock’s market price and hence that a proposed class should not be certified, and thus remanding the case to the Second Circuit Court of Appeals to reconsider the defendants’ arguments in light of all such evidence. See [Goldman Sachs Grp., Inc. v. Arkansas Teacher Ret. Sys.](#), No. 20-222 (U.S. June 21, 2021).

Shareholder plaintiffs had alleged that defendant Goldman Sachs maintained an improperly inflated stock price by making broad assertions about how carefully it managed potential conflicts of interest among its banking clients. Seeking to invoke the *Basic v. Levinson* “fraud-on-the-market” presumption that shareholders rely upon, and the stock price necessarily incorporates, all corporate statements, 485 U.S. 224 (1988), plaintiffs argued that such rosy statements must have been false because certain conflicts later came to light, causing a price decline. In opposing class certification, Goldman Sachs argued—unsuccessfully in the courts below—that its alleged misrepresentations (*e.g.*, “[o]ur clients’ interests always come first”) were too generic to have affected its share price.

The Supreme Court unanimously confirmed that the “generic nature of a misrepresentation often will be important evidence of a lack of price impact.” Importantly, as the Court explained, the standard shareholder plaintiff inference that a “back-end [stock] price drop equals front-end [stock price] inflation” resulting from some alleged misstatement can be effectively broken at the class certification stage by a defense showing that the contents of the initial alleged misrepresentation were “generic,” whereas the later alleged corrective statement was, contrastingly, “specific.” In such cases, as the Court made clear, there is “less reason to infer” that stock drops following specific disclosures are linked to price inflation from prior nonspecific statements. Equally significantly, the Court admonished lower courts that, “[i]n assessing price impact at class certification, courts should be open to *all* probative evidence on that question—qualitative as well as quantitative—aided by a good dose of common sense.”

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In a more divided aspect of its ruling, the Court in *Goldman Sachs* held, in a 6–3 vote, that defendants bear not only the burden of production but also the burden of persuasion to prove, by a preponderance of the evidence, at the class certification stage that the particular alleged misrepresentations did not affect the stock’s market price, though the majority stressed that this burden allocation will matter only in those unusual cases where the evidence is in equipoise.

In addition to offering a roadmap for defendants seeking to defeat securities-fraud class actions that are premised on generic statements, *Goldman Sachs* underscores that judicial evaluation of proposed class certifications must entail an expansive, practical, and “common sense” inquiry into both the logic and the evidence bearing upon the fraud-on-the-market presumption. This decision should, therefore, provide a useful tool to prune overly aggressive shareholder plaintiff claims in the future.

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