

# U.S. Supreme Court's Goldman Decision Clarifies Class Certification Inquiry In Securities Cases

---

June 30, 2021

On June 21, 2021, the U.S. Supreme Court addressed class certification in securities cases for the fourth time in 10 years. The Court's decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System* clarifies securities class action law in three significant ways. First, that the generic nature of an alleged misrepresentation is evidence of a lack of price impact that courts should consider at the class certification stage. Second, that defendants may present any evidence relevant to price impact, even if that evidence is also relevant to merits issues like materiality or loss causation that may not be considered at class certification. Third, that defendants have the burden of persuasion at class certification to prove a lack of price impact.

*Goldman* provides important clarifications and opportunities for securities class action defendants opposing certification. Lower courts had often limited the ability of defendants to attack price impact at class certification using evidence that was also relevant to materiality or loss causation. *Goldman* expressly rejects that reasoning and requires the consideration of any evidence relevant to price impact regardless of whether that evidence is also relevant to other issues. *Goldman* also gives the Court's imprimatur to specific arguments against price impact, including arguments that an alleged misstatement is too generic to have impacted the stock price, and arguments based on a mismatch between an alleged misstatement and a corrective disclosure. And even though *Goldman* places the burden of persuasion on defendants, the Court pointedly observed that this is unlikely to matter in practice.

## Background

In 2011, Goldman shareholders filed a putative class action alleging that the company made material misrepresentations regarding its conflict-of-interest policies, that these alleged misrepresentations maintained Goldman's stock price at an artificially inflated level, and that the stock price dropped when the "truth" was revealed about purported conflicts of interest in specific transactions. The alleged misrepresentations included generic statements such as: "We have extensive procedures and controls that are designed to identify and address conflicts of interest"; "Our clients' interests always come first"; and "Integrity and honesty are at the heart of our business."

In seeking class certification, the shareholders invoked the rebuttable presumption of reliance based on

the “fraud on the market” theory that any public, material misstatement is incorporated into a stock’s market price. Goldman sought to rebut the presumption by arguing that the alleged misrepresentations had no impact on its stock price pursuant to *Halliburton Co. v. Erica P. John Fund, Inc. (Halliburton II)* (2014). In particular, Goldman argued that the statements at issue were so generic that they would not have affected the price paid by reasonable investors. Following a procedural back-and-forth, the U.S. Court of Appeals for the Second Circuit, in a 2-1 decision, affirmed the district court’s grant of class certification, holding that Goldman had failed to carry the burden of persuasion to prove a lack of price impact.

### **The Supreme Court’s Ruling**

The Goldman opinion contains three central holdings. The first two concern the evidence defendants may present to show a lack of price impact. First, the Court held that the generic nature of an alleged misrepresentation “often will be important evidence” that the statement did not have price impact. Second, the Court emphasized that courts at class certification must be “open to *all* probative evidence” regarding price impact, regardless of whether the evidence is also relevant to any merits question. The Court vacated and remanded for further consideration because the “Second Circuit’s opinions [left] sufficient doubt” that it had taken into account “*all* record evidence relevant to price impact” (emphases in original).

Third, the Court held that defendants bear the burden of persuasion on price impact at class certification. Accordingly, defendants do not defeat the presumption of reliance for a particular misrepresentation simply by introducing competent evidence of a lack of price impact. They must introduce evidence showing that it is more likely than not, given all the evidence in the record, that the alleged misrepresentation had no price impact.

### **Goldman’s Implications**

*Goldman* helps securities class action defendants by sweeping away the common claim by plaintiffs that defendants’ evidence and arguments cannot be considered at class certification because they go to materiality or loss causation. District courts frequently accepted this position based on the Supreme Court’s prior decisions in *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds* (2013) and *Halliburton Co. v. Erica P. John Fund, Inc. (Halliburton I)* (2011), which held, respectively, that materiality and loss causation cannot be considered at class certification. *Goldman* unequivocally removes any limitations on the full range of evidence and arguments available to defendants to argue price impact at the class certification stage.

*Goldman* gives a particular boost to two potentially related price impact arguments. It expressly says that “the generic nature of a misrepresentation” is, itself, “important evidence of a lack of price impact” based on the “common sense” view that “a more-general statement will affect a security’s price less than a more-specific statement.” The decision also suggests that lower courts can and should consider any “mismatch between the contents of the misrepresentation and the corrective disclosure” – an inquiry that has traditionally been viewed (and disregarded at class certification) as a matter of loss causation. Plaintiffs commonly argue that price impact can be inferred from a stock drop after a corrective disclosure revealed the “truth” of an alleged misstatement. But as the Court explained, where, for example, the misstatement is generic but the corrective disclosure is specific, “it is less likely that the specific disclosure actually corrected the generic misrepresentation,” and therefore there is “less reason

to infer” price impact from the “back-end price drop.”

Finally, the holding that defendants bear the burden of persuasion to prove a lack of price impact is repeatedly minimized in the Court’s opinion. In its introduction, the opinion “emphasize[s] ... that the burden of persuasion should rarely be outcome determinative.” And in its final paragraphs, the opinion notes that the burden “is unlikely to make much difference on the ground” and will only come into play in the “rare[]” situation that a court “finds the evidence in equipoise.”

## CONTACTS

<b>John Skakun</b> , Partner	+1 312 853 4148, <a href="mailto:jskakun@sidley.com">jskakun@sidley.com</a>
<b>Kristen Seeger</b> , Partner	+1 312 853 7450, <a href="mailto:kseeger@sidley.com">kseeger@sidley.com</a>
<b>Maseeh Moradi</b> , Senior Managing Associate	+1 312 853 0912, <a href="mailto:mmoradi@sidley.com">mmoradi@sidley.com</a>

---

Attorney Advertising—Sidley Austin LLP is a global law firm. Our addresses and contact information can be found at [www.sidley.com/en/locations/offices](http://www.sidley.com/en/locations/offices).

Sidley provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at [www.sidley.com/disclaimer](http://www.sidley.com/disclaimer).

© Sidley Austin LLP