HALLIBURTON CO., et al., Petitioners
v.
ERICA P. JOHN FUND, INC
134 S.Ct. 2398 (2014)

Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

Investors can recover damages in a private securities fraud action only if they prove that they relied on the defendant's misrepresentation in deciding to buy or sell a company's stock. In *Basic Inc. v. Levinson,* 485 U.S. 224, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988), we held that investors could satisfy this reliance requirement by invoking a presumption that the price of stock traded in an efficient market reflects all public, material information—including material misstatements. In such a case, we concluded, anyone who buys or sells the stock at the market price may be considered to have relied on those misstatements.

We also held, however, that a defendant could rebut this presumption in a number of ways, including by showing that the alleged misrepresentation did not actually affect the stock's price—that is, that the misrepresentation had no "price impact." The questions presented are whether we should overrule or modify *Basic* 's presumption of reliance and, if not, whether defendants should nonetheless be afforded an opportunity in securities class action cases to rebut the presumption at the class certification stage, by showing a lack of price impact.

I

Respondent Erica P. John Fund, Inc. (EPJ Fund), is the lead plaintiff in a putative class action against Halliburton and one of its executives (collectively Halliburton) alleging violations of section 10(b) of the Securities Exchange Act of 1934. According to EPJ Fund, between June 3, 1999, and December 7, 2001, Halliburton made a series of misrepresentations regarding its potential liability in asbestos litigation, its expected revenue from certain construction contracts, and the anticipated benefits of its merger with another company—all in an attempt to inflate the price of its stock. Halliburton subsequently made a number of corrective disclosures, which, EPJ Fund contends, caused the company's stock price to drop and investors to lose money.

EPJ Fund moved to certify a class comprising all investors who purchased Halliburton common stock during the class period. The District Court found that the proposed class satisfied all the threshold requirements of Federal Rule of Civil Procedure 23(a): It was sufficiently numerous, there were common questions of law or fact, the representative parties' claims were typical of the class claims, and the representatives could fairly and adequately protect the interests of the class. App. to Pet. for Cert. 54a. And except for one difficulty, the court would have also concluded that the class satisfied the requirement of Rule 23(b)(3) that "the questions of law or fact common to class members predominate over any questions affecting only individual members." The difficulty was that Circuit precedent required securities fraud plaintiffs to prove "loss causation"—a causal connection between the defendants' alleged misrepresentations and the plaintiffs' economic losses—in order to invoke *Basic* 's presumption of reliance and obtain class certification. Because EPJ Fund had not demonstrated such a connection for any of Halliburton's alleged misrepresentations, the District Court refused to certify the proposed class. *Id.,* at 55a, 98a. The United States Court of Appeals for the Fifth Circuit affirmed the denial of class certification on the same ground.

We granted certiorari and vacated the judgment, finding nothing in "*Basic* or its logic" to justify the Fifth Circuit's requirement that securities fraud plaintiffs prove loss causation at the class certification stage in order to invoke *Basic* 's presumption of reliance. "Loss causation," we explained, "addresses a matter different from whether an investor relied on a misrepresentation, presumptively or otherwise, when buying or selling a stock." *Ibid.* We remanded the case for the lower courts to consider "any further arguments against class certification" that Halliburton had preserved.

On remand, Halliburton argued that class certification was inappropriate because the evidence it had earlier introduced to disprove loss causation also showed that none of its alleged misrepresentations had actually affected its stock price. By demonstrating the absence of any "price impact," Halliburton contended, it had rebutted *Basic* 's presumption that the members of the proposed class had relied on its alleged misrepresentations simply by buying or selling its stock at the market price. And without the benefit of the *Basic* presumption, investors would have to prove reliance on an individual basis, meaning that individual issues would predominate over common ones. The District Court declined to consider Halliburton's argument, holding that the *Basic* presumption applied and certifying the class under Rule 23(b)(3).

The Fifth Circuit affirmed. The court found that Halliburton had preserved its price impact argument, but to no avail. While acknowledging that "Halliburton's price impact evidence could be used at the trial on the merits to refute the presumption of reliance," *id.,* at 433, the court held that Halliburton could not use such evidence for that purpose at the class certification stage, *id.,* at 435. "[P]rice impact evidence," the court explained, "does not bear on the question of common question predominance [under Rule 23(b)(3)], and is thus appropriately considered only on the merits after the class has been certified." *Ibid.*

We once again granted certiorari, 571 U.S. ——, 134 S.Ct. 636, 187 L.Ed.2d 415 (2013), this time to resolve a conflict among the Circuits over whether securities fraud defendants may attempt to rebut the *Basic* presumption at the class certification stage with evidence of a lack of price impact. We also accepted Halliburton's invitation to reconsider the presumption of reliance for securities fraud claims that we adopted in *Basic*.

II

Halliburton urges us to overrule *Basic* 's presumption of reliance and to instead require every securities fraud plaintiff to prove that he actually relied on the defendant's misrepresentation in deciding to buy or sell a company's stock. Before overturning a long-settled precedent, however, we require "special justification," not just an argument that the precedent was wrongly decided. Halliburton has failed to make that showing.

A

Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b–5 prohibit making any material misstatement or omission in connection with the purchase or sale of any security. Although section 10(b) does not create an express private cause of action, we have long recognized an implied private cause of action to enforce the provision and its implementing regulation. To recover damages for violations of section 10(b) and Rule 10b–5, a plaintiff must prove " '(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.'

The reliance element " 'ensures that there is a proper connection between a defendant's misrepresentation and a plaintiff's injury.' " "The traditional (and most direct) way a plaintiff can demonstrate reliance is by showing that he was aware of a company's statement and engaged in a relevant transaction—*e.g.,* purchasing common stock—based on that specific misrepresentation."

In *Basic,* however, we recognized that requiring such direct proof of reliance "would place an unnecessarily unrealistic evidentiary burden on the Rule 10b–5 plaintiff who has traded on an impersonal market." That is because, even assuming an investor could prove that he was aware of the misrepresentation, he would still have to "show a speculative state of facts, *i.e.,* how he would have acted ... if the misrepresentation had not been made."

We also noted that "[r]equiring proof of individualized reliance" from every securities fraud plaintiff "effectively would ... prevent [ ] [plaintiffs] from proceeding with a class action" in Rule 10b–5 suits. If every plaintiff had to prove direct reliance on the defendant's misrepresentation, "individual issues then would ... overwhelm[ ] the common ones," making certification under Rule 23(b)(3) inappropriate. *Ibid.*

To address these concerns, *Basic* held that securities fraud plaintiffs can in certain circumstances satisfy the reliance element of a Rule 10b–5 action by invoking a rebuttable presumption of reliance, rather than proving direct reliance on a misrepresentation. The Court based that presumption on what is known as the "fraud-on-the-market" theory, which holds that "the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations." The Court also noted that, rather than scrutinize every piece of public information about a company for himself, the typical "investor who buys or sells stock at the price set by the market does so in reliance on the integrity of that price"—the belief that it reflects all public, material information. As a result, whenever the investor buys or sells stock at the market price, his "reliance on any public material misrepresentations ... may be presumed for purposes of a Rule 10b–5 action." *Ibid.*

Based on this theory, a plaintiff must make the following showings to demonstrate that the presumption of reliance applies in a given case: (1) that the alleged misrepresentations were publicly known, (2) that they were material, (3) that the stock traded in an efficient market, and (4) that the plaintiff traded the stock between the time the misrepresentations were made and when the truth was revealed.

At the same time, *Basic* emphasized that the presumption of reliance was rebuttable rather than conclusive. Specifically, "[a]ny showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance." So for example, if a defendant could show that the alleged misrepresentation did not, for whatever reason, actually affect the market price, or that a plaintiff would have bought or sold the stock even had he been aware that the stock's price was tainted by fraud, then the presumption of reliance would not apply. In either of those cases, a plaintiff would have to prove that he directly relied on the defendant's misrepresentation in buying or selling the stock.

B

Halliburton contends that securities fraud plaintiffs should *always* have to prove direct reliance and that the *Basic* Court erred in allowing them to invoke a presumption of reliance instead. According to Halliburton, the *Basic* presumption contravenes congressional intent and has been undermined by subsequent developments in economic theory. Neither argument, however, so discredits *Basic* as to constitute "special justification" for overruling the decision.

1

Halliburton first argues that the *Basic* presumption is inconsistent with Congress's intent in passing the 1934 Exchange Act. Because "[t]he Section 10(b) action is a 'judicial construct that Congress did not enact,' " this Court, Halliburton insists, "must identify—and borrow from— the express provision that is 'most analogous to the private 10b–5 right of action.' " According to Halliburton, the closest analogue to section 10(b) is section 18(a) of the Act, which creates an express private cause of action allowing investors to recover damages based on misrepresentations made in certain regulatory filings. 15 U.S.C. § 78r(a). That provision requires an investor to prove that he bought or sold stock "in reliance upon" the defendant's misrepresentation. In ignoring this direct reliance requirement, the argument goes, the *Basic* Court relieved Rule 10b–5 plaintiffs of a burden that Congress would have imposed had it created the cause of action.

We need not settle this dispute. In *Basic,* the dissenting Justices made the same argument based on section 18(a) that Halliburton presses here. The *Basic* majority did not find that argument persuasive then, and Halliburton has given us no new reason to endorse it now.

2

Halliburton's primary argument for overruling *Basic* is that the decision rested on two premises that can no longer withstand scrutiny. The first premise concerns what is known as the "efficient capital markets hypothesis." *Basic* stated that "the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations." From that statement, Halliburton concludes that the *Basic* Court espoused "a robust view of market efficiency" that is no longer tenable, for " 'overwhelming empirical evidence' now 'suggests that capital markets are not fundamentally efficient.' " To support this contention, Halliburton cites studies purporting to show that "public information is often not incorporated immediately (much less rationally) into market prices."

Halliburton does not, of course, maintain that capital markets are *always* inefficient. Rather, in its view, *Basic* 's fundamental error was to ignore the fact that " 'efficiency is not a binary, yes or no question.' " The markets for some securities are more efficient than the markets for others, and even a single 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. Yet *Basic,* Halliburton asserts, glossed over these nuances, assuming a false dichotomy that renders the presumption of reliance both underinclusive and overinclusive: A misrepresentation can distort a stock's market price even in a generally inefficient market, and a misrepresentation can leave a stock's market price unaffected even in a generally efficient one.

Halliburton's criticisms fail to take *Basic* on its own terms. Halliburton focuses on the debate among economists about the degree to which the market price of a company's stock reflects public information about the company—and thus the degree to which an investor can earn an abnormal, above-market return by trading on such information. That debate is not new. Indeed, the *Basic* Court acknowledged it and declined to enter the fray, declaring that "[w]e need not determine by adjudication what economists and social scientists have debated through the use of sophisticated statistical analysis and the application of economic theory." To recognize the presumption of reliance, the Court explained, was not "conclusively to adopt any particular theory of how quickly and completely publicly available information is reflected in market price." The Court instead based the presumption on the fairly modest premise that "market professionals generally consider most publicly announced material statements about companies, thereby affecting stock market prices." *Basic* 's presumption of reliance thus does not rest on a "binary" view of market efficiency. Indeed, in making the presumption rebuttable, *Basic* recognized that market efficiency is a matter of degree and accordingly made it a matter of proof.

The academic debates discussed by Halliburton have not refuted the modest premise underlying the presumption of reliance. Even the foremost critics of the efficient-capital-markets hypothesis acknowledge that public information generally affects stock prices. Halliburton also conceded as much in its reply brief and at oral argument. Debates about the precise *degree* to which stock prices accurately reflect public information are thus largely beside the point. "That the ... price [of a stock] may be inaccurate does not detract from the fact that false statements affect it, and cause loss," which is "all that *Basic* requires." Even though the efficient capital markets hypothesis may have "garnered substantial criticism since *Basic,*" *post,* at 2420 (THOMAS, J., concurring in judgment), Halliburton has not identified the kind of fundamental shift in economic theory that could justify overruling a precedent on the ground that it misunderstood, or has since been overtaken by, economic realities.

Halliburton also contests a second premise underlying the *Basic* presumption: the notion that investors "invest 'in reliance on the integrity of [the market] price.' " Halliburton identifies a number of classes of investors for whom "price integrity" is supposedly "marginal or irrelevant." The primary example is the value investor, who believes that certain stocks are undervalued or overvalued and attempts to "beat the market" by buying the undervalued stocks and selling the overvalued ones. If many investors "are indifferent to prices," Halliburton contends, then courts should not presume that investors rely on the integrity of those prices and any misrepresentations incorporated into them.

But *Basic* never denied the existence of such investors. As we recently explained, *Basic* concluded only that "it is reasonable to presume that *most* investors—knowing that they have little hope of outperforming the market in the long run based solely on their analysis of publicly available information—will rely on the security's market price as an unbiased assessment of the security's value in light of all public information.".

In any event, there is no reason to suppose that even Halliburton's main counterexample—the value investor—is as indifferent to the integrity of market prices as Halliburton suggests. Such an investor implicitly relies on the fact that a stock's market price will eventually reflect material information—how else could the market correction on which his profit depends occur? To be sure, the value investor "does not believe that the market price accurately reflects public information *at the time he transacts*." But to indirectly rely on a misstatement in the sense relevant for the *Basic* presumption, he need only trade stock based on the belief that the market price will incorporate public information within a reasonable period. The value investor also presumably tries to estimate *how* undervalued or overvalued a particular stock is, and such estimates can be skewed by a market price tainted by fraud.

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In securities class action cases, the crucial requirement for class certification will usually be the predominance requirement of Rule 23(b)(3). The *Basic* presumption does not relieve plaintiffs of the burden of proving—before class certification—that this requirement is met. *Basic* instead establishes that a plaintiff satisfies that burden by proving the prerequisites for invoking the presumption—namely, publicity, materiality, market efficiency, and market timing. The burden of proving those prerequisites still rests with plaintiffs and (with the exception of materiality) must be satisfied before class certification. *Basic* does not, in other words, allow plaintiffs simply to plead that common questions of reliance predominate over individual ones, but rather sets forth what they must prove to demonstrate such predominance.

Basic does afford defendants an opportunity to rebut the presumption of reliance with respect to an individual plaintiff by showing that he did not rely on the integrity of the market price in trading stock. While this has the effect of "leav[ing] individualized questions of reliance in the case," there is no reason to think that these questions will overwhelm common ones and render class certification inappropriate under Rule 23(b)(3). That the defendant might attempt to pick off the occasional class member here or there through individualized rebuttal does not cause individual questions to predominate.

Finally, Halliburton and its *amici* contend that, by facilitating securities class actions, the *Basic* presumption produces a number of serious and harmful consequences. Such class actions, they say, allow plaintiffs to extort large settlements from defendants for meritless claims; punish innocent shareholders, who end up having to pay settlements and judgments; impose excessive costs on businesses; and consume a disproportionately large share of judicial resources.

These concerns are more appropriately addressed to Congress, which has in fact responded, to some extent, to many of the issues raised by Halliburton and its *amici*. Congress has, for example, enacted the Private Securities Litigation Reform Act of 1995 (PSLRA), 109 Stat. 737, which sought to combat perceived abuses in securities litigation with heightened pleading requirements, limits on damages and attorney's fees, a "safe harbor" for certain kinds of statements, restrictions on the selection of lead plaintiffs in securities class actions, sanctions for frivolous litigation, and stays of discovery pending motions to dismiss. And to prevent plaintiffs from circumventing these restrictions by bringing securities class actions under state law in state court, Congress also enacted the Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, which precludes many state law class actions alleging securities fraud. Such legislation demonstrates Congress's willingness to consider policy concerns of the sort that Halliburton says should lead us to overrule *Basic*.

III

Halliburton proposes two alternatives to overruling *Basic* that would alleviate what it regards as the decision's most serious flaws. The first alternative would require plaintiffs to prove that a defendant's misrepresentation actually affected the stock price—so-called "price impact"—in order to invoke the *Basic* presumption. It should not be enough, Halliburton contends, for plaintiffs to demonstrate the general efficiency of the market in which the stock traded. Halliburton's second proposed alternative would allow defendants to rebut the presumption of reliance with evidence of a *lack* of price impact, not only at the merits stage—which all agree defendants may already do—but also before class certification.

A

As noted, to invoke the *Basic* presumption, a plaintiff must prove that: (1) the alleged misrepresentations were publicly known, (2) they were material, (3) the stock traded in an efficient market, and (4) the plaintiff traded the stock between when the misrepresentations were made and when the truth was revealed. Each of these requirements follows from the fraud-on-the-market theory underlying the presumption. If the misrepresentation was not publicly known, then it could not have distorted the stock's market price. So too if the misrepresentation was immaterial—that is, if it would not have " 'been viewed by the reasonable investor as having significantly altered the "total mix" of information made available,' "—or if the market in which the stock traded was inefficient. And if the plaintiff did not buy or sell the stock after the misrepresentation was made but before the truth was revealed, then he could not be said to have acted in reliance on a fraud-tainted price.

The first three prerequisites are directed at price impact—"whether the alleged misrepresentations affected the market price in the first place." In the absence of price impact, *Basic* 's fraud-on-the-market theory and presumption of reliance collapse. The "fundamental premise" underlying the presumption is "that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction." If it was not, then there is "no grounding for any contention that [the] investor[ ] indirectly relied on th[at] misrepresentation[ ] through [his] reliance on the integrity of the market price."

Halliburton argues that since the *Basic* presumption hinges on price impact, plaintiffs should be required to prove it directly in order to invoke the presumption. Proving the presumption's prerequisites, which are at best an imperfect proxy for price impact, should not suffice.

Far from a modest refinement of the *Basic* presumption, this proposal would radically alter the required showing for the reliance element of the Rule 10b–5 cause of action. What is called the *Basic* presumption actually incorporates two constituent presumptions: First, if a plaintiff shows that the defendant's misrepresentation was public and material and that the stock traded in a generally efficient market, he is entitled to a presumption that the misrepresentation affected the stock price. Second, if the plaintiff also shows that he purchased the stock at the market price during the relevant period, he is entitled to a further presumption that he purchased the stock in reliance on the defendant's misrepresentation.

By requiring plaintiffs to prove price impact directly, Halliburton's proposal would take away the first constituent presumption. Halliburton's argument for doing so is the same as its primary argument for overruling the *Basic* presumption altogether: Because market efficiency is not a yes-or-no proposition, a public, material misrepresentation might not affect a stock's price even in a generally efficient market. But as explained, *Basic* never suggested otherwise; that is why it affords defendants an opportunity to rebut the presumption by showing, among other things, that the particular misrepresentation at issue did not affect the stock's market price. For the same reasons we declined to completely jettison the *Basic* presumption, we decline to effectively jettison half of it by revising the prerequisites for invoking it.

B

Even if plaintiffs need not directly prove price impact to invoke the *Basic* presumption, Halliburton contends that defendants should at least be allowed to defeat the presumption at the class certification stage through evidence that the misrepresentation did not in fact affect the stock price. We agree.

1

There is no dispute that defendants may introduce such evidence at the merits stage to rebut the *Basic* presumption. *Basic* itself "made clear that the presumption was just that, and could be rebutted by appropriate evidence," including evidence that the asserted misrepresentation (or its correction) did not affect the market price of the defendant's stock.

Nor is there any dispute that defendants may introduce price impact evidence at the class certification stage, so long as it is for the purpose of countering a plaintiff's showing of market efficiency, rather than directly rebutting the presumption. As EPJ Fund acknowledges, "[o]f course ... defendants can introduce evidence at class certification of lack of price impact as some evidence that the market is not efficient."

After all, plaintiffs themselves can and do introduce evidence of the *existence* of price impact in connection with "event studies"—regression analyses that seek to show that the market price of the defendant's stock tends to respond to pertinent publicly reported events. In this case, for example, EPJ Fund submitted an event study of various episodes that might have been expected to affect the price of Halliburton's stock, in order to demonstrate that the market for that stock takes account of material, public information about the company. The episodes examined by EPJ Fund's event study included one of the alleged misrepresentations that form the basis of the Fund's suit.

Defendants—like plaintiffs—may accordingly submit price impact evidence prior to class certification. What defendants may not do, EPJ Fund insists and the Court of Appeals held, is rely on that same evidence prior to class certification for the particular purpose of rebutting the presumption altogether.

This restriction makes no sense, and can readily lead to bizarre results. Suppose a defendant at the certification stage submits an event study looking at the impact on the price of its stock from six discrete events, in an effort to refute the plaintiffs' claim of general market efficiency. All agree the defendant may do this. Suppose one of the six events is the specific misrepresentation asserted by the plaintiffs. All agree that this too is perfectly acceptable. Now suppose the district court determines that, despite the defendant's study, the plaintiff has carried its burden to prove market efficiency, but that the evidence shows no price impact with respect to the specific misrepresentation challenged in the suit. The evidence at the certification stage thus shows an efficient market, on which the alleged misrepresentation had no price impact. And yet under EPJ Fund's view, the plaintiffs' action should be certified and proceed as a class action (with all that entails), even though the fraud-on-the-market theory does not apply and common reliance thus cannot be presumed.

Such a result is inconsistent with *Basic*'s own logic. Under *Basic*'s fraud-on-the-market theory, market efficiency and the other prerequisites for invoking the presumption constitute an indirect way of showing price impact. As explained, it is appropriate to allow plaintiffs to rely on this indirect proxy for price impact, rather than requiring them to prove price impact directly, given *Basic* 's rationales for recognizing a presumption of reliance in the first place.

But an indirect proxy should not preclude direct evidence when such evidence is available. As we explained in *Basic,* "[a]ny showing that severs the link between the alleged misrepresentation and ... the price received (or paid) by the plaintiff ... will be sufficient to rebut the presumption of reliance" because "the basis for finding that the fraud had been transmitted through market price would be gone." And without the presumption of reliance, a Rule 10b–5 suit cannot proceed as a class action: Each plaintiff would have to prove reliance individually, so common issues would not "predominate" over individual ones, as required by Rule 23(b)(3). Price impact is thus an essential precondition for any Rule 10b–5 class action. While *Basic* allows plaintiffs to establish that precondition indirectly, it does not require courts to ignore a defendant's direct, more salient evidence showing that the alleged misrepresentation did not actually affect the stock's market price and, consequently, that the *Basic* presumption does not apply.

2

The Court of Appeals relied on our decision in *Amgen* in holding that Halliburton could not introduce evidence of lack of price impact at the class certification stage. The question in *Amgen* was whether plaintiffs could be required to prove (or defendants be permitted to disprove) materiality before class certification. Even though materiality is a prerequisite for invoking the *Basic* presumption, we held that it should be left to the merits stage, because it does not bear on the predominance requirement of Rule 23(b)(3). We reasoned that materiality is an objective issue susceptible to common, classwide proof. We also noted that a failure to prove materiality would necessarily defeat every plaintiff's claim on the merits; it would not simply preclude invocation of the presumption and thereby cause individual questions of reliance to predominate over common ones. In this latter respect, we explained, materiality differs from the publicity and market efficiency prerequisites, neither of which is necessary to prove a Rule 10b–5 claim on the merits.

EPJ Fund argues that much of the foregoing could be said of price impact as well. Fair enough. But price impact differs from materiality in a crucial respect. Given that the other *Basic* prerequisites must still be proved at the class certification stage, the common issue of materiality can be left to the merits stage without risking the certification of classes in which individual issues will end up overwhelming common ones. And because materiality is a discrete issue that can be resolved in isolation from the other prerequisites, it can be wholly confined to the merits stage.

Price impact is different. The fact that a misrepresentation "was reflected in the market price at the time of [the] transaction"—that it had price impact—is "*Basic* 's fundamental premise." It thus has everything to do with the issue of predominance at the class certification stage. That is why, if reliance is to be shown through the *Basic* presumption, the publicity and market efficiency prerequisites must be proved before class certification. Without proof of those prerequisites, the fraud-on-the-market theory underlying the presumption completely collapses, rendering class certification inappropriate.

But as explained, publicity and market efficiency are nothing more than prerequisites for an indirect showing of price impact. There is no dispute that at least such indirect proof of price impact "is needed to ensure that the questions of law or fact common to the class will 'predominate.' " That is so even though such proof is also highly relevant at the merits stage.

Our choice in this case, then, is not between allowing price impact evidence at the class certification stage or relegating it to the merits. Evidence of price impact will be before the court at the certification stage in any event. The choice, rather, is between limiting the price impact inquiry before class certification to indirect evidence, or allowing consideration of direct evidence as well. As explained, we see no reason to artificially limit the inquiry at the certification stage to indirect evidence of price impact. Defendants may seek to defeat the *Basic* presumption at that stage through direct as well as indirect price impact evidence.

* * *

More than 25 years ago, we held that plaintiffs could satisfy the reliance element of the Rule 10b–5 cause of action by invoking a presumption that a public, material misrepresentation will distort the price of stock traded in an efficient market, and that anyone who purchases the stock at the market price may be considered to have done so in reliance on the misrepresentation. We adhere to that decision and decline to modify the prerequisites for invoking the presumption of reliance. But to maintain the consistency of the presumption with the class certification requirements of Federal Rule of Civil Procedure 23, defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock.

Because the courts below denied Halliburton that opportunity, we vacate the judgment of the Court of Appeals for the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Footnotes

1 As the private Rule 10b–5 action has evolved, the Court has drawn on the common-law action of deceit to identify six elements a private plaintiff must prove: " '(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.' " *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds,* 568 U.S. ——–, —— – ——, 133 S.Ct. 1184, 1191–1194, 185 L.Ed.2d 308 (2013).

3 An investor could invoke this presumption by demonstrating certain predicates: (1) a public statement; (2) an efficient market; (3) that the shares were traded after the statement was made but before the truth was revealed; and (4) that the statement was material. *Basic,* 485 U.S., at 248, n. 27, 108 S.Ct. 978.

4 The "weak form" of the hypothesis provides that an investor cannot earn an above-market return by trading on historical price data. See Dunbar & Heller, Fraud on the Market Meets Behavioral Finance, 31 Del. J. Corporate L. 455, 463–464 (2006) (hereinafter Dunbar & Heller). The "strong form" provides that investors cannot achieve above-market returns even by trading on nonpublic information. See *ibid.* The weak form is generally accepted; the strong form is not. See *ibid.*