No. 16-685

IN THE

Supreme Court of the United States

NORFOLK COUNTY RETIREMENT SYSTEM, NEW ENGLAND TEAMSTERS & TRUCKING INDUSTRY PENSION FUND, AND OPERATING ENGINEERS TRUST FUND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Petitioners,

v.

HEALTH MANAGEMENT ASSOCIATES, LLC, GARY D. NEWSOME, KELLY E. CURRY, AND ROBERT E. FARNHAM

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied the legal rule—adopted by every court of appeals to address the issue—that the mere announcement of a government investigation, standing alone, does not constitute a corrective disclosure for purposes of pleading loss causation.

2. Whether the court of appeals correctly applied the legal rule—also adopted by every court of appeals to address the issue—that a report cannot constitute a corrective disclosure if it merely summarizes information that was already publicly available and readily understandable by the marketplace.

RULE 29.6 STATEMENT

Health Management Associates, Inc., was converted to Health Management Associates, LLC, on December 30, 2015. Respondent Health Management Associates, LLC, is wholly owned by HMA-TRI Holdings, LLC, which is wholly owned by CHS/Community Health Systems, Inc., which is wholly owned by Community Health Systems, Inc. (CHSI), a publicly held corporation. CHSI does not have a corporate parent. 10% or more of CHSI's stock is held by Blackrock, Inc., a publicly held company. Respondents Gary D. Newsome, Kelly E. Curry, and Robert E. Farnham are individuals.

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RESPONDENTS' BRIEF IN OPPOSITION

Every court of appeals to reach the issue has held that the announcement of a government investigation, without more, is not a corrective disclosure sufficient to plead loss causation. In the decision below, the Eleventh Circuit applied that well-settled principle and concluded that the announced investigation here was not a corrective disclosure. Had Petitioners brought this case in the Fifth or Ninth Circuits, where they claim the law is in conflict, the result would have been exactly the same. Indeed, the very decisions Petitioners allege to be conflicting cite the Eleventh Circuit's rule with approval.

The circuits likewise agree that a corrective disclosure must reveal some new information—or explain public information not understandable to or accessible by investors in its native state. Unsurprisingly, no court of appeals has found a corrective disclosure where, as here, an analyst report simply summarizes a readily understandable complaint available on an electronically searchable federal docket. And again, the decision below cited with approval the very same Fifth and Ninth Circuit cases that Petitioners claim conflict with it.

Petitioners' real quarrel is with how uniform rules of law were applied to the facts alleged in their complaint. There is no conflict meriting this Court's review.

STATEMENT

1. To state a claim for securities fraud under section 10(b) of the Exchange Act, a plaintiff must

sufficiently allege: (1) a material misrepresentation or omission; (2) scienter; (3) a connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation. *Dura Pharm., Inc.* v. *Broudo*, 544 U.S. 336, 341-342 (2005); see 15 U.S.C. § 78(j)(b). When a section 10(b) claim is brought by a private litigant, it is also subject to the Private Securities Litigation Reform Act (PLSRA), which likewise imposes on plaintiffs the burden of proving loss causation—*i.e.*, that the defendant's material misrepresentation "caused the loss for which the plaintiff seeks to recover." 15 U.S.C. § 78u-4(b)(4); see *Dura*, 544 U.S. at 345-346.[1]

To sufficiently plead loss causation, a plaintiff cannot simply allege that shares were purchased at an artificially inflated price. That is because even when a purchaser resells his shares at a lower price, "that lower price may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price." *Dura*, 544 U.S. at 343. Thus, to adequately plead loss causation, a plaintiff must allege that share prices fell "after the truth became known" about the defendant's alleged misrepresentations. *Id.* at 347.

[1] Congress enacted the PSLRA in 1995 "[a]s a check against abusive litigation by private parties." *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

Consistent with that requirement, plaintiffs in securities-fraud cases typically plead loss causation by identifying a "corrective disclosure"—*i.e.*, a "'release of information that reveals to the market the pertinent truth that was previously concealed or obscured by the company's fraud.'" *Pub. Emps.' Ret. Sys. of Mississippi* v. *Amedisys, Inc.*, 769 F.3d 313, 321 (5th Cir. 2014) (quoting *FindWhat Inv'r Grp.* v. *FindWhat.com,* 658 F.3d 1282, 1311 (11th Cir. 2011). As this Court has made clear, that pleading requirement is necessary to ensure the federal securities laws are not used to "provide investors with broad insurance against market losses," but rather "to protect them against those economic losses that misrepresentations actually cause." *Dura*, 544 U.S. at 345.

2. Respondent Health Managements Associates, LLC (HMA), operates acute-care hospitals and other healthcare facilities in non-urban communities through the United States.[2] Petitioners are investors in HMA stock who brought a class action against HMA and three of its executives alleging violations of sections 10(b) and 20(a) of the Exchange Act.[3] The plaintiffs filed their first class action complaint on January 26, 2012; an amended class action complaint on July 30, 2012; and, after HMA filed a motion to dismiss, a second amended class

[2] On December 30, 2015, Health Management Associates, Inc., was converted to Health Management Associates, LLC.

[3] To state a claim under section 20(a), a plaintiff must allege a primary violation under section 10(b) and that the individual defendants are "controlling person[s]." 15 U.S.C. § 78t(a).

action complaint (the complaint at issue here) on February 25, 2013. Dist. Ct. Doc. Nos. 1, 38, 49.

The plaintiffs alleged that the defendants improperly sought to increase Medicare reimbursements by increasing inpatient admissions at HMA hospitals, even when not medically necessary. To convert those allegations of improper admissions into a securities-fraud claim, the plaintiffs alleged that the defendants made material misstatements and omissions by failing to disclose to investors that HMA's revenues stemmed from Medicare fraud, and by falsely attributing HMA's revenues to various hospital initiatives. Pet. App. 46a.

According to the plaintiffs, the "truth" of HMA's alleged omissions and misstatements was revealed to the market through "two corrective disclosures." Pet. 1. First, on August 3, 2011, HMA reported that it had received two subpoenas from the U.S. Department of Health and Human Services' Office of Inspector General (OIG) seeking information related to HMA's admissions practices. Second, on January 9, 2012, equity analyst Sheryl Skolnick issued a report (the "Skolnick Report") informing the market about a whistleblower action filed months earlier by a former HMA employee who alleged that he had discovered compliance issues involving Medicare billing at certain HMA hospitals (the "Meyer action"). Pet. App. 5a-7a, 47a.[4] HMA moved to

[4] The Meyer action was filed in Florida state court on October 19, 2011. Pet. 7 n.2. On November 18, 2011, HMA removed the action to federal court. *Meyer* v. *Health Mgmt. Assocs., Inc.*, No. 11-62479, 841 F. Supp. 2d 1262 (S.D. Fla. 2012), Doc. No. 1.

dismiss the second amended complaint on the grounds that it failed to plead falsity, scienter, and loss causation. Pet. App. 8a.

3. The district court dismissed the second amended complaint on the ground that it failed to plead loss causation. The court first held that the "revelation of the investigation by the OIG, standing alone, does not reveal any actual wrongdoing, and therefore does not qualify as a corrective disclosure." Pet. App. 63a. The court next held that the Skolnick Report was not a corrective disclosure either, for two independent reasons: it merely repackaged "information obtained from a public docket," and in any event the Meyer action summarized by the Skolnick Report did "not reveal the falsity of a prior statement" by the company. *Ibid.*

4. In an unpublished opinion, the Eleventh Circuit affirmed on loss-causation grounds. A corrective disclosure, the court began, "reveals the falsity of a previous representation to the market." Pet. App. 15a. Such a disclosure "can be established by a series of cumulative, partial disclosures." *Ibid.* Although a cognizable corrective disclosure need not precisely mirror the earlier representation, the court explained, it must at least relate back to that representation. *Ibid.* The court then turned to the two alleged disclosures.

With respect to the OIG investigation, the court of appeals explained that, in *Meyer* v. *Greene*, 710 F.3d 1189 (11th Cir. 2013), it held that "an SEC

The district court remanded the case on January 20, 2012. Doc. No. 28.

investigation, like the OIG investigation in this case, 'without more, is insufficient to constitute a corrective disclosure for purposes of § 10(b).'" Pet. App. 16a (quoting 710 F.3d at 1201). That is because while the market may react negatively to the announcement of such an investigation, any such reaction is necessarily to the added *risk* of future corrective action. *Ibid.* Thus, the court of appeals held, the OIG investigation, *standing alone*, did not constitute a corrective disclosure, because it did not reveal the falsity of a prior representation to the market. *Ibid.*

The court of appeals turned next to plaintiffs' argument that "the subsequent 2012 Skolnick Report, combined with the OIG investigation, together provided sufficient evidence of a corrective disclosure." Pet. App. 16a. The court explained that, because a corrective disclosure must *reveal* information to the public, it cannot be merely *confirmatory*. *Ibid.* The Skolnick Report, however, was confirmatory because it just "summarized facts from the Meyer case that had existed in publicly accessible court dockets for three months before the Skolnick Report issued." *Id.* at 16a-17a.[5]

The court of appeals acknowledged that the market does not necessarily digest all public information immediately, and in particular that an analysis of "'complex economic data'" that is not "'readily digestible by the marketplace'" may not be merely confirmatory—and can therefore qualify as a

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[5] The Meyer action summarized by the Skolnick Report is unrelated to the Eleventh Circuit's decision in *Meyer* v. *Greene*.

corrective disclosure. Pet. App. 17a (quoting *Amedisys*, 769 F.3d at 323). But, the court observed, "the information first revealed by the Meyer action and summarized in the 2012 Skolnick Report was easily obtainable, and the market was able to assimilate the information without the assistance of the 2012 Skolnick Report." *Ibid.* The court of appeals also noted that, in any event, the Meyer action summarized by the Skolnick Report did not reveal to the market the truth of any misstatement. *Id.* at 16a. Thus, the court of appeals held, "[a]fter three attempts at drafting complaints, the district court correctly decided plaintiffs-appellants had failed to allege adequately loss causation." *Id.* at 18a.

Judge Martin concurred in the judgment. According to Judge Martin, the Eleventh Circuit's decision in *Meyer* v. *Greene* requires plaintiffs to be "armed with *proof* of a misrepresentation in order to *plead* securities fraud." Pet. App. 18a. "To require a conclusive finding of fraud at the pleading stage," she said, "imposes a prohibitive burden on plaintiffs and immunizes defendants who have successfully concealed their misconduct from the government." *Id.* at 19a. Thus, while compelled by circuit precedent to affirm, Judge Martin believed that the plaintiffs had adequately pleaded loss causation by providing the defendants with notice as to the causal connection between the alleged misrepresentation and the loss suffered. *Id.* at 26a-27a.

The Eleventh Circuit denied the plaintiffs' petitions for rehearing. Pet. App. 68a-69a.

REASONS FOR DENYING THE PETITION

Petitioners contend that the circuits are split on (1) when the announcement of a government investigation may constitute a corrective disclosure, and (2) when a report summarizing already-public information may constitute a corrective disclosure. In fact, the courts of appeals are divided on neither issue. Indeed, with respect to both questions, the unpublished decision below applied the very rule that Petitioners ask this Court to adopt. Because the decision below is correct and does not conflict with any decision of this Court or other court of appeals, further review is unwarranted.

I. Review Is Not Warranted On The Question When The Announcement Of An Investigation May Constitute A Corrective Disclosure

A. Every circuit agrees that a government investigation, standing alone, cannot constitute a corrective disclosure

Petitioners contend that the courts of appeals are divided over the question when the announcement of a government investigation constitutes a corrective disclosure for purposes of pleading loss causation. According to Petitioners, the Eleventh Circuit holds that a government investigation cannot be a corrective disclosure, unless that investigation "result[s] in a finding of wrongdoing" by the government. Pet. 15. That, Petitioners say, conflicts with the rule in the Fifth and Ninth Circuits, which hold that an investor may plead loss causation "based on government investigations that do not find wrongdoing." *Id.* at 16.

Petitioners manufacture a circuit split where none exists—and the lower court applied the very rule that Petitioners advocate.

1. Every court of appeals to address the issue holds that the announcement of a government investigation, without more, cannot be a corrective disclosure. They also all allow that, in some circumstances, the disclosure of an investigation *can* form a corrective disclosure when combined with subsequent corrective disclosures. There is no circuit split.

The Eleventh Circuit first addressed the issue in *Meyer* v. *Greene*. In that case, the plaintiffs alleged loss causation based on two alleged corrective disclosures: an investor presentation suggesting that a company's assets were overvalued, and the company's later disclosure that the Securities and Exchange Commission (SEC) had initiated investigations into its investment practices. 710 F.3d at 1197.

With respect to the second disclosure, the court held that "the commencement of an SEC investigation, *without more*, is insufficient to constitute a corrective disclosure for purposes of § 10(b)." *Id.* at 1201 (emphasis added). That is because the "announcement of an investigation reveals just that—an investigation—and nothing more." *Ibid.*

But the *Meyer* court went on to state "[t]hat is not to say that an SEC investigation could never form the basis for a corrective disclosure." *Id.* at 1201 n.13. Rather, the court explained, it merely held that "the disclosure of an SEC investigation, standing alone and without any subsequent disclosure of actual wrongdoing, does not reveal to the market the pertinent truth of anything, and therefore does not qualify as a corrective disclosure." *Ibid.* (internal quotation marks omitted).

The Ninth Circuit was the next to address the question—and it came out the exact same way. In *Loos* v. *Immersion Corp.*, 762 F.3d 880 (9th Cir. 2014), the plaintiff alleged loss causation based on a company's disclosure of an internal investigation into prior revenue transactions. *Id.* at 887. The Ninth Circuit explained that, in *Meyer*, the Eleventh Circuit "examined the disclosure of a fraud investigation under . . . analogous circumstances." *Id.* at 889. After reviewing *Meyer* at length, the court held that it "agree[d] with the Eleventh Circuit's reasoning. The announcement of an investigation does not 'reveal' fraudulent practices to the market." *Id.* at 890. Indeed, the Ninth Circuit continued, "at the moment an investigation is announced, the market cannot possibly know what the investigation will ultimately reveal." *Ibid.* Thus, the Ninth Circuit held—just like *Meyer*—"that the announcement of an investigation, without more, is insufficient to establish loss causation." *Ibid.*

The Ninth Circuit went on to note—again, like *Meyer*—that it did "not mean to suggest that the announcement of an investigation can never form the basis of a viable loss causation theory." *Id.* at 890 n.3. "Like the Eleventh Circuit," the court stated, "we merely hold that the announcement of an investigation 'standing alone and without any subsequent disclosure of actual wrongdoing,'" does not constitute a corrective disclosure. *Ibid.* (quoting *Meyer*, 710 F.3d at 1201 n.13).

Thus, the Ninth Circuit didn't just apply the same rule (and exception) as *Meyer*—it expressly *said that it was doing so*. Seeking to conjure a circuit split, however, Petitioners relegate *Loos* to a footnote. Pet. 17 n.5. They focus instead on the Ninth Circuit's subsequent decision in *Lloyd* v. *CVP Financial Corp.*, 811 F.3d 1200 (9th Cir. 2016). But that case *reaffirms* both the Eleventh Circuit's decision in *Meyer* and the Ninth Circuit's decision in *Loos*.

In *Lloyd*, the plaintiff alleged that a company made false statements about its ability to repay its loans, and that those statements were revealed to be false through a series of corrective disclosures—including blog posts about the company's practices, the company's announcement that it had received an SEC subpoena, reports from market analysts, and the company's announcement that it was unable to pay its loans. 811 F.3d at 1204-05. The court held that, based on the *combination* of those alleged disclosures, the plaintiff adequately pleaded loss causation.

The Ninth Circuit explained that, in *Loos*, it had "recently held that 'the announcement of an investigation, standing alone and without any subsequent disclosure of actual wrongdoing, does not reveal to the market the pertinent truth of anything, and therefore does not qualify as a corrective disclosure.'" *Id.* at 1209-10 (quoting *Loos*, 762 F.3d at 890 n.3)). But, the court continued, *Loos* left open the question whether the announcement of an investigation can ever form the basis for a viable loss causation theory "if the complaint also alleges a subsequent corrective disclosure by the defendant." *Id.* at 1210. In *Meyer*, the court observed, the Eleventh Circuit "reserv[ed]" the "same question." *Ibid.*

In *Lloyd* the court answered that question in the affirmative, and explained that, unlike in *Loos*, "much more is alleged here" than the announcement of an investigation. *Id.* at 1210. Specifically, the court noted that, after the company had announced the SEC investigation, it disclosed that it was charging off millions of dollars of loans— "confirming that investors understood the SEC announcement as at least a partial corrective disclosure." *Ibid.* Thus, "[u]nder the facts of this case, loss causation was sufficiently pleaded." *Ibid.*

Lloyd therefore had a different *outcome* from *Meyer* and *Loos*, namely, that on "the facts of t[he] case" the plaintiff had pleaded loss causation—a determination that the court described as "context-dependent." *Lloyd*, 811 F.3d at 1210 (internal quotation marks omitted). But *Lloyd*, like the Ninth Circuit's earlier decision in *Loos*, makes abundantly clear that the rule it applied—that an investigation, without more, is insufficient to constitute a corrective disclosure—is perfectly consistent with the Eleventh Circuit's decision in *Meyer*.

The same goes for the other case that Petitioners invoke—the Fifth Circuit's decision in *Amedisys*. There, the plaintiffs alleged that a company made misrepresentations about its billing practices that were revealed to the market through a series of five partial corrective disclosures: (1) a research report raising questions about the company's billing practices; (2) the resignation of two corporate officers; (3) a Wall Street Journal article that included a detailed analysis of Medicare data that "had little to no probative value in its native state" and that showed that the company was gaming the Medicare system; (4) three different government investigations into the company's billing practices; and (5) the company's announcement of disappointing earnings results after billing changes made in light of the investigations. *Amedisys*, 769 F.3d at 318-319, 323-324. The court then proceeded to consider those partial corrective disclosures "collectively in determining whether a corrective disclosure has occurred." *Id*. at 322.

With respect to the three government investigations, the Fifth Circuit began by noting that it "agree[d] with the district court that generally, commencement of government investigations on suspected fraud do not, standing along, amount to a corrective disclosure." *Id.* at 323. In support of that proposition, the Fifth Circuit cited *Meyer*, which it characterized as "holding that the commencement of an SEC investigation was not a corrective disclosure because the SEC never issued any finding of wrongdoing." *Ibid.* It also cited *Loos*, which it characterized as "holding that a press release announcing an internal investigation, without more, is insufficient to establish loss causation." *Ibid.*

But, the *Amedisys* court continued, the three government investigations at issue "must be viewed together with the totality of the other alleged partial disclosures" in *that case*. 769 F.3d at 324. The court then reviewed each of the five partial corrective disclosures, and noted that, after each one, the defendants had made additional false statements to prevent the full truth from being revealed. *Ibid.* The court ultimately concluded that, *taken together*, "the 2008 Citron Report, the Swartz and Graham resignations, the 2010 WSJ Article and the above government investigations, coupled with Amedisys's second quarter 2010 earnings constitute and culminate in a corrective disclosure that adequately pleads loss causation." *Id.* at 324.

The Fifth Circuit's decision in *Amedisys* therefore did nothing to cast doubt on the Eleventh Circuit's rule in *Meyer* (or the Ninth Circuit's identical rule) that the announcement of an investigation, without more, is not a corrective disclosure. To the contrary, the Fifth Circuit expressly adopted that very rule. It simply held that the "series of events" at issue in that case, when "viewed together," "culminate[d]" in a corrective disclosure. *Id.* at 324-325.

To be sure, *Amedisys* rejected a rule that would require, in all circumstances, "a conclusive government finding of fraud." *Id.* at 325. Latching on to that language, Petitioners contend that the Eleventh Circuit's decision in *Meyer* (and its decision below) requires precisely such a "conclusive government finding of fraud." Pet. 29.[6] Indeed, that

[6] The Petition is replete with such assertions that the Eleventh Circuit *requires* a *conclusive government finding of fraud*. See Pet. i ("government investigation" must have "resulted" in a finding of wrongdoing); 2 (government investigation must have "produced such a finding"); 13 ("government investigations" must "produce a finding of wrongdoing"); 14 (government investigation must have "produced a finding of actual fraud"); 15 ("government investigations" must "result in a finding of

would seem to be the *sole* basis for the circuit split that they assert.

But Petitioners take aim at a straw man. Petitioners focus exclusively on a footnote in *Meyer* that suggests that a government investigation may constitute a corrective disclosure when coupled with a "subsequent disclosure of actual wrongdoing" or a "later finding of fraud or wrongdoing." *Meyer*, 710 F.3d at 1201 n.13. But *Meyer* never said (as Petitioners contend) that a government investigation cannot constitute a corrective disclosure *unless* coupled with a "conclusive government finding of fraud." Pet. 29. It simply said that an investigation *could* constitute a partial corrective disclosure, if coupled with *some* type of subsequent disclosure that reveals the falsity of a prior statement by the company—not just a government finding of fraud.

Indeed, the two cases cited by *Meyer* as examples of cognizable corrective disclosures did *not* involve a "conclusive government finding of fraud" or proof of liability. Pet. 29. One found that an SEC inquiry could constitute a corrective disclosure where it "'culminated in the restatement of [the company's] earnings.'" *Meyer*, 710 F.3d at 1201 n.13 (quoting *In re IMAX Sec. Litig.*, 587 F. Supp. 2d 471, 485 (S.D.N.Y 2008)). The other held that "disclosure of an SEC investigation was a partial corrective disclosure when it was followed by a corporate officer's plea of guilty." *Ibid.* (citing *In re Take-Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 287-90

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wrongdoing"); 19 ("government investigation must produce a finding of fraud"; 29 ("conclusive government finding of fraud").

(S.D.N.Y. 2008)). In short, *Meyer* expressly acknowledges the very rule that Petitioners advocate—*i.e.*, that an investor may plead loss causation "based on government investigations that do not find wrongdoing," if combined with other corrective disclosures. Pet. 16.

2. The decision below is simply one more in an unbroken pattern.

The plaintiffs here alleged that HMA's statements about its growth were shown to be false through two corrective disclosures—the announcement of the OIG investigation, and the Skolnick Report. With respect to the OIG investigation, the court of appeals explained that the OIG investigation, "'without more, is insufficient to constitute a corrective disclosure.'" Pet. App. 16a (quoting *Meyer*, 710 F.3d at 1201). As noted, that is the exact rule applied by the Fifth and Ninth Circuits.

The court of appeals then went on to ask whether there was in fact "more" here—again, consistent with the decisions of the Fifth and Ninth Circuits. Specifically, it addressed the plaintiffs' contention that "the subsequent 2012 Skolnick Report, combined with the OIG investigation, together provided sufficient evidence of a corrective disclosure." Pet. App. 16a.

In doing so, the court explained that the Skolnick Report merely "summarized facts from the Meyer case that had existed in publicly accessible court dockets." Pet. App. 16a-17a.[7] The court of appeals also noted that the Meyer action did not provide proof of any fraud, but only alleged as much. Pet. App. 16a. Thus, the court reasoned, because the Skolnick Report was not *itself* a corrective disclosure, it was not sufficient to render the OIG investigation a corrective disclosure either: "Taken independently or combined," the court held, "[n]either the OIG investigation nor the 2012 Skolnick Report are corrective disclosures." *Id.* at 18a.

The lower court therefore applied the very rule adopted by the Fifth and Ninth Circuits (and that Petitioners themselves advocate). It asked whether the OIG investigation—viewed *in light of other alleged corrective disclosures*—constituted a partial corrective disclosure. Petitioners nevertheless contend that the lower court entrenched a circuit split by requiring a government investigation to "produce[] a finding of fraud by the time the complaint is filed." Pet. 14.

But that is not what the lower court required. If it had, the court would have simply said as much—*i.e.*, that the OIG investigation did not result in a "conclusive government finding of fraud." Pet. 29. But it didn't. Instead, the lower court's decision reflects the fact that the loss-causation question is a "context-dependent inquiry," and asked whether, "[u]nder the facts of this case," the OIG investigation

[7] As discussed below, Petitioners challenge the court's determination that the Skolnick Report did not reveal new information. But that is irrelevant to the question here, which is whether the court required a conclusive finding of fraud by the government. It did not.

constituted a partial corrective disclosure when combined with other alleged disclosures. *Lloyd*, 811 F.3d at 1210 (internal quotation marks omitted). Petitioners plainly *disagree* with the lower court's resolution of that context-dependent determination. But that does not mean that the court applied Petitioners' phantom rule that only a government investigation resulting in a conclusive finding of fraud can constitute a corrective disclosure.

3. Petitioners also assert that some district courts in New York have adopted a different rule from the courts of appeals. Pet. 17. But this "Court will not grant certiorari to review a decision of a federal court of appeals merely because it is in direct conflict on a point of federal law with a decision rendered by a district court." Shapiro, Geller, Bishop, Hartnett & Himmelfarb, Supreme Court Practice § 4.8, p. 257 (10th ed. 2013). As the district court decision on which Petitioners rely observed, the Second Circuit itself has not yet weighed in on the issue. *In re Gentiva Sec. Litig.*, 932 F. Supp. 2d 352, 388 (E.D.N.Y. 2013).

And, as *Gentiva* itself recognized (*id.* at 386), other district courts within the Second Circuit have held—just as the courts of appeals have held—that the "announcement of an SEC subpoena or an internal investigation is itself insufficient to plead loss causation." *Janbay* v. *Canadian Solar, Inc.*, No. 10-4430, 2012 WL 1080306, at *15 (S.D.N.Y. Mar. 30, 2012). This Court should not grant review of an issue on which the courts of appeals are united simply because some district courts might disagree.

B. The decision below does not conflict with this Court's precedents regarding pleading requirements

Petitioners contend that the decision below conflicts with this Court's precedents, which hold that, to survive a motion to dismiss, a plaintiff need only raise a "plausible" inference of liability, and "'provide a defendant with some indication of the loss and the causal connection that the plaintiff has in mind.'" Pet. 26-27 (quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 556 (2007), and *Dura*, 544 U.S. at 347).

But the decision below does not call into question the "plausibility" or "notice" pleading requirements. It did not hold that the plaintiffs should have provided additional factual allegations in their complaint, or should have pleaded them with greater particularity. Nor did it hold (as Petitioners contend) that the plaintiffs had to *prove* loss causation, much less fraud, at the pleading stage. The court did not require the plaintiffs to prove that the alleged disclosures caused the stock drop (*e.g.*, by showing that the stock drop did not result from other market-wide forces), or that the statements allegedly made by HMA were material and made with the requisite scienter.

What the lower court *did* hold was simply that some disclosures do not constitute corrective disclosures *as a matter of law*. Courts make that determination at the pleading stage all the time. Thus, for example, courts will dismiss a complaint for failure to plead loss causation if the alleged disclosure does not "relate back" to the alleged misrepresentation. *Katyle* v. *Penn Nat'l Gaming,* *Inc.*, 637 F.3d 462, 473 (4th Cir. 2011) (internal quotation marks omitted). Courts also routinely dismiss complaints if the alleged disclosure merely confirms information that was already in the marketplace.

A court's resolution of those legal questions, like all questions regarding loss causation, is a "context-dependent inquiry," *Lloyd*, 811 F.3d at 1210, that looks to the nature of the alleged misstatements, the nature of the alleged corrective disclosures, and the extent to which those disclosures were capable of revealing to the marketplace a previously concealed truth. See *Dura*, 544 U.S. at 347 (complaint must allege share price fell "after the truth became known."); *Amedisys*, 769 F.3d at 321 (a corrective disclosure "reveals to the market the pertinent truth that was previously concealed") (internal quotation marks omitted).

Here, the court simply decided that, based on the facts of this case, the OIG investigation did not *reveal* any previously concealed *truth*, but instead merely portended a risk of future corrective action. Pet. App. 16a-18a. Thus, as a matter of law, the OIG investigation could not have disclosed to the market that HMA made prior false statements—and therefore is not a corrective disclosure.[8]

[8] Judge Martin's suggestion that *Meyer* requires defendants to "prove the existence of a misrepresentation" at the pleading stage therefore misses the mark. Pet. App. 24a. The rule applied by the decision below does not require *proof* of fraud; it just requires plaintiffs to plead a corrective disclosure that contradicts a prior statement—*i.e.*, that "reveals" the "truth" of that misstatement. As every circuit to address the issue has

Petitioners cite *Lloyd* as the model for what a court *should* do at the pleading stage. Pet. 28. As noted, however, *Lloyd* made clear that, standing alone, the SEC subpoena at issue in that case—like the OIG investigation at issue here—would *not* have constituted a corrective disclose for purposes of pleading loss causation. Under Petitioners' own theory, that would violate this Court's precedents. *Lloyd*, of course, went on to hold that the subpoena could constitute a corrective disclosure when combined with the company's subsequent "bombshell disclosure" that it was writing down its loans. *Lloyd*, 811 F.3d at 1210. But that determination merely reflected the unique circumstances of that case—not any different approach to the pleading standard.

C. The lower court correctly held that the announcement of the OIG investigation was not a corrective disclosure

1. The decision below applied the legal rule that the announcement of a government investigation, without more, cannot constitute a corrective disclosure. That rule—which has been adopted by every court of appeals to address the issue—is correct.

As the Ninth Circuit has explained, "[w]hile the disclosure of an investigation is certainly an ominous event, it simply puts investors on notice of a potential future disclosure of fraudulent conduct." *Loos,* 762 F.3d at 890. But "the announcement of an investigation does not 'reveal' fraudulent practices to

made clear, the announcement of an investigation, standing alone, cannot do so.

the market," as required for a corrective disclosure. *Ibid.*

That rule makes complete sense. The securities laws were not meant "to provide investors with broad insurance against market losses." *Dura*, 544 U.S. at 345. And the loss-causation requirement is a core component of that principle, because it guards against the use of securities litigation as an *in terrorem* device to force companies to settle claims with "very little chance of success at trial" to avoid the cost of litigation. *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 740 (1975); see *Meyer*, 710 F.3d at 1196. "[A]llowing a plaintiff to plead loss causation solely on the basis of an announced investigation encourages the precise abusive litigation practices the securities laws are designed to protect against." *Caplin* v. *Trans1, Inc.*, 973 F. Supp. 2d 596, 610 (E.D.N.C. 2013).[9]

2. Petitioners presumably do not challenge the rule that an investigation, without more, cannot be a corrective disclosure. After all, that is the very rule articulated by the decisions they cite. Instead, they challenge the *application* of that rule in this case—*i.e.*, the lower court's determination that there was nothing "more" in this case that would confirm that the OIG investigation was a revelation of the truth.

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[9] See also *In re Almost Family Sec. Litig.*, No. 10-00520, 2012 WL 443461, at *12 (W.D. Ky. Feb. 10, 2012) ("If the disclosure of a mere *risk* of fraud was enough to trigger loss causation, a private cause of action for securities fraud would accrue every time an allegation or rumor of wrongdoing circulated," contrary to the purposes of Rule 10b-5.").

But the court's application of the legal rule Petitioners advocate was entirely straightforward. It simply concluded that, unlike in *Lloyd* and *Amedisys*, the Skolnick Report did not confirm that the OIG investigation revealed a truth to the market place. That is because the Skolnick Report itself was not a corrective disclosure, for two reasons. First, the legal action reported in the Skolnick Report itself merely showed a *risk* that the company had made false statements, and therefore did not *reveal* to the market that it had done so. And second, the Skolnick Report did not reveal any *new* information to the market, as required for a corrective disclosure.[10] In short, the lower court simply held that two *non-corrective* disclosures do not add up to a cognizable corrective disclosure. That determination was correct.

II. Review Is Not Warranted On The Question When A Report Reveals New Information To The Public

A. Every circuit agrees that a corrective disclosure cannot merely "confirm" information that has already been digested by the market

Petitioners contend that the circuits are divided on the question whether an investor may plead loss causation based on a report "drawn from" public sources. Pet. 20. According to Petitioners, the First, Second, Fourth, and Eleventh Circuits apply a

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[10] As we show below, that conclusion was correct (and consistent with the rule universally applied by the courts of appeals).

bright-line rule and "bar analyses of information in the public domain from serving as corrective disclosures." Pet. 21. That, they say, conflicts with decisions from the Fifth and Ninth Circuits that allow investors to plead loss causation "based on reports analyzing public sources." Pet. 22.

Once again, however, Petitioners seek to create a split where none exists. And, once again, the lower court applied the precise legal rule Petitioners advocate. Petitioners simply have a fact-bound disagreement with the lower court's application of that rule.

1. Every court of appeals applies the general rule that a corrective disclosure must reveal some new information to the public—and therefore cannot merely "confirm" already-public information. Courts also recognize, however, that a report based on public sources *can* sometimes reveal something new to the market—if, for example, the public information in its native state cannot be understood by the marketplace. That is not a circuit split; it is an application of the same rule to different fact patterns.

Take the cases Petitioners cite (at 23-24) for the proposition that an analysis of publicly available information can be a corrective disclosure. In *Amedisys*, the Fifth Circuit addressed whether a Wall Street Journal article that included a "detailed analysis of Medicare data" constituted a partial corrective disclosure. *Amedisys*, 769 F.3d at 318. The newspaper enlisted a Yale professor to analyze Medicare records "to determine how often between 2005 and 2008 various home health companies sent therapists to patients' homes during a 60 day treatment period and whether such visits coincided with Medicare financial incentives." *Ibid.* That analysis "revealed a questionable pattern of home visits clustered around reimbursement targets"—specifically, that after a 2008 change in Medicare's Prospective Payment System threshold, "the percentage of Amedisys patients getting 10 visits (the prior threshold) dropped by 50% while the percentage that got 14 visits (a new threshold) rose 33%." *Ibid.*

In addressing whether the article constituted a corrective disclosure, the Fifth Circuit began by explaining that "it is generally true that in an efficient market, any information released to the public is presumed to be immediately digested and incorporated into the price of a security." *Id.* at 323. That, of course, is the very rule Petitioners attack here.

The Fifth Circuit explained, however, that "complex economic data understandable *only* through expert analysis may not be readily digestible by the marketplace." *Id.* at 323 (emphasis added). "Thus, although a disclosure of mere confirmatory information will not cause a change in the stock price because the current price already reflects the information available," the *Amedisys* court held that the information revealed in the Yale expert's analysis was not merely "confirmatory." *Ibid.* That is because while "the data [the analysis] was based on may have been technically available to the public," the "raw data itself had *little to no probative value in its native state*"—and therefore "required expert analysis" to even be comprehensible to the market. *Ibid.* (emphasis added).

In short, *Amedisys* simply recognized that some analyses based on public information may nevertheless disclose new information to the public if the raw information had no value to the public in its "native state" without complex expert analysis. *Id.* at 323. That does nothing to alter the fundamental rule, acknowledged by *Amedisys* and expressly adopted by other Fifth Circuit decisions, that "confirmatory information cannot be the basis for a fraud-on-the-market claim" because it has "already been digested by the market." *Greenberg* v. *Crossroads Sys., Inc.*, 364 F.3d 657, 665-666 (5th Cir. 2004).

The Ninth Circuit decision cited by Petitioners, *In re Gilead Sciences Securities Litigation*, 536 F.3d 1049 (9th Cir. 2008), does not say otherwise. To the contrary, it simply held that the corrective disclosure alleged there *did* provide new information to the public. In *Gilead*, the plaintiffs alleged that a pharmaceutical company misled the public by failing to disclose that demand for its drug was driven by off-label marketing. To allege loss causation, the plaintiffs cited an FDA Warning Letter chastising the company for statements made by one of its representatives. The plaintiffs also relied on a subsequent company press release that disclosed lower revenues from the drug. The company's stock plummeted, and the plaintiff alleged that the press release allowed the public to "finally realize the impact of the off-label marketing and the Warning Letter." *Id.* at 1054.

The Ninth Circuit held that the press release constituted a corrective disclosure. The court explained that the market would not necessarily respond to the Warning Letter itself, because that letter "discussed only two instances of off-label marketing" and did not discuss revenues from the drug. *Id.* at 1058. Thus, the court stated, the Warning Letter "did not contain enough information to undermine Gilead's July 2003 pronouncements concerning demand for [the drug]." *Ibid.* But, the court held, "the market did react immediately to the corrective disclosure—the October 28 press release." *Ibid.* That is because the press release revealed to the market, for the first time, that the company's revenues from the drug were lower—and that they were lower because of reduced off-market labeling. *Id.* at 1054, 1058.

Gilead therefore reached the unremarkable conclusion that the press release disclosed *new information* that was not revealed to the public through the Warning Letter. *Gilead* does nothing to alter the general rule that mere "confirmatory" reports do not constitute corrective disclosures. Indeed, long after *Gilead*, courts within the Ninth Circuit continue to apply the general rule that "a corrective disclosure that is derived entirely from public sources is insufficient" to plead loss causation. *Bonanno* v. *Cellular Biomedicine Grp., Inc.*, No. 15-01795, 2016 WL 2937483, at *5 (N.D. Cal. May 20, 2016); see *In re Novatel Wireless Sec. Litig.*, 830 F. Supp. 2d 996, 1019 (S.D. Cal. 2011) ("a disclosure that does not reveal anything new to the market is, by definition, not corrective.").

The cases cited by Petitioners on the "wrong" side of the supposed split do not create a split at all. They simply apply the same general rule—*i.e.*, that mere "confirmatory" information is insufficient—in circumstances where the alleged disclosure did *not* reveal anything new to the public.

Petitioners begin, once again, with the Eleventh Circuit's decision in *Meyer*—a decision they continue to focus on almost to the exclusion of the decision below. In *Meyer*, the petitioners alleged that the "Einhorn Presentation," in which an industry short-seller suggested that the company's assets were overvalued, constituted a corrective disclosure. But, the court explained, "disclosure of confirmatory information" will not cause a change in its stock price. *Meyer*, 710 F.3d at 1197. And the information contained in the Einhorn Presentation was taken entirely from publicly available sources. Thus, the court held, the plaintiffs failed to allege loss causation because the presentation did not reveal anything new to the public other than the short seller's *opinion* about the company. *Id.* at 1199-1200.

In *Meyer*, the court therefore simply applied the general rule that a corrective disclosure must reveal new information, and concluded that the disclosure at issue did not do so. Petitioners (at 21, 31) make much of *Meyer*'s statement that, in an efficient market, "any information released to the public is immediately digested and incorporated into the price of a security." *Meyer*, 710 F.3d at 1197. But that statement is virtually *identical* to the Fifth Circuit's statement that "in an efficient market, any information released to the public is presumed to be *immediately digested and incorporated into the price of a security*." *Amedisys*, 769 F.3d at 323 (emphasis added). Given those identical statements of law, Petitioners' assertion that the two decisions are in irreconcilable conflict is baffling.

In re Omnicom Group, Inc. Securities Litigation, 597 F.3d 501 (2d Cir. 2010), is also consistent with *Amedisys* and *Gilead*. There, the Second Circuit addressed whether a newspaper article revealing that a company used an improper accounting method to value a transaction was a corrective disclosure. The court explained that nothing in the article "even purported to reveal some then-undisclosed fact with regard to the specific misrepresentations" about the transaction. *Id.* at 511. That is because the use of the accounting method was well known to the public for a year. *Id.* at 511-512. Thus, while the article reported two professors' belief that the transaction was suspicious, that conjecture "added nothing to the public's knowledge" that the "transaction was designed to remove losses from Omnicom's books." *Id.* at 512. The article addressed by *Omnicom* is a far cry from the article in *Amedisys*, which analyzed raw data that was not digestible by the public in its "native state."[11]

2. In the decision below, the court of appeals applied the precise rule articulated by the Fifth and Ninth Circuits and advocated here by Petitioners. Indeed, the lower court *said that it was doing so*. Petitioners simply disagree with the lower court's application of that legal rule to the facts of this case.

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[11] The other cases cited by Petitioners (at 21-22) are even further afield. *Bricklayers & Trowl Trades Int'l Pension Fund* v. *Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 89 (1st Cir. 2014), simply addressed whether an event study was admissible at trial. And in *Katyle*, the Fourth Circuit held that the alleged disclosures were not corrective of anything because they said nothing to show the falsity of any of the statements at issue. 637 F.3d at 473-478.

The question before the lower court was whether the Skolnick Report, which simply "inform[ed] the market of the wrongful termination lawsuit filed by Meyer," constituted a corrective disclosure. Pet. App. 7a. The court explained, however, that a corrective disclosure "must disclose new information, and cannot be merely confirmatory." *Id.* at 16a (internal quotation marks omitted). The Fifth Circuit, of course, applied the same rule in *Amedisys*, which likewise held that "mere confirmatory information" cannot constitute a corrective disclosure. *Amedisys*, 769 F.3d at 323.

The Meyer action, the decision below explained, "had existed in publicly accessible court dockets for three months before the Skolnick Report issued." Pet. App. 17a. Consequently, the court held, "the information first revealed by the Meyer action and summarized in the 2012 Skolnick Report was easily obtainable, and the market was able to assimilate the information without the assistance of the 2012 Skolnick Report." *Ibid.*

Petitioners contend that, in reaching that conclusion, the lower court entrenched a split with Fifth Circuit's decision in *Amedisys* and the Ninth Circuit's decision in *Gilead*. But the decision below *quoted*, with evident approval, *Amedisys*'s holding that "'complex economic data understandable only through expert analysis may not be readily digestible by the marketplace' and analysis of that data may not be merely confirmatory." Pet. App. 17a (quoting *Amedisys*, 769 F.3d at 323). The decision below also cited, again with evident approval, *Gilead*, in which the Ninth Circuit held that a press release about the earlier FDA Warning Letter revealed new information to the market. Pet. App. 17a.

In other words, the court of appeals *expressly agreed* with *both* decisions that Petitioners cite here. It just held that, unlike in those cases, the disclosure at issue here was "easily obtainable" because it merely summarized a legal complaint that was available to the public (including on an electronic federal court docket for two months). Pet. App. 17a. The Meyer complaint, moreover, was readily understandable in its native state. That, the court made clear, is nothing like *Amedisys*, where the alleged corrective disclosure analyzed "'complex economic data'" understandable only through expert analysis of unintelligible raw data—and thus was *not* merely "'confirmatory.'" *Ibid.* (quoting *Amedisys*, 769 F.3d at 323).

Petitioners grudgingly acknowledge that fact only in a footnote, where they observe that the lower court "cryptically cited *Amedisys* and *Gilead*." Pet. 25 n.11. But the lower court's holding—which applied the *exact* rule Petitioners ask this Court to adopt—cannot be dismissed as "cryptic." The court's analysis could scarcely have been clearer: It acknowledged the general rule, adopted by all courts of appeals, that mere "confirmatory" information cannot be a corrective disclosure. It also acknowledged the rule, articulated by the Fifth and Ninth Circuits, that sometimes information gleaned from public sources is *not* "'merely confirmatory'"—if, for example, it is understandable only through complex expert analysis. Pet. App. 17a (quoting *Amedisys*, 769 F.3d at 323). The only thing cryptic about that is Petitioners' assertion that the lower court's decision applying the very rule they advocate somehow *creates* a circuit split.

Petitioners also contend that the lower court erroneously assumed that markets must respond "immediately" to public information, and improperly rejected the rule, articulated in *Gilead*, that tolerates some "lag" in the market's response to a disclosure. Pet. 26 & n.11. But once again, the decision below acknowledged that very point: "While we may 'countenance some lag' in the capacity of the market to digest publicly available information," the court noted, "the market was able to assimilate the information [from the Meyer action] without the assistance of the 2012 Skolnick Report." Pet. App. 17a (quoting *Meyer*, 710 F.3d. at 1198 n.9). Petitioners simply disagree with the lower court's application of the very rule they ask this Court to apply. That is not a basis for granting certiorari.

B. The decision below does not conflict with this Court's precedents regarding the efficient-market theory

Petitioners contend that the "Eleventh Circuit's rule that publicly sourced reports cannot serve as corrective disclosures" is flawed because its "either-or, binary view of market efficiency conflicts with this Court's precedents." Pet. 31. Because markets process different types of information differently, Petitioners say, it does not follow that all public information "'is immediately digested and incorporated into the price of a security.'" Pet. 31 (quoting *Meyer*, 710 F.3d at 1197). But as noted, *Amedisys*—which Petitioners say adopts the correct rule—also holds that "any information released to the public is presumed to be immediately digested and incorporated into the price of a security." 769 F.3d at 323.

In any event, both *Meyer* and the decision below expressly *acknowledge* Petitioners' point that markets may process different information differently. Thus, in *Meyer*, the court stated that it was "willing to countenance some lag in the market's processing of" particular information. 710 F.3d at 1198 n.10. The decision below acknowledged the very same point. Pet. App. 17a. It simply held that, on the facts alleged in the complaint, there was no basis for inferring that the market would have been unable to react to the allegations in the Meyer action when it was filed.

In essence, Petitioners take the position that, because markets process different information differently, courts can *never* make a determination (at least at the pleading stage) whether a disclosure of already-public information constitutes a corrective disclosure. But that bright-line rule is just as flawed as the bright-line rule Petitioners falsely attribute to the Eleventh Circuit.

No court, for example, would hold that a New York Times article that simply summarized news reported a week earlier by the Washington Post would be a corrective disclosure. Conversely, no court would hold that a computer scientist's analysis of data that was released only in the form of raw computer code would *not* be a corrective disclosure. Such information, after all, is not readily available to or digestible by the public at large.

In the decision below, the court simply held that the disclosure at issue here (the Skolnick Report) was closer to a New York Times summary than to an analysis of raw computer code. That is because the Skolnick Report merely reported on the *existence* of a prior lawsuit that was publicly available on state and federal court dockets and understandable by anyone who could read English. In reaching that conclusion, the lower court was not ignoring the fact that markets process information differently. Nor, for that matter, did the court hold that publicly sourced reports can *never* constitute a corrective disclosure, as Plaintiffs contend (at 31). It was just making a legal determination of what constitutes information that is "merely confirmatory" and "available to the public." *Amedisys*, 769 F.3d at 323. Again, Petitioners disagree with that determination. But their disagreement with the lower court's application of the legal rule they advocate does not place the lower court's decision in conflict with this Court's precedents.

C. The decision below correctly held that the Skolnick Report was not a corrective disclosure

1. The decision below applied the legal rule that a corrective disclosure must present new information to the market, and not just confirm already-public information. That rule, which has been adopted by every court of appeals, is correct.

"A corrective disclosure is a disclosure that reveals the fraud, or at least some aspect of the fraud, to the market. It stands to reason then that [a] disclosure that does not reveal anything new to the market is, by definition, not corrective." *In re Novatel*, 830 F. Supp. at 1019 (internal quotation marks omitted). To be sure, when an analyst reports already-public information, and then provides an opinion about the potential consequences of that information, a company's stock may drop. But in that case, the market is responding to *the opinion itself*—and not to the underlying information (assuming that information was understandable by the public).

Indeed, as the Eleventh Circuit has correctly explained, "[i]f *every* analyst or short-seller's opinion based on already-public information could form the basis for a corrective disclosure, then every investor who suffers a loss in the financial markets could sue under § 10(b) using an analyst's negative analysis of public filings as a corrective disclosure. That cannot be—nor is it—the law." *Meyer*, 710 F.3d at 1199 (emphasis added).

2. Petitioners presumably do not quarrel with the general rule that "disclosure of mere confirmatory information" will not constitute a corrective disclosure. *Amedisys*, 769 F.3d at 323. Once again, that is the rule applied by the cases they cite. So Petitioners' real challenge is to the lower court's *application* of that rule to the particular report at issue here—*i.e.*, its holding that the Skolnick Report, which merely summarized the already-filed Meyer action, did not present new information to the marketplace.

Petitioners do not attempt to argue that the Skolnick report was anything like the analysis at issue in *Amedisys*. And for good reason. The Skolnick report did not interpret "complex economic data understandable only through expert analysis," or that was unintelligible "in its native state."

Amedisys, 769 F.3d at 323. It simply reported the existence of a publicly available lawsuit.

So Petitioners focus instead on what they say is the "[m]ost significant[]" fact about the Meyer action—that "Skolnick herself only became aware of Meyer's lawsuit the Friday before she published her report." Pet. 25 (internal quotation marks omitted). "That alone," Petitioners say, shows that it's plausible that "investors did not immediately digest one lawsuit filed on a state-court docket." *Ibid.*

Petitioners therefore propose a new legal rule: If publicly available information is *news to the author* of a report about that information, then that report *necessarily* qualifies as a corrective disclosure that reveals new information to the public. That cannot possibly be the test for what constitutes "new" as opposed to "confirmatory" information.

Nor is it even accurate to say that the Meyer action was found only "on a state-court docket"—a fact that Petitioners suggest makes it less readily available to the market. Pet. 25; see *id.* at 7 (noting that the Meyer lawsuit was filed "on a non-electronic docket in a different county from HMA's headquarters"). As Petitioners elsewhere note (Pet. 7 n.2), HMA removed Meyer's lawsuit to federal court on November 18, 2011—nearly two months before Skolnick issued her report on January 9, 2012, describing the lawsuit. See n.4, *supra*. The Meyer action therefore was (and still is) readily available to the public on the district court's electronic docket, which reflected numerous pleadings in the case *before* Skolnick issued her report. The decision below correctly held that the Meyer action was available to (and understandable by) the wider market before Skolnick summarized it.[12]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[12] The lower court, moreover, provided two grounds for holding that the Skolnick report was not a corrective disclosure. One was that it merely confirmed already public information. The other was that the Meyer action *itself* was not a corrective disclosure because it comprised unverified allegations—and therefore did not disclose to the market any fact about HMA's alleged misstatements. Pet. App. 16a.