LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Securities Class Cert., 5 Years After Goldman Ruling

By **Susan Saltzstein, Jacob Fargo and Jonathan Shapiro** (June 22, 2026, 5:12 PM EDT)


Susan Saltzstein


Jacob Fargo


Jonathan Shapiro

As some celebrate and others bemoan the five-year anniversary of the U.S. Supreme Court's 2021 decision in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System, we review the decision's legacy through a particular analytical lens.[1] Specifically, we examine the potential consequences of Goldman on courts' analyses in class certification actions.

And we ask two key questions: Has the decision affected courts' willingness to certify classes in federal securities actions? And has it affected petitions to appeal class certification decisions and the resulting reversal rates?

The commentary surrounding Goldman shows a sharp but predictable divide, as many legal scholars and plaintiff-oriented firms critique the decision, while defense-oriented commentators applaud it. Here, we offer a statistically informed perspective, using data to tell a more objective story about class certification in securities actions.

What the Goldman Court Held

The Goldman decision afforded defendants in securities class actions more arguments against class certification. The Goldman court held that "[t]he generic nature of a misrepresentation often will be important evidence of a lack of price impact."

The court also held that, "when there is a mismatch between the contents of the misrepresentation and the corrective disclosure," which "may occur when the earlier misrepresentation is generic ... and the later corrective disclosure is specific ... there is less reason to infer front-end price inflation — that is, price impact — from the back-end price drop."[2]

Extending the logic of previous price impact precedents, 1988's Basic Inc. v. Levinson[3] and 2014's Halliburton Co. v. Erica P. John Fund Inc.,[4] the Goldman court stated that, "[i]n assessing price impact at class certification, courts should be open to all probative evidence on that question — qualitative as well as quantitative — aided by a good dose of common sense."[5]

Prior to Goldman, the fraud-on-the-market theory from Basic allowed courts to presume the reliance requirement for class certification on a classwide basis, thereby avoiding individualized inquiry in most instances.[6]

Under Basic, defendants facing class certification could rebut the presumption of reliance by making "any showing that sever[ed] 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."[7]

Evidence that "severs the [price-impact] link" could be quantitative, such as event studies showing the stock price did not move on certain dates, or qualitative, including analyzing the mismatch in language between alleged misstatements and corrective disclosures.

Decades later, the Halliburton court further clarified this analysis, "see[ing] 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."[8]

The Goldman court extended this logic, reaffirming the straightforward idea that, at class certification, courts "should be open to all probative evidence" relevant to price impact, "aided by a good dose of common sense."[9]

The Goldman court held that, in conducting price impact analyses, generic statements are less likely to influence stock prices, and that mismatches between the type of disclosure — generic or specific — on either the front or back end weakens an inference of price impact.[10]

On remand, the U.S. Court of Appeals for the Second Circuit held that the district court committed clear error in ignoring the specificity mismatch between a generic alleged misstatement and a highly specific supposed corrective disclosure.[11] In effect, Goldman provided defendants in securities actions with an effective avenue for introducing dispositive counterarguments at class certification.

More specifically, defendants may be able to argue that a mismatch in the specificity of a misrepresentation and a corrective disclosure, either of which can be generic or specific, proves a lack of price impact.

Goldman's Impact

Five years later, how have these arguments from Goldman made their mark on the state of securities class actions? Analysis of federal dockets suggests that Goldman may have had an impact on the rate at which federal courts certified classes in securities cases.

The five years since Goldman have seen fewer grants, and more denials and partial denials, of class certification motions in securities cases compared to the five years before Goldman.

Courts issued class certification decisions in securities cases at a similar rate before and after Goldman, with 106 class certification decisions in securities cases during the five-year periods before and after Goldman.[12] However, Goldman's legacy can be examined by focusing on the rate at which class certification motions were dismissed or granted in securities cases.

When deciding class certification motions in federal securities cases during the five years leading up to Goldman, courts dismissed approximately 11.3% of motions, partially granted and partially dismissed approximately 0.9%, and granted the remainder, approximately 87.7%.[13] In the five years since, courts dismissed approximately 13.2% of class certification motions in federal securities cases, partially granted and partially dismissed approximately 8.5%, and granted the remainder, approximately 78.3%.[14]

Federal courts overall are slightly more likely to deny class certification motions in securities cases since Goldman. While the number of denials increased marginally in the wake of Goldman, most of the change was an increase in partial grants and partial denials.

Attributing these changes to Goldman is fair, given that most of the decisions themselves at least cite to Goldman, with courts in some cases denying certification or rejecting a substantial number of alleged misstatements based on Goldman.[15]

However, in recent years, both the U.S. Court of Appeals for the Third Circuit and the U.S. Court of Appeals for the Ninth Circuit have affirmed class certification in securities cases based on less rigorous readings of Goldman that do not require that back-end disclosures correct prior misrepresentations, but merely that the statements can be read in tension with one another on the same subject matter.[16]

As a result, we have not found a decision from the Third Circuit that has denied class certification after Goldman was decided,[17] and the number of class certification grants in Ninth Circuit securities cases actually has increased since Goldman.[18]

Appeals of class certification decisions are not as of right. When a district court decides a class certification motion, the losing party can seek permission to appeal under Rule 23(f).[19]

Many considerations bear on whether to appeal class certification decisions, including whether parties can meet the bar of obtaining permission to appeal, and, if so, whether they are prepared to battle for reversal. Without guidance from the Supreme Court, most circuits have been guided by Rule 23 in reaching their decisions on whether or not to grant Rule 23(f) petitions.[20]

Furthermore, even if courts grant permission to appeal, courts typically apply a separate abuse-of-discretion standard in deciding whether to reverse the decision below. And while circuits grant Rule 23(f) petitions sparingly, some do so even less frequently than others.[21]

Despite Goldman's apparent impact on class certification decisions, Rule 23(f) petitions have continued to decline. Comparing Rule 23(f) petitions to class certification decisions, both in securities cases and generally, Rule 23(f) petitions are falling not just in absolute numbers but also in relative terms to the number of class certification decisions.[22]

In the five years leading up to Goldman, there was an average of approximately 212 Rule 23(f) petitions each year, and, in the years since, that average decreased to around 167.[23] Overall class certification decisions, including both securities and nonsecurities cases, fell pre- and post-Goldman, but Rule 23(f) petitions fell faster, with the ratios of Rule 23(f) petitions to grants, partial grants or partial denials, and denials all lower after Goldman than before.[24]

One possible rationale for the continued downward trend in Rule 23(f) petitions since Goldman is that through Goldman's jurisprudence and the arguments it offers to defendants, lower courts can be more searching in their own analyses with respect to class certification in securities cases. This offers parties more opportunities to present their arguments, in turn providing more ammunition for the continuation of the action or for productive settlement discussions.

Goldman's legacy may not just be arming defendants in securities cases with a wider range of arguments in any individual class certification fight, but may also be providing litigants with greater certainty and finality in the larger battle for class certification.

Susan Saltzstein is a partner, co-head of the complex litigation and trials group in New York, and co-deputy of the securities litigation group at Skadden Arps Slate Meagher & Flom LLP.

Jacob Fargo is an associate at the firm.

Jonathan Shapiro is an associate at the firm.

[1] Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System, 594 U.S. 113 (2021).

[2] Id. at 123.

[3] Basic Inc. v. Levinson, 485 U.S. 224 (1988).

[4] Halliburton Co. v. Erica P. John Fund Inc., 573 U.S. 258 (2014).

[5] Goldman Sachs, 594 U.S. at 122 (cleaned up).

[6] See Basic Inc., 485 U.S. at 248.

[7] Id.

[8] Halliburton, 573 U.S. at 283.

[9] Goldman Sachs, 594 U.S. at 122 (citation omitted).

[10] Id. at 122-23.

[11] Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp Inc., 77 F.4th 74,105 (2d Cir. 2023).

[12] See Class Certification: Orders and Outcomes, Docket Alarm (last accessed June 14, 2026), https://www.docketalarm.com/embed/AICn.zhfEA (class certification decisions in federal securities cases). Using Docket Alarm's analytics function for motions in federal courts, 340 potentially relevant entries were identified by applying the following criteria: (1) the nature of suit matching "850 Securities, Commodities, Exchange"; (2) dating from 2015 to the present; and (3) filtering for a motion for class certification. Motions with unknown outcomes were then excluded and decisions categorized based on the date and outcome provided by Docket Alarm. The periods considered are from June 2016

to June 2021 and from June 2021 to June 2026.

[13] Id.

[14] Id.

[15] See, e.g., Shupe v. Rocket Cos., 752 F. Supp. 3d 735 (E.D. Mich. 2024); In re: Kirkland Lake Gold Ltd. Sec. Litig., No. 20-CV-4953, 2024 WL 1342800 (S.D.N.Y. March 29, 2024); In re: Concho Res. Inc. Sec. Litig., No. 4:21-cv-2473, 2025 WL 1040379 (S.D. Tex. April 7, 2025); Sjunde AP-Fonden v. Goldman Sachs Grp., 798 F. Supp. 3d 416 (S.D.N.Y. 2025), leave to appeal denied, No. 25-2280, 2025 WL 3731055 (2d Cir. Dec. 25, 2025).

[16] See San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, No. 24-1409, 2025 WL 2176586, at *4 (3d Cir. July 30, 2025); Jaeger v. Zillow Grp. Inc., No. 24-6605, 2025 WL 2741642, at *2-3 (9th Cir. Sept. 26, 2025).

[17] See Class Certification: Orders and Outcomes, Docket Alarm (last accessed June 14, 2026), https://www.docketalarm.com/embed/AIBn9HEnEw (Third Circuit class-certification decisions in securities cases). 140 potentially relevant entries were identified and analyzed using the same methodology as above, see supra note 12, but setting "State" to include Delaware, New Jersey, Pennsylvania and the U.S. Virgin Islands.

[18] See Class Certification: Orders and Outcomes, Docket Alarm (last accessed June 14, 2026), https://www.docketalarm.com/embed/AIBn1DWhFA (Ninth Circuit class-certification decisions in securities cases). 117 potentially relevant entries were identified and analyzed using the same methodology as above (see supra notes 12 and 17), but setting "State" to include Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

[19] See Fed. R. Civ. P. 23(f).

[20] See id. ("A court of appeals may permit an appeal" from class certification decisions, but need not do so.); id. advisory committee's note ("The court of appeals is given unfettered discretion whether to permit the appeal, akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari. ... Permission to appeal may be granted or denied on the basis of any consideration that the court of appeals finds persuasive").

[21] See, e.g., Bryan Lammon, An Empirical Study of Class-Action Appeals, 22 J. App. Prac. & Process 283, 310 (2022) (from 2013 to 2017, the Fifth Circuit granted half of all Rule 23(f) petitions, while the D.C. Circuit granted a mere 14%); Joseph R. Palmore, How Do 23(f) Petitions Fare in the Ninth Circuit?, Morrison Foerster LLP (June 30, 2022), https://appeals.mofo.com/topics/20220628_How-do-Rule-23f-petitions-fare-in-the-Ninth-Circuit (the Ninth Circuit, "one of the stingiest courts in the country when it comes to permission to appeal under Rule 23(f)," granted 18% of petitions from 2013 through 2017, 20% from 2018 through 2020, and only 10% from 2021).

[22] See Federal Judicial Caseload Statistics, United States Courts, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics. The Federal Judicial Caseload Statistics are released annually and report statistical information, including the total number of Rule 23(f) petitions, for twelve-month periods ending every March 31.

[23] See id.

[24] Compare id., with Class Certification: Orders and Outcomes, Docket Alarm (last accessed June 14, 2026), https://www.docketalarm.com/embed/AICn3yXQEw (class certification decisions in all federal cases). 8,746 potentially relevant entries were identified and analyzed using the same methodology as above (see supra notes 12, 17 and 18), but not filtering based on nature of suit or state.