Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MERCK & CO., INC., ET AL. *v*. REYNOLDS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08–905. Argued November 30, 2009—Decided April 27, 2010

On November 6, 2003, respondent investors filed a securities fraud action under §10(b) of the Securities Exchange Act of 1934, alleging that petitioner Merck & Co. knowingly misrepresented the heart-attack risks associated with its drug Vioxx. A securities fraud complaint is timely if filed no more than "2 years after the discovery of the facts constituting the violation" or 5 years after the violation. 28 U. S. C. §1658(b). The District Court dismissed the complaint as untimely because the plaintiffs should have been alerted to the *possibility* of Merck's misrepresentations prior to November 2001, more than 2 years before the complaint was filed, and they had failed to undertake a reasonably diligent investigation at that time. Among the relevant circumstances were (1) a March 2000 "VIGOR" study comparing Vioxx with the painkiller naproxen and showing adverse cardiovascular results for Vioxx, which Merck suggested might be due to the absence of a benefit conferred by naproxen rather than a harm caused by Vioxx (the naproxen hypothesis); (2) an FDA warning letter, released to the public on September 21, 2001, saying that Merck's Vioxx marketing with regard to the cardiovascular results was "false, lacking in fair balance, or otherwise misleading"; and (3) pleadings filed in products-liability actions in September and October 2001 alleging that Merck had concealed information about Vioxx and intentionally downplayed its risks. The Third Circuit reversed, holding that the pre-November 2001 events did not suggest that Merck acted with scienter, an element of a §10(b) violation, and consequently did not commence the running of the limitations period.

Held:

1. The limitations period in §1658(b)(1) begins to run once the plaintiff actually discovered or a reasonably diligent plaintiff would

Syllabus

have "discover[ed] the facts constituting the violation"—whichever comes first. In the statute of limitations context, "discovery" is often used as a term of art in connection with the "discovery rule," a doctrine that delays accrual of a cause of action until the plaintiff has "discovered" it. The rule arose in fraud cases but has been applied by state and federal courts in other types of claims, and legislatures have sometimes codified this rule. When "discovery" is written directly into a statute, courts have typically interpreted the word to refer not only to actual discovery, but also to the hypothetical discovery of facts a reasonably diligent plaintiff would know. Congress intended courts to interpret the word "discovery" in §1658(b)(1) similarly. That statute was enacted after this Court determined a governing limitations period for private §10(b) actions, *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U. S. 350, concluding that such actions "must be commenced within one year *after the discovery of the facts constituting the violation* . . . ," *id.,* at 364 (emphasis added). Since then, Courts of Appeals deciding the matter have held that "discovery" occurs both when a plaintiff *actually* discovers the facts and when a hypothetical reasonably diligent plaintiff would have discovered them. In 2002, Congress repeated *Lampf*'s critical language in enacting the present limitations statute. Normally, when Congress enacts statutes, it is aware of relevant judicial precedent. See, *e.g., Edelman* v. *Lynchburg College*, 535 U. S. 106, 116–117, and n. 13. Given the history and precedent surrounding the use of "discovery" in the limitations context generally as well as in this provision, the reasons for making this assumption are particularly strong here. Merck's claims are evaluated accordingly. Pp. 8–12.

2. In determining the time at which "discovery" occurs, terms such as "inquiry notice" and "storm warnings" may be useful insofar as they identify a time when the facts would have prompted a reasonably diligent plaintiff to begin investigating. But the limitations period does not begin to run until the plaintiff thereafter discovers or a reasonably diligent plaintiff would have discovered "the facts constituting the violation," including scienter—irrespective of whether the actual plaintiff undertook a reasonably diligent investigation. Pp. 12–17.

(a) Contrary to Merck's argument, facts showing scienter are among those that "constitut[e] the violation." Scienter is assuredly a "fact." In a §10(b) action, it refers to "a mental state embracing intent to deceive, manipulate, or defraud," *Ernst & Ernst* v. *Hochfelder*, 425 U. S. 185, 194, n. 12, and "constitut[es]" an important and necessary element of a §10(b) "violation." See *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U. S. 308, 319. Because the scienter element of §10(b) fraud cases has special heightened pleading requirements, see

Syllabus

15 U. S. C. §78u–4(b)(2), unless a §10(b) complaint sets out facts showing that it is more likely than not that the defendant acted with the relevant intent, the claim will fail. It would frustrate the very purpose of the discovery rule codified in §1658(b)(1) if the limitations period began to run regardless of whether a plaintiff had "discover[ed]" any facts suggesting scienter. Pp. 12–14.

(b) The Court also rejects Merck's argument that, even if "discovery" requires facts related to scienter, facts that tend to show a materially false or misleading statement (or material omission) are ordinarily sufficient to show scienter. Where §10(b) is at issue, the relation of factual falsity and state of mind is more context specific. For instance, an incorrect prediction about a firm's future earnings, by itself, does not automatically show whether the speaker deliberately lied or made an innocent error. Hence, "discovery" of additional scienter-related facts may be required. The statute's inclusion of an unqualified bar on actions instituted "5 years after such violation," §1658(b)(2), should diminish Merck's fear that this requirement will give life to stale claims or subject defendants to liability for acts taken long ago. P. 14.

(c) And the Court cannot accept Merck's argument that the limitations period begins at "inquiry notice," meaning the point where the facts would lead a reasonably diligent plaintiff to investigate further, because that point is not necessarily the point at which the plaintiff would already have "discover[ed]" facts showing scienter or other "facts constituting the violation." The statute says that the plaintiff's claim accrues only after the "discovery" of those latter facts. It contains no indication that the limitations period can sometimes begin *before* "discovery" can take place. Merck also argues that determining when a hypothetical reasonably diligent plaintiff would have "discover[ed]" the necessary facts is too complicated for judges to undertake. But courts applying the traditional discovery rule have long had to ask what a reasonably diligent plaintiff would have known and done in myriad circumstances and already undertake this kind of inquiry in securities fraud cases. Pp. 14–17.

3. Prior to November 6, 2001, the plaintiffs did not discover, and Merck has not shown that a reasonably diligent plaintiff would have discovered, "the facts constituting the violation." The FDA's September 2001 warning letter shows little or nothing about the here-relevant scienter, *i.e.*, whether Merck advanced the naproxen hypothesis with fraudulent intent. The FDA itself described the hypothesis as a "possible explanation" for the VIGOR results, faulting Merck only for failing sufficiently to publicize the less favorable alternative, that Vioxx might be harmful. The products-liability complaints' general statements about Merck's state of mind show little

Syllabus

more. Thus, neither these circumstances nor any of the other pre-November 2001 circumstances reveal "facts" indicating the relevant scienter. Pp. 17–19.

543 F. 3d 150, affirmed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined.