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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

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**MATRIXx INITIATIVES, INC., ET AL. v. SIRACUSANO
ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 09–1156. Argued January 10, 2011—Decided March 22, 2011

Respondents filed this securities fraud class action, alleging that petitioners (hereinafter Matrixx) violated §10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b–5 by failing to disclose reports of a possible link between Matrixx’s leading product, Zicam Cold Remedy, and loss of smell (anosmia), rendering statements made by Matrixx misleading. Matrixx moved to dismiss the complaint, arguing that respondents had not pleaded the element of a material misstatement or omission and the element of scienter. The District Court granted the motion, but the Ninth Circuit reversed. It held that the District Court erred in requiring an allegation of statistical significance to establish materiality, concluding instead that the complaint adequately alleged information linking Zicam and anosmia that would have been significant to a reasonable investor. It also held that Matrixx’s withholding of information about reports of adverse effects and about pending lawsuits by Zicam users gave rise to a strong inference of scienter.

Held: Respondents have stated a claim under §10(b) and Rule 10b–5. Pp. 8–22.

(a) To prevail on their claim, respondents must prove, as relevant here, a material misrepresentation or omission by Matrixx and scienter. See *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U. S. 148, 157. Matrixx contends that they failed to plead these required elements because they did not allege that the reports Matrixx received reflected statistically significant evidence that Zicam caused anosmia. Pp. 8–9.

(b) Respondents have adequately pleaded materiality. Pp. 9–19.

(1) Under *Basic Inc. v. Levinson*, 485 U. S. 224, §10(b)’s material-

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ity requirement is satisfied when there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” *Id.*, at 231–232. The Court declined to adopt a bright-line rule for determining materiality in *Basic*, observing that “[a]ny approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive.” *Id.*, at 236. Here, Matrixx’s bright-line rule—that adverse event reports regarding a pharmaceutical company’s products are not material absent a sufficient number of such reports to establish a statistically significant risk that the product is causing the events—would “artificially exclud[e]” information that “would otherwise be considered significant to [a reasonable investor’s] trading decision.” *Ibid.* Matrixx’s premise that statistical significance is the only reliable indication of causation is flawed. Both medical experts and the Food and Drug Administration rely on evidence other than statistically significant data to establish an inference of causation. It thus stands to reason that reasonable investors would act on such evidence. Because adverse reports can take many forms, assessing their materiality is a fact-specific inquiry, requiring consideration of their source, content, and context. The question is whether a *reasonable* investor would have viewed the nondisclosed information “as having significantly altered the ‘total mix’ of information made available.” *Id.*, at 232. Something more than the mere existence of adverse event reports is needed to satisfy that standard, but that something more is not limited to statistical significance and can come from the source, content, and context of the reports. Pp. 9–16.

(2) Applying *Basic*’s “total mix” standard here, respondents adequately pleaded materiality. The complaint’s allegations suffice to “raise a reasonable expectation that discovery will reveal evidence” satisfying the materiality requirement, *Bell Atlantic Corp. v. Twombly*, 550 U. S. 544, 556, and to “allo[w] the court to draw the reasonable inference that the defendant is liable,” *Ashcroft v. Iqbal*, 556 U. S. ___, ___. Assuming the complaint’s allegations to be true, Matrixx received reports from medical experts and researchers that plausibly indicated a reliable causal link between Zicam and anosmia. Consumers likely would have viewed Zicam’s risk as substantially outweighing its benefit. Viewing the complaint’s allegations as a whole, the complaint alleges facts suggesting a significant risk to the commercial viability of Matrixx’s leading product. It is substantially likely that a reasonable investor would have viewed this information “as having significantly altered the ‘total mix’ of information made available.” *Basic*, *supra*, at 232. Assuming the

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complaint's allegations to be true, Matrixx told the market that revenues were going to rise 50 and then 80 percent when it had information indicating a significant risk to its leading revenue-generating product. It also publicly dismissed reports linking Zicam and anosmia and stated that zinc gluconate's safety was well established, when it had evidence of a biological link between Zicam's key ingredient and anosmia and had conducted no studies to disprove that link. Pp. 16–19.

(c) Respondents have also adequately pleaded scienter, “a mental state embracing intent to deceive, manipulate, or defraud,” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U. S. 308, 319. This Court assumes, without deciding, that the scienter requirement may be satisfied by a showing of deliberate recklessness. Under the Private Securities Litigation Reform Act of 1995, a complaint adequately pleads scienter “only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged.” *Id.*, at 324. Matrixx's proposed bright-line rule requiring an allegation of statistical significance to establish a strong inference of scienter is once again flawed. The complaint's allegations, “taken collectively,” give rise to a “cogent and compelling” inference that Matrixx elected not to disclose adverse event reports not because it believed they were meaningless but because it understood their likely effect on the market. *Id.*, at 323, 324. “[A] reasonable person” would deem the inference that Matrixx acted with deliberate recklessness “at least as compelling as any [plausible] opposing inference.” *Id.*, at 324. Pp. 19–22.

585 F. 3d 1167, affirmed.

SOTOMAYOR, J., delivered the opinion for a unanimous Court.