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FOREWORD

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 allow investors to bring a securities fraud claim when they are harmed by fraud. A hallmark of securities law is the "fraud-on-the-market" presumption, which allows investors who purchase or sell securities at distorted prices to forego the arduous process of proving that they individually relied on material misstatements and omissions. Rather, under fraud-on-the-market theory, investors in open and developed markets are presumed to have relied on fraudulent statements that caused market-wide distortion in the price of a security. Requiring plaintiffs to show individual reliance would make reliance an individual rather than a class-wide issue and would frustrate plaintiff's ability to bring class-action suits.

In *Halliburton v. Erica P. John Fund* (*Halliburton II*), many thought the Supreme Court would either do away with or severely circumscribe the fraud-on-the-market presumption—making securities-fraud class-actions harder to bring. Instead, the Court upheld fraud-on-the-market theory, though it allowed defendants to rebut the presumption of reliance at the class-certification stage of a class-action proceeding. The *Halliburton II* holding, along with other sweeping securities rulings from the high Court in recent years, reflects an ever more uncertain landscape for securities lawsuits.

The *Duke Journal of Constitutional Law and Public Policy*'s 2015 symposium, "Fraud on the Market after *Halliburton II*," confronted head-on the impact of the Supreme Court's 2014 decision to maintain the fraud-on-the-market presumption in *Halliburton II*. Participants in this symposium critically analyzed the Court's opinion in *Halliburton II* and suggested how courts and policy-makers should proceed in the future to reduce and eliminate uncertainties in securities law.

In her contribution, Ann Lipton argues that the Court misinterpreted fraud-on-the-market theory in *Halliburton II* and will, therefore, result in an unfair impact on future claims predicated on individual reliance. Adam Pritchard attacks the Court's "fraud-on-the-market" doctrine directly; his contribution takes an institutional perspective on securities laws and worries that all institutional actors, including the Court, Congress, and the SEC, all prefer the status quo, likely resulting in shareholders resorting to self-help in future securities class actions . Amanda Rose, in her article, observes that the Court's decision has raised more questions than it answered and will do little to protect investors. Rose argues that the primary beneficiaries of current securities law are lawyers and experts involved in securities litigation. Rose proposes that Congress consider alternative enforcement mechanisms to prevent securities fraud. In his contribution, James Park seeks to ground securities law fraud prohibitions on the broader norms undergirding the integrity of the public corporation. Finally, Jill Fisch criticizes the Court's use of event-studies methodology as the mechanism corporate defendants should use to defeat class certification in securities suits. Rather, Fisch argues that an analysis of materiality is needed to make a determination of price distortion.

This symposium would not have been possible without the generous support of Clifford Chance and all of our co-sponsors. We are especially grateful for the guidance provided by our faculty advisors, Professors Joseph Blocher and Ernest A. Young. We also extend our thanks to all of the participants in our symposium:

- James Cox, Duke University School of Law
- Jill Fisch, University of Pennsylvania School of Law
- Ann Lipton, Tulane Univesrity Law School
- Alan Palmiter, Wake Forest University School of Law
- James Park, University of California, Los Angeles School of Law
- Adam Pritchard, University of Michigan Law School
- Amanda Rose, Vanderbilt University Law School