

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2653

IN RE: OCUGEN, INC. SECURITIES LITIGATION

FARHAN BEIG; STEPHEN GARY MANSFIELD,
Appellants

On Appeal from the U.S. District Court, E.D. Pa.
Judge Kelley B. Hodge, No. 2:24-cv-01500

Before: RESTREPO, MONTGOMERY-REEVES, and BOVE,
Circuit Judges
Argued: June 11, 2026; Filed: Sept. 30, 2026

OPINION OF THE COURT

MONTGOMERY-REEVES, *Circuit Judge*.

In this appeal, investors of a small pharmaceutical company (the “Investors”) allege that the company and its Chief Executive Officer made false statements about the company’s finances and accounting controls, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. To succeed on these claims, the Investors must show, among other things, that the statements were misleading as to a *material* fact. The Supreme Court has told us that a fact is material when the fact would

significantly alter the total mix of information available to reasonable investors at the time of their investment decisions.

Almost thirty years ago, we announced a categorical rule for materiality that turned on a public company's stock-price movements immediately following a truthful disclosure. We said a lack of movement in the stock price following the truthful disclosure conclusively proved a false statement's immateriality. The District Court relied on this categorical materiality rule to dismiss this suit as a matter of law. But in 2011, the Supreme Court decided that categorical rules have no place in a materiality analysis and reaffirmed that materiality turns on the total mix of information available to reasonable investors at the time of their investments, a fact specific inquiry. This decision binds us. So we abrogate the portions of our prior decisions relying on a categorical rule for materiality. And with the proper standard in mind, we will remand to the District Court to consider this case afresh.

I. FACTUAL BACKGROUND¹

Ocugen, Inc., is a small publicly traded pharmaceutical company that develops gene therapies for retinal diseases. The

¹ Because this case comes to us by way of dismissal, we take the following facts from the Investors' operative pleading, styled as the "Amended Class Action Complaint" (the "Amended Complaint"). Appendix (hereinafter "App. __") 31.

company struggled financially, never earning enough cash to cover its yearly expenses from 2020 through 2023. Nor did the company generate revenues or successfully commercialize its products. That was not for lack of trying. In September 2019, for instance, Ocugen reached an agreement with a Chinese company, CanSinoBIO Biologics Inc. (“CanSinoBIO”). Under the agreement, CanSinoBIO agreed to develop one of Ocugen’s core products (OCU400) in exchange for an exclusive license to sell that product in China, Hong Kong, Macau, and Taiwan.² As to the company’s cash shortfalls, Ocugen turned to the capital markets to raise funds through a series of equity and debt issuances.

With those issuances came the obligation to tell the truth. But according to the Amended Complaint, Ocugen violated this cardinal command. The Investors rely on three confidential witnesses, “CW-1,” “CW-2,” and “CW-3,” to tell the story. App. 42, 46–47.

CW-1 worked at Ocugen headquarters from February 2022 to March 2023 as the Manager of the Financial Planning and Analysis department. CW-1 reported to Frank Clifford, the head of that department, and was mainly responsible for forecasting estimates for Ocugen’s drug-development costs. The Amended Complaint alleges that Ocugen used CW-1’s forecasts to determine the company’s cash runway and that the

² Ocugen later amended this agreement in 2021 and 2022 to include two more of its core products.

company's CEO, Shankar Musunari, saw CW-1's forecasts. CW-1's forecasts "were based on information such as the costs per patient in the clinical studies, numbers provided to CW-1 from [Research & Development ("R&D")], and calculations of costs based on research timelines." App. 42.

CW-2 worked at Ocugen headquarters from May 2022 to August 2023 as the Executive Liaison/Assistant to Chief Accounting Officer Jessica Crespo and then Chief Financial Officer Quan Vu. CW-2 reported to Musunari's Executive Assistant and sat within earshot of Musunari's office.

CW-3 worked at Ocugen headquarters from September 2021 to November 2023, first as the Accounting Manager and later the Associate Director of Accounting. Throughout his time at Ocugen, CW-3 reported to the Chief Financial Officer, the Chief Accounting Officer, and the Senior Director of Finance and Treasury. CW-3's primary responsibilities in these roles included the accounting of the CanSinoBIO agreement.

Through this trio of confidential witnesses, the Amended Complaint alleges three core problems percolating at Ocugen. First, CW-1 tells us that Ocugen higher-ups began manipulating the forecast estimates and shared those fabricated numbers with investors. Second, CW-2 details that Ocugen filed a misleading quarterly report in August 2023 and struggled internally to find anyone to sign it. Third, CW-3 adds that Ocugen failed to properly account its CanSinoBIO revenues, leading to

a “Big R” restatement.³ We take each problem in turn.

A. The Problematic Forecast Estimates

Sometime during CW-1’s employment, CW-1 noticed that Musunari and Chief Scientific Officer Arun Upadhyay began revising the forecast estimates.⁴ According to the Amended Complaint, CW-1 would provide the estimates to Musunari and Upadhyay, and the pair would “c[o]me up with their own numbers and estimates without any basis for doing so.” App. 43. CW-1 relays one instance in which Musunari and Upadhyay did not account for known patient-enrollment delays in clinical trials for OCU400, instead telling investors that enrollment was on schedule. CW-1’s accurate forecasts also allegedly invited the ire of Musunari and Upadhyay, who both shut down CW-1’s access to Ocugen’s R&D department.

³ A restatement is “[t]he process of revising previously issued financial statements to reflect the correction of an error in those financial statements.” Fin. Acct. Standards Bd., Accounting Standards Codification 250-10-20, <https://asc.fasb.org/1943274/2147483446> (last accessed Aug. 27, 2026). According to the Amended Complaint, a “Big R” restatement “occurs when the error is material to the prior period financial statements.” App. 59.

⁴ The Amended Complaint does not allege when CW-1 became aware of the revised forecast estimates.

Then, in late February and early March 2023, CW-1 and Clifford penned a 20-page report expressing their concerns about the forecasts. The report detailed “what was wrong with the forecasts being provided to the public and the risks of using those manipulated numbers.” App. 44. As alleged, the impetus for the report was a February 27 quarterly earnings call, in which Musunari gave investors incorrect financial projections.⁵ CW-1 and Clifford emailed the report to Chief Accounting Officer Jessica Crespo. The report led to an early March 2023 meeting in which Musunari and Upadhyay chewed out Crespo and others for “not to[e]ing the company line.” App. 45. Crespo resigned on March 7, 2023.

B. The Problematic Quarterly Report

After Crespo’s resignation, Quan Vu took charge as Ocugen’s Chief Financial Officer and interim principal accounting officer. But Vu fared little better in the role. In late May or early June 2023, Vu told CW-2 that “after speaking with members of the R&D team and reviewing the Company’s financials,” he had uncovered “multiple things that were wrong and [that] the Company was misleading the public.” App. 46. CW-2 recalled Vu saying, “I went to a lawyer[;] there is going to be an investigation of finance and R&D because I learned

⁵ The Amended Complaint further alleges that CW-1 was “certain” that “fabricated numbers . . . were appearing in corporate decks being used by investor relations and filed with the [Securities and Exchange Commission] SEC.” App. 45.

something that isn't right, and I can't live with myself if I allow it to continue without saying something." App. 46–47 (alteration in original).⁶ Vu informed Ocugen's board of his findings; that move caused Musunari to cut off all communications with Vu and CW-2 in mid-June 2023. After a heated meeting, Vu informed Musunari that he would not sign Ocugen's quarterly report for Q2 2023. A few weeks later, Musunari fired Vu.

Vu's firing left Musunari with an urgent problem: he needed someone to sign the company's quarterly report due by August 15, 2023. He could not immediately find anyone, so Ocugen disclosed that it would file its quarterly report late. With the clock ticking, Musunari asked Michael Walsh, then Vice President of Finance, to sign, but he refused. (Musunari fired Walsh a few weeks later.) Musunari then turned to Jaiby Abraham, the Manager of Financial Reporting. Despite Musunari's plea to "their shared Indian heritage," App. 48, she too refused to sign. Ultimately, on August 21, Musunari signed the quarterly report himself, in his capacity as CEO and interim principal financial officer. The Amended Complaint alleges that Musunari "knew about the misrepresentations in the Company's Q2 2023 [quarterly report] because of his earlier discussions with Vu." App. 48. It further alleges that, in the months following this debacle, virtually everyone in Ocugen's finance department resigned or was fired.

⁶ The Amended Complaint alleges that Vu would not tell CW-2 or anyone else on his staff what he uncovered to shield his employees from the knowledge.

C. The Problematic Accounting

The problems did not stop there. In the aftermarket hours of April 1, 2024, Ocugen disclosed that it would restate fifteen quarters (Q1 2020 through Q3 2023) of its previously disclosed financial statements. The company admitted that its financial statements, associated earnings releases, and related investor materials were “materially misstated” and “should no longer be relied on.” App. 92. It blamed these errors on “the existence of a material weakness in its internal control over financial reporting that also existed during the Restated Periods.” App. 93. And more pointedly, Ocugen disclosed that the restatement concerned its “accounting for the estimated costs in one of its collaboration agreements,” resulting in corrections to five line items in its financial statements. App. 93.

The collaboration agreement was the CanSinoBIO agreement. According to the Amended Complaint, Ocugen failed to properly account the CanSinoBIO agreement as a “collaborative agreement” under the U.S. Generally Accepted Accounting Principles (“GAAP”). More specifically, the Amended Complaint says that companies accounting collaborative agreements must follow Accounting Standards Codification Topic 808 (“ASC 808”), under which companies record collaborative revenue separate from other customer revenues and by analogy to other authoritative accounting standards.⁷

⁷ Ocugen disclosed that it followed ASC 808 as of January 1, 2020.

Ocugen did neither. Ocugen recorded revenues realized from the CanSinoBIO agreement as part of commingled revenues in its “other income” line item. App. 56. And it failed to analogize to relevant accounting standards, resulting in improper accounting of the agreement’s “transaction price,” “the progress towards the satisfaction of the performance obligations,” and “the value of non-cash consideration received and recognized as research and development expense.” App. 56.

The Amended Complaint characterizes these errors as significant. The restatement revealed a \$4.6 million adjustment to Ocugen’s reported accumulated deficit in 2021.⁸ The restated balance and income sheets for each quarter from 2022 and 2023 showed (among other corrections) the following:

- Ocugen understated its current liabilities, anywhere from 35.3% to 45.1%.
- Ocugen understated its accumulated deficit, anywhere from 3.1% to 4.8%.
- Ocugen overstated its total stockholders’ equity, anywhere from 4.5% to 18.6%.
- Ocugen overstated its current ratio, anywhere from 54.6% to 82.0%.

⁸ The Amended Complaint does not allege figures for the restatement of the 2020 quarterly or annual financial statements.

- Ocugen understated its R&D expenses, anywhere from 0.1% to 22.4%.

In other words, the restated financials portrayed a weaker financial outlook for Ocugen in 2022 and 2023 than initially disclosed to the Investors.

CW-3 explains how the CanSinoBIO accounting errors accrued. According to CW-3, accountants in Ocugen’s finance department were not permitted to contact CanSinoBIO to verify financial results. Instead, CW-3 reports, Upadhyay provided the accounting department with financial numbers for the CanSinoBIO agreement “based on his assessments of the amount of work completed . . . and estimated costs.” App. 58. The Amended Complaint further alleges that CW-3 depended on Musunari, Upadhyay, or the head of Ocugen’s commercial division for facts about Upadhyay’s estimates. And CW-3 saw “no evidence” of “the estimates for the CanSinoBIO agreement being subjected to internal and disclosure controls.” App. 58.

The market reaction to Ocugen’s restatement announcement was swift. On April 2, 2024—the day after Ocugen announced it would restate its financials—Ocugen’s stock price dropped 10.38% from \$1.54 per share to \$1.38 per share.

II. PROCEDURAL HISTORY

Nine days after the stock-price drop, the Investors filed a putative class action against Ocugen and Musunari, alleging

violations under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”). The District Court granted leave to amend, and the Investors filed their operative pleading.

A. The Alleged False Statements

The Amended Complaint alleged numerous misleading statements across the class period, defined as May 8, 2020, to April 1, 2024. We organize the challenged misstatements as follows: (1) financial statements, (2) internal control statements, (3) SOX certifications, (4) CanSinoBIO statements, and (5) the August 2023 statements.

First, the Amended Complaint alleges that the financial statements in Ocugen’s quarterly and annual reports and the related investor press releases were materially false. The Investors say these statements misled them because they materially misstated several accounting categories, including Ocugen’s total current liabilities, accumulated deficit, total stockholder equity, collaboration revenue, R&D expenses, loss from operations, other income, and loss per share.

Second, the Amended Complaint alleges that statements about the effectiveness of internal accounting and financial controls in Ocugen’s quarterly and annual reports were materially misleading. For example, the Amended Complaint notes the following passage from one of Ocugen’s annual reports: “management concluded that our internal control over

financial reporting was effective as of December 31, 2020.” App. 67. The Investors claim that these statements were materially false because, in fact, Ocugen had material weaknesses in its internal controls, resulting in ineffective disclosure protocols.

Third, the Amended Complaint alleges that the certifications required by the Sarbanes–Oxley Act (“SOX”) of 2002, Pub. L. No. 107-204, 116 Stat. 745, were materially false. Those certifications were signed by Musunari and broadly averred (among other things) that Ocugen’s internal financial controls were designed according to GAAP and evaluated for effectiveness. *See* 15 U.S.C. § 7241(a)(4).

Fourth, the Amended Complaint alleges that the descriptions of the CanSinoBIO agreement in Ocugen’s annual reports were materially false. The Investors emphasize the following about the agreement: (1) statements in Ocugen’s 2020 and 2021 annual reports that “[t]he Company has two agreements accounted for as collaborative agreements within the scope of ASC 808,” *e.g.*, App. 68–69; (2) statements in Ocugen’s 2021 annual report that “[n]o collaboration revenue was recorded during the years ended [sic] December 31, 2021 and 2019,” App. 78; and (3) descriptions in Ocugen’s 2022 annual report that the CanSinoBIO agreement is a collaborative agreement within the scope of ASC 808, App. 84. The Amended Complaint alleges that the Investors were misled by these statements because Ocugen did not properly account the CanSinoBIO agreement and materially misstated the company’s

financial statements as a result.

Fifth and finally, the Amended Complaint alleges that Ocugen’s disclosures surrounding the company’s Q2 2023 quarterly report were materially misleading—at least partially so. The Amended Complaint flags the following statements disclosed on August 14, 2023, in a Form 8-K and August 15, 2023, in a Form 12b-25, respectively⁹:

Effective August 14, 2023, Quan Vu is no longer serving as the Chief Financial Officer/Chief Business Officer, and as principal financial officer and principal accounting officer, of Ocugen, Inc. The separation from employment is being treated as a severance qualifying event under Mr. Vu’s employment agreement.

App. 87.

[Ocugen] requires additional time primarily as a result of recent transition in the Company’s management, including its principal financial officer [Vu] and principal accounting officer. Despite working diligently in an

⁹ The SEC requires issuers to disclose in a Form 8-K “the event” and “date of the event” of a principal financial officer’s termination. Sec. & Exch. Comm’n, Form 8-K General Instructions 27 (effective through Nov. 30, 2027). The SEC further requires issuers to notify the market of late quarterly reports in a Form 12b-25. 17 C.F.R. § 240.12b-25(a).

effort to timely file the Form 10-Q, the Company has been unable to complete all work necessary to timely file the Form 10-Q.

App. 87–88 (second alteration in original). The Investors say they were misled by these statements because Ocugen failed to disclose that Vu and other personnel in the finance department had refused to sign the Q2 2023 quarterly report due to accounting fraud.

B. The District Court’s Decision

The District Court dismissed the Amended Complaint with prejudice. It cabined its review to two statements (which the District Court described as “corrective disclosures,” App. 5, 14): (1) the August 2023 statements about Vu’s firing and the late Q2 2023 quarterly report and (2) the April 1, 2024 disclosure announcing the restatement. The District Court did so because the Investors pleaded that only those statements caused their losses.

The District Court then concluded that the August 2023 statements were not actionably false. It reasoned that the Investors identified no duty to disclose the specifics of Vu’s firing, noting that Ocugen satisfied the SEC’s instructions to Form 8-K. Turning to the Investors’ April 1 corrective disclosure, the District Court ruled this statement immaterial as a matter of law. It relied on our precedent in *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410 (3d Cir.

1997), and *Oran v. Stafford*, 226 F.3d 275 (3d Cir. 2000), for the rule (the “*Oran–Burlington* rule”) that a “rebound or increase [of an issuer’s stock price] between one and four days after disclosure would be a sign of immateriality.” *In re Ocugen, Inc. Sec. Litig.*, No. 24-cv-1500, 2025 WL 2146836, at *6 (E.D. Pa. July 29, 2025). It then took judicial notice of Ocugen’s Nasdaq stock price data and found that Ocugen’s stock price recovered to pre-disclosure levels by April 4, 2024. “[A] complete recovery in two (2) trading days,” concluded the District Court, “would be evidence that the corrective disclosures were not material to then-investment decisions.” *Id.* at *7.¹⁰

The Investors timely appealed.

III. JURISDICTION & STANDARD OF REVIEW

The District Court had jurisdiction under 15 U.S.C. § 78aa(a) and 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291. *Handal v. Innovative Indus. Props., Inc.*, 157 F.4th 279, 291 (3d Cir. 2025). We exercise plenary review, taking all facts in the Amended Complaint as true and drawing all reasonable inferences in the favor of the Investors. *Id.* at 292.

¹⁰ The District Court dismissed with prejudice but did not conduct a futility analysis. See *SLT Imports, Inc. v. SAR Transp. Sys. Pvt. Ltd.*, 177 F.4th 445, 453 (3d Cir. 2026) (quoting *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002)).

IV. DISCUSSION

At its core, this appeal concerns how we assess a public company's statements under the Exchange Act. Section 10(b) of the Exchange Act "prohibits the use of 'any manipulative or deceptive device or contrivance' in violation of regulations promulgated by the SEC." *City of Warren Police & Fire Ret. Sys. v. Prudential Fin., Inc.*, 70 F.4th 668, 679 (3d Cir. 2023) (quoting 15 U.S.C. § 78j(b)). To that end, the SEC has crafted a regulation—colloquially known as "Rule 10b-5"—that prohibits "mak[ing] any untrue statement of a material fact or omit[ting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5(b). Just as the SEC may charge public companies with fraud under its regulations, so too may investors bring private causes of action against companies allegedly violating Section 10(b) and Rule 10b-5. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 260 (2024). Likewise, investors may assert claims under Section 20(a) of the Exchange Act against "persons who control an individual or entity that violates [Section] 10(b) and Rule 10b-5." *City of Warren*, 70 F.4th at 679.

To state a claim under Section 10(b) and Rule 10(b)(5), investors must plead six elements: "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the

misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37–38 (2011). By and large, the District Court cut short its analysis of these six factors by applying a rule unique to our Circuit—the *Oran–Burlington* rule. We begin our analysis with that rule.

A. The *Oran–Burlington* Rule

The *Oran–Burlington* rule holds that courts may judge a statement’s materiality post hoc by looking to a public company’s stock price after a corrective disclosure. Negligible movement means negligible significance, or so the rule posits. But much has happened since we created the *Oran–Burlington* rule, not the least of which has been Supreme Court precedent on the issue of materiality. We thus take this moment to gauge the vitality of this rule.

Because the *Oran–Burlington* rule purports to measure the significance of an issuer’s statements, we start with the origins of “materiality.” Neither the Exchange Act nor Rule 10b-5 defines materiality, but the Supreme Court has. The Supreme Court first addressed the issue in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), where it assessed the materiality of omitted facts in a proxy statement under Section 14(a) of the Exchange Act.¹¹ It held that an omitted fact is material if

¹¹ Like Section 10(b), Section 14(a) does not expressly include a materiality requirement. 15 U.S.C. § 78n(a). Instead, the

“a substantial likelihood [exists] 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 449.

Twelve years after *TSC Industries*, the Supreme Court adopted this “total mix” standard for Section 10(b) claims. *Basic Inc. v. Levinson*, 485 U.S. 224, 232 (1988). In doing so, the Court rejected a materiality rule crafted in our Circuit that would have deemed pre-merger discussions per se immaterial until the merging companies reached an agreement-in-principle on key terms. *See generally Greenfield v. Heublein, Inc.*, 742 F.2d 751, 757 (3d Cir. 1984). Such a “bright-line rule,” the Court warned, “designate[d] a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality” and “must necessarily be overinclusive or underinclusive.” *Basic*, 485 U.S. at 236; *see also TSC Indus.*, 426 U.S. at 450 (“The [materiality] determination requires delicate assessments of the inferences a ‘reasonable shareholder’ would draw from a given set of facts and the significance of those inferences to him . . .”).

So under the teachings of *TSC Industries* and *Basic*, we shun per se rules when deciding what is important to investors and instead assess the total mix of information available to

SEC has promulgated that requirement through rulemaking prohibiting materially false misstatements and omissions in proxy materials. 17 C.F.R. § 240.14a-9(a).

reasonable investors at the time of their investment decisions. Even still, we have crafted “a special rule for measuring materiality in the context of an efficient securities market.” *Oran*, 226 F.3d at 282. Under it, we measure the materiality of disclosed information “post hoc by looking to the movement, in the period immediately following disclosure, of the price of a firm’s stock.” *Id.* This “dispositive” rule, *id.* at 283, renders statements immaterial as a matter of law when “a negligible effect on the stock price” follows a corrective disclosure. *Burlington*, 114 F.3d at 1425. For example, we most recently applied this rule in a case involving a pharmaceutical company’s disclosure of inaccurate revenue reporting. In *In re Merck & Co., Inc. Securities Litigation*, Merck partially disclosed that it had misreported the revenue of one of its subsidiaries in its prior annual reports.¹² 432 F.3d 261, 264 (3d Cir. 2005). Merck’s stock price did not flinch. *Id.* Instead, the blowback came two months later when the *Wall Street Journal* reported that Merck’s error amounted to almost \$5 billion in overstated revenues, causing Merck’s stock price to plummet. But even with that later plunge, we ruled that the market’s non-reaction to Merck’s initial disclosure conclusively deemed the company’s prior revenue misstatements immaterial.

To be sure, we had some cover to depart from the Supreme Court’s admonition against per se rules based on *Basic*’s adoption of the efficient market hypothesis. The efficient market

¹² We say ‘partially’ because Merck disclosed only the fact of its misreporting, not how much it had overreported revenues.

hypothesis posits that, “in an open and developed securities market, the price of a company’s stock is determined by the available material information regarding the company and its business.” *Basic*, 485 U.S. at 241 (quoting *Peil v. Speiser*, 806 F.2d 1154, 1160–61 (3d Cir. 1986)). The Supreme Court employed the efficient market hypothesis to craft a rebuttable presumption of reliance for Section 10(b) claims. *Id.* at 248–49. We took the theory a step further to conclude that efficient markets would incorporate significant information immediately, thereby resulting in swift stock-price changes. Put differently, “[t]o the extent that information is not important to reasonable investors, it follows that its release will have a negligible effect on the stock price.” *Burlington*, 114 F.3d at 1425; *see also Merck & Co. Sec. Litig.*, 432 F.3d at 269 (“Our Court, as compared to the other courts of appeals, has one of the clearest commitments to the efficient market hypothesis.” (citation modified)).

Whatever the merits of the efficient market hypothesis,¹³ the Supreme Court has never applied it to a materiality analysis. That point became clear in *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011), a unanimous decision handed down more than a decade after our creation of the *Oran–Burlington* rule. There, a drug manufacturer (Matrixx) failed to

¹³ We note that the hypothesis has come under considerable assault in recent decades. *See generally Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 289–94 (2014) (Thomas, J., concurring in the judgment).

disclose anecdotal adverse event reports showing that its cold medicine caused anosmia in some patients. When the press reported on a government investigation on the same topic, Matrixx's stock price dropped from \$13.55 to \$11.97 per share. But three days later, the company issued a press release generally denying the basis of the investigation; the stock price rebounded to \$13.40 per share that same day.

When assessing whether Matrixx's prior statements were materially misleading, the Supreme Court did not ask whether the company's stock price reflected what investors found important. Nor did it pay attention to the stock price's rebound—even though it occurred within three days of a corrective disclosure. The Court instead employed the familiar “total mix” standard. *Matrixx*, 563 U.S. at 38 (quoting *Basic*, 485 U.S. at 231–32). In doing so, it discarded another bright-line rule of materiality, this one developed by the Seventh Circuit, which would have rendered immaterial statistically insignificant adverse event reports. That “categorical rule,” said the Court, “would ‘artificially exclude’ information that ‘would otherwise be considered significant to the trading decisions of a reasonable investor.’” *Id.* at 40 (quoting *Basic*, 485 U.S. at 236). The Court then reapplied its earlier rationale, reasoning that “assessing the materiality of adverse event reports is a ‘fact-specific’ inquiry that requires consideration of the source, content, and context of the report.” *Id.* at 43 (quoting *Basic*, 485 U.S. at 236). The Court's analysis in *Matrixx* underscores two core principles of materiality. One: materiality cannot be based on categorical approaches; the Court has twice rejected

those approaches outright. And two: materiality must be based on a fact-specific assessment of the information available to, and hidden from, reasonable investors at the time of their investment decisions. Simple recourse to an issuer's later stock price as a proxy for materiality will not suffice.

Given *Matrixx*, we must now part ways with the *Oran–Burlington* rule.¹⁴ We have authority to do so as a panel when intervening Supreme Court precedent has told us we did not get it right. See *United States v. Henderson*, 64 F.4th 111, 118 (3d Cir. 2023); *Karns v. Shanahan*, 879 F.3d 504, 514–15 (3d Cir. 2018). It is no impediment to us that the Supreme Court has not weighed in directly on the *Oran–Burlington* framework. “It is enough,” we have said, “if the Supreme Court decides a similar issue using reasoning that, if applied to the issue in our prior holding, would compel a different answer.” *United States v. Moses*, 142 F.4th 126, 130 (3d Cir. 2025). That is what happened here. To the extent *Basic* left the door open to per se approaches to materiality, *Matrixx* shut it. The Court reaffirmed the fact-specific nature of the materiality inquiry

¹⁴ For the avoidance of doubt, we partially abrogate the passages developing and relying on the rule in the following decisions: (1) *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1400, 1425 (3d Cir. 1997); (2) *Oran v. Stafford*, 226 F.3d 275, 282–83 (3d Cir. 2000); (3) *In re NAHC, Inc. Securities Litigation*, 306 F.3d 1314, 1330–31 (3d Cir. 2002); (4) *In re Merck & Co., Inc. Securities Litigation*, 432 F.3d 261, 269–71 (3d Cir. 2005).

and chided a court of appeals for employing an approach that excluded analysis of information reasonable investors might find significant. And, like the Seventh Circuit’s “categorical” rule, so too is our *Oran–Burlington* rule necessarily underinclusive. It fails to assess, for example, what investors would have considered important at the time they decided to invest—even though that is the precise inquiry the Court directed us to undertake. See *TSC Indus.*, 426 U.S. at 449 (“An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important *in deciding how to vote.*” (emphasis added)); *Basic*, 485 U.S. at 236 (discussing the “significan[ce]” of pre-merger discussions “to the trading decision of a reasonable investor”); *Matrixx*, 563 U.S. at 40 (same).¹⁵

Our decision to abrogate the *Oran–Burlington* rule finds further support in our precedent following *Merck*, the last case to apply the rule. In two cases decided just before the Supreme Court’s *Matrixx* decision, we downplayed the dispositive nature of the rule. See, e.g., *In re Constar Int’l Inc. Sec. Litig.*, 585 F.3d 774, 784 (3d Cir. 2009) (“[A] drop in stock price in an efficient market is one way to show materiality.”); *United States v. Schiff*, 602 F.3d 152, 171 (3d Cir. 2010) (noting that

¹⁵ Indeed, because the Supreme Court has thrice reasoned that the relevant timeframe for materiality is the time of an investor’s trading decision, courts should be wary of materiality arguments that rely on post-hoc datapoints to inform what reasonable investors may have found material.

a stock-price drop “is not the only method of proving materiality”). And published decisions after *Matrixx* have not referred to the rule at all. For example, in *Fan v. StoneMor Partners LP*, we cited the “total mix” standard and did not reference the rule. 927 F.3d 710, 716 (3d Cir. 2019); *see also SEC v. Chappell*, 107 F.4th 114, 134 (3d Cir. 2024) (“The District Court did what Supreme Court precedent instructs, ‘assessing materiality as a fact-specific inquiry that requires consideration of the source, content, and context.’” (quoting *Matrixx*, 563 U.S. at 43)). Simply put, in the 20 years since *Merck* and the 15 years since *Matrixx*, we have not relied on the *Oran–Burlington* rule in published precedent. We thus ascribe little reliance interests to the rule.¹⁶ The “total mix” standard carries the day.

¹⁶ We further note that decisions from our sister circuits have signaled the rule’s demise. *See, e.g., No. 84 Emp.-Teamster Joint Council Pension Tr. Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 934 (9th Cir. 2003) (declining to adopt the *Oran–Burlington* rule because doing so “would contravene the Supreme Court’s holdings”); *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991) (“[W]hether a public company’s stock price moves up or down or stays the same . . . does not establish the materiality of the statements made . . .”). *See generally* Brian J. Boyle, Note, *Bright Line Rules and Inefficient Markets: The Third Circuit’s 10b-5 Materiality Doctrine is Ripe for Revision*, 57 Vill. L. Rev. 683 (2012) (“Indeed, after the Court’s 2011 opinion in *Matrixx Initiatives*, it is clear that bright-line tests are necessarily unsuitable for the analysis of 10b-5 materiality.” (quotation marks and citation omitted)).

B. The District Court’s Analysis

We turn now to the District Court’s analysis of the Amended Complaint’s challenged misstatements.¹⁷ Here, the parties focus on two of the six elements of a Section 10(b)

¹⁷ The District Court did not analyze most of the Amended Complaint’s challenged misstatements because “Plaintiffs only plead[ed] loss causation as to the August 15, 2023, and April 1, 2024 corrective disclosures.” *Ocugen, Inc. Sec. Litig.*, 2025 WL 2146836, at *5. On that basis, the District Court constrained its analysis of materially false statements to “only . . . those statements in those corrective disclosures.” *Id.* That approach is not quite right. Though loss causation is an element of a Section 10(b) claim, *see Handal*, 157 F.4th at 292, statements causing loss are not proxies for materially false statements under the securities laws. Loss causation focuses on statements disclosing the truth to the market—often called “corrective disclosures”—and asks whether a plaintiff has sufficiently linked the alleged fraud to the alleged loss. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 344–46 (2008). On the other hand, materiality focuses on the issuer’s false or misleading statements made at the time investors are deciding to buy or sell. *See Basic*, 485 U.S. at 231–32. On remand, the District Court should be mindful that it cannot constrain its materiality assessment to only corrective disclosures and must consider whether the allegedly false statements would significantly alter the total mix of information available to reasonable investors at the time of their investment decisions.

claim: material misstatements and scienter.

Whether a statement is materially misstated is really two inquiries in one. Courts first ask “whether each individual statement the plaintiff has identified was, as written or spoken and at the time the statement was made, actually false or misleading by omission.” *Handal*, 157 F.4th at 294. Investors must “specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.” 15 U.S.C. § 78u-4(b)(1). That requires investors to plead “the who, what, when, where, and how” for the alleged misstatements. *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 534 (3d Cir. 1999) (citation omitted), *abrogated on other grounds by Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308 (2007).

But even false or misleading information may not be actionable if investors did not care about it. As stated above, courts also assess the materiality of each statement, asking whether “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.” *Matrixx Initiatives*, 563 U.S. at 38. The Supreme Court has been “careful not to set too low a standard of materiality,” out of fear of “bury[ing] shareholders in an avalanche of information.” *Id.* (quoting *Basic*, 485 U.S. at 231). To that end, we have confined our analysis of materiality

to what an objectively reasonable investor would find significant, not what a plaintiff might have believed. *Fan*, 927 F.3d at 716. And we have remarked that materiality is a “mixed question of law and fact” that requires “the delicate assessments of the inferences a reasonable shareholder would draw from a given set of facts.” *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 714 (3d Cir. 1996).

Scienter, on the other hand, requires the Investors to plead more about a speaker’s state of mind at the time he or she made the statement. Congress has heightened the pleading burden, requiring the Investors to “state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.” 15 U.S.C. § 78u-4(b)(2). As with materiality, the Supreme Court tells us how to review the Investors’ scienter allegations through a three-step test. First, we accept all factual allegations of scienter as true. *Tellabs*, 551 U.S. at 322. Second, we do not review the scienter allegations “in isolation”; instead, we assess “whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter.” *Id.* at 323. That strong inference “must be more than merely ‘reasonable,’” “must be cogent and compelling,” and must be “strong in light of other explanations.” *Id.* at 324; *see also id.* (“The inference that the defendant acted with scienter need not be irrefutable, *i.e.*, of the ‘smoking-gun’ genre, or even the ‘most plausible of competing inferences.’” (citations omitted)). Third, in working out the strength of plaintiffs’ allegations, we “must take into account plausible opposing inferences,” particularly “nonculpable explanations for the

defendant’s conduct.” *Tellabs*, 551 U.S. at 323–24. This “inherently comparative” analysis thus asks, “How likely is it that one conclusion, as compared to others, follows from the underlying facts?” *Id.* at 323.

In addition to the *Tellabs* three-step, courts have been clear that the required state of mind is not “negligent wrongdoing.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 210 (1976). The securities laws, as we have said, “do not make it unlawful to do bad business, act negligently, breach fiduciary duties, or otherwise to fail to take care in managing corporate affairs.” *Handal*, 157 F.4th at 293. For this reason, we have required securities plaintiffs to plead “a knowing or reckless state of mind.” *Inst’l Invs. Grp. v. Avaya, Inc.*, 564 F.3d 242, 252 (3d Cir. 2009) (citing *Advanta Corp. Sec. Litig.*, 180 F.3d at 534–35). At minimum then, plaintiffs must plead that an issuer made a statement “involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” *Advanta*, 180 F.3d at 535.

So the Investors must at least allege that Musunari recklessly made materially false or misleading statements. To refresh, the Investors allege that, from Q1 2020 through Q3 2023, Musunari made several material misstatements, including (1) financial statements, (2) internal control statements, (3) SOX certifications, (4) CanSinoBIO statements, and (5) the August

2023 statements. The District Court, however, did not assess whether these statements were materially false or whether they were recklessly made. Indeed, application of the *Oran–Burlington* rule artificially stopped any inquiry into these statements’ actionability.¹⁸ Similarly, the presence of the *Oran–Burlington* rule deprived the parties of the benefit of full briefing on arguments about the fact-intensive materiality and scienter elements. We thus remand for the District Court to assess the actionability of these statements in the first instance. *See Valli v. Avis Budget Grp.*, 162 F.4th 396, 413 (3d Cir. 2025) (“[B]ecause the District Court ruled solely on [the *Oran–*

¹⁸ With one exception. The District Court concluded that the August 2023 statements were not actionable, and we agree. The Amended Complaint alleges that these statements were both partially corrective and partially misleading because, while Ocugen disclosed Vu’s firing, it did not disclose that Vu refused to sign the company’s Q2 2023 quarterly report. “Silence, absent a duty to disclose, is not misleading under Rule 10b-5.” *City of Edinburgh Council v. Pfizer, Inc.*, 754 F.3d 159, 174 (3d Cir. 2014) (quoting *Basic*, 485 U.S. at 239 n.17). As we have said, a duty to disclose arises “when there is [1] insider trading, [2] a statute requiring disclosure, or [3] an inaccurate, incomplete or misleading prior disclosure.” *Schiff*, 602 F.3d at 162 (quoting *Oran*, 226 F.3d at 285–86). And as the District Court correctly noted, the Amended Complaint failed to allege any of the three. Likely for that reason, the Investors appear to have abandoned any argument as to the actionability of the August 2023 statements.

Burlington rule], we will remand so that it may address [materiality and scienter] in the first instance.”).

Appellees resist and ask that we affirm the District Court on the alternative grounds that the Amended Complaint fails to adequately allege scienter. We decline to do so. “While we may affirm on grounds not reached by the District Court, we also possess the authority to remand for the District Court to resolve unaddressed issues in the first instance.” *In re Maiden Holdings, Ltd. Sec. Litig.*, 153 F.4th 354, 368 (3d Cir. 2025) (citing *Howze v. Jones & Laughlin Steel Corp.*, 750 F.2d 1208, 1213 (3d Cir. 1984)). Prudence favors remand considering our retreat from the *Oran–Burlington* rule. And, as “a court of review, not of first review,” *Maiden Holdings*, 153 F.3d at 368 (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 (2005)), we leave it to the District Court’s sound judgment to assess in the first instance whether the Amended Complaint’s confidential-witness allegations pass muster under our standards. *See Avaya*, 564 F.3d at 263 (noting that courts “evaluat[e] the detail provided by the confidential sources, the sources’ basis of knowledge, the reliability of the sources, the corroborative nature of other facts alleged, including from other sources, the coherence and plausibility of the allegations, and similar indicia” (quoting *Cal. Pub. Emps. Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 147 (3d Cir. 2004))).

V. CONCLUSION

In sum, we abrogate the *Oran–Burlington* rule. Because

the parties and the District Court operated with that rule in mind, we return this case to the District Court to consider materiality and, if necessary, scienter in the first instance. Because we revive the Investors’ Section 10(b) cause of action, we also vacate the District Court’s dismissal of the Investors’ Section 20(a) claim. *See Avaya*, 564 F.3d at 280. On remand, the District Court should decide in the first instance whether leave to amend is appropriate.

Further, on remand, the District Court should carefully parse the import of Ocugen’s restatement of its financials. Though Ocugen admitted in its April 1, 2024 restatement announcement that it had “materially misstated” fifteen quarters of financial statements, App. 92, bare allegations of a “Big R” restatement alone, without any explanation for what the restatement means, may fail to meet the fact-intensive materiality inquiry. *See Westinghouse Sec. Litig.*, 90 F.3d at 714 (remark- ing that materiality requires “the delicate assessments of the inferences a reasonable shareholder would draw from a given set of facts”). We are mindful not to replace the *Oran–Bur- lington* rule with another categorical rule that restatements al- ways render some prior disclosures materially false.

To be sure, the Amended Complaint reveals just why a “Big R” restatement may not be enough. On one hand, the Amended Complaint alleges that Ocugen restated some of its financial figures for 2022 and 2023 by more than 35%. We suspect a departure of that magnitude will shed light on the “total mix” of information reasonable investors would find significant.

Accord Gimpel v. Hain Celestial Grp., Inc., 156 F.4th 121, 140 & n.13 (2d Cir. 2025). But, on the other hand, the Amended Complaint alleges very little as to the restatement’s significance on the 2020 and 2021 financial statements. For instance, the Investors’ only allegation about the pre-2022 period is that Ocugen underreported its accumulated deficit by \$4.6 million for its 2021 fiscal year. The Amended Complaint does not allege the *total* accumulated deficit, though Ocugen’s public filings suggest a figure north of \$130 million. So, on remand, the District Court should probe the “total mix” of information available to reasonable investors and what exactly the restatement reveals about Ocugen’s prior disclosures.

In addition, should the District Court determine that the Investors allege materially false statements, it should analyze the operative complaint’s scienter allegations. Our own review of the Amended Complaint reveals several scienter allegations, including (1) Ocugen’s motive to lie, (2) the significance of the CanSinoBIO agreement to Ocugen’s operations, (3) the size and scope of the restatement, (4) the departures of high-ranking executives and accounting personnel, and (5) the confidential witnesses’ reported failures of accounting controls. To the extent the District Court assesses scienter, it should determine “whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter.” *Tellabs*, 551 U.S. at 323; *see also id.* at 326 (“We reiterate, however, that the court’s job is not to scrutinize each allegation in isolation but to assess all the allegations holistically.”); *OFI Asset Mgmt. v. Cooper Tire & Rubber*, 834 F.3d 481, 493 (3d Cir. 2016) (noting that a district

court should “explicitly note that it had considered all the arguments presented by the Complaint and assessed scienter holistically”).

* * * * *

For these reasons, we will VACATE the District Court’s judgment and REMAND for further proceedings consistent with this opinion.

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