No. 20-8

IN THE

Supreme Court of the United States

DEUTSCHE BANK TRUST COMPANY AMERICAS, *et al.*,
Petitioners,

v.

ROBERT R. MCCORMICK FOUNDATION, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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Counsel for Respondents Susquehanna Capital Group, et al.

COMPLETE LIST OF PARTIES REPRESENTED BY COUNSEL IN APPENDIX

CORPORATE DISCLOSURE STATEMENT

Each of the following Respondents states that it has no parent corporation and no publicly held corporation owns 10% or more of its stock: 1199SEIU Health Care Employees Pension Fund; 1199SEIU Home Care Employees Fund; 1199SEIU Greater New York Pension Fund; Adage Capital Advisors Long; Adage Capital Partners LP; The Alfred W. Merkel Marlowe G. Merkel Trust UA 11 Sept 85; Amalgamated Bank; The Bank of New York Mellon Corporation Retirement Plans Master Trust; The Bank of Nova Scotia; Board of Administration of the Water and Power Employees' Retirement Plan; Board of Trustees of the Colleges of Applied Arts and Technology Pension Plan, as Administrator of Colleges of Applied Arts and Technology Pension Plan; City of Los Angeles Employees' Retirement System; The Church Pension Fund, in its individual and trustee capacities; Clearwater Growth Fund (n/k/a Clearwater Core Equity Fund); Cougar Trading, LLC; Darell F. Kuenzler IRA; Del Mar Master Fund, Ltd.; Denise Palmer Revocable Trust U/A/D 10-28-1991, Denise E. Palmer, Trustee; The Depository Trust & Clearing Corporation; D. E. Shaw Valence Portfolios, L.L.C.; Deutsche Bank AG; DiMaio Ahmad Capital LLC; Emanuel E. Geduld 2005 Family Trust; Evelyn A. Freed Trust U/A/D 03/26/90 Brandes-All Cap Value; GPC LX LLC; Graff Valve & Fittings Co. Employees Profit Sharing Plan 2 UAD 6/30/85, Philip Graff, Michael Graff, Trustees; Great-West Life & Annuity Insurance Company; Gryphon Hidden Values VIII Ltd.; Guggenheim Portfolio Company XXXI, LLC; Guggenheim Portfolio LIX, LLC; Halcyon Asset Management LLC; Halcyon Diversified Fund LP; Halcyon Fund, LP; Halcyon Master Fund LP; Harbor Capital Group Trust for Defined Benefit Plans (incorrectly named as

"Harbor Capital Group Trust"); Harbor Mid Cap Value Fund; Harris Corporation Master Trust; Harvest AA Capital LP; Harvest Capital LP; Hussman Econometrics Advisors, Inc.; Hussman Investment Trust; Hussman Strategic Growth Fund; Harvard University; J. Goldman & Co., L.P. (incorrectly named as "Jay Goldman & Co., LP"); J. Goldman, L.P. (f/k/a Jay Goldman Master Limited Partnership) (incorrectly named as "Jay Goldman Master LP"); Jeanette Day Family Trust U/A DTD 10/04/1994; Jennifer Merkel, Successor Trustee of The Alfred W. Merkel Marlowe G. Merkel Trust UA 11 Sept 85; Jim Hicks as trustee of The Jim Hicks & Co. Employee Profit-Sharing Plan; John Hancock Funds II; John Hancock Funds II Equity Income Fund (incorrectly named as "John Hancock Funds II (Equity-Income Fund)" and "JHF II Equity-Income Fund"); John Hancock Funds II – Spectrum Income Fund (incorrectly named as "John Hancock Funds II (Spectrum Income Fund)" and "JHF II Spectrum Income Fund"); John Hancock Variable Insurance Trust New Income Trust (incorrectly named as "John Hancock Variable Insurance Trust (f/k/a John Hancock Trust (New Income Trust))," "John Hancock Variable Insurance Trust," and "JHT New Income Trust"); The Kraft Group; Lispenard Street Credit Fund LLP; Lispenard Street Credit Master Fund; Lispenard Street Credit Master Fund Ltd.; Loomis Sayles Credit Alpha Master Fund (incorrectly named as "Loomis Sayles Credit Alpha Fund"); Los Angeles Fire and Police Pension Plan; MassMutual Premier Enhanced Index Value Fund (currently known as MassMutual Premier Disciplined Value Fund); MassMutual Premier Funds; MassMutual Premier Small Company Opportunities Fund (currently known as MassMutual Premier Small Cap Opportunities Fund); MassMutual Select Diversified Value Fund;

MassMutual Select Funds; MassMutual Select Indexed Equity Fund (currently known as MM S&P 500 Index Fund); Milliken & Company; MML Blend Fund; MML Series Investment Fund; MML Series Investment Fund II; Monserrate Ramirez JTWROS; National Railroad Retirement Investment Trust; New Americans LLC; New York Life Insurance Company; NorthShore University HealthSystem, as owner of the NorthShore University HealthSystem Second Century Fund; Northwestern Mutual Life Insurance Company; Ohio National Fund, Inc.; OMA OPA LLC; Oppenheimer Main Street Select Fund (formerly known as Oppenheimer Main Street Opportunity Fund); Oppenheimer Main Street Mid Cap Fund (formerly known as Oppenheimer Main Street Small Cap Fund); Oppenheimer Variable Account Funds doing business as Oppenheimer Main Street Small & Mid-Cap Fund/VA (formerly known as Oppenheimer Main Street Small Cap Fund/VA); Paper Products, Miscellaneous Chauffeurs, Warehousemen, Helpers, Messengers, Production and Office Workers Local 27 Pension Fund; The Peter J. Fernald Trust U/A 1/13/92; Peter J. Fernald, Trustee of The Peter J. Fernald Trust U/A 1/13/92; Pond View Credit (Master) LP; Posen Family Limited Partnership; President and Fellows of Harvard College; The Public Employees' Retirement Association of Colorado; QVT Fund LP; Raymond M. Luthy Trust; Reed Elsevier U.S. Retirement Plan (now known as RELX Inc. U.S. Retirement Plan); Russell Investment Company; Robert N. Mohr, Successor Trustee to Joseph B. Mohr, as Trustee of the J&M Trust UA Dated 07/23/1992; Russell U.S. Core Equity Fund (incorrectly named as "Russell US Core Equity Fund," and f/k/a "Russell Equity I Fund" and Russell Investment Company Diversified Equity Funds); Royal Bank of Canada; Rydex ETF

Trust (Guggenheim S&P 500 Pure Value ETF) (incorrectly named as "Rydex ETF Trust (Rydex S&P 500 Pure Value ETF)"); Rydex ETF Trust (Guggenheim S&P 500 Equal Weight Consumer Discretionary ETF) (incorrectly named as "Rydex ETF Trust (Rydex S&P Equal Weight Consumer Discretionary ETF)"); Rydex ETF Trust (Guggenheim S&P 500 Equal Weight ETF) (incorrectly named as "Rydex ETF Trust (Rydex S&P Equal Weight ETF)"); Rydex Series Funds; Rydex Series Funds Multi-Hedge Strategies Fund; Rydex Series Funds S&P 500 Pure Value Fund; Rydex Variable S&P 500 Pure Value Fund; Rydex Variable Trust; Rydex Variable Trust Multi-Hedge Strategies Fund; SBL Fund Series O; Stark Investments; The Diamond Family Foundation; The Salvation Army—Central Territory; The State Universities Retirement System of Illinois; Stichting Pensioenfonds ABP; Stichting Pensioenfonds Hoogovens; Stichting Pensioenfonds Van De ABN Amro Bank N.V.; Stichting Pensioenfonds Zorg En Welzijn; Stichting Shell Pensioenfonds; Susquehanna Capital Group; Susquehanna Investment Group; Susquehanna Investment Group as custodian of the SIG-SS CBOE Joint Account; Terrill F Cox & Lorraine M Cox Trust U/A DTD 3/31/98; Times Mirror Savings Plan; Towerview LLC; Transamerica Partners Mid Cap Value (f/k/a Diversified Investors Portfolios); Transamerica Partners Mid Value Portfolio (f/k/a Transamerica Partners Mid-Cap Value Portfolio f/k/a/ Diversified Investors Mid-Cap Value Portfolio); Transamerica Partners Portfolios (f/k/a/ Diversified Investors Portfolios); Tribune Company 401(k) Savings Plan; Tribune Company Master Retirement Savings Trust; Tribune Employee Stock Ownership Plan; Trustees of Boston College; Trustees of the Walters Art Gallery, Inc., d/b/a the Walters Art Museum; Twin Se-

curities, Inc.; Wabash/Harvest Partners LP; Waterman Broadcasting Corp Employee Profit Sharing Plan U/A 01/01/1974; Weiss Multi-Strategy Partners LLC; Wolverine Arbitrage Fund A/K/A Wolverine Convertible Arbitrage Fund; Wolverine Trading LLC; Woodmont Investments Ltd.; and Workers Compensation Board.

Each of the following Respondents, to the extent they exist, either are (or were merged into) wholly owned direct or indirect subsidiaries of Wells Fargo & Company (a publicly held corporation that has no parent corporation and no public corporation owns 10% or more of its common stock): A.G. Edwards & Sons, LLC; A.G. Edwards Private Equity Partners III, L.P.; A.G. Edwards, Inc.; AG Edwards & Sons, Inc.; Evergreen Asset Management Corp.; First Clearing, LLC; Wachovia Bank, N.A.

Each of the following Respondents, to the extent they exist, either are (or were merged into) wholly owned direct or indirect subsidiaries of The Bank of New York Mellon Corporation (a publicly held corporation that has no parent corporation and no public corporation owns 10% or more of its stock): BNY Mellon Investment Servicing (US) Inc. (f/k/a PFPC, Inc.); BNY Mellon Trust of Delaware; BNY Mellon, N.A., as successor-in-interest to Mellon Trust of New England, N.A.; Pershing LLC; The Bank of New York Mellon (on its own behalf and in its capacity as trustee of various trusts); The Dreyfus Corporation.

Bank of America Corporation is a publicly held company whose shares are traded on the New York Stock Exchange and has no parent corporation. Based on the U.S. Securities and Exchange Commission Rules regarding beneficial ownership, Berkshire Hathaway Inc., 3555 Farnam Street, Omaha, Nebraska 68131,

beneficially owns greater than 10% of Bank of America Corporation's outstanding common stock. Each of the following Respondents, to the extent they exist, either are (or were merged into) wholly owned direct or indirect subsidiaries of Bank of America Corporation, are unincorporated divisions of Bank of America Corporation, or otherwise not publicly owned corporations: Bank of America; Bank of America, N.A.; Bank of America, N.A. / LaSalle Bank, N.A.; Bank of America Structured Research; Banc of America Securities LLC; Bank of America N.A./GWIM Trust Operations; Columbia Management Group; Forrestal Funding Master Trust; LaSalle Bank, N.A.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch, Pierce, Fenner & Smith as successor to Banc of America Securities LLC, Securities Lending Services; Merrill Lynch; Merrill Lynch & Co., Inc.; Merrill Lynch Capital Corp.; Merrill Lynch Financial Markets, Inc.; Merrill Lynch Trust Co.; Merrill Lynch, Pierce, Fenner & Smith, Inc. – Safekeeping; Merrill Lynch, Pierce, Fenner & Smith, Inc. – Securities Lending; 1IA SPX1; US Trust Co. N.A.; and U.S. Trust Company of Delaware.

"Aegon/Transamerica Series Fund – TRP" does not exist, to the best of counsel's knowledge.

Aetna Inc. states that it is 100% owned by CVS Pharmacy, Inc., which is 100% owned by CVS Health Corporation, a publicly traded corporation.

APG Asset Management US Inc. F/K/A ABP Investments US, Inc. (incorrectly named as ABP) states that no publicly held corporation owns 10% or more of its stock and that its parent corporation is APG Asset Management, whose parent is Stichting Pensioenfonds ABP.

Baldwin Enterprises LLC (formerly known as Baldwin Enterprises, Inc.) states that its ultimate parent company is Jefferies Financial Group Inc. (formerly known as Leucadia National Corporation), a publicly held corporation.

Bank of Montreal Holding Inc. (as successor in interest to BMO Nesbitt Burns Trading Corp. S.A.) states that it is ultimately wholly owned by the Bank of Montreal. Bank of Montreal holds 100% of the issued and outstanding common shares of Bank of Montreal Holding Inc. BMO Life Assurance Company ("BMO-LA") holds 100% of Class A Preference Shares of Bank of Montreal Holding Inc. BMO Life Holdings (Canada), ULC ("BMO ULC") holds 100% of the issued and outstanding shares of BMOLA. BMO Life Insurance Company ("BMOLI") holds 100% of the issued and outstanding common shares of BMO ULC. Bank of Montreal holds 100% of the issued and outstanding common shares of BMOLI.

Barclays Bank PLC states that it is a wholly owned subsidiary of Barclays PLC, which is a publicly held corporation, and no other publicly traded company owns 10% or more of Barclays Bank PLC's stock.

Barclays Capital Inc. states that it is a wholly owned subsidiary of Barclays Group US Inc., which is a wholly owned subsidiary of Barclays US LLC, which is a wholly owned subsidiary of Barclays Bank PLC, which is a wholly owned subsidiary of Barclays PLC, a publicly held corporation. No other publicly traded company owns 10% or more of Barclays Capital Inc.'s stock.

Barclays Capital Securities Ltd. states that it is an indirectly held wholly owned subsidiary of Barclays PLC, which is a publicly held corporation, and no other

publicly traded company owns 10% or more of Barclays Capital Securities Limited's stock.

Bear Stearns Asset Management Inc. states that it is a wholly owned subsidiary of The Bear Stearns Companies LLC, which is a wholly owned subsidiary of JPMorgan Chase Holdings LLC, which is a wholly owned subsidiary of JPMorgan Chase & Co., a publicly held corporation.

Bear Stearns Equity Strategies RT LLC merged into Bear Stearns Equity Holdings Inc., effective September 30, 2019. Bear Stearns Equity Holdings Inc. states that it is a wholly owned subsidiary of The Bear Stearns Companies LLC, which is a wholly owned subsidiary of JPMorgan Chase & Co., a publicly held corporation.

BMO Nesbitt Burns Employee Co-Investment Fund I (U.S.) L.P. no longer exists, to the best of counsel's knowledge.

BMO Nesbitt Burns Employee Co-Investment Fund I Management (U.S.) Inc. no longer exists, to the best of counsel's knowledge.

BMO Nesbitt Burns Inc. states that it is a wholly owned subsidiary of BMO Nesbitt Burns Holding Corporation, which in turn is wholly owned by Bank of Montreal Holding Inc., which is wholly owned by the Bank of Montreal. Bank of Montreal is a publicly traded bank, incorporated under the Bank Act. No publicly held corporation owns 10% or more of the stock of the Bank of Montreal.

BMO Nesbitt Burns U.S. Blocker Inc. no longer exists, to the best of counsel's knowledge.

BNA Employees' Retirement Plan states that is an "employee pension benefit plan," as that term is defined

by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1002(2)(A); there is no parent corporation or any publicly held corporation owning 10% or more of its stock.

BNP Paribas Securities Corp. states that it is a wholly owned indirect subsidiary of BNP Paribas, which is a publicly owned company organized under the laws of France. No publicly held entity owns 10% or more of the stock of BNP Paribas.

BNP Paribas Prime Brokerage Inc. states that on March 12, 2018, it merged into BNP Paribas Securities Corp., which is a wholly owned indirect subsidiary of BNP Paribas, which is a publicly owned company organized under the laws of France. No publicly held entity owns 10% or more of the stock of BNP Paribas.

Canadian Imperial Holdings, Inc. states that it is an indirect wholly owned subsidiary of Canadian Imperial Bank of Commerce, which is a publicly traded company and has no parent. No publicly held corporation owns 10% or more of Canadian Imperial Bank of Commerce's stock.

Cantigny Foundation states that it is organized under the General Not For Profit Corporation Act of Illinois and, accordingly, issues no stock.

Cede & Co. states that it is a New York partnership with no parent corporation and no publicly held corporation owns 10% or more of Cede & Co.

Each of the following Respondents states that it has no parent corporation and no publicly held corporation owns 10% or more of its stock: Allegro Associates; Camilla Chandler Family Foundation; and Chandis Securities Company.

Each of the following Respondents states that it is a trust, issues no stock, and has no parent corporation, and that no publicly held company owns 10% or more of its beneficial interests: Alberta W. Chandler Marital Trust No. 2; Chandler Trust No. 1; Chandler Trust No. 2; Dorothy B. Chandler Marital Trust No. 2; Dorothy B. Chandler Residuary Trust No. 2; Earl E. Crowe Trust No. 2; Garland Foundation Trust No. 2; Helen Garland Trust No. 2 (for Gwendolyn Garland Babcock); Helen Garland Trust No. 2 (for Hillary Duque Garland); Helen Garland Trust No. 2 (for William M. Garland III); HOC GST Exempt Trust No. 2. FBO Eliza Haskins; HOC GST Exempt Trust No. 2. FBO John Haskins; HOC GST Exempt Trust No. 2. FBO Scott Haskins; HOC Trust No. 2 FBO Eliza Haskins; HOC Trust No. 2 FBO John Haskins; HOC Trust No. 2 FBO Scott Haskins; Marian Otis Chandler Trust No. 2; May C. Goodan Trust No. 2; Patricia Crowe Warren Residuary Trust No. 2; Philip Chandler Residuary Trust No. 2; and Ruth C. Von Platen Trust No. 2.

Charles Schwab & Co., Inc., as Custodian for Brent V. Woods IRA Rollover, states that it is 100% owned by Schwab Holdings, Inc., which is 100% owned by The Charles Schwab Corporation, a publicly traded company.

Charles Schwab & Co., Inc., as Custodian of the George William Buck SEP-IRA DTD 04/08/93, states that it is 100% owned by Schwab Holdings, Inc., which is 100% owned by The Charles Schwab Corporation, a publicly traded company.

Charles Schwab & Co., Inc., as Custodian of the Peter Marino IRA Rollover, states that it is 100% owned by Schwab Holdings, Inc., which is 100% owned by The

Charles Schwab Corporation, a publicly traded company.

CIBC World Markets Corp. states that it is a wholly owned subsidiary of Canadian Imperial Bank of Commerce, which is a publicly traded company and has no parent. No publicly held corporation owns 10% or more of Canadian Imperial Bank of Commerce's stock.

CIBC World Markets, Inc. states that it is a wholly owned subsidiary of Canadian Imperial Bank of Commerce, which is a publicly traded company and has no parent. No publicly held corporation owns 10% or more of Canadian Imperial Bank of Commerce's stock.

Citibank, N.A. states that it is indirectly wholly owned by Citigroup Inc. Citigroup Inc. is a publicly traded corporation that has no parent corporation. No publicly held corporation owns 10% or more of its stock.

Citigroup Global Markets Inc. states that it is indirectly owned by Citigroup Inc, which has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

Citigroup Pension Plan Trust states that it is indirectly associated with Citigroup Inc., a publicly held corporation.

Citicorp Securities Services Inc. states that it is indirectly wholly owned by Citigroup Inc.

The following entity no longer exists, to the best of counsel's knowledge, and thus has no parent company and no public company that owns 10% or more of its stock: Cogent Investment Strategies Master Fund.

Commerzbank AG states that it is publicly traded on the German market. Upon information and belief,

no publicly traded entity owns 10% or more of Commerzbank AG.

Commerz Markets LLC states that it is wholly owned by Commerzbank AG. Upon information and belief, no publicly traded entity owns 10% or more of Commerzbank AG.

Conservative Balanced Portfolio states that it is a series of the Prudential Series Fund, Inc., which is incorporated in Maryland and organized as a Delaware statutory trust. The beneficial interests of the Prudential Series Fund, Inc. are divided into eighteen separate portfolios. No publicly traded company holds 10% or more of the beneficial interests in the Prudential Series Fund, Inc.

Cooper Neff Advisors, Inc. no longer exists, to the best of counsel's knowledge.

Credit Suisse Securities (Europe) Limited states that it is a wholly owned subsidiary of Credit Suisse Investment Holdings (UK), which in turn is a wholly owned subsidiary of Credit Suisse Investments (UK), which in turn is a wholly owned subsidiary of Credit Suisse AG, which in turn is a wholly owned subsidiary of Credit Suisse Group AG. Credit Suisse AG has publicly registered debt securities and warrants in the United States and elsewhere. Credit Suisse Group AG is a corporation organized under the laws of Switzerland and whose shares are listed on the Swiss Stock Exchange and are also listed on the New York Stock Exchange in the form of American Depositary Shares. No publicly held company owns 10% or more of Credit Suisse Group AG.

Credit Suisse Securities (USA) LLC states that it is a wholly owned subsidiary of Credit Suisse (USA),

Inc., which in turn is a wholly owned subsidiary of Credit Suisse Holdings (USA), Inc., which in turn is a jointly owned subsidiary of Credit Suisse AG (100% voting & approx. 25.5% equity) and Credit Suisse AG, Cayman Islands Branch (approx. 74.5% equity). Credit Suisse AG is a wholly-owned subsidiary of Credit Suisse Group AG. Credit Suisse AG has publicly registered debt securities and warrants in the United States and elsewhere. Credit Suisse Group AG is a corporation organized under the laws of Switzerland and whose shares are listed on the Swiss Stock Exchange and are also listed on the New York Stock Exchange in the form of American Depositary Shares. No publicly held company owns 10% or more of Credit Suisse Group AG.

Credit Suisse (USA), Inc. states that it is a wholly owned subsidiary of Credit Suisse Holdings (USA), Inc., which in turn is a jointly owned subsidiary of Credit Suisse AG (100% voting & approx. 25.5% equity) and Credit Suisse AG, Cayman Islands Branch (approx. 74.5% equity). Credit Suisse AG is a wholly-owned subsidiary of Credit Suisse Group AG. Credit Suisse AG has publicly registered debt securities and warrants in the United States and elsewhere. Credit Suisse Group AG is a corporation organized under the laws of Switzerland and whose shares are listed on the Swiss Stock Exchange and are also listed on the New York Stock Exchange in the form of American Depositary Shares. No publicly held company owns 10% or more of Credit Suisse Group AG.

The Depository Trust Company states that it is a wholly owned subsidiary of The Depository Trust & Clearing Corporation, which does not have a parent company. No publicly held company owns 10% or more of The Depository Trust & Clearing Corporation.

Deutsche Bank AG, Filiale Amsterdam states that it is a branch of Deutsche Bank AG. No publicly traded corporation holds 10% or more of the stock of Deutsche Bank AG.

"DIA MID CAP Value Portfolio" does not exist, to the best of counsel's knowledge.

Employee Retirement System of Texas ("ERST") states that it is a public employee pension fund that does not have a parent corporation. No publicly held corporation owns 10% of more of the ERST's stock.

Frank Russell does not exist, to the best of counsel's knowledge.

Frank Russell Company states that it is a wholly owned subsidiary of the London Stock Exchange Group, LLC.

Frank Russell Investments does not exist, to the best of counsel's knowledge.

Frank Russell Trust does not exist, to the best of counsel's knowledge.

GAMCO Asset Management Inc. states that it is a wholly owned subsidiary of GAMCO Investors, Inc., a publicly held corporation.

Goldman Sachs & Co. LLC (formerly known as Goldman, Sachs & Co.) states that it is a wholly-owned subsidiary of The Goldman Sachs Group, Inc. ("GS Group") except for de minimis non-voting, non-participating interests held by unaffiliated broker-dealers. GS Group is a corporation organized under the laws of Delaware, and its shares are publicly traded on the New York Stock Exchange. GS Group has no parent corporation, and to the best of GS Group's knowledge, no publicly held company owns 10% or

more of the common stock of GS Group. Goldman Sachs Execution & Clearing, L.P. was merged into Goldman Sachs & Co. LLC in June 2017.

Goldman Sachs Execution & Clearing, L.P. states that it is an indirect subsidiary of The Goldman Sachs Group, Inc. To the best of its knowledge, no other publicly held corporation owns 10% or more of Goldman Sachs Execution & Clearing, L.P.

Goldman Sachs International Holdings LLC states that it is an indirect, wholly-owned subsidiary of The Goldman Sachs Group, Inc. ("GS Group"). GS Group is a corpora-tion organized under the laws of Delaware, and its shares are publicly traded on the New York Stock Exchange. GS Group has no parent corporation, and to the best of GS Group's knowledge, no publicly held company owns 10% or more of the common stock of GS Group.

GS Investment Strategies LLC states that it is an indirect, wholly-owned subsidiary of The Goldman Sachs Group, Inc. ("GS Group"). GS Group is a corporation organized under the laws of Delaware, and its shares are publicly traded on the New York Stock Exchange. GS Group has no parent corporation, and to the best of GS Group's knowledge, no publicly held company owns 10% or more of the common stock of GS Group.

Guggenheim Advisors, LLC states that it is a wholly owned subsidiary of Guggenheim Alternative Asset Management, LLC. No publicly held corporation owns 10% or more of its stock.

Harbor Capital Advisors, Inc. states that it is wholly owned by OCE US Holding, Inc., which is wholly owned by OCE US Holding B.V., which is wholly

owned by ORIX Corporation Europe N.V. ORIX Corporation, a publicly traded company, owns 100% of the outstanding shares of ORIX Corporation Europe N.V.

The Hartford Financial Services Group, Inc., incorrectly named as "The Hartford Financial Services Group, Inc. d/b/a The Hartford," states that it is a publicly traded corporation that has no parent corporation and that no publicly held corporation with a 10% or more ownership interest in its common stock. Allianz SE, a publicly held corporation that has no parent corporation, holds contingent rights to purchase more than 10% of the common stock of Hartford Financial.

Hartford Investment Management Company states that it is wholly owned by The Hartford Financial Services Group, Inc. ("Hartford Financial"), a publicly traded corporation that has no parent corporation and which has no publicly held corporation with a 10% or more ownership interest in its common stock. Allianz SE, a publicly held corporation that has no parent corporation, holds contingent rights to purchase more than 10% of the common stock of Hartford Financial.

Hartford Life Insurance Company states that it is wholly owned by Hartford Life and Accident Insurance Company, which is wholly owned by Hartford Life, Inc., which is wholly owned by Hartford Holdings, Inc., which is wholly owned by The Hartford Financial Services Group, Inc., a publicly traded corporation that has no parent corporation and which has no publicly held corporation with a 10% or more ownership interest in its common stock. Allianz SE, a publicly held corporation that has no parent corporation, holds contingent rights to purchase more than 10% of the common stock of Hartford Financial.

Harvard Management Co. states that its parent corporation is the President and Fellows of Harvard College. No publicly held corporation owns 10% or more of its stock.

Homeland Insurance Co. of New York states that it is a wholly-owned subsidiary of Intact Financial Corpora-tion, which is publicly traded on the Toronto Stock Ex-change. No publicly held corporation owns more than 10% of Intact Financial Corporation's shares.

Hudson Bay Fund LP states that its general partner is Hudson Bay Capital Associates LLC. No publicly held corporation owns 10% or more of its stock.

Hudson Bay Master Fund Ltd. states that it is a wholly owned subsidiary of Hudson Bay Fund LP and Hudson Bay Intermediate Fund Ltd. No publicly held corporation owns 10% or more of its stock.

Illinois Municipal Retirement Fund ("Fund") states that it is a public employee pension fund that does not have a parent corporation. No publicly held corporation owns 10% of more of the Fund's stock.

Jefferies LLC (formerly known as Jefferies & Company, Inc. and which in 2011 merged with Jefferies Bache Securities, LLC, with Jefferies & Company, Inc. as the surviving entity) states that it is wholly owned by Jefferies Group LLC, which in turn is wholly owned by Jefferies Financial Group, Inc., a publicly held corporation.

John Hancock Life Insurance Company (U.S.A.) as successor-in-interest to John Hancock Financial Services, Inc. states that it is a wholly owned subsidiary of Manulife Financial Corporation, a publicly traded company.

JPMorgan Chase 401(k) Savings Plan states that it is an "employee pension benefit plan" as defined by the Employee Retirement Income Security Act, income from which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code, and that it is sponsored by JPMorgan Chase Bank, N.A., a wholly owned subsidiary of JPMorgan Chase & Co., a publicly held corporation.

JPMorgan Trust II states that it is an open-end, management investment company organized as a Delaware statutory trust. JPMorgan Trust II has no parent corporation. JPMorgan Trust II issues shares of beneficial interest in series, with each series corresponding to a separate fund; the relevant fund is JPMorgan Equity Index Fund. As of August 17, 2020, no publicly held corporation owns, of record, ten percent or more of any class of shares of the JPMorgan Equity Index Fund for its own benefit, except that JPMorgan SmartRetirement Blend 2030 Fund, JPMorgan SmartRetirement Blend 2035 Fund, and JPMorgan SmartRetirement Blend 2040 Fund do own more than ten percent of one of the JPMorgan Equity Index Fund's class of shares.

J.P. Morgan Whitefriars, Inc. (n/k/a J.P. Morgan Whitefriars LLC) states that it is a wholly owned subsidiary of J.P. Morgan Overseas Capital Corporation (n/k/a J.P. Morgan Overseas Capital LLC), which is a wholly owned subsidiary of J.P. Morgan International Finance Limited, which is a wholly owned subsidiary of JPMorgan Chase Bank, N.A., which is a wholly owned subsidiary of JPMorgan Chase & Co., a publicly held corporation.

Laborers' District Council & Contractors Pension Fund of Ohio states that it is a Taft-Hartley Trust

Fund, managed jointly by a board of trustees comprised of both labor and management representatives. The fund does not have any parent, subsidiary or affiliate corporations. No publicly held corporation owns 10% of more of the fund's stock.

Lockheed Martin Corporation states that it has no parent corporation and that State Street Corporation, a publicly held corporation, beneficially owns 10% or more of its stock.

Lockheed Martin Corporation Master Retirement Trust states that is was established by Lockheed Martin Corporation as a master pension trust for the corporation's U.S. employee pension plans and for the exclusive benefit of the participants and beneficiaries of such plans.

LPL Financial LLC states that it is an indirect, wholly owned subsidiary of LPL Financial Holdings Inc., a publicly traded corporation.

Lyxor/Canyon Value Realization Fund Ltd. no longer exists, to the best of counsel's knowledge.

Manulife Asset Management (US) LLC (n/k/a Manulife Investment Management (US) LLC) states that it is an indirect subsidiary of the John Hancock Financial Corporation, which is itself an indirect subsidiary of The Manufacturers Life Insurance Company, which is wholly owned by Manulife Financial Corporation, a publicly traded company.

Manulife Investment Management (f/k/a Manulife Investments (f/k/a "Manulife Mutual Funds")) states that it is a division of Manulife Investment Management Limited (f/k/a Manulife Asset Management Limited), which is a wholly owned subsidiary of Manulife Investment Management Holdings (Canada) Inc. (f/k/a/

"FNA Financial Inc."), which is itself a wholly owned subsidiary of The Manufacturers Life Insurance Company, which is wholly owned by Manulife Financial Corporation, a publicly traded company.

Manulife Invst Ex FDS Corp.-MIX states that it is a wholly owned subsidiary of Manulife Investment Exchange Funds Corp.

Manulife U.S. Equity Fund states that the Manufacturers Life Insurance Company owns more than 10% of the units of the fund in connection with one of its segregated fund products. Manufacturers Life Insurance Company is a direct subsidiary of Manulife Financial Corporation, which is a publicly traded corporation.

MassMutual Premier Main Street Small/Mid Cap Fund (f/k/a "MassMutual Premier Main Street Small Cap Fund") no longer exists, to the best of counsel's knowledge.

Maxim Foreign Equity Portfolio states that it is a series of Maxim Series Fund, Inc. and is not publicly traded. Great-West Life & Annuity Insurance Company is the parent of Maximum Series Fund, Inc. No publicly held company holds 10% or more of Great-West Life & Annuity Insurance Company, which has no parent company.

Maxim Series Fund, Inc. states that Great-West Life & Annuity Insurance Company is the parent of Maximum Series Fund, Inc. No publicly held company holds 10% or more of Great-West Life & Annuity Insurance Company, which has no parent company.

Mutual of America Investment Corp. states that no publicly held corporation own 10% or more of its stock and that its parent corporation is Mutual of America Life Insurance Company.

Mill Shares Holdings (U.S.) Ltd. (formerly Mill Shares Holdings (Bermuda) Ltd.) states that it is a wholly-owned subsidiary of Intact Financial Corporation, which is publicly traded on the Toronto Stock Exchange. No publicly held corporation owns more than 10% of Intact Financial Corporation's shares.

Neuberger Berman BD LLC states that, effective Jan-uary 1, 2017, Neuberger Berman LLC changed its name to Neuberger Berman BD LLC ("NB BD LLC"), and, following a consolidation of certain legal entities, became 100% owned by Neuberger Berman Investment Advisers LLC ("NBIA"). Both NB BD LLC and NBIA are indirect wholly-owned subsidiaries of Neuberger Berman Group LLC. NBSH Acquisitions, LLC is the parent company of Neuberger Berman Group LLC ("NBG"). No publicly held company owns more than 10% of NBG's equity.

SG Americas Securities, LLC (as successor to respondent Newedge USA, LLC) states that it is wholly owned by SG Americas Securities Holdings, LLC, which is a wholly owned subsidiary of Société Générale, which is a publicly traded company. Upon information and belief, no other publicly held corporation owns 10% or more of the shares of Société Générale.

Northwestern Mutual Series Fund, Inc. states that it is a wholly owned subsidiary of the Northwestern Mutual Life Insurance Company, which does not have a parent corporation. No publicly held corporation owns 10% or more of the stock of Northwestern Mutual Life Insurance Company.

OFI Private Investments, Inc. states that it is a wholly owned subsidiary of OppenheimerFunds, Inc., itself a wholly owned subsidiary of Oppenheimer Acquisition Corp., which is primarily owned by MM Asset

Management Holding LLC, which is owned by MassMutual Holding LLC, which is in turn owned by Massachusetts Mutual Life Insurance Company. No publicly held corporation owns 10% or more of Massachusetts Mutual Life Insurance Company.

Ohio Public Employees Retirement System ("OPERS") states that it is a public employee pension fund that does not have a parent corporation. No publicly held corporation owns 10% of more of the OPERS' stock.

OneBeacon Insurance Savings Plan (a/k/a OneBeacon Insurance Savings Plan – Equity 401k and OneBeacon Insurance Savings Plan – Fully Managed) states that it is a wholly-owned subsidiary of Intact Financial Cor-poration, which is publicly traded on the Toronto Stock Exchange. No publicly held corporation owns more than 10% of Intact Financial Corporation's shares.

OneBeacon Pension Plan (f/k/a OneBeacon Insurance Pension Plan) states that it is a wholly-owned subsidiary of Intact Financial Corporation, which is publicly traded on the Toronto Stock Exchange. No publicly held corporation owns more than 10% of Intact Financial Corporation's share.

Oppenheimer & Co., Inc. states that it is a subsidiary of Oppenheimer Holdings, Inc., a publicly held company.

OppenheimerFunds, Inc. states that it is a wholly owned subsidiary of Oppenheimer Acquisition Corp., which is primarily owned by MM Asset Management Holding LLC, which is owned by MassMutual Holding LLC, which is in turn owned by Massachusetts Mutual Life Insurance Company. No publicly held corporation

owns 10% or more of Massachusetts Mutual Life Insurance Company.

optionsXpress, Inc. (n/k/a Charles Schwab Futures, Inc.) states that it is 100% owned by optionsXpress Holdings, Inc., which is in turn 100% owned by The Charles Schwab Corporation, a publicly traded company.

Pacific Select Fund Equity Index Portfolio is not a corporate entity, but an investment fund operating under the Pacific Select Fund, which itself is a registered investment company operating as a Delaware statutory trust, and thus has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Pensions Reserve Investment Management Board of Massachusetts ("PRIM") states that it is a public employee pension fund that does not have a parent corporation. No publicly held corporation owns 10% of more of the PRIM's stock.

PGIM, Inc. (formerly Prudential Investment Management, Inc.) is a direct subsidiary of PGIM Holding Company, LLC, which is an indirect, wholly owned subsidiary of Prudential Financial, Inc. Prudential Financial, Inc. is a publicly-traded company, and no parent corporation or any publicly-held corporation owns 10 percent or more of its stock.

PNC Bank, National Association states that it is wholly owned by PNC Bancorp, Inc., which in turn is wholly owned by The PNC Financial Services Group, Inc.

ProShares Ultra S&P500 states that it is a publicly sold, exchange-traded fund and a series of ProShares Trust, a Delaware statutory trust. ProShares Trust has no parent corporation, and, to its knowledge, no

publicly held corporation beneficially owns 10% or more of the stock of ProShares Trust.

Prudential Insurance Company of America states that it is a wholly owned subsidiary of Prudential Financial, Inc., who is its sole member. No publicly held corporation owns 10% or more of the party's stock.

Prudential Retirement Insurance and Annuity Company states that it is a wholly owned subsidiary of The Prudential Insurance Company of America, which is a wholly owned subsidiary of Prudential Financial, Inc., who is its sole member. No publicly held corporation owns 10% or more of the party's stock.

QS S&P 500 Index Fund (f/k/a Legg Mason Batterymarch Financial Management S&P 500 Index Fund) states that it is a series of Legg Mason Partners Equity Trust, a Maryland statutory trust.

RBC Capital Markets Arbitrage, S.A., formerly known as RBC Capital Markets Arbitrage, LLC, states that it is an indirect, wholly owned subsidiary of Royal Bank of Can-ada, which is publicly traded on the New York Stock Ex-change and Toronto Stock Exchange.

RBC Capital Markets, LLC states that it is an indirect, wholly owned subsidiary of Royal Bank of Canada, which is publicly traded on the New York Stock Exchange and the Toronto Stock Exchange.

RBC Global Asset Management, Inc. states that it is an indirect wholly owned subsidiary of Royal Bank of Canada, which is publicly traded on the New York Stock Exchange and the Toronto Stock Exchange.

RBC O'Shaughnessy U.S. Value Fund states that it is a Canadian trust for which RBC Global Asset Management Inc. is its investment advisor. RBC Global Asset Manage-ment Inc. is an indirect wholly owned

subsidiary of Royal Bank of Canada, which is publicly traded on the New York Stock Exchange and the Toronto Stock Exchange.

Reed Elsevier Inc. (now known as RELX, Inc.) states that its ultimate parent company is RELX PLC, which is a publicly traded company.

Reichhold, Inc. states that it is a wholly owned subsidiary of Kestrel I Acquisition Corporation, which has no parent corporation. No publicly held corporation owns 10% or more of the Kestrel I Acquisition Corporation.

Reliance Trust Company states that its ultimate parent company is Fidelity National Information Services, Inc., a publicly traded company.

Robert R. McCormick Foundation states that it is organized under the General Not For Profit Corporation Act of Illinois and, accordingly, issues no stock.

Royal Trust Corporation of Canada states that it is an indirect, wholly owned subsidiary of Royal Bank of Canada, which is publicly traded on the New York Stock Exchange and the Toronto Stock Exchange.

Russell Investment Group, LLC (incorrectly named as "Russell Investment Group") states that it is a wholly owned subsidiary of Russell Investments U.S. Institutional Holdco, Inc., whose ultimate parent company is Russell Investments Group, LLC.

Russell Investments Trust Company (f/k/a Frank Russell Trust Company) states that it is a wholly owned subsidiary of Russell Investments US Institutional Holdco, Inc., whose ultimate parent company is Russell Investments Group, LLC.

Rydex Investments states that it is the former doing-business-as name of Security Investors LLC, a wholly owned subsidiary Rydex Holdings, LLC, and that no publicly held corporation owns 10% or more of its stock.

SBL Fund no longer exists, to the best of counsel's knowledge.

SBL Fund Series H no longer exists, to the best of counsel's knowledge. Therefore, it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

School Employees Retirement System of Ohio ("SERS") states that it is a public employee pension fund that does not have a parent corporation. No publicly held corporation owns 10% of more of the SERS' stock.

Schultze Asset Management, LP states that, effective on June 30, 2015, Schultze Asset Management, LLC changed its name to Schultze Asset Management, LP. Schultze Asset Management, LP has no parent corpora-tion and no publicly held corporation owns 10% or more of an ownership interest in Schultze Asset Management, LP.

Scotia Capital Inc. states that it is owned entirely by The Bank of Nova Scotia, a publicly held foreign bank headquartered in Toronto, Ontario, Canada. No publicly held corporation owns 10% or more of The Bank of Nova Scotia's equity interests.

Scotia Capital (USA) Inc. states that it is a wholly owned subsidiary of Scotia Holdings (US) Inc., whose ultimate parent is The Bank of Nova Scotia, a publicly held foreign bank headquartered in Toronto, Ontario,

Canada. No publicly held corporation owns 10% or more of The Bank of Nova Scotia's equity interests.

Security Global Investors-Rydex/SGI states that it is the former doing-business-as name for Security Global Investors, LLC, which is Kansas limited liability company that was merged with and into Security Investors LLC, and no publicly held corporation owns 10% or more of its stock.

Securities Investors, LLC states that it is a subsidiary of Rydex Holdings, LLC, and that no publicly held corporation owns 10% or more of its stock.

SG Americas Securities, LLC states that it is a limited liability company wholly owned by SG Americas Securities Holdings, LLC. SG Americas Securities Holdings, LLC, is a wholly owned subsidiary of Société Générale, which is a publicly traded company. Upon information and belief, no other publicly held corporation owns 10% or more of the shares of Société Générale.

Stark Global Opportunities Master Fund Ltd. states that its indirect parent entities are Stark Global Opportunities Fund LP and Stark Global Opportunities Fund Ltd., none of which are publicly held corporations. No publicly held corporation owns 10% or more of its stock.

Stark Master Fund Ltd. states that its indirect parent entities are Stark Investments Limited Partnership, Shepherd Investments International, Ltd., and Shepherd Guardian Fund Ltd., none of which are publicly held corporations. No publicly held corporation owns 10% or more of its stock.

State Street Bank and Trust Company states that it is a trust company chartered and existing under the

laws of the Commonwealth of Massachusetts and headquartered in the Commonwealth of Massachusetts. State Street Bank and Trust Company is a wholly owned subsidiary of State Street Corporation, a publicly traded corporation.

State Street Bank Luxembourg, S.A. states that it is an indirect wholly owned subsidiary of State Street Bank and Trust Company.

State Street Global Advisors, Inc. states that it is a direct wholly owned subsidiary of State Street Corporation.

State Street Global Advisors (Japan) Co., Ltd. states that it is a wholly owned subsidiary of SSGA Japan Holdings GK, which is a wholly owned subsidiary of State Street Global Advisors International Holding Inc., which is a wholly owned subsidiary of State Street Global Advisors, Inc., which is a wholly owned subsidiary of State Street Corporation.

State Street Trust and Banking Company, Limited states that it is an indirect wholly owned subsidiary of State Street Bank and Trust Company, which is a wholly owned subsidiary of State Street Corporation.

Stock Index Portfolio, a Series of the Prudential Series Fund, Inc. states that it is a series of the Prudential Series Fund, Inc., which is incorporated in Maryland and organized as a Delaware statutory trust. The beneficial interests of the Prudential Series Fund, Inc. are divided into eighteen separate portfolios. No publicly traded company holds 10% or more of the beneficial interests in the Prudential Series Fund, Inc.

Swiss American Corporation states that it is a wholly owned subsidiary of Credit Suisse (USA), Inc., which in turn is a wholly owned subsidiary of Credit

Suisse Holdings (USA), Inc., whose voting stock is 100% owned by Credit Suisse AG, which is 100% owned by Credit Suisse Group AG, which is a corporation organized under the laws of Switzerland and whose shares are listed on the Six Swiss Stock Exchange and are also listed on the New York Stock Exchange in the form of American Depositary Shares. No publicly held company owns 10% or more of Credit Suisse Group AG.

Swiss American Securities, Inc. was dissolved as of June 7, 2010, and thus has no parent corporation, nor does any publicly held corporation own 10% or more of its stock.

Swiss Re Financial Products Corp. states that it is a subsidiary of Swiss Re America Holding Corp. No publicly held corporation owns 10% or more of its stock.

TD Ameritrade Clearing, Inc. states that it is a wholly owned subsidiary of TD Ameritrade Online Holdings, Corp. TD Ameritrade Online Holdings Corp. is a wholly owned subsidiary of TD Ameritrade Holdings Corporation. TD Ameritrade Holding Corporation is a publicly traded corporation with no parent company. The Toronto-Dominion Bank, a publicly held entity, owns more than 10 percent of TD Ameritrade Holding Corporation's stock.

Texas Education Agency ("TEA") states that it is a public employee pension fund that does not have a parent corporation. No publicly held corporation owns 10% of more of the TEA's stock.

TOA Reinsurance Company of America states that it is a wholly owned subsidiary of The TOA Reinsurance Company, Ltd. No publicly held corporation owns 10% or more of its stock.

Transamerica Premier Life Insurance Company's ("Transamerica Premier") (f/k/a "Monumental Life Insurance Company") sole shareholder is Commonwealth General Corporation ("Commonwealth"), which is a direct subsidiary of Transamerica Corporation. Transamerica Premier, Commonwealth, and Transamerica Corporation are indirect subsidiaries of AEGON N.V., which is a publicly traded holding company with its headquarters in The Hague, the Netherlands. American Depository Receipts of AEGON N.V. are also listed on the New York Stock Exchange under the ticker symbol AEG.

UBS AG states that it is wholly owned by UBS Group AG, a publicly traded company. No publicly held corporation owns 10% or more of UBS Group AG stock.

UBS Financial Services, Inc. states that it is a wholly owned subsidiary of UBS Americas Inc., which is wholly owned by UBS Americas Holding LLC. UBS Americas Holding LLC is a wholly owned subsidiary of UBS AG, which is wholly owned by UBS Group AG. No publicly held corporation owns 10% or more of UBS Group AG stock.

UBS Global Asset Management (Americas) Inc. states that it is a wholly owned subsidiary of UBS Americas Inc., which is wholly owned by UBS Americas Holding LLC, which is wholly owned by UBS AG, which is wholly owned by UBS Group AG, a publicly traded corporation. No publicly held corporation owns 10% or more of UBS Group AG stock.

UBS Asset Management (US) Inc. states that it is a wholly owned subsidiary of UBS Americas Inc., which is wholly owned by UBS Americas Holding LLC, which is wholly owned by UBS AG, which is wholly owned by UBS Group AG, a publicly traded corpora-

tion. No publicly held corporation holds 10% or more of UBS Group AG stock.

UBS O'Connor LLC states that it is a wholly owned subsidiary of UBS Asset Management (Americas) Inc., which is wholly owned by UBS Americas Inc., which is wholly owned by UBS Americas Holding LLC, which is wholly owned by UBS AG, which is wholly owned by UBS Group AG, a publicly traded corporation. No publicly held corporation holds 10% or more of UBS Group AG stock.

UBS Securities LLC states that its corporate parents are UBS Americas Holding LLC (1%) and UBS Americas Inc. (99%), the latter of which is wholly owned by UBS Americas Holding LLC. UBS Americas Holding LLC is wholly owned by UBS AG, which is wholly owned by UBS Group AG, a publicly traded corporation. No publicly held corporation holds 10% or more of UBS Group AG stock.

MUFG Union Bank N.A., formerly known as Union Bank, N.A., states that it is a wholly owned subsidiary of MUFG Americas Holdings Corporation, which is a wholly owned subsidiary of MUFG Bank, Ltd., which in turn is a wholly owned subsidiary of Mitsubishi UFJ Financial Group.

Variable Insurance Products Fund II – Index 500 Portfolio states that it is a fund of the Variable Insurance Products Fund II, an open-end management investment company created under a declaration of trust. It has no parent company. Upon information and belief, no publicly traded company owns 10% or more of the Index 500 Portfolio.

Victory 500 Index VIP Series (f/k/a RS S&P 500 Index VIP Series, incorrectly named as "Guardian In-

vestors Services LLC and Guardian VC 500 Index Fund, John Doe as Owner of) has no parent corporation and no publicly held corporation owns 10% or more of its stock.

VY® T. Rowe Price Equity Income Portfolio (f/k/a ING T. Rowe Price Equity Income Portfolio) states that Voya Retirement Insurance and Annuity Company and Voya Institutional Trust Company each own more than 10% of the assets of VY® T. Rowe Price Equity Income Portfolio.

Welch & Forbes LLC states that its parent company is Affiliated Managers Group Inc. and that Affiliated Managers Group Inc. is a public company that owns more than 10% of Welch & Forbes LLC's stock.

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INTRODUCTION

Petitioners' questions do not merit review. None presents a circuit split or entails a departure from this Court's precedent. The Second Circuit's plain-meaning interpretation of Bankruptcy Code §101(22)(A) decided an issue expressly left open by *Merit Management Group, LP* v. *FTI Consulting, Inc.*, 138 S. Ct. 883 (2018); the court of appeals' decision applying the presumption against preemption—not discarding it—accords with this Court's precedent recognizing that the presumption carries less weight in areas of longstanding federal interest like those here; and its holding that §546(e)'s securities safe harbor preempted petitioners' state-law fraudulent-transfer claims to avoid safe-harbored transfers correctly decided a question *Merit* never addressed and that no other court of appeals has confronted.

In any event, this case presents a poor vehicle to review the questions presented because there are alternative grounds for affirmance. No matter how strong of a presumption against preemption is applied, petitioners' state-law claims would gut Congress' safe harbor and thus conflict with federal law. And preemption aside, this Court's precedent makes clear that when Tribune filed for bankruptcy, those claims vested in the trustee, the creditors' statutory representative and successor, and never "reverted" to the creditors to bring free and clear of the safe harbor.

In short, there is no reason for this Court to review the Second Circuit's unremarkable conclusion that Congress did not enact a nullity: a toothless safe harbor that supposedly allowed petitioners to make an acknowledged "end run" around its express limits on unwinding settled securities payments in bankruptcy,

by bringing the same state-law claims to avoid those payments that §546(e) expressly bars the creditors' representative, the trustee, from bringing on their behalf.

STATEMENT

A. Statutory Framework

Outside bankruptcy, a debtor's creditors may sue under state law to collect their claims from assets the debtor "fraudulently transferred" to a third party. These state-law remedies ensure that payment of creditors' claims is not frustrated by a debtor who intends to hinder, delay, or defraud its creditors by transferring its assets out of creditors' reach (intentional fraudulent transfers) or who otherwise depletes its assets, while insolvent, by transferring them for less than fair value (constructive fraudulent transfers). Fraudulent-transfer claims allow creditors to "avoid," or undo, the transfers and collect their claims from the transferred assets as if the debtor still owned them.

Once a debtor files for bankruptcy, however, the bankruptcy trustee succeeds to all creditors' state-law fraudulent-transfer claims. The Bankruptcy Code provides that "the trustee may avoid any transfer of an interest of the debtor in property … that is voidable under applicable law by a creditor holding an unsecured claim." 11 U.S.C. §544(b)(1). Section 544 makes the trustee the "statutory successor … to creditors under … [§]544(b)," empowering the trustee to bring the claims that the debtor's creditors could have brought outside bankruptcy under state law to recover fraudulently transferred assets. 28 U.S.C. §1409(c). Section 544's title reinforces the point, identifying the

"[t]rustee … as successor to certain creditors." 11 U.S.C. §544.[1]

Accordingly, once a bankruptcy petition is filed, individual creditors can no longer pursue their state-law fraudulent-transfer claims, and the trustee obtains the exclusive right to prosecute, settle, or release those claims on behalf of all creditors. *See In re PWS Holding Corp.*, 303 F.3d 308, 314-315 (3d Cir. 2002); *In re MortgageAmerica Corp.*, 714 F.2d 1266, 1275-1276 (5th Cir. 1983); App.34a-35a, 41a-43a. The Code also provides the trustee a federal-law claim to avoid intentional and constructive fraudulent transfers. §548(a).

By vesting these powers in the trustee, the Code ensures that assets the debtor fraudulently transferred before bankruptcy may be recovered for the collective benefit of all creditors, rather than just for those who win the race to judgment. Assets the trustee recovers are returned to the bankruptcy estate. §§541(a)(3), 550. When the petition is filed, an automatic stay bars creditors from enforcing their state-law remedies to collect their claims from the debtor or its assets, and those assets also become property of the estate. §§362(a), 541(a). These provisions work together to empower the trustee to marshal the debtor's assets—both those the debtor owned on the petition date and those it had fraudulently transferred before bankruptcy—and to distribute that value among all creditors under the Code's distribution rules. §§704, 725-726, 1106-1108, 1129. Those rules replace the state-law collection regime, in which faster-moving creditors get paid in full

[1] "Although section headings cannot limit the plain meaning of a statutory text, they supply cues as to what Congress intended." *Merit*, 138 S. Ct. at 893 (citing §546's title in construing §546(e)).

while others get nothing, with bankruptcy law's principle of equitable distribution, in which the estate's value is distributed (after satisfying secured and priority claims) pro rata among all general unsecured creditors. *Id.*; §§524(a), 727, 1141(d) (bankruptcy discharge bars further collection).

But Congress did not enact the Bankruptcy Code with only one goal in mind. *Florida Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008). In addition to fostering an equitable recovery for all creditors, Congress also sought to protect the nation's securities markets. Section 546(e) thus provides a "safe harbor" barring avoidance under either state (§544) or federal (§548(a)(1)(B)) fraudulent-transfer law of certain transfers affecting the securities markets: "Notwithstanding sections 544 … [or] 548(a)(1)(B) …, the trustee may not avoid a transfer … made by or to (or for the benefit of)" defined qualifying entities—"a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency"—if the transfer was a "settlement payment … or … made … in connection with a securities contract." §546(e). The only "except[ion]" to this safe harbor is for a federal-law intentional fraudulent-transfer claim "under §548(a)(1)(A)." *Id.*

The safe harbor's "purpose" is to "minimize the displacement caused in the commodities and securities markets in the event of a major bankruptcy affecting those industries." H.R. Rep. No. 97-420, at 1 (1982), *reprinted in* 1982 U.S.C.C.A.N. 583, 583. Congress sought to promote "finality," "speed[,] and certainty in resolving complex financial transactions" by limiting the circumstances under which securities transactions could be unwound in bankruptcy to those involving intentional fraudulent transfer under federal law. H.R.

Rep. No. 101-484, at 2 (1990), *reprinted in* 1990 U.S.C.C.A.N. 223, 224); S. Rep. No. 95-989, at 8 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5794.

B. Tribune's Bankruptcy Proceedings

Tribune Company was a widely held, publicly traded media company. In April 2007, new investors initiated a leveraged buyout ("LBO") under which Tribune paid its stockholders (respondents here) about $8 billion for their shares, reflecting the shares' approximate market value at the close of 2006. App.10a-11a. As is typical in large securities transactions, Tribune retained a bank and trust company, Computershare Trust Company, N.A., to act on Tribune's behalf as depository for the LBO: Computershare received and held the stockholders' tendered shares, and Tribune's cash, pending Tribune's payment of the purchase price to the stockholders. Pet. App.24a-25a; C.A. App.0903; C.A. Dkt. 377 at 18-19.

In December 2008, Tribune filed for Chapter 11 bankruptcy. Pet. App.11a. Tribune, as a debtor-in-possession, assumed the role of trustee. *Id.*; §1107(a). In November 2010, shortly before the Code's two-year limitations period for commencing avoidance actions expired, §546(a), Tribune's creditors' committee ("Committee"), acting in the debtor-in-possession/trustee's stead, brought an action asserting an intentional fraudulent-transfer claim under §548(a)(1)(A) against the shareholders to avoid the payments they had received for their stock. Pet. App.12a. The suit did not allege that the shareholder-defendants (who had nothing to do with structuring the LBO) had acted with fraudulent intent. Given §546(e), which excepts only a federal intentional fraudulent-transfer claim from its safe harbor, the Committee did not bring a federal or

state-law constructive fraudulent-transfer claim under §548(a) or §544(b). Pet. App.12a-13a.

But a group of creditors—petitioners here—led by various hedge funds sought relief from the automatic stay to commence fraudulent-transfer actions under state law to avoid the LBO payments to Tribune's stockholders. The Committee supported petitioners' motion, insisting that the "Committee deliberately did not initiate any [state-law constructive fraudulent-transfer claims] against the Former Shareholders," and "[i]nstead … inten[ded] … that individual creditors have the ability to pursue [such claims] on their own behalf."[2] The purpose of that choreography, the Committee explained, was to make an "end run" around §546(e)'s safe harbor.[3] In the creditors' view, whereas the creditors' representative, the Committee, was barred from seeking to avoid the safe-harbored payments to shareholders as a constructive fraudulent transfer, this acknowledged "Work-Around" would allow the creditors themselves to assert those same claims "unburdened by section 546(e)."[4]

The bankruptcy court lifted the automatic stay to permit petitioners to file their complaints. Pet. App.13a. The court made clear, however, that it was not determining whether petitioners had valid claims to assert, noting merely that petitioners could pursue their "right, if any, to prosecute" such claims. *Id.*

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[2] Committee Statement 4, No. 08-13141 (Bankr. D. Del. Mar. 17, 2011), ECF No. 8396.

[3] Tr. 53:12-14, No. 08-13141 (Bankr. D. Del. Mar. 23, 2011), ECF No. 8485-3.

[4] Report of Examiner 254-255, No. 08-13141 (Bankr. D. Del. July 26, 2010), ECF Nos. 5130-5134.

Meanwhile, once Tribune's reorganization plan took effect, the Committee was succeeded by the Litigation Trustee, who continued to pursue the Committee's intentional fraudulent-transfer claim under §548(a)(1)(A) to avoid the shareholder payments. Pet. App.14a. In 2017, the district court dismissed that claim on the merits, but the case remained in the district court where other claims asserted by the Trustee against Tribune's former directors, officers and advisors were pending. 2017 WL 82391 (S.D.N.Y. Jan. 6, 2017). In 2019, after this Court had decided *Merit*, the district court denied the Trustee's motion to amend its complaint to add a constructive fraudulent-transfer claim under §548(a)(1)(B) against the shareholders. The court held that amendment would be futile because §546(e) would bar the claim. It reasoned, as the Second Circuit later did in its subsequent decision below, that the shareholder payments were made "by" a "financial institution" because the entity that had made the payments, Tribune, qualified as a "financial institution" as defined in the Code. 2019 WL 1771786 (S.D.N.Y. Apr. 23, 2019). The Trustee's appeal of those rulings remains pending in the Second Circuit (No. 19-3049).

C. Proceedings Below

Beginning in 2011, having obtained relief from the automatic stay, petitioners filed forty-five suits against more than 2,500 named former Tribune shareholders (and a defendant class) in twenty-one courts around the country alleging that the same shareholder payments the Trustee was challenging were also avoidable by creditors under state constructive fraudulent-transfer laws. These actions were consolidated in the Southern District of New York. Pet. App.14a.

The district court dismissed petitioners' actions for lack of standing. Pet. App.15a. The Second Circuit affirmed, but on the ground that §546(e) preempted petitioners' state-law fraudulent-transfer claims. Pet. App.16a ("*Tribune I*"). Petitioners filed a petition for certiorari challenging *Tribune I*'s preemption ruling and its construction of §546(e). While that petition was pending, this Court decided *Merit*, rejecting *Tribune I*'s construction of §546(e) as applicable even if neither the transferor nor the transferee was a financial institution or other covered entity. Two Justices subsequently issued a statement noting the possible lack of a quorum to act on petitioners' certiorari petition and suggesting the Second Circuit might wish to recall its mandate. The Second Circuit did so and later issued an amended opinion in the decision below, reaffirming its dismissal of petitioners' state-law fraudulent-transfer claims. Pet. App.15a-17a.

The court first determined that the shareholder payments remained subject to §546(e). Pet. App.22a. It acknowledged that *Merit* overruled the precedent on which it had previously applied §546(e), but concluded that §546(e) applied under an alternative basis. Addressing the question *Merit* expressly left open, 138 S. Ct. at 890 n.2, the court held that Tribune, the transferor, was a "financial institution" as defined under §101(22)(A) because Tribune was a "customer" of a bank and trust company, Computershare, that acted as Tribune's "agent" "in connection with a securities contract" in its role as depository for the LBO. Pet. App.18a n.5, 22a-31a.

Turning to whether the safe harbor against trustee suits preempted state-law suits seeking the same relief, the court first addressed petitioners' argument that the presumption against preemption applied. App.32a.

Contrary to petitioners' contention (at 9), the court did not hold that the presumption was inapplicable in bankruptcy. Instead, it recognized the "presumption against inferring preemption" and explained that, "[a]s in the present matter, the presumption against preemption usually goes to the weight to be given to the lack of an express statement overriding state law." Pet. App.32a-33a. Because the presumption "is premised on federalism grounds," it is "strongest when Congress is legislating in an area recognized as traditionally one of state law alone," *id.* 33a (citing *Hillman* v. *Maretta*, 569 U.S. 483, 490-491 (2013)), and is weaker when state law regulates in an area where there has been "a history of significant federal presence," *id.* 33a-34a (quoting *United States* v. *Locke*, 529 U.S. 89, 108 (2000)); *see also Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001). The "'ultimate touchstone of pre-emption analysis,'" the court observed, is "congressional intent, even where that intent must be inferred." Pet. App.33a (quoting *Cipollone* v. *Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992)).

Proceeding under this well-established legal framework, the court addressed the federal interests served by the safe harbor. Section 546(e) "stands 'at the intersection of two important national legislative policies,'" "'the policies of bankruptcy and securities law.'" *In re Enron Creditors Recovery Corp.*, 651 F.3d 329, 334 (2d Cir. 2011). The court considered the Constitution's grant of power to Congress to "establish … uniform Laws on the subject of Bankruptcies," U.S. Const. art. 1, §8, cl.4, and the "detailed, preemptive federal regulation of creditors' rights [that] has, … existed for over two centuries." Pet. App.33a-34a. The court added that "the policies reflected in Section 546(e) relate to securities markets," which have also

long been "subject to extensive federal regulation," "reflect[ing] very important federal concerns." *Id.* 36a; *see Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 78 (2006).

To advance these competing federal goals, the Second Circuit explained, the Code vests creditors' state-law fraudulent-transfer claims exclusively in the trustee, §544(b), and subjects those claims to various federal-law modifications, including a limitations period, §546(a), constraints on remedies, §550, and §546(e)'s safe harbor. Pet. App.35a. Moreover, creditors are bound, as a matter of federal law, by the outcome of the trustee's actions asserting state-law avoidance claims. *Id.*

Conversely, the court explained, this case does not implicate an area the States have traditionally regulated. *Cf. Hillman*, 569 U.S. at 490. As it observed, there is "no history of the use of state law, constructive fraudulent conveyance actions to unwind settled securities transactions … after a bankruptcy." Pet. App.64a. The Second Circuit accordingly concluded that its task was to "infer congressional intent from the Code, without significant countervailing pressures of state law concerns" about "federal intrusion into traditional state domains." *Id.* 36a.

Looking then to the Code's text, structure, and purpose, the court noted several difficulties with the premise of petitioners' theory for evading the safe harbor. Petitioners contended that state-law fraudulent-transfer claims to avoid the shareholder payments—which had vested exclusively in the trustee under §544(b)(1) when Tribune filed for bankruptcy—later "reverted" to individual creditors after the Code's limitations period for the trustee to bring those claims had

expired. Pet. App.39a-41a. That premise had "no support in the language of the Code" and was "hardly consistent" with the obvious purposes of the statutory provisions vesting creditors' avoidance claims in the trustee and establishing a limitations period for bringing them: to "assure an equitable distribution among the creditors" and "provide peace to possible defendants." *Id.* 41a-43a. And even if petitioners' state-law claims could revert to them, the notion that they would do so free and clear of §546(e) would create "a glaring anomaly" in the statute. *Id.* 43a-44a. The court ultimately declined to "resolve these issues," but explained that "they [were] sufficient … to dispel the suggestions" that §546(e)'s reference to the "trustee" had the plain meaning petitioners claimed (that it permitted creditors to assert claims that the trustee was expressly barred from pursuing). *Id.* 50a-51a.

Instead, the court concluded that §546(e) preempted petitioners' claims because §546(e) would expressly bar those claims if brought by the creditors' legal representative, the trustee. Permitting the creditors to "[w]ork around" that statutory bar by bringing the claims in their own names would "conflict with" "[e]very congressional purpose reflected in [that] Section." Pet. App.52a. It "would seriously undermine" §546(e) if petitioners could bring constructive fraudulent-transfer claims under state law to "[u]nwind[] settled securities transactions" in Tribune's $8 billion LBO that §546(e) barred the trustee from bringing. *Id.*

REASONS FOR DENYING THE WRIT

I. THE QUESTION WHETHER TRIBUNE WAS A "FINANCIAL INSTITUTION" UNDER §101(22)(A) DOES NOT MERIT REVIEW

The Second Circuit's conclusion that Tribune was a "financial institution" under §101(22)(A) does not conflict with the decision of any other court. Indeed, the Second Circuit is the only court of appeals that has addressed the question. Petitioners' challenge to the Second Circuit's plain-meaning interpretation of "an obscure definition" (Pet. 34) in the Code does not warrant review.

1. Petitioners contend (at 31-34) that the decision below flouts this Court's holding in *Merit*, but *Merit* expressly left open the question the Second Circuit decided: whether the transferor in the challenged transfer qualifies as a "financial institution" under §101(22)(A)'s "customer" provision. 138 S. Ct. at 890 n.2. *Merit* construed only the phrase "by or to (or for the benefit of)" in §546(e) and did not construe the "customer" provision of §101(22)(A)'s "financial institution" definition. But it noted the possibility that a transferor that is not a bank or trust company may nonetheless "qualif[y] as a 'financial institution' by virtue of its status as a 'customer' under §101(22)(A)" of a bank or trust company that "is acting as agent … for [the] customer … in connection with a securities contract." *Id.* (quoting §101(22)(A)). The Second Circuit applied that very analysis.

Petitioners and their amici contend that the Second Circuit's resolution of that question "would deprive *Merit* of practical significance." Pet. 32. That, too, is incorrect. In holding that §546(e) applies if the transferor is itself a "financial institution," the court did not construe that term to encompass "any individual or en-

tity that pays anything through a bank" by check or wire transfer, *id.* 34, but instead held that Tribune was a financial institution because it was the customer of a bank and trust company retained to act as its "depository" in connection with securities contracts governing an $8 billion LBO to purchase all of Tribune's publicly traded shares. Pet. App.24a-28a. The court did not address circumstances like those in *Merit*, involving claims to avoid relatively modest payments to a few shareholders to purchase stock in a privately held company. 138 S. Ct. at 891.

2. The Second Circuit's decision was correct. It construed "financial institution" in accordance with the statute's plain text, holding that Tribune qualified as a "financial institution" because it was a "customer" of a "bank" and "trust company" (Computershare) that acted as Tribune's "agent" "in connection with a securities contract" in its role as depository for the LBO. §101(22)(A); App.22a-30a.

Petitioners contend that the Second Circuit misconstrued the term "agent," asserting that an agent must have "discretionary authority to manage its customer's investments" or "bind[] [its principal] in contract." Pet. 36-37. There is no such requirement in §101(22)(A)'s text or the law of agency. "Statutes employing common-law terms, such as agent, are presumed … to incorporate the established meaning of th[o]se terms, absent contrary indication." Pet. App.27a (quoting *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U.S. 318, 322 (1992)); *Field* v. *Mans*, 516 U.S. 59, 69 (1995). "At common law, '[a]gency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent

or otherwise consents to so act.'" Pet. App.27a (quoting *Restatement (Third) of Agency* §1.01 (2006)). There is no further requirement that an agent have a broader "fiduciary" relation granting discretionary trading or contracting authority, and in fact the principal may limit the scope of authority it grants the agent. *Restatement (Third) of Agency* §1.01 cmt. c. An agent need not expressly assume fiduciary duties, as amici contend (Professors Br. 23); rather, "an agency relationship creates the agent's fiduciary duties as a matter of law." *Restatement (Third) of Agency* §1.01 cmt. e.

Petitioners also contend (at 37) that §101(22)(A)'s use of the present tense—"is acting as agent"—means that Computershare had to act as Tribune's agent, not when the LBO payments were made, but when the lawsuits to avoid them were filed. That argument disregards the statute's "language … [and] the specific context in which that language is used." *Merit*, 138 S. Ct. at 893. Section 546(e) also uses the present tense. It bars avoidance of a transfer that "*is* a settlement payment" or "transfer … in connection with a securities contract," made by a customer of a bank or trust company that "*is* acting as agent" for its customer "in connection with a securities contract." §§101(22)(A), 546(e) (emphases added). That statutory language and context make clear that the bank or trust company must be acting as agent at the time the challenged transfer is made. *Tribune*, 2019 WL 1771786, at *11 n.11.

II. THE QUESTION WHETHER §546(e) PREEMPTS CREDITOR CONSTRUCTIVE FRAUDULENT-TRANSFER CLAIMS DOES NOT MERIT REVIEW

Petitioners concede (at 30) that the Second Circuit's conclusion that §546(e) preempts individual creditors' state-law fraudulent-transfer claims does not con-

flict with the decision of any other court of appeals. Petitioners also admit that "individual creditors have brought cases like this only a handful of times." Pet. C.A. Reply Br. 72.

Instead, petitioners mischaracterize the Second Circuit's analysis, suggesting that the court discarded the presumption against preemption, creating a supposed circuit split, and flouted *Merit* by holding petitioners' claims preempted. It did neither. The Second Circuit adhered to this Court's preemption jurisprudence and correctly decided an unusual question of preemption that *Merit* never addressed.

But even if petitioners' contentions had merit, review would be unwarranted because resolution of the questions presented would not alter the outcome of this case. Petitioners assert state-law claims that vested in the trustee and did not "revert" to the creditors (or if they did, they reverted subject to §546(e)). Moreover, the palpable conflict between the Code's safe harbor and petitioners' state-law claims mandates preemption regardless of any presumption otherwise.

A. The Second Circuit's Application Of The Presumption Against Preemption Is Not Worthy Of Review

Petitioners' first question presented posits that the Second Circuit "held … that the presumption against preemption of state law does not apply to creditor-rights claims once federal bankruptcy law has been invoked." Pet. i. That is a caricature of the decision. The court expressly applied the presumption; it merely concluded that the presumption carried less weight in a case concerning multiple areas of longstanding federal

regulation. That conclusion does not conflict with any decision of another court of appeals or this Court.

1. The court of appeals recognized the "presumption against inferring preemption" and explained, in accordance with this Court's precedent, that the presumption carries more weight in areas of traditional state regulation and less weight in areas with a history of significant federal presence. Section 546(e) concerns two areas of longstanding federal regulation—creditors' rights in bankruptcy and the securities markets. Petitioners' contention (at 21) that the states have long regulated fraudulent transfers misses the point: the issue is not whether §546(e) preempts all state fraudulent-transfer law, but whether it preempts state-law fraudulent-transfer claims to unwind a transaction that occurred in the federally regulated securities markets involving a debtor in federal bankruptcy proceedings. The Second Circuit correctly concluded that the presumption against preemption is at a low ebb where, as here, creditors of a bankrupt debtor seek to assert claims that §546(e) bars their statutory representative from bringing.

Ignoring the Second Circuit's careful analysis, petitioners and their amici contend that the court discarded altogether the presumption against preemption. Petitioners seize on a single remark, in which the court ventured that the Code effects a "wholesale preemption of state laws regarding creditors' rights." Pet. 4, 9, 17, 19, 21, 22 (quoting Pet. App.34a). As the full opinion makes clear, however, the court never suggested that the presumption was inapplicable in bankruptcy—to the contrary, it applied that presumption, App.32a-36a; in the snippet on which petitioners focus, the court simply focused on how federal bankruptcy law has long provided that the trustee, not individual creditors, is the right

party to pursue creditors' state-law fraudulent-transfer claims once the debtor enters bankruptcy.

The Second Circuit's conclusion that the presumption against preemption carries less weight in this area of longstanding federal regulation was faithful to this Court's precedent, not the radical departure petitioners and their amici contend. In many respects, the Code defers to state law, such as in defining property interests in estate assets and determining the validity and dollar amounts of creditors' claims against the debtor. §§502(b), 541(a)(1); *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 450-451 (2007); *Butner* v. *United States*, 440 U.S. 48, 54-55 (1979).

But in other key respects, the Code dramatically reshapes creditors' rights, displacing the state-law regime of creditor collection remedies with a federal bankruptcy scheme empowering a trustee to marshal the debtor's assets for equitable distribution among all creditors: the Code imposes an automatic stay barring creditor collection actions, §362(a); vests creditors' state-law avoidance claims exclusively in the trustee, to recover fraudulently transferred assets for creditors' collective benefit, §544(b); permits creditor claims to be satisfied with less than full payment, through pro rata distributions or restructured obligations under a reorganization plan, §§726, 1123, 1129; and provides a discharge barring any further collection of those claims, §§524(a), 727, 1141(d). As this Court has noted, "the restructuring of debtor-creditor relations … is at the core of the federal bankruptcy power." *Stern* v. *Marshall*, 564 U.S. 462, 477 (2011).

2. Once petitioners' mischaracterization of the decision below is set aside, the supposed split with other circuits and this Court's precedent disappears. Like

other circuits, the Second Circuit recognized the presumption. The different outcomes in different cases reflects no split in the courts' approach to the presumption, but rather the differing federal and state interests implicated by the different Code provisions at issue in each case. Unlike this case, none of the cases petitioners cite involved §546(e) or a similar provision that expressly barred state-law claims in furtherance of the federal interests in regulating bankruptcy proceedings and protecting the securities markets.

Instead, the Eighth Circuit held that the Code did not preempt state law governing the validity of a creditor's claim against the debtor, and the Eleventh Circuit held that the Code did not preempt state law defining the debtor's property interest in an estate asset—two areas in which the Code has traditionally deferred to state law (*supra* p.17). *See Melikian Enters., LLP* v. *McCormick*, 863 F.3d 802, 806-807 (8th Cir. 2017); *In re Northington*, 876 F.3d 1302, 1310-1315 (11th Cir. 2017). Similarly, the Third Circuit held that the Code's grant of a damages remedy to debtors injured by bad-faith involuntary bankruptcy filings did not preempt state-law tort claims of other parties injured by the filing, where, unlike here, the Code did not vest such state-law claims exclusively in the debtor or trustee and then safe harbor them. *See Rosenberg* v. *DVI Receivables XVII, LLC*, 835 F.3d 414, 419 (3d Cir. 2016).[5] Petitioners do not assert that the Second Circuit has adopted a different rule with respect to any of those issues. To the contrary, after issuing its initial decision on the

[5] Petitioners also cite *Pacific Gas & Electric Co.* v. *California ex rel. California of Toxic Substances Control*, 350 F.3d 932 (9th Cir. 2003), but that case construed an express preemption clause and declined to consider conflict preemption. *Id.* at 942-943, 946-949.

preemption question at issue here in 2016, Pet. App.15a-17a, the Second Circuit has continued to find, consistent with the presumption, that Code provisions other than the safe harbor do not preempt state law. *See, e.g.*, *Trikona Advisers Ltd.* v. *Chugh*, 846 F.3d 22, 35 (2d Cir. 2017) (Code Chapter 15 does not preempt state law of comity).

By contrast, when other circuits, including the Eighth Circuit, have considered a more analogous question—whether §546(e) preempts state-law unjust-enrichment claims by a trustee to avoid transfers safe harbored against fraudulent-transfer claims—they have concluded, like the Second Circuit here, that §546(e) bars efforts to invoke state law to circumvent the safe harbor. *See Grede* v. *FCStone, LLC*, 746 F.3d 244, 259 (7th Cir. 2014); *Contemporary Indus. Corp.* v. *Frost*, 564 F.3d 981, 988 (8th Cir. 2009), *abrogated on other grounds by Merit*, 138 S. Ct. 883.

Nor does the Second Circuit's decision conflict with this Court's decisions in *BFP* v. *Resolution Trust Corp.* and *Midlantic National Bank* v. *New Jersey Department of Environmental Protection*—cases that concerned vastly different federal and state interests than those at issue here. *BFP* concerned whether the price paid for a debtor's real estate in a pre-bankruptcy foreclosure sale that complied with state law was "reasonably equivalent value," as defined in the federal constructive fraudulent-transfer provision (§548). The Court held that it was, noting that there was no history of federal regulation of foreclosure, and the Code was "entirely compatible with pre-existing [state-law] practice." 511 U.S. 531, 532, 539-540, 543-545 (1994). *Midlantic* held that a trustee could not abandon the estate's toxic PCB-contaminated properties in violation of state environmental-law clean-up obligations, explaining that

"Congress has repeatedly expressed its legislative determination that the trustee is not to have *carte blanche* to ignore nonbankruptcy law" "designed to protect public health or safety." 474 U.S. 494, 502-505 (1986).

3. Even if the Second Circuit *had* stated that the presumption against preemption does not apply in bankruptcy, this case would present a poor vehicle to review that question because that question is not outcome-determinative here. Presumption or not, federal law preempts conflicting state law—even in areas of traditional state interest—when the state law "interferes with Congress' objective" in federal enactments. *Hillman*, 569 U.S. at 499; *id.* at 490-491 ("There is … a 'presumption against pre-emption' of state laws governing domestic relations," "[b]ut … state laws … governing domestic relations … must give way to clearly conflicting federal enactments" (internal quotation marks omitted)). Petitioners' state-law claims plainly conflict with §546(e)'s objective to safe harbor securities transfers like those at issue here, and therefore are preempted even if the presumption against preemption were at its strongest.

B. Whether § 546(e) Preempts Petitioners' Claims Does Not Merit Review

Under their second question presented, petitioners contend (at 23) that the Second Circuit undertook a freewheeling inquiry in derogation not only of §546(e)'s text, context, and history, but also of this Court's decision in *Merit*. It did not. Rather, it analyzed the text, structure, and purpose behind the safe harbor, and only then concluded (correctly) that petitioners' state-law fraudulent-transfer claims would gut Congress' carefully balanced statutory scheme and were therefore

preempted. The court's decision does not conflict with *Merit* or the decision of any other court of appeals, and the preemption question has arisen in only a few decisions in the nearly four decades since §546(e)'s enactment. This question also does not warrant review.

1. Petitioners contend (at 23) that the Second Circuit's preemption analysis "is irreconcilable with *Merit*," but *Merit* did not address preemption at all. App.65a-66a. *Merit* analyzed §546(e)'s scope as a matter of statutory construction, holding that §546(e) did not bar a trustee's federal-law avoidance claim under §548 because the transfer was not made "by or to" a transferor or transferee that was itself a qualifying entity. 138 S. Ct. at 891-893.

Petitioners and their amici nonetheless contend (at 23-24) that *Merit* rejected the premise, on which the Second Circuit relied, that the safe harbor's purpose is to protect the finality of safe-harbored securities transactions. In fact, *Merit* never questioned the proposition that Congress intended §546(e) to promote finality and certainty for parties to transfers *within* §546(e)'s scope; it rejected only an argument that this purpose expanded §546(e)'s scope beyond its plain text. 138 S. Ct. at 896-897; Pet. App.65a-66a. "[P]urposivist arguments," *Merit* explained, provide no basis to extend the safe harbor to "transfers made *through* [qualifying entities]" where that reading was "contradicted by the plain language of the safe harbor," which applied only to "securities transactions 'made by or to (or for the benefit of)' covered entities"; "[t]ransfers 'through' a covered entity, conversely, appear nowhere in the statute." 138 S. Ct. at 897.

Here, the question is whether permitting creditors to bring state-law claims to avoid transfers that *do* fall within §546(e)'s text (because they were made by a

covered entity), and that §546(e) expressly bars the trustee from bringing on the creditors' behalf, would undermine the safe harbor. Nothing in *Merit* casts any doubt on the Second Circuit's conclusion that it would. Pet. App.65a-67a.

2. Petitioners cannot point to any significant split of authority. The Second Circuit is the only court of appeals to have addressed the question. Moreover, other courts of appeals addressing the analogous question whether §546(e) preempts state-law unjust-enrichment claims to recover safe-harbored transfers have agreed that §546(e) bars such claims because those claims "would allow the trustee or a creditor to make an end run around the [B]ankruptcy [C]ode[]," *Grede*, 746 F.3d at 259, and "wholly frustrate the purpose behind that section," *Contemporary Indus.*, 564 F.3d at 988. The only contrary cases petitioners identify (at 30) are one district and one bankruptcy court decision, one of which did not even address conflict preemption. *See PHP Liquidating, LLC*, 291 B.R. 603, 607, 609-610 (D. Del. 2003), *aff'd*, 128 F. App'x 839 (3d Cir. 2005) (per curiam).

3. Petitioners and their amici urge the Court to use this case to revisit the doctrine of conflict preemption and narrow or abandon it altogether. Pet. 29-30. Even if the Court were otherwise inclined to review that doctrine, this case would present a poor vehicle to do so because it arose in an atypical context, concerning a narrow question under an unusual statutory regime that has little application beyond the circumstances here.

The Code expressly bars petitioners' state-law claims to avoid safe-harbored payments in the hands of the only party with statutory authority to assert them—the trustee, the "statutory successor" to such

claims, who is charged with pursuing them for the creditors' collective benefit. There is accordingly a strong argument that this case presents a question not merely of implied preemption, but rather of express preemption, as respondents argued below, but which the Second Circuit did not reach. C.A. Dkt. 145, at 41-41; C.A. Dkt. 229, at 2-17. Given the trustee's role as the statutory representative and successor to the creditors with the exclusive right to bring the creditors' state-law avoidance claims, §546(e)'s safe harbor barring the trustee from bringing those claims makes express Congress's intent to bar the creditors—not merely some hypothetical third party with no connection to the trustee—from avoiding safe-harbored payments under state law. This case thus does not present a Circuit's free-wheeling application of implied conflict preemption divorced from the words of the statute.

4. The Second Circuit's decision was correct. Petitioners and their amici contend that §546(e) does not preempt creditors' state-law fraudulent-transfer claims because §546(e) refers only to "the trustee." Pet. 26-28. But given the identity in bankruptcy between creditors and the trustee, the textual cue on which petitioners base their argument does not bear the weight they ascribe to it.

Indeed, the court of appeals' analysis is reinforced by petitioners' principal authority, *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1 (2000), which held that a Code provision authorizing the "trustee" to surcharge collateral meant that no other party, including creditors, could exercise that power. *Id.* at 6-7. *Hartford* underscores why Congress referred exclusively to the "trustee" in §546(e): The Code also gives the power to assert creditors' state-law avoidance claims in bankruptcy solely to the "trustee"

under §544(b). Having done so, Congress had only to limit the avoidance power of "the trustee" in §546(e) to protect safe-harbored transfers from being unwound in bankruptcy.

It was hardly a stretch for the court of appeals to conclude that permitting petitioners to bring the same claims that §546(e) bars the creditors' representative from bringing—in an admitted attempt to make an "end run" around §546(e)—would conflict with the safe harbor. Were petitioners' claims permitted to proceed, §546(e) would be a dead letter. In every case, the trustee could renounce its authority to bring safe-harbored claims so that the creditors could bring those same claims free of §546(e)'s bar.[6] Under that approach, the "safe harbor" would provide no harbor at all.

That cannot be correct. As this Court has emphasized, courts construing a statute's preemptive effect should not presume that Congress "inten[ded] to preserve state-law rules" whose "continued existence … would be absolutely inconsistent with the provisions of the act"; "the act cannot be held to destroy itself." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 343, 352 (2011) (quotation marks omitted).

Finally, petitioners miss the point when they contend (at 25-26) that Congress must not have really intended to protect the finality of securities transactions because §546(e) does not apply if the debtor never files for bankruptcy and, even if it does, permits the trustee to avoid securities transactions as intentional fraudulent transfers under §548. The safe harbor reflects the bal-

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[6] Indeed, some amici advocate that very result, urging that trustees should be permitted to "abandon" claims subject to the "legal bar [of] §546(e)" to "provide an avenue for creditor recovery that otherwise would not exist." Trustees Br. 2.

ance Congress struck between protecting securities markets and protecting creditors. While Congress chose not to protect every transaction, it did "inten[d] to 'minimize the displacement caused in the … securities markets in the event of a major bankruptcy'" and "'promot[e] finality' … by limiting the circumstances … to cases of intentional fraud[] under which securities transactions could be unwound." Pet. App.56a (quoting H.R. Rep. No. 97-420, at 1 (1982); H.R. Rep. No. 101-484, at 2 (1990)). Section 546(e) limits the avoidance of securities settlement payments made by debtors that become bankrupt to claims brought under federal law involving intentional fraud.[7] §§546(e), 548(a)(1)(A). In the far more common circumstance, like that here, where avoidance in bankruptcy is sought under state law theories alleging merely that an insolvent debtor received insufficient value in a securities transaction (constructive fraudulent transfers), Congress judged that the policy of maximizing creditors' recoveries was outweighed by the potentially destabilizing effects on the securities markets if the transactions could be unwound in bankruptcy. *Id.*; H.R. Rep. No. 97-420, at 2 (the safe harbor "ensure[s] that the avoiding powers of a trustee are not construed to permit … settlement payments to be set aside except in cases of [actual] fraud."). It thus enacted a "safe harbor" to ensure that such settlement payments are final, rather than a source of potential liability in suits like petitioners' here, brought against thousands of former Tribune shareholders, many of whom are retir-

[7] Petitioners' amici are thus wrong in contending that the decision below allows "insiders to loot companies at the detriment of … creditors." Professors Br. 2, 21-22. Section 546(e) protects creditors from such wrongdoing by preserving the federal remedy against intentional fraud.

ees or individuals who have had this litigation hanging over them for a decade.

Petitioners ultimately posit an illogical world in which Congress decided to limit the trustee to avoiding intentional fraud when seeking to maximize creditors' recoveries, but elected to impose no such limit on the creditors themselves—except to require them to delay bringing suit for two years until the Code's limitations period for the trustee to bring those claims expires. As the Second Circuit explained, "the idea of preventing a trustee from unwinding specified transactions while allowing creditors to do so, but only later, is a policy in a fruitless search for a logical rationale." App.53a. The court rightly rejected petitioners' position.[8]

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[8] Petitioners note (at 28-29) that another Code section provides for express preemption, but that is no answer to the court's conclusion that petitioners' claims conflict with §546(e). "[T]he existence of an express pre-emption provisio[n] does *not* bar the ordinary working of conflict preemption principles or … make it more difficult to establish the preemption of laws falling outside the clause." App.62a (quoting *Arizona* v. *United States*, 132 S. Ct. 2492, 2504-2505 (2012)); *accord Hillman*, 569 U.S. at 498. Moreover, the provision petitioners cite is particularly uninstructive given its different structure and history. Enacted 16 years after §546(e) in a narrow amendment addressing only charitable contributions, §544(b)(2) provides that—unlike here—creditors' state-law claims to avoid charitable contributions do *not* vest in the trustee under §544(b)(1), thus leaving them in creditors' hands; hence, §544(b)(2)'s preemptive language became necessary to bar such claims. §544(b)(1)-(2); H.R. Rep. No. 105-556 (1998); *The Religious Liberty and Charitable Donations Protections Act of 1997; and Religious Fairness in Bankruptcy Act of 1997: Hearing on H.R. 2604 and H.R. 2611 Before the Subcommittee on Communications and Administrative Law of the House Committee on the Judiciary*, 105th Cong. 35, 69 (1998). Here, by contrast, state-law claims to avoid securities settlement payments do vest in the trustee under §544(b)(1), which §546(e) then safe harbors.

C. This Case Is A Poor Vehicle To Review The Preemption Questions Presented Because There Is An Alternative Ground For Affirmance

Review of the preemption questions presented also is not warranted because their resolution would not alter the case's outcome. As the Second Circuit recognized, there is a substantial, alternative ground for affirmance, independent of preemption: petitioners have no state-law claims to assert in the first place, because those claims vested in the trustee upon the bankruptcy filing and never "reverted" to the creditors (or did not revert free of §546(e)'s limitations). Pet. App.41a-51a.

Petitioners and their amici posit that petitioners' state-law claims to avoid the shareholder payments, which §544(b) vested in the trustee, "reverted" to the creditors, free and clear of §546(e), when the Code's limitations period for bringing those claims expired. But there is "no support in the language of the Code" for that assumption, Pet. App.41a, and it runs headlong into this Court's precedents. No "creditor can have any greater right under the Bankrupt Act than the act itself confers." *Glenny* v. *Langdon*, 98 U.S. 20, 29 (1878). A fundamental principle of bankruptcy law, recognized by this Court 140 years ago, is that creditors' state-law collection "remedies," including avoidance of fraudulent transfers, "are absorbed in the great and comprehensive remedy" given the trustee "to collect and distribute among [creditors] the property of their debtor." *Id.* at 28; *Trimble* v. *Woodhead*, 102 U.S. 647, 649-650 (1880). Consequently, except where bankruptcy law specifies otherwise, nothing "divest[s]" the trustee of any remedies and restores them to creditors, even after the time in which the trustee may assert the claim has expired. *Trimble*, 102 U.S. at 649-650 (creditor's fraud-

ulent-transfer claim did not revert from bankruptcy-estate representative to creditor when limitations period expired); Pet. App.48a.

Congress has revised the bankruptcy law several times since *Glenny* and *Trimble*, but it has never displaced those decisions or altered the fundamental principle they articulate. In the current version of the statute, Congress again specified that creditors' claims vest in the trustee as the "successor" to those claims, §544(b)(1); 28 U.S.C. § 1409(c), to pursue for the collective benefit of all creditors. *See supra* pp.2-4. And it provided for reversion—but only if the bankruptcy case is dismissed altogether (a remedy the creditors could have sought here but never did). §349(b). That narrow statutory exception allowing for reversion reaffirms the rule that, absent dismissal of the bankruptcy case, creditors' claims do not revert to creditors. *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998) ("We … 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure[.]'"); *In re MortgageAmerica Corp.*, 714 F.2d 1266, 1275 (5th Cir. 1983) (Code follows *Glenny*). Indeed, that rule has special force here, where the trustee did not renounce its authority to bring all fraudulent-transfer claims, but only those barred by §546(e), resulting in two different sets of plaintiffs—individual creditors and the bankruptcy estate—both seeking to avoid the same transfers as alleged fraudulent transfers.

In any event, even if creditors' state-law claims somehow could revert, the Second Circuit rightly deemed it "a glaring anomaly" to suppose that creditors would have (or the trustee could pass on to them) greater powers to avoid the debtor's transfers than

Congress gave the creditors' legal representative in bankruptcy, the trustee. Pet. App.43a-44a, 50a-51a.[9]

The court ultimately concluded that it "need not resolve these issues"—though it noted "the lack of a statutory basis for reversion might well … suggest Section 544[] … cut[s] off creditors from any avoidance rights"—because §546(e) would preempt petitioners' claims in any event. Pet. App. 50a-51a. But the serious defects it identified in petitioners' claims make this case an especially poor vehicle for resolving the preemption questions presented. Their resolution would likely not affect the outcome at all.

III. PETITIONERS' EFFORT TO CREATE A QUORUM DOES NOT RESOLVE THE APPEARANCE OF A CONFLICT

Even if the questions presented otherwise warranted this Court's review, petitioners' attempt to obtain a quorum is neither effective nor appropriate. In 2016, after petitioners filed a petition for certiorari from *Tribune I* raising substantially the same issues presented here, two Justices issued a Statement noting "there might not be a quorum in this Court." Pet. App.74a. Petitioners "[p]resum[e] the possible lack of a quorum resulted from the many mutual funds that were respondents." Pet. 11. Although petitioners' claims have affected all shareholders equally for the past decade, petitioners now selectively abandon their claims against 235 defendants in which they believe the Justices may have a financial interest. Pet. ii-xvi, 11-12.

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[9] Petitioners' amici cite *In re Wilton Armetale, Inc.*, 2020 WL 4460000 (3d Cir. Aug. 4, 2020), but that case merely held that a trustee could abandon claims belonging to the estate under §541; it did not address reversion of claims vested in the trustee under §544, nor did it concern a claim that the Code barred the trustee from bringing. *Id.* at *3, *5-7.

But that fails to address fully the underlying conflict, much less the appearance of one.

1. Notably, petitioners never sought dismissal of these shareholders before the district court or the Second Circuit, but rather announced only in the Petition that they had "abandoned" the claims against those defendants. Of course, petitioners' representation that they "will let the judgment below stand" (Pet. ii) as to this subset of defendants would estop petitioners from later seeking relief against them. But, as a technical matter, as parties to the judgment below, those defendants remain respondents here, per Rule 12(6). By asking this Court to issue an order vacating the judgment below except as to those defendants in which the Justices might have a financial interest, petitioners hardly avoid—but rather only highlight—the actual or apparent conflict of interest.

2. Moreover, even if petitioners "let the judgment below stand" for the benefit of the specified defendants, any ruling by this Court regarding §546(e)'s application would still impact those same defendants, through the virtually identical claim the Trustee is pursuing against the same shareholders in the related action pending before the Second Circuit.[10] There, the district court denied the Trustee's motion to amend the complaint to

[10] A non-exhaustive list of "dropped" defendants remaining in the Trustee's action includes: AST T. Rowe Price Asset Allocation Portfolio; DWS Equity 500 Index Portfolio; J.P. Morgan Securities LLC; Schwab Capital Trust, T. Rowe Price Group, Inc.; T. Rowe Price Index Trust, Inc.; Vanguard Valley Forge Funds; and Wells Fargo Bank, NA. The Trustee's proposed amended complaint also seeks to add a constructive-transfer claim against a class of all former shareholders, subject to a certain threshold. *See* Proposed Sixth Amended Complaint, No. 1:12-cv-02652 (S.D.N.Y. Apr. 4, 2019), ECF No. 6084-1.

add a constructive fraudulent-transfer claim on the same ground that petitioners challenge here—that the claims were barred by §546(e) because Tribune was a "financial institution" under §101(22)(A). That decision is now on appeal before the Second Circuit. *Supra* p.7. Any decision this Court might take regarding §546(e) would have a direct effect on the 235 "dropped" shareholder-defendants in the case pending in the Second Circuit, in which the Trustee has not "abandoned" his claims against those entities.[11]

3. Finally, petitioners' eleventh-hour attempt to dismiss selectively certain defendants in which the Justices may have a financial interest raises serious questions of equity. For more than a decade, petitioners asserted a claim against thousands of defendants, representing the investment interests of millions of individual investors, who are not accused of any wrongdoing, but of simply receiving payment for their shares roughly equivalent to the shares' market value before the LBO was announced. Petitioners now seek to excuse only the Justices and those shareholders who had the good fortune to invest alongside the Justices in the same investment vehicles—while other similarly situated shareholders would have to continue to fight petitioners' claims because they had the misfortune to invest through other vehicles, such as their union's

[11] The interplay between petitioners' and the Trustee's actions likely explains why petitioners did not formally dismiss the 235 identified defendants. Both litigations are controlled by the same entities, represented by the same counsel. To date, all settlements have resolved all claims in both petitioners' and the Trustee's actions. Here, by contrast, petitioners undoubtedly wish to retain their ability to pursue the 235 named defendants in the Trustee action, and thereby benefit against them from any favorable ruling in this Court.

ERISA plan. Accordingly, even if petitioners' gambit resolves the Justices' potential conflict of interest, petitioners' attempt to shift liability from the "dropped" shareholder-defendants onto other innocent shareholders raises serious questions of equity.

CONCLUSION

If a quorum exists, the petition should be denied. If, however, petitioners' gambit fails to solve the absence of a quorum, the Court should affirm the judgment below in accordance with 28 U.S.C. §2109.

Respectfully submitted.

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Art Gallery, Inc., d/b/a the Walters Art Museum, incorrectly named as "Walters Trustees Consolidated Fund – Fixed Income"; Vermont State Employees Retirement System; Board of Administration of the Water and Power Employees' Retirement Plan of the City of Los Angeles; and Weiss Multi-Strategy Partners LLC

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which in 2011 merged with Jefferies Bache Securities, LLC, with Jefferies & Company, Inc. as the surviving entity); Mellon Bank N.A. Employees Benefit Collective Investment Plan; Mellon Bank, N.A. Employee Benefit Plan; Oppenheimer & Co., Inc.; Paper Products, Miscellaneous Chauffeurs, Warehousemen, Helpers, Messengers, Production and Office Workers Local 27 Pension Fund; Pershing LLC; Reed Elsevier U.S. Retirement Plan; Reliance Trust Company; Strategic Funds, Inc.; The Bank of New York Mellon; The Bank of New York Mellon as trustee of The Bank of New York Mellon Employee Benefit Collective Investment Fund Plan f/k/a Mellon Bank, N.A. Employee Benefit Collective Investment Fund Plan; The Bank of New York Mellon as trustee of The Collective Trust of The Bank of New York; The Bank of New York Mellon as trustee of the PG&E Nuclear Facilities Qualified CPUC Decommissioning Master Trust; The Bank of New York Mellon as trustee of the PG&E Postretirement Medical Plan Trust; The Bank of New York Mellon as trustee of the R.E. Ginna Nuclear Power Plant LLC Master Decommissioning Trust; The Depository Trust & Clearing Corporation; The Depository Trust Company; The Dreyfus Corporation; and Wachovia Bank, N.A.

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