No. 22-1165

In the Supreme Court of the United States

MACQUARIE INFRASTRUCTURE CORP., ET AL.,
PETITIONERS

v.

MOAB PARTNERS, L.P., ET AL.

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

REPLY BRIEF FOR RESPONDENT
BARCLAYS CAPITAL INC. IN SUPPORT OF VACATUR

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Petitioners have requested relief from this Court in the form of vacatur of the judgment below and remand for further proceedings. See Br. 46. As this Court's rules expressly permit, see Rule 25.1, Barclays filed a brief as a respondent supporting petitioners' requested relief. Barclays explained (Br. 7-9) that vacatur and remand would be appropriate because such relief would allow the court of appeals to reconsider its decision as to the claims asserted by Moab against both petitioners and Barclays under Sections 11 and 12(a)(2) of the Securities Act of 1933, in light of this Court's decision concerning Section 10(b)

of the Securities Exchange Act of 1934. Cf. *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996).

Moab argues that Barclays' "request" for remand is "procedurally defective" because Barclays did not file a cross-petition and because the question presented does not encompass claims under Sections 11 and 12(a)(2). Br. 48, 49. But those arguments fail for a straightforward reason: Barclays is not "request[ing]" any relief from the Court at all. Instead, Barclays is merely supporting *petitioners'* request for vacatur and remand. The Court need not grant any specific relief to Barclays in order for Barclays to benefit from petitioners' request; if the Court vacates the judgment below and remands the case, petitioners and Barclays alike will have an opportunity to argue before the court of appeals that the Section 11 and 12(a)(2) claims cannot proceed in light of this Court's reasoning concerning the Section 10(b) claims.

For that reason, the rule that a party must file a cross-petition in order to challenge a judgment "with a view either to enlarging [its] own rights thereunder or of lessening the rights of [its] adversary" does not apply here. *El Paso Natural Gas Co.* v. *Neztsosie*, 526 U.S. 473, 479 (1999) (citation omitted); see Moab Br. 48. Nor is it relevant that the question presented is limited to whether Item 303 can support a private action in the specific context of Section 10(b). See Moab Br. 49.

Moab suggests (Br. 49) that, on remand, Barclays would face unspecified preservation problems before the court of appeals. Of course, that is an issue for the court of appeals, not this Court. See, *e.g.*, *Siegel* v. *Fitzgerald*, 596 U.S. 464, 481 (2022); *United States* v. *Haymond*, 139 S. Ct. 2369, 2385 (2019) (plurality opinion); *United States* v. *Stitt*, 139 S. Ct. 399, 407-408 (2018). In any event, contrary to Moab's suggestion, Barclays clearly defended the district court's dismissal of the Section 11 and 12(a)(2)

claims against it in the proceedings below. See Joint C.A. Br. 28; Barclays C.A. Rule 28(i) Letter 1. To the extent Moab is noting that Barclays did not contest the use of Item 303 as a basis for a private action under Sections 11 and 12(a)(2), there is a good reason for that: binding circuit precedent foreclosed that argument. See Barclays Br. 3 (citing cases). A party need not engage in the formalism of raising a futile argument in order to preserve it for subsequent review. Cf., *e.g.*, *Samia* v. *United States*, 599 U.S. 635 (2023) (deciding a question not addressed by the court of appeals where binding circuit precedent had already dictated an answer to that question).

* * * * *

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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