No. 22-200

In the

Supreme Court of the United States

SLACK TECHNOLOGIES, LLC, fka SLACK TECHNOLOGIES, INC., *et al.*,
Petitioners,
v.
FIYYAZ PIRANI,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF INVESTOR AMICI CURIAE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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I. IDENTITY AND INTEREST OF AMICI CURIAE

This brief is submitted by eleven institutional investors, which are identified in Appendix 1 (the "Investor Amici").[1] The Investor Amici are among the largest U.S. public pension funds that collectively invest billions of dollars on behalf of hundreds of thousands of American workers, including firefighters, police officers, teachers, and healthcare workers. Pursuant to Rule 37.2 of the rules of this Court, all parties received timely notice of the filing of and have consented to the filing of this amici curiae brief.

American pension funds collectively manage assets totaling $35.5 trillion and are responsible for millions of American workers' retirement funds. Pension funds are the primary vehicle through which these workers invest their savings in the public markets, and thus have a strong interest in effective enforcement of the securities laws to deter fraud and to ensure compensation for those injured by fraud.

The Investor Amici rely on the investor protections provided by the Securities Act of 1933 (the "Securities Act" or "Act"). For almost ninety years, the Securities Act has been a critical safeguard for

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[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

investors to deter issuers from making material misstatements in public offering materials. The Ninth Circuit's opinion preserved this important safeguard for the U.S. capital markets. Reversing the Ninth Circuit's opinion would severely harm investors.

The Investor Amici respond to briefs that were filed by the Cato Institute ("Cato"); the Chamber of Commerce of the U.S.A. and the Securities Industry and Financial Markets Association (collectively, the "Chamber"); Professor Joseph A. Grundfest ("Grundfest"); and the Washington Legal Foundation ("WLF").

II. SUMMARY OF ARGUMENT

Since 1933, §11 has provided a cause of action to investors who purchase securities offered using a registration statement containing "an untrue statement of a material fact or omit[ting] to state a material fact required to be stated therein or necessary to make the statements therein not misleading." 15 U.S.C. § 77k(a).

Deciding an issue of first impression, the Ninth Circuit held that in the specific situation of a direct-listing offering of both registered and unregistered securities—a new mechanism that first became available in 2018—§11's reference to "such security" encompasses all securities issued in the direct listing because sale of all the securities was authorized by the registration statement.

The Chamber, Cato, Grundfest, and WLF briefs present unrealistic "the sky is falling" scenarios. The Ninth Circuit's opinion invites no catastrophic

consequence; it simply maintains the long-embraced protections provided by Congress. The Ninth Circuit's opinion is correct, and the petition for a writ of certiorari should be denied for several reasons.

First, §11 is a remedial statute intended to be interpreted broadly to protect investors and "provide full and fair disclosure . . . and to prevent frauds in the sale [of securities]." 48 Stat. 74. *See* §III.A.

Second, the Ninth Circuit's opinion breaks no new ground. Since its inception, §11 has protected investors from misrepresentations in initial public offerings ("IPOs") and secondary offerings, where the duty of full and fair disclosure is heightened.

Were the Court to grant certiorari and reverse the Ninth Circuit's opinion, the Act would be materially weakened in a stark break from precedent. Companies and their officers, directors, and private investors could seize on the loophole championed by Defendants and the Defendants' amici to evade the Act at investors' expense. Allowing public offerings of securities without the risk of liability if investors are not provided the complete and accurate disclosures required under the Act would chill investment, harming both the capital markets and investors. *See* §III.B.

Finally, the Ninth Circuit's opinion comports with traditional statutory construction. *See* §III.C. Grundfest wrongly argues that the Ninth Circuit's decision is improperly "purposive," but he ignores that the phrase "such security" in §11 has no antecedent, creating a textual ambiguity. Adherents of both strict textualism and textualism informed by legislative

purpose agree that it is proper to look to a statute's purpose to resolve the statute's textual ambiguities and improper to resolve statutory ambiguity in a manner contrary to well-established legislative intent.

III. ARGUMENT

A. The Ninth Circuit's Opinion Furthers "Full And Fair Disclosure" Under The Securities Act

Congress enacted §11 to protect investors by compelling issuers and their insiders "[t]o provide full and fair disclosure . . . and to prevent frauds . . . ." 48 Stat. 74. Indeed, this Court has long affirmed that a "fundamental purpose" of the Securities Act is "to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963). Through its liability provisions, §11 effectuates Congress's determination that those who publicly offer securities bear a "moral responsibility to the public [that] is particularly heavy." *Herman & MacLean v. Huddleston*, 459 U.S. 375, 381-82 (1983); *Gustafson v. Alloyd Co.*, 513 U.S. 561, 581 (1995) (quoting H.R. Rep. No. 85, 73d Cong., 1st Sess., at 5 (1933)).

Courts, including the district court here, the Ninth Circuit, and this Court, routinely invoke the Act's purpose of protecting investors. *See Wilko v. Swan*, 346 U.S. 427, 438 (1953) (because Congress "enacted the Securities Act to protect the rights of investors . . . the intention of Congress . . . is better carried out by holding invalid" arbitration agreements

concerning claims under the Act); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1090 (9th Cir. 2010) ("Our conclusion that the Rule 144 safe harbor does not apply . . . is reinforced by the purposes underlying Securities Act registration[:] . . . the protection of investors through public disclosure of information necessary to make informed investment decisions."); *Pirani v. Slack Techs., Inc.*, 445 F. Supp. 3d 367, 379-380 (N.D. Cal. 2020) ("[A]mong the central purposes of [the Act] is full and fair disclosure relative to the issuance of securities.").

Consistent with this purpose, §11 is a critical tool for investors seeking to recoup losses attributable to false offering materials. Between 2012 and 2021, investors recovered hundreds of millions of dollars to compensate them, at least in part, for violations of §11. Specifically, in that period of time, plaintiffs (largely institutions like the Investor Amici) settled 77 cases brought exclusively under the Securities Act and an additional 1,116 cases brought under both the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act").[2] More than 80% of the settled cases that were brought exclusively under the Securities Act involved IPOs, the type of offering that is most

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[2] *See* Cornerstone Research, *Securities Class Action Settlements: 2021 Review and Analysis*, at 7 (https://securities.stanford.edu/research-reports/1996-2021/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf). Investors, including the Investor Amici, have recovered upwards of $2 billion in settlements of actions involving Securities Act claims in just the past few years since the new direct-listing rules have been in effect. *See* Appendix 2, listing a sampling of top recent settlements involving §11 claims.

impacted by the extreme stance taken by Defendants and their amici. *Id.* at 8.

B. The Ninth Circuit's Opinion Upholds Long-Standing Principles Recognizing Liability For Misrepresentations In Public Securities Offerings

1. The Ninth Circuit's Ruling Preserves The Status Quo And Creates No New Liability Under The Securities Act

Defendants and their amici incorrectly contend that the Ninth Circuit's opinion will upset settled law and invite a flood of new Securities Act suits against issuers that conduct direct-listing IPOs and other types of securities offerings. The Ninth Circuit actually affirmed current law, which for decades has recognized that companies accessing the public markets are subject to Securities Act liability. It is Defendants and their amici who advocate disruption.

Defendants' and Defendants' amici's arguments echo complaints that were rejected—and proved unfounded—when Congress adopted the Act. Opponents argued that §11 liability would be the "bête noire that was going to stifle legitimate financing."[3] In fact, §11 has not prevented public offerings since 1933. There have been thousands of IPOs and secondary offerings over the past decade. Indeed, 2021—the year

[3] Benjamin J. Nickerson, *The Underlying Underwriter: An Analysis of the Spotify Direct Listing*, 86 U. Chi. L. Rev. 985, 1025 (2019).

following the district court's opinion here—saw an all-time record high number of 1,033 IPOs, with 2020 ushering in 471 IPOs, the second largest total ever.[4] Therefore, it is clear that §11's directive that companies making public offerings tell investors the truth has created a healthy securities market where honesty is the expectation and dishonesty deterred or remedied. The Ninth Circuit's opinion simply ensures compliance with the existing statutory scheme, which will not prevent direct listings—only dishonest direct listings. Contrary to the appellants' and their amici's arguments, the Ninth Circuit opinion presents no circuit split, and does not alter the judge-made tracing doctrine that has historically been applied to secondary offerings, and not initial offerings or direct initial offerings.[5]

The parade of horribles invoked by the Chamber, Cato, Grundfest, and WLF is a fiction. For example, contrary to their assertions (Chamber Br. 7-11; Cato Br. 8-14; Grundfest Br. 15-18), it is Defendants' proposed construction, not the Ninth Circuit's, that would make early-stage investing

[4] *See* Phil Mackintosh, "A Record Year for IPOs in 2021," *Nasdaq* (Jan. 13, 2022) (https://www.nasdaq.com/articles/a-record-year-for-ipos-in-2021).

[5] As such, the Chamber's contention that the decision below creates a circuit split that will lead to widespread forum shopping (Chamber Br. 11) is baseless. Tellingly, neither the Chamber, Cato, nor WLF cite any authority for the proposition that a circuit split exists. Grundfest is also wrong and ignores that the "strict tracing requirement" he claims that the Ninth Circuit conflicts with (Grundfest Br. 5-11) applies to secondary offerings and not IPOs at issue here.

riskier and more expensive for startups. For example, Cato argues that direct listings free from all Section 11 liability allow "out-of-the-garage-era employees and early investors in startup companies the liquidity of a public market and enable them to sell their shares at a market price, often with less red tape and overhead along the way than a traditional IPO." Cato Br. 10. Upending 90 years of certainty in the markets to help a small cadre of startup investors secure a financial windfall at the expense of tens of thousands of public market participants who can no longer rely on the truth of the offering materials would directly conflict with the Securities Act's legislative purpose and the public's longstanding faith in the public markets. Since 1933, shareholders have had the certainty of §11 to recoup losses in misleading offerings. Stripping investors of those protections would make early-stage investments riskier and chill investment. Conversely, the current framework ***supports*** fair, efficient public markets, which also encourage investment in innovative private companies hoping to go public.[6]

Section 11 requires only that companies describe their business to investors honestly. If Defendants' amici fret that honesty has a price, the

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[6] *California Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2055 (2017) (cited at Chamber Br. 7)—a case that does not concern §11 liability at all—stands for the anodyne proposition that "stability and reliance" are important to market actors. Plaintiffs' amici do not dispute this fact, and it is the Ninth Circuit's decision below that upholds the status quo.

Investor Amici respectfully submit that is a price worth paying.

2. Overturning The Ninth Circuit's Decision Would Significantly Weaken, If Not Vitiate, §11

While the Ninth Circuit's opinion maintains the status quo, a reversal that allows issuers and their insiders to flood the market simultaneously with registered and unregistered securities, all inoculated from §11 liability, would significantly and immediately harm the market.

Indeed, the SEC has recently expanded the use of direct listings to allow issuers (as opposed to only insiders) to raise capital through these new direct listings. In so doing, the SEC specifically pointed to the district court opinion in this case assuring §11 liability in these offerings.[7] A reversal would create a new §11 loophole for all issuers raising capital.[8]

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[7] *See* SEC Release No. 34-91947, at 30 (May 19, 2021).

[8] In their amicus brief before the Ninth Circuit, the Chamber argued that the threat of liability under §11 of the Securities Act does not impact a company's choice between launching a traditional IPO or launching a direct listing or hybrid IPO/direct listing. *See* Chamber Br. §I.A. They have abandoned this specious argument in their current amicus brief, as they must, in a tacit admission that companies stand at the ready to choose whichever offering mechanism provides the least legal liability. Indeed, the same attorneys who signed the Chamber's brief wrote an article stating that an "important advantage of the direct listing" was that it could evade §11. *See* Complex and Novel Section 11 Liability Issues of Direct Listings, *Corporate Counsel* (Dec. 20,

A reversal here would also likely impact the recent trend of Special Purpose Acquisition Company ("SPAC") transactions and subsequent "de-SPAC" public offerings, to investors' detriment.[9] In 2020 and 2021, over 700 SPAC IPOs were completed, and within the next few years, many of those SPACS will "de-SPAC." As recently reaffirmed by the SEC in statements and proposed regulations, §11 protects investors and ensures honesty in these de-SPAC transactions.[10] But a reversal of the Ninth Circuit decision would enable issuers to combine de-SPAC

2019) (https://www.lw.com/thoughtLeadership/section-eleven-liability-direct-listings).

[9] For information on SPAC transactions, *see* SEC Office on Investor Education and Advocacy, "What You Need to Know About SPACs – Updated Investor Bulletin" (May 25, 2021) (https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/what-you).

[10] *See* John Coates, Acting Director, SEC Division of Corporate Finance, Public Statement: SPACs, IPOs and Liability Risk Under the Securities Laws, at 2 (Apr. 8, 2021) ("any material misstatement in or omission from an effective Securities Act registration statement as part of a de-SPAC business combination is subject to Securities Act Section 11"; "a de-SPAC transaction gives no one a free pass for material misstatements or omissions"); *see also* SEC Release Nos. 33-11048; 34-94546; IC-34549; File No. S7-13-22, | Special Purpose Acquisition Companies, Shell Companies, and Projections" (*available at* https://www.sec.gov/rules/proposed/2022/33-11048.pdf) (March 30, 2022 proposed SEC rules governing SPACs, which, according to SEC Chairman Gary Gensler, "would strengthen disclosure, marketing standards and gatekeeper and issuer obligations by market participants in SPACs, helping ensure that investors in these vehicles get protections similar to those when investing in traditional IPOs.").

transactions with unregistered direct listings, imperiling plaintiffs' ability to hold issuers liable, which would significantly harm investors pursuing §11 claims in cases involving de-SPAC transactions and a concurrent direct listing.

This harm is hardly academic: SPACs present increased risks to investors, as demonstrated by high-profile examples of companies merging with SPACs and subsequently collapsing and causing massive investor losses (while providing a financial windfall to Wall Street).[11] Defendants' interpretation of §11 would provide issuers with an enormous "loophole large enough to undermine the purpose of Section 11 as it has been understood since its inception," as the Ninth Circuit warned. Opn. at 16.

The Chamber's implication that the Ninth Circuit's construction would lead to a flood of de-SPAC suits and other similar "spillover effect[s]" (Chamber Br. 17-18) due to the purportedly weakened tracing requirement is unfounded. Indeed, the very

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[11] *See, e.g.*, Eliot Brown, "SPAC Sponsors Were Winners Even on Losers," *The Wall Street Journal* (Oct. 15, 2022) ("Share prices of more than one-third of the 339 SPACs that have merged with private companies since 2020 are down more than 80%, according to the data-tracking firm SPAC Research.") (available at https://www.wsj.com/articles/spac-sponsors-were-winners-even-on-losers-11665794518?reflink=desktopwebshare_permalink); Jessica DiNapoli, "Special Report: How Wall Street banks made a killing on SPAC craze," *Reuters* (May 11, 2022) ("All told, according to Vanda Research, retail investors lost $4.8 billion, or 23%, of the aggregate $21.3 billion they plowed into SPACs from the beginning of 2020 to the first week of April 2022.") (available at https://www.reuters.com/business/finance/how-wall-street-banks-made-killing-spac-craze-2022-05-11/).

complaints the Chamber cites demonstrate that plaintiffs pursuing §11 claims in these circumstances only pursue claims for securities that can be traced to a defective registration statement. *See* Compl. ¶¶20-22, *Poirier v. Bakkt Holdings, Inc.*, No. 1:22-cv-02283 (E.D.N.Y. Apr. 21, 2022) (suit brought on behalf of plaintiffs that "purchased [company] securities pursuant and/or traceable to the Registration Statement."); Am. Compl. ¶1, *Felipe v. Playstudios, Inc.*, No. 2:22-cv-01159 (D. Nev. July 20, 2022) (defining "Securities Act Class" as "all persons who purchased or otherwise acquired public shares in [company] . . . pursuant to or traceable to the defective proxy/registration statement . . . ."). The Chamber does not, and cannot, cite any concrete evidence of the spillover effects that will purportedly result from the decision below.

C. The Ninth Circuit's Opinion Is Supported By Traditional Statutory Construction

Section 11 is ambiguous with respect to the meaning of "such security," as recognized by the district court's decision, *see* 445 F. Supp. 3d at 379, Judge Miller's dissent from the Ninth Circuit decision, *see* Opn. at 22, and the seminal opinion in *Barnes v. Osofsky*, 373 F.2d 269, 271 (2d Cir. 1967). Grundfest ignores this long-acknowledged ambiguity. Unlike every other occurrence of this phrase in the Securities Act, §11's "such security" has ***no*** antecedent, and so can mean either only securities registered under a registration statement or also securities whose public offering is made possible by the registration statement, as held by the Ninth Circuit. It is

indisputable that "[a] word or phrase is ambiguous when the question is which of two or more meanings applies . . . ." Antonin Scalia & Bryan A. Garner, *Scalia and Garner's Reading Law: The Interpretation of Legal Texts* 46 (Thomson West, Kindle ed., 2012). Given this ambiguity, the Court should construe §11 in light of Congress's principal purpose in enacting the Securities Act: "full and fair disclosure" and "the protection of investors." 48 Stat. 74; 15 U.S.C. § 77b(b).

Both strict textualists and proponents of considering legislative intent agree that legislative purpose is a necessary key to resolving statutory ambiguity: "words are given meaning by their context, and context includes the purpose of the text." Scalia & Garner, at 64. Thus, "it can be said . . . that the resolution of an ambiguity . . . that achieves a statute's purpose should be favored over the resolution that frustrates its purpose." *Id.* So say strict textualists. Less-strict textualists agree:

> The task of the judge is to make sense of legislation in a way that is faithful to Congress's purposes. When the text is ambiguous, a court is to provide the meaning that the legislature intended. In that circumstance, the judge gleans the purpose and policy underlying the legislation and deduces the outcome most consistent with those purposes.

Robert A. Katzmann, *Judging Statutes* 31 (Oxford University Press, Kindle ed., 2014).[12]

Thus, where statutory language is ambiguous, courts are guided by the statute's fundamental purpose in resolving the ambiguity:

> "[H]owever well [statutory canons such as *expressio unius*] may serve at times to aid in deciphering legislative intent, they long have been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy."

United States v. Singh, 979 F.3d 697, 717 (9th Cir. 2020) (quoting *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943) (internal citations omitted)); *Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 56 (1983) (same);

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[12] WLF's assertion that amendments to the Securities Act have silently resolved the facial ambiguity of Section 11's phrase "such security" (WLF Br. 7-10) should be rejected. Congress has never addressed whether Section 11 requires tracing specific purchased securities to a registration statement, let alone whether any tracing requirement should apply to the unique circumstances of direct listings. Nor does statutory stare decisis apply, because none of the tracing case law addresses direct listings, and *Barnes*—the leading case in that line—acknowledges the ambiguity of "such security." 373 F.2d at 271.

Clark v. Capital Credit & Collection Servs., Inc., 460 F.3d 1162, 1169 (9th Cir. 2006) (same).

Similarly, "[a] preamble, purpose clause, or recital is a permissible indicator of meaning," so that the prologue can "be considered in determining which of various permissible meanings the dispositive text bears." Scalia & Garner, at 177-78. Thus, the Act's preamble properly informs §11's meaning and favors applying §11 to direct listings to promote "full and fair disclosure" and "prevent[] fraud" in securities offerings. 48 Stat. 74.[13]

The Ninth Circuit correctly held that accepting Defendants' "interpretation of Section 11 would create a loophole large enough to undermine the purpose of Section 11 as it has been understood since its inception." Opn. at 16. This is consistent with the long-held understanding that "[t]he [Securities and

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[13] Grundfest quotes Justice Kagan's statement in an interview that "we are all textualists now." Grundfest Br. 1 (quoting Harvard Law School, *The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes*, YOUTUBE (Nov. 25, 2015), https://www.youtube.com/watch?v=dpEtszFT0Tg). However, Grundfest ignores not only Justice Kagan's more recent statement from the bench cautioning against misunderstanding that quote, *see W. Va. v. EPA*, 142 S. Ct. 2587, 2641 (2022) (Kagan, J., dissenting), but also the judicial consensus that legislative intent is a proper key to resolving textual ambiguity, *see, e.g.*, *Bostock v. Clayton County, Ga.*, 140 S. Ct. 1731, 1749 (2020) (Gorsuch, J.); *id.* at 1776 (Alito & Thomas, JJ., dissenting); *Dist. of Columbia v. Heller*, 554 U.S. 570, 578 (2008) (Scalia, J.); *Koons Buick Pontiac GMC Inc. v. Nigh*, 543 U.S. 50, 62 (2004) (Ginsburg, J.); *id.* at 65 (Stevens & Breyer, JJ., concurring); *id.* at 66-67 (Kennedy, J. & Rehnquist, C.J., concurring).

Exchange] Acts must be interpreted liberally to effect their purpose of ensuring full and fair disclosure to purchasers of securities and protecting the public from speculative or fraudulent schemes of promoters." *El Khadem v. Equity Sec. Corp.*, 494 F.2d 1224, 1227 (9th Cir. 1974). As the district court correctly held, "[t]he 1933 Act and 1934 Acts are remedial legislation" (citing *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 480 (9th Cir. 1973)), and the Securities Act therefore "'should be construed broadly to effectuate its purposes.'" 445 F. Supp. 3d at 379 (quoting *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)); *see also FTC v. v. AT&T Mobility LLC*, 883 F.3d 848, 854 (9th Cir. 2018) (same).

Of course, Congress could not foresee in 1933 that the SEC would adopt rules permitting direct listing of unregistered securities alongside a registered offering. But the broad language Congress used—"such security"—should be given its full scope, which encompasses this new type of public offering. "General terms are to be given their general meaning," and "the presumed point of using general words is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions." Scalia & Garner, at 92. Moreover, as noted above, the SEC's citation to the district court's holding that §11 applies to direct listings as support for its approval of the new rules allowing direct listings supports the Ninth Circuit decision maintaining the historic application of §11 to public offerings.

Moreover, contrary to Grundfest's argument (Grundfest Br. 11-12), applying §11 to unregistered securities sold alongside registered securities in a

direct offering does not expand damages beyond §11(e)'s damages cap. The fact that all direct offerings previously included only shares sold by insiders, so the issuers received no proceeds, in no way distinguishes these offerings from registered public offerings of securities sold by selling shareholders rather than by the issuer, to which §11 indisputably applies. The issuer, as the party best positioned to provide complete and accurate disclosure in the registration statement, is properly held liable by the unambiguous statutory text. There is no basis in the statute for reaching a different result here where "such security" is ambiguous and must be construed in light of Congress's intent to protect investors.

In addition, Grundfest asserts that direct offerings are analytically indistinguishable from "traditional IPOs in which an additional number of shares exempt from registration requirements quickly enter the market." Grundfest Br. 17; *see also* Chamber Br. 9-10, 16. But this fanciful hypothetical ignores market reality—IPO underwriters and investors insist on lockups to protect investors from insider sales flooding the market soon after an offering and depressing the securities' price, and Defendants' amici cite no instances where they did not. Equally beside the point is the Chamber's argument that corporate spinoffs, uplistings, and Level 2 ADR listings (which do not raise new capital) are other ways of going public without §11 liability (Chamber Br. 16-17), because none of these types of transactions involve registered public offerings.

Finally, Cato's and the Chamber's argument that the Ninth Circuit's decision may harm innovation

in traditional IPOs, such as looser lockup periods and pricing at the expected post-IPO market price (i.e., not at a lower price intended to result in a post-offering price increase) (Cato Br. 5-8, 12-13; Chamber Br. 8-11), is baseless. The Ninth Circuit's opinion addresses only direct listings and in no way prevents looser lockups or more aggressive pricing in traditional IPOs, should the market find them acceptable.

IV. CONCLUSION

Certiorari should be denied because the Ninth Circuit's decision rests on sound statutory construction and maintains the status quo.

November 2, 2022

Respectfully submitted,

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Appendix

APPENDIX 1

Indiana Public Retirement System

Indiana Public Retirement System ("INPRS") is a $36.9 billion pension fund operated for the benefit of public employees in the State of Indiana. INPRS serves the needs of approximately 467,332 members and retirees representing more than 1,200 employers, including public universities, schools, municipalities, and state agencies.

Louisiana Sheriffs' Pension & Relief Fund

Louisiana Sheriffs' Pension & Relief Fund ("Louisiana Sheriffs") is a public pension fund that provides pension and other benefits for sheriffs, deputy sheriffs, and tax collectors in the State of Louisiana. Louisiana Sheriffs manages approximately $4 billion in assets for the benefit of its approximately 20,000 active and retired participants.

Allegheny County Employees' Retirement System

The Allegheny County Employees' Retirement System ("Allegheny County") is a single-employer defined benefit, contributory retirement benefit plan established in 1915 and headquartered in Pittsburgh, Pennsylvania. As of December 31, 2020, Allegheny County managed approximately $1 billion in assets on behalf of nearly 12,600 participants.

Southeastern Pennsylvania Transportation Authority

Southeastern Pennsylvania Transportation Authority ("SEPTA) is an institutional investor based in Philadelphia, Pennsylvania that manages more than $1.4 billion in assets on behalf of approximately 14,000 participants in SEPTA's five single-employer, defined benefit pension plans for all non-regional-rail-union employees in Southeastern Pennsylvania.

City of Cambridge Retirement System

City of Cambridge Retirement System ("Cambridge") is a contributory retirement system for active and retired employees of the City of Cambridge, Massachusetts, the Cambridge Housing Authority, the Cambridge Public Health Commission, and the Cambridge Redevelopment Authority. As of September 1, 2021, Cambridge manages approximately $1.7 billion in assets on behalf of approximately six thousand participants.

City of Miami Fire Fighters' and Police Officers' Retirement Trust

City of Miami Fire Fighters' and Police Officers' Retirement Trust ("Miami Fire Fighters") was founded in 1939 and provides retirement and disability benefits to over 2,000 Miami-based firefighters and police officers. As of September 30, 2018, Miami Fire Fighters manages more than $1.7 billion in assets.

City of Miami General Employees' & Sanitation Employees' Retirement Trust

The City of Miami General Employees' & Sanitation Employees' Retirement Trust ("Miami") is a government entity that was founded in 1985 to provide benefits—including retirement, death, and disability benefits—to eligible employees of the government of the City of Miami, Florida. Miami manages more than $704 million in assets for the benefit of active and retired members.

Lehigh County Employees' Retirement System

Lehigh County Employees' Retirement System ("Lehigh"), based in Pennsylvania, is a defined benefit plan governed under the Taft-Harley Act. Lehigh provides retirement, disability, and death benefits to workers within the County of Lehigh, Pennsylvania. Currently, Lehigh manages approximately $544 million in assets on behalf of approximately 3,600 participants.

Hollywood Firefighters' Pension Fund

Hollywood Firefighters' Pension Fund ("Hollywood Firefighters") is a pension fund established for the benefit of the current and retired firefighters of the city of Hollywood, Florida. Hollywood Firefighters manages over $248 million in assets for its beneficiaries.

West Palm Beach Firefighters' Pension Fund

West Palm Beach Firefighters Pension Fund ("WPBFPF") is a pension fund based in West Palm Beach, Florida that provides retirement benefits for firefighters. As of September 30, 2019, WPBFPF managed total assets in excess of $233 million on behalf of over 364 current employees, retirees, and beneficiaries.

West Palm Beach Police Pension Fund

West Palm Beach Police Pension Fund ("West Palm Beach Police") is a public pension fund that provides retirement benefits to over 500 police officers and their families. As of June 30, 2021, West Palm Beach Police manages approximately $450 million in pension assets.

APPENDIX 2

Sample of Recent Settlements Involving Securities Act Claims

Case	Year	Result
Snap. Inc. Securities Cases (Case No. 2:17-cv-03679-SVW-AGR (C.D. Cal.), No. BC669394 (Cal. Super. Ct., Los Angeles Cty.), and No. 17CIV03710 (Cal. Super. Ct., San Mateo Cty.))	2021	Collective settlement of Securities Act and Exchange Act claims for $187.5 million, the second-largest securities settlement of 2021
Akazoo S.A. Sec. Litig., Case No. 1:20-cv-01900-BMC (E.D.N.Y.)	2021	Settlement of Securities Act and Exchange Act claims for $35 million
In re GreenSky Sec. Litig., Case No. 1:18-cv-11071-AKH (S.D.N.Y.)	2021	Settlement of Securities Act claims for $35 million
In re ADT Inc. S'holder Litig., No. 502018CA003494XXXXMB-AG (15th Cir. Ct. Fla.)	2021	Settlement of Securities Act claims for $30 million

Deka Investment GmbH v. Santander Consumer USA Holdings Inc., Case No. 3:15-cv-02129-K (N.D. Tex.)	2021	Settlement of Securities Act and Exchange Act claims for $47 million
City of Westland Police and Retirement System v. Metlife Inc., et al, Case No. 1:12-cv-00256-LAK (S.D.N.Y.)	2021	Settlement of Securities Act and Exchange Act claims for $84 million
In re Valeant Pharmaceuticals International, Inc. Sec. Litig., Case No. 3:15-cv-07658-MAS-LAG (D.N.J.)	2020	Settlement of Securities Act and Exchange Act claims for $1.2 billion
In re American Realty Capital Properties, Inc. Litig., Case No. 1:15-mc-00040-AKH (S.D.N.Y.)	2020	Settlement of Securities Act and Exchange Act claims for $1.025 billion, the largest settlement of 2020
Baker v. SeaWorld Entertainment, Inc., et al., Case No. 3:14-cv-02129-MMA-AGS (S.D. Cal.)	2020	Settlement of Securities Act and Exchange Act claims for $65 million

Chicago Laborers Pension Fund v. Alibaba Group Holding Limited, No. CIV535692 (Cal. Super. Ct., San Mateo Cty.)	2019	Settlement of Securities Act claims for $75 million
In re Petrobras Sec. Litig., Case No. 1:14-cv-09662-JSR(S.D.N.Y.)	2018	Settlement of Securities Act and Exchange Act claims for $3 billion
Schuh v. HCA Holdings, Inc., Case No. 3:11-cv-01033-KHS (M.D. Tenn.)	2016	Settlement of Securities Act claims for $215 million
In re: Bank of America Corp. Securities, Derivative, and ERISA Litigation, Case No. 1:09-md-02058-PKC (S.D.N.Y.)	2013	Settlement of Securities Act and Exchange Act claims for $2.4 billion
Rubin v. MF Global, Ltd., et al, Case No. 1:08-cv-02233-VM (S.D.N.Y.)	2011	Settlement of Securities Act claims for $90 million
In re WorldCom, Inc. Sec. Litig., Case No. 1:02-cv-03288-DLC (S.D.N.Y)	2005	Settlement of Securities Act and Exchange Act claims for $6.15 billion