

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-980

FACEBOOK, INC., ET AL., PETITIONERS

v.

AMALGAMATED BANK, ET AL.

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

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting respondents. Respondents have consented to this motion and agreed to cede ten minutes of their argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 30 minutes for petitioners, 20 minutes for respondents, and 10 minutes for the United States.

Securities issuers are required by Item 105 of Securities and Exchange Commission (SEC) Regulation S-K to include a discussion of business "risk factors" in certain filings with the SEC. 17 C.F.R. 229.105. This case concerns the circumstances in which risk disclosures are false or misleading under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and SEC Rule 10b-5, 17 C.F.R. 240.10b-5, which "prohibit material misrepresentations and omissions in connection with the sale of securities." Goldman Sachs Grp., Inc. v. Arkansas Teacher Ret. Sys., 594 U.S. 113, 117-118 (2021). The United States has filed a brief as amicus curiae in support of respondents, arguing that a risk statement can, in some circumstances, be materially misleading if it describes a risk in hypothetical terms and fails to disclose that the relevant risk has already materialized.

The United States has a substantial interest in the resolution of the question presented. The Department of Justice and SEC administer and enforce the federal securities laws, including the laws at issue in this case. The question presented here arises in both private civil suits and government enforcement actions. Indeed, in 2019, the SEC brought a civil action against petitioner Facebook, Inc. that involved similar legal issues and the same underlying events. Adoption of petitioners' position could thus impede the SEC's ability to enforce Rule 10b-5, as well as the effectiveness of Item 105 of Regulation S-K. Moreover, meritorious

private securities-fraud suits -- including those based on the theory of liability at issue here -- are an essential complement to SEC enforcement efforts and help to ensure compliance with federal statutory and regulatory requirements.

The United States has frequently participated in oral argument as amicus curiae in cases involving the federal securities laws, including Section 10(b) and Rule 10b-5. See, e.g., Macquarie Infrastructure Corp. v. Moab Partners, L.P., 601 U.S. 257 (2024); Goldman Sachs, supra; Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 575 U.S. 175 (2015); Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258 (2014); Amgen Inc. v. Connecticut Retirement Plans & Trust Funds, 568 U.S. 455 (2013). In light of the substantial federal interest in the question presented, the United States' participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

OCTOBER 2024