No. A-__

IN THE

Supreme Court of the United States

SHANDA GAMES LIMITED, YINGFEN ZHANG, LI YAO, LIJUN LIN, HENG WIN CHAN, YONG GUI, SHAOLIN LIANG, DANIAN CHEN,

Applicants,

v.

DAVID MONK,

Respondent.

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

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To: Justice Sonia Sotomayor, Circuit Justice for the Second Circuit:

Under this Court's Rules 13.5 and 22, Applicants Shanda Games Limited, Yingfen Zhang, Li Yao, Lijun Lin, Heng Win Chan, Yong Gui, Shaolin Liang, and Danian Chen respectfully request an extension of sixty (60) days to file a petition for a writ of certiorari in this case. The petition will seek review of the U.S. Court of Appeals for the Second Circuit's decision in *In re Shanda Games Limited Securities Litigation*, 128 F.4th 26 (2d Cir. 2025). A copy of the decision is attached. App. A. A copy of the Second Circuit's April 25, 2025, order denying rehearing and rehearing en banc is also attached. App. B.

In support of this application, Applicants state:

1. The Second Circuit issued its decision in this case on February 3, 2025. App. A, at 1. On April 25, 2025, the Second Circuit denied rehearing and rehearing en banc. App. B. A petition for a writ of certiorari would be due July 24, 2025. *See* S. Ct. R. 13.1, 13.3. Granting this 60-day extension would make the petition due on September 22, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. This case involves the proper interpretation of this Court's decision in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), which holds that a plaintiff who purchases or sells securities in an efficient market has presumptively relied on any material misstatement made about those securities.

a. Applicant Shanda Games Limited is a video-games company. App. A, at 3. The remaining Applicants are former executives and directors at Shanda. *Id.* at 4-5. From 2009 to 2015, Shanda was a public company registered in the Cayman Islands with American Depository Shares ("ADS") listed on NASDAQ. *Id.* at 3, 12. This case concerns a "going private transaction" undertaken by private investors in Shanda that "collectively controlled 90 percent of all shareholder votes" and thus held sufficient voting power to approve the merger. *Id.* at 7-8. But Shanda needed to give minority shareholders the opportunity to vote in favor of the proposed merger or to "dissent" and seek appraisal in the Cayman Islands. *Id.* at 11. Shanda filed two proxy statements—in May and October 2015—in connection with the shareholder meeting at which the vote would take place. *Id.* At the shareholder meeting, the buyer group voted to approve the merger at a price of $7.10 per share. *Id.* at 12-13.

Respondent David Monk is a former holder of Shanda ADS. Monk did not dissent, so when the merger closed in November 2015 his shares were canceled, and the $7.10 per share merger price was deposited into his account. App. A, at 12-13.

In 2018, Monk became the lead plaintiff in this securities-fraud putative class action. App. A, at 13. Monk does not allege that he read either proxy statement Shanda issued. *See id.* at 13-14. Nor does he claim that he knew about the proposed merger or made a conscious decision on how to react. Nonetheless, he claims fraud because he alleges that the proxy statements contained material

misstatements that generally understated Shanda's financial strength. Monk deduces that he was injured by fraud from the fact that shareholders who did exercise their appraisal rights were awarded $12.84 per ADS by the Cayman courts. *Id.* at 13. Monk theorizes that although the Cayman court was answering a different question, its appraisal decision suggests that he was defrauded into obtaining only the $7.10-per-share merger price.

b. The district court granted Shanda's motion to dismiss the operative complaint, and a divided panel of the Second Circuit vacated in relevant part. App. A, at 15, 64. As relevant here, the majority explained that "[t]his case presents the question whether the fraud-on-the-market presumption is available to minority-shareholder tenderers, such as Monk, who sold their shares in a freeze-out merger," but did not purchase or sell shares on the market at the market price. *Id.* at 48. The panel held that the presumption was available. It opined that "most investors who acquire or divest themselves of stock look at the market price to determine that stock's value," and that a "minority shareholder . . . must still determine whether to tender his shares or to dissent and seek appraisal." *Id.* at 49. And it found "instructive" a set of cases in which plaintiffs who voted to approve mergers were held to have relied on proxy statements supporting the merger. *Id.* at 51. It therefore concluded that "Monk has adequately pleaded reliance." *Id.* at 55.

c. Judge Jacobs dissented. In his view, "the majority opinion burdens the fraud-on-the-market theory with more weight than it can bear," because an

"investor's actual purchase or sale of a security at a price set by a developed market is needed" to invoke that presumption. App. A, at 81-82. Judge Jacobs found the fraud-on-the-market presumption unavailable because "Monk's actual transaction did not occur at the price set by the market" and Monk's "hypothetical action[s]" are not cognizable under the securities laws given that "Monk's holding of his stock was not an actionable investment decision." *Id.* at 82-83. Judge Jacobs concluded by expressing his "worry" that the panel decision will "swallow whole the[] state law protections for minority shareholders." *Id.* at 89.

3. This case is a strong candidate for plenary review. The Second Circuit allowed a securities-fraud suit to move forward by applying the fraud-on-the-market presumption to give a shareholder a claim based on his inaction and his receipt of the merger price rather than the market price. This Court's precedents do not permit that application. And the court of appeals' decision will destabilize securities law in the most important forum for such suits.

a. The decision below is wrong. In *Basic*, this Court recognized an alternative route to proving reliance in an implied suit under the securities laws. *Basic* observed that "the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations." 485 U.S. at 246. Consequently, "[a]n investor who buys or sells stock at the price set by the market does so in reliance on the integrity of that price." *Id.* at 247. In *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014), the Court rejected calls to overturn the *Basic* presumption but

underscored its limits to circumstances where "a plaintiff shows that the defendant's misrepresentation was public and material and that the stock traded in a generally efficient market" and that the plaintiff "purchased the stock at the market price during the relevant period." *See id.* at 277, 279.

Under a faithful reading of *Basic* and *Halliburton*, the fraud-on-the-market presumption cannot benefit Monk, who cannot show that the price he received—which was set before any misrepresentation occurred—was affected by any misrepresentation or that he in any way "relied on the integrity of the price set by the market" in receiving that price. *Basic*, 485 U.S. at 226. *Basic* itself stated that the fraud-on-the-market presumption is designed to benefit a plaintiff "who has traded on an impersonal market." *Id.* at 245. And *Halliburton* doubled down on that limitation, explaining that if a plaintiff "shows that he purchased the stock at the market price during the relevant period," then "he is entitled to a . . . presumption that he purchased the stock in reliance on the defendant's misrepresentation." 573 U.S. at 279. The court of appeals consequently erred in expanding *Basic* to securities plaintiffs who never purchased or sold the stock on the market after the alleged statements were made.

b. This question is exceptionally important to securities litigation. Given its jurisdiction over Wall Street, the Second Circuit sets securities law for virtually the entire United States. So without this Court's intervention, the Second Circuit's rule will allow any securities plaintiff to make a case based on "pure speculation." App. A, at 66 (Jacobs, J., dissenting). That result, in turn,

will federalize disputes that are traditionally the province of state corporate law, "swallow[ing] whole . . . state law protections for minority shareholders." *Id.* at 89. In short, the significance of the decision makes it a strong candidate for the Court's review.

4. This application for a 60-day extension seeks to accommodate Applicants' legitimate needs. Counsel for Applicants are currently preparing numerous briefs with proximate due dates and is presenting oral argument in other cases during the period for filing the petition in this case. *See, e.g.*, *Behrens v. JPM Chase Bank, N.A.*, No. 6:24-cv-02047 (S.D.N.Y.) (motion to dismiss reply due June 17, 2025); *Palladino v. JPMorgan Chase & Co.*, No. 1:23-cv-01215 (S.D.N.Y.) (opposition to motion for reconsideration of dismissal due June 26); *Key West Police Officers & Firefighters Retirement Plan v. Greenberg*, No. 2:25-cv-4863 (C.D. Cal.) (anticipated preliminary injunction opposition due July 7 and oral argument anticipated July 28, 2025). Additional time is therefore needed to prepare and print the petition in this case.

5. For these reasons, Applicants request that the due date for their petition for a writ of certiorari be extended to September 22, 2025.

Respectfully submitted,

By: *<u>/s/ Abby F. Rudzin</u>*

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