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IN THE SUPREME COURT OF THE UNITED STATES

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DEUTSCHE BANK TRUST COMPANY AMERICAS, ET AL., *Petitioners,*

v.

ROBERT R. MCCORMICK FOUNDATION, ET AL., *Respondents.*

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**PETITIONERS' MOTION FOR PARTIAL DISMISSAL OF THE PETITION  
FOR CERTIORARI ONLY WITH RESPECT TO CERTAIN RESPONDENTS**

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Pursuant to Rule 46.2(a) of the Rules of this Court, petitioners (listed at pages 169a-172a of the appendix to the petition for a writ of certiorari) respectfully move for their petition for a writ of certiorari to be dismissed solely with respect to certain respondents identified below.

1. This case arises from the bankruptcy of Tribune Co., a media conglomerate that entered bankruptcy shortly after a failed leveraged buyout (LBO). Respondents are former Tribune shareholders who received cash as a result of the LBO. Petitioners are Tribune retirees and holders of Tribune's pre-LBO notes, that is, unsecured creditors of Tribune. Petitioners seek to avoid Tribune's LBO-related payments to respondents as constructively fraudulent transfers under state law.

2. This is not the first time a petition concerning this dispute has come before this Court. On September 9, 2016, petitioners filed a petition for a writ of certiorari seeking review of a previous decision of the United States Court of Appeals for the Second Circuit. *Deutsche Bank Trust Co. Ams. v. Robert R. McCormick*

*Found.*, No. 16-317. That petition presented the question, among others, whether a fraudulent transfer is exempt from avoidance under 11 U.S.C. § 546(e) when a financial institution acts as a mere conduit for fraudulently transferred property. The Second Circuit had held that such mere-conduit transfers qualified as transfers “made by or to” a “financial institution” for the purposes of Section 546(e). While the first petition was pending, this Court decided *Merit Management Group, LP v. FTI Consulting, Inc.*, 138 S. Ct. 883 (2018), which presented the same question. The Court held, contrary to the Second Circuit, that fraudulent transfers in which a financial institution acts merely as a conduit for fraudulently transferred property are not exempt from avoidance under Section 546(e).

3. Following *Merit*, Justices Kennedy and Thomas issued a statement concerning petitioners’ then-pending petition. The statement “advised” the parties that the petition would “be deferred for an additional period of time,” “allow[ing] the Court of Appeals . . . to consider whether to recall the mandate” or provide “other relief” “in light of this Court’s decision in *Merit*.” *Deutsche Bank Trust Co. Ams. v. Robert R. McCormick Found.*, 138 S. Ct. 1162, 1162-63 (2018). The statement further noted that “there might not be a quorum in this Court.” *Id.* at 1163.

4. Following the statement of Justices Kennedy and Thomas, the Second Circuit recalled its mandate. Petitioners thus dismissed their previous petition, No. 16-317. The Second Circuit then ruled against petitioners a second time, on an alternative ground. The present petition arises from that decision.

5. To address the quorum concern noted by Justices Kennedy and Thomas—a concern that, petitioners believe, was a result of the many mutual funds named as respondents in the first petition—petitioners in the present petition abandoned their case as to many defendants below, based on petitioners’ review of financial disclosures made by the Members of this Court. Pet. ii, 11-12.

6. On October 27, 2020, Justice Barrett became a Member of this Court. Petitioners have reviewed Justice Barrett’s financial disclosures as they have reviewed financial disclosures for all other Members of the Court. As a result, petitioners move to dismiss the petition as to the following respondents:

- AQR Absolute Return Master Account, LP
- AQR Global Stock Selection HV Master Account Ltd.
- AQR Global Stock Selection Master Account, LP
- Columbia Management Group [n/k/a Bofa Global Capital Management Group, LLC]
- Conservative Balanced Portfolio a Series of Prudential Series Fnd Inc
- Loomis Sayles Credit Alpha Fund
- Prudential Bache Securities, LLC [Jefferies Bache Securities, LLC f/k/a Prudential Bache Securities, LLC]
- Prudential Insurance Co. of America (PDI)
- Prudential Insurance Co. of America (PMFIM) [PICA – Prudential Insurance Company Separate Account]
- Prudential Insurance Company of America

- Prudential Investment Management Inc.
- Prudential Investment Portfolio 3 – Prudential Strategic Value Fund
- Prudential Investment Portfolios 8 – Prudential Stock Index Fund
- Prudential Investments, Inc.
- Prudential Non-Qualified Benefits Funding (TOLI)
- Prudential Retirement Insurance and Annuity Co
- Prudential Retirement SA LV5
- Stock Index Portfolio, a Series of the Prudential Series Fund, Inc.

7. Separately, petitioners erroneously listed “T. Rowe Price Group, Inc.” as a respondent. Pet. App. 294a. “T. Rowe Price Group Inc.” (without a comma) is among the entities as to which petitioners have abandoned their case. Pet. xi. For the avoidance of doubt, petitioners move to dismiss their petition as to “T. Rowe Price Group, Inc.”

8. Petitioners do not at this time move to dismiss their petition as to any other respondent.

9. All fees due the Clerk have been paid, and petitioners have assumed all costs.

Respectfully submitted.

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