

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-1165

MACQUARIE INFRASTRUCTURE CORPORATION, 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

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 respondent Moab Partners, L.P. Respondent has consented to this motion and agreed to cede ten minutes of its 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 respondent, and 10 minutes for the United States.

This case concerns the scope of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Securities and Exchange Commission (SEC) Rule 10b-5, 17 C.F.R. 240.10b-5. Those provisions “prohibit material misrepresentations and omissions in connection with the sale of securities.” Goldman Sachs Grp., Inc. v. Arkansas Teacher Ret. Sys., 141 S. Ct. 1951, 1958 (2021). In addition, Item 303 of SEC Regulation S-K requires securities issuers, when filing periodic financial reports, to “[d]escribe any known trends or uncertainties that * * * are reasonably likely to have a material favorable or unfavorable impact on” the issuer’s financial condition. 17 C.F.R. 229.303(b)(2)(ii). The question presented is whether a private plaintiff or the SEC may have a viable claim against an issuer under Section 10(b) and Rule 10b-5, where the issuer disseminates a financial report that discloses some, but not all, of the information required by Item 303. The United States has filed a brief as amicus curiae in support of respondent. The brief argues that a financial report that discloses only some of the information required by Item 303 is misleading and can thus violate Section 10(b) and Rule 10b-5 if the other prerequisites to liability are established.

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, the SEC has brought numerous enforcement actions premised on the theory of liability that petitioners challenge in this case. Adoption of petitioners' position could thus impede the SEC's ability to enforce Item 303, as well as various other regulatory disclosure requirements that it has promulgated. 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 interpretation and application of the federal securities laws, including Section 10(b) and Rule 10b-5. See, e.g., Goldman Sachs Grp., Inc., 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); Matrix Initiatives, Inc. v. Siracusano, 563 U.S. 27 (2011). 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

DECEMBER 2023