No. _____

In the Supreme Court of the United States

FIYYAZ PIRANI,

Applicant,

v.

SLACK TECHNOLOGIES, INC., *et al.*,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM MAY 12, 2025, TO JULY 10, 2025

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:

Under 28 U.S.C. § 2101(c) and pursuant to Rules 13.5, 22, and 30.3 of this Court, applicant Fiyyaz Pirani ("Pirani" or "Applicant") respectfully requests a 60-day extension of time, to and including July 10, 2025, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. The court of appeals issued its opinion on February 10, 2025. That opinion, *Pirani v. Slack Technologies, Inc.*, 127 F.4th 1183 (9th Cir. 2025), is attached as Appendix A. Unless extended, the petition would be due on Monday, May 12, 2025 (90 days falling on Sunday, May 11, 2025).[1] This application is timely filed. *See* S. Ct. R. 13.5, 30.2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

1. This application relates to the Ninth Circuit decision on remand from this Court's decision in *Slack Technologies, Inc., LLC v. Pirani*, 598 U.S. 759 (2023).

Applicant Pirani brought this action alleging that defendant Slack misled investors in its initial public sale of securities by including false and misleading statements in the prospectus and registration statements it was required to file with the U.S. Securities and Exchange Commission in advance of the sales. The action raised claims under Sections 11 and 12 of the Exchange Act of 1933, 15 U.S.C. §§ 77k, 77*l*. Section 11 prohibits filing a securities registration statement that

[1] The requested deadline of July 10, 2025, is 60 days beyond Sunday, May 11, 2025, and a total of 150 days after the court of appeals' decision.

contains any "untrue statement of material fact" and creates a private right of action for "any person acquiring such security." 15 U.S.C. § 77k. Section 12 is worded differently. It makes any person offering or selling "a security . . . by means of a prospectus or oral communication" that "includes an untrue statement of material fact" liable to anyone "purchasing such security from him." 15 U.S.C. § 77*l*(a)(2).

In a typical initial public offering, shares sold on the opening day are limited to those registered under the registration statement. The Slack offering, however, was conducted as a "direct listing," which had the consequence of also allowing immediate sales of unregistered shares that had previously been issued to corporate insiders. As a result, anyone purchasing shares in reliance on the information in the registration statement may have purchased registered or unregistered shares, or both. *See Slack*, 598 U.S. at 763-64.

In *Slack*, this Court held that Section 11 "requires a plaintiff to plead and prove that he purchased shares traceable to the allegedly defective registration statement." 598 U.S. at 770. It remanded to the Ninth Circuit to determine whether "Pirani's pleadings can satisfy § 11(a) as properly construed." *Ibid*. The Court further ordered the Ninth Circuit to reconsider whether Section 12 contains a similar tracing requirement, noting that the court of appeals had seemingly treated its interpretation of Section 12 as following from its now-reversed construction of Section 11 and "caution[ing] that the two provisions contain distinct language that warrants careful consideration." *Id*. at 770 n.3.

2. On remand, the Ninth Circuit ordered dismissal of the Section 11 claims on the ground that Pirani had conceded his "inability to trace." *Slack*, 127 F.4th at

1189. The court rejected Pirani's argument that he should be allowed to satisfy the tracing requirement through statistical evidence, concluding that "Pirani's statistical theory, like an allegation of direct traceability, is barred by Pirani's concessions" and lacked merit in any event. *Id*. at 1190. The court did not find waived, however, Pirani's argument that he should be allowed to satisfy his burden through a "regime of burden-shifting" under which the issuer "would have the burden to prove that [the] shares were *not* registered" when the difficulty in tracing arises from a defendants' decision to register only some of the shares to be sold in a direct listing. *Ibid*. (emphasis in original). The Ninth Circuit rejected that argument on the merits because it viewed itself powerless to adopt such a burden-shifting regime absent something "in the statute or in the Court's decision [that] suggests that traceability should be an exception to the general rule that the plaintiff bears the burden of establishing every element of the claim." *Id*. at 1191.

The Ninth Circuit further held that "section 12(a)(2) also requires tracing a plaintiff's shares to an allegedly false or misleading prospectus." *Ibid*. The court acknowledged that unlike in Section 11, the phrase "such security" in Section 12 has "a clear referent"—*i.e.*, "the 'security' that was offered or sold 'by means of a prospectus or oral communication.'" *Ibid.* (quoting 15 U.S.C. § 77*l*(a)(2)). The court did not dispute that in a direct listing, a single registration statement is used to "offer or sell" all the shares in the direct listing and that anyone purchasing shares in that offering would rely on the truth of the registration statement regardless of whether the particular shares purchased had been registered or not. The Ninth Circuit nonetheless viewed itself bound by this Court's decision in *Gustafson v. Alloyd Co*.

Inc., 513 U.S. 561, 572 (1995), to hold that Section 12 provides no remedy unless a plaintiff can prove that the shares he purchased had been registered. *See Slack*, 127 F.4th at 1191-93.

3. The Ninth Circuit's decision warrants review. The court of appeal's belief that burden-shifting is permitted only when a statute indicates that although Congress did not expressly provide for burden-shifting, it nonetheless intended for courts to develop a burden-shifting regime, cannot be reconciled with this Court's precedents, which have created presumptions and burden-shifting regimes when necessary to avoid "plac[ing] an unnecessarily unrealistic evidentiary burden on" securities plaintiffs, *Basic, Inc. v. Levinson*, 485 U.S. 224, 245 (1988), even if the statute itself does not suggest such a regime (including because it does not address burdens at all), *contra Slack*, 127 F.4th at 1190. *See also, e.g.*, *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 359 n.45 (1977) ("Presumptions shifting the burden of proof are often created to reflect judicial evaluations of probabilities and to conform with a party's superior access to the proof."); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (creating burden-shifting framework for proving intentional race discrimination); *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018) (burden-shifting regime for proving unlawful restraint on trade); *Barnes v. Osofsky*, 373 F.2d 269, 273 n.2 (2d Cir. 1967) (Friendly, J.) (rejecting burden-shifting regime for Section 12 not because Congress failed to indicate an intent to create one, but because the plaintiffs in that case had not "sufficiently demonstrated the unreasonableness of leaving the burden on them"). The need for such burden-shifting in direct listing cases is particularly acute—without it, Slack and other issuers have insisted that they may

effectively opt-out of Section 11 by electing to register only some of the shares sold in the offering, which they say makes it impossible to prove whether any purchased shares were registered or not.

The Ninth Circuit's Section 12 ruling warrants review as well. This Court previously granted certiorari to decide whether Section 12(a)(2) "require[s] plaintiffs to plead and prove that they bought shares registered under the registration statement they claim is misleading." *Slack* Pet. i. The Ninth Circuit's decision only emphasizes why that review continues to be necessary. The court of appeals did not dispute that, as your Honor remarked at oral argument, "everything about Section 12 reads differently from Section 11," most significantly because unlike Section 11, Section 12 contains "absolutely no reference to registration." Oral Arg. Tr. 16 (Apr. 17, 2023). Instead, Section 12 provides a cause of action against those who sell a security "by means of a prospectus or oral communication" that was misleading. 15 U.S.C. § 77*l*(a)(2). In a direct listing, no security may be sold in the absence of a registration statement, and every share sold in the listing is sold "by means" of the prospectus included in that registration statement, which provides the basic information used by the market to value the stock. *See* 15 U.S.C. § 77b(10) (defining "prospectus" as "any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers *any* security for sale.") (emphasis added). The Ninth Circuit nonetheless once again held that despite the provision's textual differences, Section 12 imposes the same registration limitation as Section 11, based not on the text of the statute, but on its reading of this Court's

5-4 decision in *Gustafson*. *See Slack*, 127 F.4th at 1191-93. At this point, only this Court can resolve what *Gustafson* actually means.

4. A 60-day extension of time is warranted to allow counsel to prepare and file a petition presenting these important questions to this Court. Counsel for Pirani have several significant professional obligations in pending matters that make completing a petition on the current schedule difficult.

5. Whether or not the extension is granted, the petition will be considered—and, if the petition were granted, the case would be considered on the merits—in the next Term. The extension thus will not substantially delay the resolution of this case or prejudice any party.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended 60-days to and including July 10, 2025.

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Dated: April 29, 2025