No. 25-1376

IN THE

Supreme Court of the United States

ON24, INC., *et al.*,

Petitioners,

v.

LEADERSEL INNOTECH ESG,

Respondent.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

On August 26, 2025, Leadersel Innotech ESG's (then known as Leadersel Innotech) management company, Ersel Gestion Internationale S.A., carried out a merger by absorption of Leadersel Innotech into Globersel Global Equity Walter Scott. Thus, Globersel Global Equity Walter Scott became the successor-in-interest to Leadersel Innotech. Prior to this merger, Leadersel Innotech's management company was Ersel Gestion Internationale S.A. and investment management was delegated to Ersel Asset Management SGR S.p.A. Globersel Global Equity Walter Scott's management company was also Ersel Gestion Internationale S.A. with investment management delegated to Walter Scott & Partners Limited.

On July 16, 2026, Globersel Global Equity Walter Scott's (then known as Globersel – Global Equity Walter Scott & Partners) management company, Ersel Gestion Internationale S.A., carried out a merger by absorption of Globersel – Global Equity Walter Scott & Partners into Leadersel – Global Equity Walter Scott & Partners (Bloomberg Ticker: GLBREQU LX). Thus, Leadersel – Global Equity Walter Scott & Partners is the successor-in-interest to Globersel – Global Equity Walter Scott & Partners and the successor-in-interest to Leadersel Innotech. Prior to this merger, Globersel – Global Equity Walter Scott & Partners' management company was Ersel Gestion Internationale S.A. and investment management was delegated to Walter Scott & Partners Limited. Leadersel – Global Equity Walter Scott & Partners' management company is also Ersel Gestion Internationale S.A. with investment management also delegated to Walter Scott & Partners Limited.

No publicly held corporation or other publicly held entity owns 10% or more of Leadersel – Global Equity Walter Scott & Partners' units.

TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES

Statutes and Other Authorities

INTRODUCTION

Petitioners ask this Court to grant certiorari to review an unpublished memorandum disposition that reversed the dismissal of this case and remanded it for further proceedings. Pet. App. 1a–8a; *see also* Pet. 3. That disposition is expressly nonprecedential under Ninth Circuit Rule 36-3. It binds no future panel and announces no new legal rule.

None of Petitioners' three questions warrants review.

Part I explains that the first question—"[w]hether an issuer violates Section 11(a)'s misleading-omissions prong by describing unmaterialized risks as hypothetical"—does not warrant review because it rests entirely on a misdescription of the decision below, which found that the relevant risk—customer non-renewal—had already begun to materialize before the IPO of ON24, Inc. ("ON24"). The Petition's central contention—that the Ninth Circuit's approach to risk disclosures conflicts with that of the First, Third, and Tenth Circuits—is premised on that mischaracterization. In fact, every circuit agrees that characterizing a risk as merely hypothetical can be misleading if it has begun to materialize or is virtually certain to do so. No circuit, including the Ninth, holds that an issuer violates Section 11 of the Securities Act of 1933 ("Section 11" and the "Securities Act") simply by describing an unmaterialized risk as hypothetical. Pet. App. 6a.

Petitioners are also wrong to suggest that this case presents the same question the Court granted certiorari to decide in *Facebook, Inc. v. Amalgamated Bank*. The two questions are materially different. In *Facebook*, the question presented asked whether risk disclosures are "false or misleading when they do not disclose that a risk *has* materialized in the past, even if that past event presents no known risk of ongoing or future business harm?" Pet. i (emphasis added), *Facebook, Inc. v. Amalgamated Bank*, No. 23-980 (U.S. June 10, 2024). That formulation accepted that the risk had already materialized. Petitioners' first question here does the opposite: it depends on their assertion that the relevant risk was "*un*materialized."

Part II explains that the second and third questions do not warrant review because they mischaracterize both the decision below and the Ninth Circuit's decision in *Sodha v. Golubowski*, 154 F.4th 1019 (9th Cir. 2025)—the decision at issue in the pending petition in *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Feb. 5, 2026)—and because Petitioners identify no conflict among the circuits on the questions they actually present. Here, the panel did not require disclosure of immaterial facts; it held that ON24's omissions rendered specific affirmative statements misleading—the analysis *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024), requires. The panel further held that the omitted information was reasonably likely to have a material effect on how investors would value the stock, which is all Item 303 demands.

The petition should be denied.

STATEMENT OF THE CASE

A. The First Amended Complaint

ON24 operates a cloud-based platform for webinars and virtual events. The operative First Amended Consolidated Class Action Complaint ("FAC") alleges that, during the COVID-19 pandemic, ON24 experienced a surge in new customers as businesses shifted to remote marketing, many of whom it internally characterized as "atypical" or "COVID customers" who subscribed to ON24 for short-term or single-event purposes. FAC ¶¶ 9, 176(a), *In re ON24, Inc. Sec. Litig.*, No. 4:21-cv-08578-YGR (N.D. Cal. Sep. 1, 2023), ECF No. 102. Before the February 2021 IPO, ON24's management knew that a material portion of these pandemic-era customers had communicated their intent not to renew. FAC ¶¶ 10, 176(b).

ON24 systematically tracked these customers through internal databases, including Salesforce and Totango. FAC ¶¶ 83, 176(e). Management regularly discussed these customers in meetings where they reviewed "churn reports" that were "color coded green, yellow, orange, and red to signify likelihood of renewal." FAC ¶ 13. Defendant CEO Sharan acknowledged in meetings that these pandemic-era customers were "not our ideal customers" and instructed employees that "we will deal with the churn later in the year" because "we know they will most likely churn." FAC ¶ 22. Indeed, ON24 wrote these customers off internally by marking them as "DNR" (do not renew) in Salesforce. FAC ¶¶ 106–07, 166–67.

Despite this documented knowledge, ON24 proceeded with its February 2021 IPO. The offering documents touted

ON24's growth metrics—including annual recurring revenue ("ARR") growth from $76.9 million to $138.9 million in the nine months ending September 30, 2020, and an increase from 144 to 271 customers contributing $100,000 or more in ARR over the same period. FAC ¶ 171. ON24 did not disclose that a substantial portion of that growth arose from customers it had flagged as atypical customers that were not going to renew. FAC ¶¶ 10, 178(b). The offering documents also described a "highly engaged and loyal customer base," FAC ¶ 175, and characterized customer non-renewal as a purely hypothetical future contingency—warning that demand "may" decline "as the impact of COVID-19 lessens"—without disclosing that the warned-of risk was already materializing. FAC ¶¶ 181–84.

Within months of the IPO, on August 10, 2021, CEO Sharan admitted that ON24 had "experienced higher-than-expected churn and downsell from customers we signed up in the second quarter of last year during the peak of COVID," primarily in "the first-time renewal cohort." FAC ¶ 24. CFO Vattuone confirmed that the first-time renewal cohort was "outsized accounting for over 60% of the cohort" and that ON24 saw "high churn and downsell" within it. FAC ¶ 25. Market analysts downgraded ON24's stock. On August 11, 2021, Underwriter JP Morgan lowered its price target from $85 to $32 per share, explaining that the "major issue is the increase in churn and [customer] down-sell that will likely cause the platform revenue to decelerate" and that "[m]anagement's previous guidance had not factored in enough churn from smaller accounts." FAC ¶ 200. On August 11, 2021, Underwriter Canaccord downgraded ON24 from "buy" to "hold" because of "elevated churn" from "first-time renewals who had signed up for one-year deals at the height of COVID." FAC ¶ 202.

The FAC asserts claims under Sections 11 and 15 of the Securities Act on behalf of all persons who purchased ON24 common stock pursuant and/or traceable to the February 2021 IPO. FAC ¶¶ 1, 235. Section 11 prohibits two categories of deficiencies in registration statements: statements that are misleading because they omit facts "necessary to make the statements therein not misleading," and the omission of facts "required to be stated" by law. 15 U.S.C. § 77k(a). The FAC alleges both.

Under the first theory, the FAC alleges that material omissions (FAC ¶ 176(a)–(f)) rendered affirmative statements in the IPO offering documents half-truths under Section 11's "misleading" prong. *See* FAC ¶¶ 175–78 (alleging as to each challenged statement that ON24 "violated Section 11 of the Securities Act, which prohibits the omission of information that is necessary to prevent existing disclosures from being misleading"). In relevant part, the FAC challenges the following statements:

- Three risk disclosures in the IPO offering documents stating that ON24's "recent revenue growth has been significantly impacted by an increasing demand for [its] platform and products following the onset of the COVID-19 pandemic" (FAC ¶ 181), and warning that "*[i]f* these new customers elect not to continue their subscription as the impact of COVID-19 lessens, our business, financial condition and results of operations would be harmed" (*Id.* (emphasis added)) and that "customers *may* not renew their subscriptions at the same rate, increase their usage of our solutions or purchase subscriptions for additional solutions, if they renew at all" (FAC ¶ 183 (emphasis added));

- A statement describing a "highly engaged and loyal customer base" that "has allowed us to grow our revenue with them over time" and reporting a 147% dollar-based net retention rate[1] as of September 30, 2020 (FAC ¶ 175); and

- A statement characterizing ON24's "consistent ARR growth each quarter" as reflecting "success in acquiring new customers and expanding subscriptions with existing customers, which was occurring prior to the COVID-19 pandemic and has accelerated in 2020 partly in response to the COVID-19 pandemic" (FAC ¶ 177).[2]

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1. A dollar-based net retention rate above 100% means that revenue from existing customers grew year-over-year by more than enough to offset any revenue lost to churn or downsell. *See* FAC ¶ 175; *see also* ON24, Final Prospectus (Form 424B4) at 66–67 (Feb. 4, 2021), Registration No. 333-251967 (defining NRR as "current period ARR" from existing customers divided by "prior period ARR," and noting that NRR "includes the effect of any customer renewals, expansion, contraction and churn").

2. The FAC also challenged a sixth statement (FAC ¶ 179), which the panel affirmed dismissal of on the ground that it was a forward-looking opinion that would not have misled a reasonable investor. *See* Pet. App. 4a–5a. That ruling is not at issue in this petition.

The FAC alleges that all of these statements were rendered misleading by the same set of omissions. Specifically, the offering documents failed to disclose that: "a material amount of 'atypical' or 'COVID' customers" had informed ON24's sales and customer service teams "that they were either going to downsell or not renew their subscriptions when they came due" (FAC ¶ 176(b)); the Company's customer base had transitioned from "carefully courted, enterprise customer to a growing influx of SMB[3] customers, which historically did not have good retention rates, that entered into short-term and/or single event-based deals" (FAC ¶ 176(a)); "a material amount of services that enterprise customers added during the COVID-19 pandemic were or would be subject to downsell" (FAC ¶ 176(c)); "atypical subscriptions began to churn prior to the IPO" because some deals had terms of less than one year, including six-month subscriptions (FAC ¶ 176(d)); the "material churn" that "had occurred prior to the IPO and was knowingly going to continue and amplify after the IPO was reported prior to the IPO through an indicator in the Company's Salesforce computer program, generated into reports for management, and discussed with management, including Defendant Sharan, at sales meetings and companywide all hands meetings" (FAC ¶ 176(e)); and "a material amount of customers were not using the platform or only used it once," a fact "captured prior to the IPO through the Company's Totango computer program," which "calculated a 'Health Score' based on this 'use' matrix" and was "discussed with management, including Defendant Sharan, because it indicated that these customers were or would be downselling their subscriptions or not renewing" (FAC ¶ 176(f)).

3. "SMB" stands for small and midsize businesses.

Under the second theory, the FAC alleges that ON24 violated Section 11(a)'s "required to be stated" prong by failing to disclose known trends and uncertainties required by Item 303 of Regulation S-K, 17 C.F.R. § 229.303. FAC ¶¶ 185–91. Specifically, the FAC alleges that ON24 was required to disclose, but did not, the trend away from long-term enterprise customers toward short-term, atypical pandemic customers with historically poor retention rates; the fact that a material number of these customers had already communicated their intent not to renew or to downsell; and the fact that some short-term subscriptions had already begun to churn before the IPO—all of which were known to management and systematically tracked through ON24's Salesforce and Totango systems. FAC ¶¶ 176(a)–(f), 185–91.[4]

B. District Court Proceedings

The district court initially dismissed the original consolidated complaint with leave to amend, concluding that Respondent's omission theories lacked sufficient factual support. Order Granting Mot. to Dismiss, *In re ON24, Inc. Sec. Litig.*, No. 4:21-cv-08578-YGR (N.D. Cal. July 7, 2023), ECF No. 96 ("First MTD Order"). Respondent then filed the FAC. The district court subsequently dismissed the FAC with prejudice, finding Respondent's allegations of material customer churn internally inconsistent, implausible, and adequately disclosed in the company's risk factors. Order Granting Mot. to Dismiss, *In re ON24, Inc. Sec. Litig.*, No. 4:21-cv-

4. The FAC also asserted a claim under Item 105, but Respondent withdrew that theory. *See* Plaintiff's Supplemental Brief, *In re ON24*, No. 24-2204, at 14 (9th Cir. Oct. 17, 2025).

08578-YGR (N.D. Cal. Mar. 5, 2024), ECF No. 117 ("Second MTD Order").

C. The Ninth Circuit Appeal

Respondent appealed to the Ninth Circuit. After briefing and oral argument, the panel vacated submission pending the Ninth Circuit's ruling in *Sodha*, 154 F.4th 1019, and ordered supplemental briefing on that decision's effect on this matter.

On January 7, 2026, the panel issued an unpublished memorandum disposition reversing in part and affirming in part the district court's dismissal. Pet. App. 1a–8a. The panel affirmed dismissal of one statement not at issue in this petition. Pet. App. 4a–5a.

The panel reversed as to the remaining five statements. Pet. App. 5a–7a. The panel explained that "[r]isk disclosures that speak entirely of as-yet-unrealized risks and contingencies and do not alert the reader that some of these risks may already have come to fruition can mislead reasonable investors." Pet. App. 6a (quoting *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687, 703 (9th Cir. 2021)). The panel held that Respondent had "sufficiently allege[d] that ON24 knew that the risk of material churn and downselling had started to come to fruition before the IPO yet disclosed only that those risks may occur." Pet. App. 6a; *see also* FAC ¶¶ 176(b)–(e).

The panel also reversed dismissal of Respondent's Item 303 claim, holding that the FAC sufficiently alleged that ON24 had failed to disclose known trends, including "the change in customer profiles that occurred before the

IPO, ON24 leadership's knowledge of several customers' intent not to renew or intent to downsell, and ON24 leadership's knowledge of churn with six-month contracts leading up to the IPO." Pet. App. 7a; *see also* FAC ¶¶ 176(a), (b), (d).

The panel specifically noted that ON24's leadership "methodically tracked this information in ON24's Salesforce software and held meetings with ON24 management regarding customers' churn risk leading up to the IPO." Pet. App. 8a; *see also* FAC ¶ 176(e). It further reasoned that: (1) "during the COVID-19 pandemic, atypical customers engaged ON24 for short-term subscriptions of one-year or less and informed ON24 of their intent to either downsell . . . or not renew these short-term subscriptions"; (2) "ON24 systematically tracked its data regarding customer churn risk and actual churn occurrences"; and (3) "atypical customer churn and downsell began to occur prior to the 2021 IPO and continued thereafter when ON24 failed to meet its projected mid-year revenue goals within months after the IPO." Pet. App. 5a–6a. Critically, the panel concluded that these allegations, taken as true, were "consistent with [Respondent's] theory that the change in customer base negatively impacted ON24's future growth rate and that the change should have been specifically disclosed to potential stockholders." Pet. App. 6a.

The panel denied rehearing and rehearing *en banc* on March 9, 2026. No judge requested a vote on whether to rehear the matter *en banc*. Pet. App. 76a.

REASONS FOR DENYING THE PETITION

I. THE FIRST QUESTION PRESENTED DOES NOT WARRANT REVIEW

Petitioners ask the Court to decide "[w]hether an issuer violates Section 11(a)'s misleading-omissions prong by describing unmaterialized risks as hypothetical." Pet. i. That question does not warrant review because no circuit, including the Ninth, holds that Section 11 can be violated simply by describing an unmaterialized risk as hypothetical. Rather, every circuit to address the question holds that an issuer may be liable where the warned-of risk has already begun to materialize. Because the Ninth Circuit founded liability on the fact that "the risk of material churn and downselling had started to come to fruition," Pet. App. 6a, this case does not present Petitioners' proposed question regarding the legality of describing "unmaterialized risks as hypothetical." Pet. i.

A. There Is No Circuit Split on the Treatment of Risk Disclosures

Petitioners argue that certiorari is warranted to resolve a circuit split over whether a risk statement may be actionably misleading for describing an unmaterialized risk as a hypothetical prospect. Pet. i. They contend that the majority of circuits hold it may not, but that the Ninth Circuit held in this case that it can. *See* Pet. 14–22 (citing cases from the First, Third, and Tenth Circuits). That argument fails because the Ninth Circuit applies the same rule as every other circuit.

In *In re Alphabet, Inc. Securities Litigation*, 1 F.4th 687 (9th Cir. 2021), the Ninth Circuit held that the company's "warning in each Form 10-Q of risks that 'could' or 'may' occur is misleading to a reasonable investor when [the company] knew that those risks had materialized." 1 F.4th at 703–04[5] (quoting *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985–87 (9th Cir. 2008)); *see also In re Facebook Inc. Sec. Litig.*, 87 F.4th 934, 949–50 (9th Cir. 2023) (same); *Constr. Laborers Pension Tr. of Greater St. Louis v. Funko Inc.*, 2026 WL 2601128 (9th Cir. Sept. 2, 2026) (same).

Every other circuit to address the issue applies the same legal principle. In *Karth v. Keryx Biopharmaceuticals, Inc.*, 6 F.4th 123 (1st Cir. 2021), the First Circuit recognized that a company must disclose a risk that "had already begun to materialize." *Id.* at 137–38. It affirmed dismissal only because the allegations did "not indicate that a supply interruption was happening or was even close to a 'near certainty.'" *Id.* at 138. The Third and Tenth Circuits agree. *See Williams v. Globus Med., Inc.*, 869 F.3d 235, 242 (3d Cir. 2017) ("[A] company may be liable under Section 10b for misleading investors when it describes as hypothetical

5. The Ninth Circuit has rejected liability when the asserted risk had not materialized. For example, in *Steamfitters Loc. 449 Pension & Ret. Sec. Funds v. Sunpower Corp.*, the Ninth Circuit rejected the plaintiffs' attempt to apply *Alphabet* and *Facebook*, noting they did not adequately allege that the defendants knew about defects in their product by the time they made the risk factor statements at issue. 2026 WL 2137695, at *2 (9th Cir. July 24, 2026); *see also Weston Family P'ship LLLP v. Twitter, Inc.*, 29 F.4th 611, 621–22 (9th Cir. 2022) (holding that the complaint did not adequately allege that the asserted risks had materialized by the time the defendant issued its risk warnings).

a risk that has already come to fruition."); *id.* at 242–43 (affirming dismissal because the "risk actually warned of"—adverse effects on sales—had not yet materialized, as distinct from the loss of distributors generally); *Ind. Pub. Ret. Sys. v. Pluralsight, Inc.*, 45 F.4th 1236, 1255–56 (10th Cir. 2022) (acknowledging that "risk disclosures that speak entirely of as-yet-unrealized risks and contingencies . . . can mislead reasonable investors" but finding plaintiff had not adequately alleged that the specific risk was then materializing) (citation omitted).

Circuit courts that Petitioners do not cite confirm the consensus. For example, the Fifth Circuit's decision in *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009), held that warnings about risks associated with no-deposit subscriber programs were insufficient because "they omitted the known severe risks associated with these business actions even as they recognized signs that those risks had already materialized." *Id.* at 249. The defendants "publicly touted the migration of services and the use of no-deposit programs although they recognized signs that the dangers they privately predicted had already materialized (i.e., churn, bad debt, lack of independent control)." *Id.*

Every circuit thus applies the same principle; the outcomes differ only because the factual allegations differ.

B. Petitioners Misdescribe the Ninth Circuit's Unpublished Memorandum

The Petition does not argue that any of the Ninth Circuit's precedential opinions depart from the circuit consensus. Instead, Petitioners' asserted circuit conflict is founded entirely on their claim that the panel in this case went beyond existing Ninth Circuit precedent to hold that a risk statement may be misleading if it describes an "*un*materialized risk as hypothetical." Pet. i (emphasis added); *see* Pet. 17–19. That would be no basis to claim a circuit conflict even if true; an unpublished decision does not create (much less alter) the law of the Ninth Circuit. *See* 9th Cir. R. 36-3(a) ("Unpublished dispositions and orders of this Court are not precedent"); 9th Cir. R. 36-2 (reserving "opinion" designation for dispositions that "[e]stablish[], alter[], modif[y] or clarif[y] a rule of federal law"). But Petitioners' description of the unpublished disposition and its holding is entirely made up, a transparent attempt to transform a case-specific disagreement with the panel's view of the facts into a certworthy question of law.

The panel could not have been clearer about the legal rule it was applying: "Risk disclosures that speak entirely of as-yet-unrealized risks and contingencies and do not alert the reader that some of these risks may *already have come to fruition* can mislead reasonable investors." Pet. App. 6a (quoting *Alphabet*, 1 F.4th at 703) (emphasis added). The panel then made equally clear that it was reversing dismissal in this case because the FAC plausibly alleged that the relevant warned-of risk had already materialized: "Leadersel sufficiently alleges that ON24 knew that the risk of material churn and downselling had *started to come to fruition* before the IPO yet disclosed only that those risks *may* occur." Pet. App. 6a (emphasis added).

Petitioners argue that the Ninth Circuit was wrong on the facts. They insist that the risk of atypical churn and downselling had *not* begun to materialize before the IPO. *See* Pet. 12-13. And they claim that the risk warned of was not "atypical customer churn and downsell," as the Ninth Circuit held, *see* Pet. App. 6a, but "material non-renewal *that would harm ON24's business*," which they insist had not yet materialized because "ON24's revenue and revenue growth rate" were not "already declining" or certain to decline at the time of the IPO. Pet. 18 (emphasis added). For these reasons, Petitioners continue, the legal rule the panel below *really* applied is that Section 11 prohibits "describing *un*materialized risks as hypothetical," Pet. i (emphasis added), a rule that conflicts with the law of other circuits (as well as the Ninth Circuit's published decisions).

That argument is nonsense top to bottom. Petitioners may disagree with the Ninth Circuit's characterization of the warned-of risk and its understanding of the state of the business as alleged in the FAC, but those disagreements do not somehow alter the legal rule the court applied, much less the law of the Ninth Circuit. For example, a court that wrongly rejects a defendant's immateriality defense does not thereby establish the legal rule that immaterial falsehoods are actionable or create a circuit conflict over whether issuers can be sued over immaterial misstatements. Likewise, even if Petitioners were right that the warned-of risks had not materialized, the fact remains that the panel below articulated and applied the same rule as every other circuit, which permits liability only if the warned-of risk has already begun to materialize.

Accordingly, the law of the Ninth Circuit does not require issuers to "predict the future" in their risk disclosures or face liability, as Petitioners repeatedly assert. *See* Pet. at 1, 17–18, 29, 30. It requires only that ON24 not describe as purely hypothetical risks that its own internal systems had already confirmed were materializing. *See Alphabet*, 1 F.4th at 703 (quoting *Berson*, 527 F.3d at 985–87). The risk ON24 warned about was customer non-renewal, and the Ninth Circuit reasoned that risk had already materialized. Pet. App. 5a–6a; *see also* FAC ¶¶ 176(a)–(e). There was nothing to "predict" because ON24 already had the data in its own systems.

Petitioners' brazen rewriting of the panel's legal holding betrays the petition for what it really is: a request for fact-bound error correction of an unpublished interlocutory decision. Such a request never warrants this Court's review. But the request in this case is particularly unworthy of this Court's time because Petitioners' objections to the panel's view of the facts are completely unfounded. For example, Petitioners argue that their own financial metrics—showing continued growth in total customer counts, ARR, and the number of customers contributing $100,000 or more in ARR—contradict Respondent's theory and render the FAC implausible. *See* Pet. 9, 12–13, 18–19. But these aggregate metrics are entirely consistent with what the FAC alleges. The FAC does not deny that ON24 grew overall or that it added enterprise customers. It alleges that, in marketing ON24's IPO, Petitioners' offering documents *also* touted growth that was attributable to its recent acquisition of a large wave of atypical, short-term pandemic customers who ON24 knew would not renew, without disclosing the known fragility of a material portion of that growth. Pet. App. 5a–6a; *see also* FAC ¶¶ 9, 176(a)–(b). A company can simultaneously grow its total customer count, grow its base of large customers, *and* acquire a significant cohort of short-term customers destined to churn. These are not mutually exclusive phenomena. The metrics Petitioners cite are aggregate figures that say nothing about the composition or durability of the customer base—which is precisely the information Respondent alleges was omitted.

Petitioners implicitly assume that if ON24 was also adding enterprise customers, the atypical-customer problem must be immaterial. But materiality under *Basic Inc. v. Levinson* asks whether disclosure of the omitted fact "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." 485 U.S. 224, 231–32 (1988). A reasonable investor considering an IPO priced on trailing growth metrics and forward-looking retention assumptions would want to know that a material portion of recently acquired customers had communicated non-renewal intent and were being tracked internally as "DNR"—regardless of whether other customers were simultaneously growing their commitments. The existence of healthy segments does not render the unhealthy segment immaterial. To the contrary, the undisclosed deterioration in one cohort would alter a reasonable investor's understanding of the sustainability of the very growth ON24 was touting in its offering documents. Pet. App. 4a; *see also* FAC ¶¶ 175, 177, 179.

Moreover, Petitioners' reliance on growth in the $100,000+ ARR cohort is inapt for the additional reason that this cohort itself included pandemic-driven expansions that ON24 internally expected to reverse. The FAC distinctly alleges that "a material amount of services that enterprise customers added during the COVID-19 pandemic were or would be subject to downsell." FAC ¶ 176(c). In other words, even some of the large customers Petitioners point to as evidence of healthy growth were expanding their ON24 usage in ways the company knew would be temporary.

This dispute—whether ON24's aggregate growth metrics foreclose the FAC's theory, or whether those metrics masked a known, documented, and internally tracked problem that would significantly alter the total mix of information available to investors—is case-specific and fact-bound, and does not warrant the use of the Court's resources.

C. This Case Does Not Present the Question in *Facebook, Inc. v. Amalgamated Bank* But Suffers from the Same Vehicle Problems

Petitioners are also wrong in claiming that this case presents the same question the Court granted certiorari to decide in *Facebook, Inc. v. Amalgamated Bank*, No. 23-980, without the vehicle problems that ultimately led to the dismissal in that case.

To start, the questions are different. The question presented in *Facebook* was: "Are risk disclosures false or misleading when they do not disclose that a risk *has materialized* in the past, even if that past event presents no known risk of ongoing or future business harm?" Brief for Petitioner at I, *Facebook, Inc. v. Amalgamated Bank*, 2024 WL 1009159 (U.S. June 10, 2024) (No. 23-980) (emphasis added). That question *accepted* that the risk had already materialized and asked only whether liability was nonetheless precluded because the materialized event posed no ongoing or future business harm. Petitioners' first question here is the inverse: it is premised on the risk being "*un*materialized" and Petitioners do not contest that if it *had* materialized, their business would be harmed. Whatever conflict may have existed on the *Facebook* question, it is not implicated in a case where the threshold dispute is whether the risk materialized at all. If the risk is unmaterialized, as Petitioners insist, then the *Facebook* question—which presupposed materialization—does not arise. And if the risk has materialized, as the Ninth Circuit found, then Petitioners' own question presented is built on a false premise. The petition should be denied for that reason alone.

Moreover, the Question Presented in *Facebook* was premised on the materialized risk posing no prospect of "ongoing or future business harm." Here, in contrast, Petitioners have never disputed that if the risk of atypical customer churn and downsell *had* materialized, it would present a substantial "known risk of ongoing or future business harm." Indeed, Petitioners' own offering documents warned that if customers "elect not to continue their subscriptions as the impact of COVID-19 lessens, our business, financial condition and results of operations would be harmed." FAC ¶ 181. Their CEO later confirmed that "churn has been our biggest issue," FAC ¶ 224, and their CEO and CFO acknowledged that ON24 "experienced higher-than-expected churn and downsell from customers we signed up in the second quarter of last year during the peak of COVID," attributing the company's weakened financial outlook to precisely the materialized risk the FAC alleges was known but undisclosed at the time of the IPO. FAC ¶¶ 24–25. In other words, ON24 itself has acknowledged—repeatedly, in its own public statements—that customer churn of the kind alleged here caused exactly the business harm its risk disclosures warned about.

In addition, this case presents *exactly* the same vehicle problems Petitioners say led to the dismissal in *Facebook*—*i.e.*, "disputes about the underlying facts and the scope of the Ninth Circuit's decision." Pet. 20. For example, as in *Facebook*, Petitioners' arguments depend on this Court resolving in their favor a fact-bound dispute about what the relevant "warned-of risk" is. *See id.* 20. As noted, the Ninth Circuit identified the relevant risk as "atypical customer churn and downsell" and found it had already "started to come to fruition" before the IPO. Pet. App. 6a. Petitioners insist that the "relevant risk warned of" here was business harm created by churn and downselling. *See* Pet. 21. The parties likewise dispute whether customer churn and downsell had, in fact, begun by the time of the challenged statements. *See* Pet. 12–13, 18–19. If the Court were to resolve these disputes in Respondent's favor, it would never reach the question it had granted certiorari to decide because there would be no "unmaterialized risk" in the case. Pet. i.

In fact, this case is a *worse* vehicle than *Facebook* for deciding any legal question about liability for risk statements. Unlike in *Facebook*, the resolution of the question presented would not fully resolve the case. Petitioners' first question is, by its terms, a question about risk disclosures that maps onto Statements 4–6. It does not reach the two other surviving statements—Statements 1 and 2—which are not risk disclosures at all but affirmative factual representations about the composition and quality of ON24's customer base. Even if this Court held that describing an "unmaterialized" risk as hypothetical does not violate Section 11, the half-truth claims based on Statements 1 and 2 would survive, because those claims rest on the separate and universally accepted principle that an issuer who chooses to speak about its customer base must not omit known, material, contrary facts that render what it said misleading. *See Macquarie*, 601 U.S. at 263–64. Similarly, the Item 303 theory—which rests on ON24's independent regulatory obligation to disclose known trends and uncertainties under 17 C.F.R. § 229.303—does not depend on the adequacy of the risk disclosures and would survive a reversal limited to the first question.

Thus, factual disputes—what risk was warned about, and whether it had materialized—pervade the petition, just as in *Facebook*. Resolving those disputes would require the Court to wade into the same fact-bound, case-specific terrain that made *Facebook* an unworkable vehicle—and it would do so in the context of an unpublished, nonprecedential disposition whose resolution would not alter the governing law in the Ninth Circuit or anywhere else, without even reaching the question Petitioners purport to present, and potentially without even resolving this case.

II. THE SECOND AND THIRD QUESTIONS PRESENTED DO NOT WARRANT REVIEW

Petitioners' second and third questions ask:

- "Whether an issuer violates Section 11(a)'s misleading-omissions prong whenever it omits information related to a disclosed fact regardless of whether the omission renders an affirmative statement misleading," and

- "Whether an issuer violates Item 303 of Regulation S-K—and thus the prong of Section 11(a) prohibiting the omission of required statements—by failing to disclose immaterial facts as 'known trends or uncertainties' that are reasonably likely to have a material impact on financial results."

Pet. i.

Petitioners contend that these are the same questions presented in *Robinhood*, and that the Court should therefore grant this petition or hold it pending the Court's decision in *Robinhood*. Pet. 3, 22, 26, 29. The Court should do neither. This case does not present either of the *Robinhood* questions. And neither of the questions Petitioners pose are presented by this case or the subject of a circuit conflict or otherwise warrant review. Instead, both questions are, again, premised on a misdescription of the Ninth Circuit's decision, which held that Petitioners' omissions were material and rendered their statements materially misleading.

A. This Case Does Not Present the Questions Presented in *Robinhood*

Robinhood asks the Court to decide whether issuers must disclose intra-quarter financial metrics when those metrics post-date the last reported fiscal quarter. Specifically, the *Robinhood* petition asks the Court to decide: "1. Whether an issuer violates Section

11(a)'s misleading-omissions prong by *failing to disclose interim financial data* that investors may consider material, without an inquiry into whether the omission rendered any affirmative statement misleading;" and "2. Whether an issuer violates Item 303—and thus Section 11(a)'s required-statements prong—by *failing to disclose and quantify interim financial data* before quarterly reporting deadlines." *See* Petition for Writ of Certiorari, *Robinhood Mkts. v. Sodha* at (I), No. 25-944 (U.S. Feb. 5, 2026) (emphasis added). This case, which does not concern interim financial data, poses neither question. Instead, this case asks whether an issuer that touts its customer loyalty and retention may omit that its systematically collected internal data documented that a material portion of its customers were not going to renew their contracts. Nothing the Court might say about interim financial disclosures would shed any light on that question.

B. Petitioners' Actual Questions Are Not Certworthy in Their Own Right

Petitioners make no effort to show that the questions they actually pose are certworthy in their own right. In fact, the answers to the Second and Third Questions are obvious: the text of Section 11(a) itself makes clear that an omission is misleading only if "necessary to make the statements therein not misleading," 15 U.S.C. § 77k(a), and nothing in Item 303 requires disclosure of "immaterial facts." Petitioners do not claim that the Ninth Circuit, or any other circuit, has held otherwise in a precedential opinion. Their claim that the unpublished decision in this case did so is both no ground for certiorari and untrue.

1. The Decision Below Did Not Hold That Section 11 Is Violated by an Immaterial or Non-Misleading Omission

Petitioners' second question asks whether "an issuer violates Section 11(a)'s misleading-omissions prong whenever it omits information related to a disclosed fact regardless of whether the omission renders an affirmative statement misleading." Pet. i. Petitioners attempt to ground this question in *Macquarie*, arguing that the panel below impermissibly "collapsed" the duty to disclose into materiality—treating any omission of material information related to a disclosed subject as actionable without a separate inquiry into whether the omission rendered a specific affirmative statement misleading. Pet. 22–25.

That argument fails because it again misdescribes the Ninth Circuit's cases. *Macquarie* held that "pure omissions are not actionable under Rule 10b-5(b)" and that a court must instead "identify[] affirmative assertions (*i.e.*, 'statements made') before determining if other facts are needed to make those statements 'not misleading.'" 601 U.S. at 257–58, 264. The Ninth Circuit's published decisions are in full accord: *Alphabet* required identifying specific risk disclosures and specific omissions before concluding the former were rendered misleading by the latter, 1 F.4th at 703–04, and *Facebook* applied the same statement-specific analysis, 87 F.4th at 949–50. The panel here followed that framework. It identified specific affirmative statements—ON24's representations about its "highly engaged and loyal customer base," its "consistent ARR growth," and its conditional risk warnings that customers "may not renew"—and then held that the complaint plausibly alleged that ON24's omission of then-existing contrary facts rendered *those particular statements* misleading. Pet. App. 5a–7a, 15a–16a. That is the *Macquarie* framework applied to specific facts of this case.

The panel did not hold that ON24 was required to disclose information merely because it was material or merely because it "related to" an already-disclosed subject. It held that ON24 made affirmative statements about customer loyalty and growth sustainability that created a false impression of a state of affairs materially different from what was internally true at the time. The omissions were actionable not because they concerned the same general topic as the disclosures, but because they contradicted the specific impression those disclosures conveyed. That is the difference between a pure omission (saying nothing on a subject) and a half-truth—"stat[ing] the truth only so far as it goes, while omitting critical qualifying information." *Macquarie*, 601 U.S. at 263 (quoting *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 188 (2016)).

Respondent's primary theory is precisely a half-truth theory: ON24 chose to speak about the quality of its customer base and the sustainability of its pandemic-era growth, and having spoken, omitted then-existing adverse facts on those same subjects. *See* FAC ¶¶ 175–78 (alleging omissions rendered ON24's affirmative statements about customer loyalty and growth misleading). Under *Macquarie*, once an issuer makes affirmative assertions, it must disclose "other facts . . . needed to make those statements 'not misleading.'" 601 U.S. at 264. The panel applied that framework and reversed, reasoning that because "before the IPO, atypical customers had informed ON24 of their intent not to renew and that some 'atypical customer churn' had started to occur," therefore "ON24 knew that the risk of material churn and downselling had started to come to fruition before the IPO yet disclosed only that those risks may occur." Pet. App. 12, 5a–7a.

Petitioners also argue that the omitted information was not material and therefore could not have rendered any statement misleading—pointing to Respondent's purported concession that most pandemic-era customers had not yet reached their contract-renewal dates before the IPO and that ON24's aggregate financial metrics continued to show growth. *See* Pet. 12–13, 18–19. However, as noted in Sections I.B and I.C, *supra*, this is an argument about the facts of this case, not the law of the Ninth Circuit, and it would not warrant review even if it had merit. And in any event, the FAC does not deny that ON24 grew; it alleges that the growth coexisted with a known, tracked, and undisclosed cohort of atypical customers destined to churn, and that some enterprise customers' pandemic-era expansions were also expected to reverse. FAC ¶¶ 9, 176(a)–(c). Whether aggregate metrics foreclose that theory or instead mask a problem that would have significantly altered the total mix of information under *Basic* is a pleading-stage factual question the Ninth Circuit resolved by accepting the well-pleaded allegations as true—exactly as *Tellabs* requires. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Asking this Court to reweigh that determination is the paradigmatic form of fact-bound error correction that Rule 10 disfavors.

2. The Decision Below Did Not Hold That Item 303 Requires Disclosure of Immaterial Facts

Petitioners' third question asks whether an issuer violates Item 303 by "failing to disclose immaterial facts as 'known trends or uncertainties.'" Pet. i. That question does not arise because the panel below did not hold that the withheld information was immaterial. To the contrary, it held that ON24's customer-profile shift and churn were "reasonably likely to have a material effect," Pet. App. 7a, which is precisely the standard Item 303 requires. *See* 17 C.F.R. § 229.303(b)(2)(ii) (requiring disclosure of "known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations").

Petitioners also fault the panel for allegedly failing to "analyze whether th[e] non-renewals reflected a 'trend' with respect to either quantity or temporal duration," citing cases discussing the meaning of that term. *See* Pet. 28 (citing *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182 (11th Cir. 2002), and *Kapps v. Torch Offshore, Inc.*, 379 F.3d 207 (5th Cir. 2004)). But their petition does not pose any question about what constitutes sufficiently persistent business conditions to constitute a reportable "trend." *See* Pet. i (asking only whether "immaterial facts" can constitute trends or uncertainties). And they do not claim that any precedential Ninth Circuit decision conflicts with the Fifth and Eleventh Circuit decisions they cite. *See* Pet. 28 (discussing only the unpublished decision in this case).

Nor is there any conflict with the unpublished panel decision here. *Oxford* held that assessing whether a "trend" exists requires evaluating "whether an observed pattern accurately reflects persistent conditions of the particular registrant's business environment," applying a standard derived from SEC Release 6835, and acknowledged that "it may be that a particular pattern is . . . of such short duration that it will not support any conclusions about the registrant's business environment." 297 F.3d at 1191. *Kapps* held that a 60% five-month decline in natural gas prices was not yet a "trend" under Item 303 because the decline "[had] not yet significantly impacted [the company's] gross revenue" and the company had disclosed price volatility generally. 379 F.3d at 217–21.

Neither case supports Petitioners here. ON24's Item 303 violation rests not on a short-duration exogenous price fluctuation or a six-week deviation in prescription data, but on a documented, management-tracked risk of customer churn. *See* Pet. App. 7a–8a. Unlike the external market forces at issue in *Oxford* and *Kapps*, ON24's churn data was generated by ON24's own internal systems and based on direct communications from ON24's own customers. That data made the "trend" or "known uncertainty" far more concrete than in *Oxford* or *Kapps*, and far less susceptible to the "short duration" and "not yet impacted revenue" defenses that prevailed in those cases.[6] Petitioners may disagree with the panel's reasoning that the omission here was material, but that disagreement does not alter

6. Petitioners' narrow focus on the word "trend" in Item 303 also ignores that the regulation independently requires disclosure of known "events" and "uncertainties," in addition to "trends." 17 C.F.R. § 229.303(b)(2)(ii).

the panel's legal rule, nor does it present any conflict with Item 303 decisions in other circuits.[7]

7. Petitioners raise policy concerns about overdisclosure, litigation risk for public companies, and forum shopping toward the Ninth Circuit. Pet. 29–31. But those speculations are premised on the mistaken view that the Ninth Circuit imposes liability for failing to predict the future and requires disclosures of immaterial information. *See id.* In any case, such policy concerns are better addressed to the Securities & Exchange Commission (the "SEC") and/or Congress. Even if such concerns were valid, "it is Congress's role to modify the statutory structure to address them." *See Basic, Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988). The SEC, for its part, has authority to recalibrate disclosure obligations, and has recently demonstrated its attentiveness to these issues. *See* Paul S. Atkins, *Reforming Regulation S-K*, U.S. Securities & Exchange Commission (Jan. 13, 2026) (requesting public comment as part of a "comprehensive review of Regulation S-K," which contains Item 303).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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