

No. 25-944

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**In the Supreme Court of the United States**

ROBINHOOD MARKETS, ET AL.

*Petitioners,*

v.

VINOLD SODHA, ET AL.

*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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**RESPONDENTS' BRIEF IN OPPOSITION**

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AMANDA F. LAWRENCE

*Counsel of Record*

SCOTT+SCOTT ATTORNEYS

AT LAW LLP

156 South Main Street

P.O. Box 192

Colchester, CT 06415

*alawrence@scott-scott.com*

*Counsel for Respondents*

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## **QUESTIONS PRESENTED**

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.

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.

**PARTIES TO THE PROCEEDING**

Petitioners are Robinhood Markets, Inc.; Baiju Bhatt; Jan Hammer; Vladimir Tenev; Jason Warnick; Paula Loop; Scott Sandell; Robert Zoellick; Goldman Sachs & Co. LLC; J.P. Morgan Securities LLC; Barclays Capital, Inc.; Wells Fargo Securities, LLC; Mizuho Securities USA LLC; KeyBanc Capital Markets Inc.; Piper Sandler & Co.; Rosenblatt Securities Inc.; BMO Capital Markets Corp.; BTIG, LLC; Santander Investment Securities Inc.; Academy Securities, Inc.; Loop Capital Markets LLC; Samuel A. Ramirez & Company, Inc.; and Siebert, Cisneros, and Shank & Co., L.L.C.

Respondents are Vinod Sodha and Ameer Sodha.

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## INTRODUCTION

On both questions presented, Petitioners criticize the decision below for failing to impose extratextual rules of law that Petitioners do not even urge this Court to adopt. The petition thus does not present a true dispute over competing legal rules. It instead presents, at bottom, a disagreement over how to apply widely accepted standards to factbound, context-specific circumstances. Similarly misguided attempts by petitioners in securities-fraud class actions to manufacture illusory clashes over pleading-stage legal rules recently caused this Court to dismiss as improvidently granted two petitions after argument. *See NVIDIA Corp. v. E. Ohman J:OR Fonder AB*, 604 U.S. 20 (2024); *Facebook, Inc. v. Amalgamated Bank*, 604 U.S. 4 (2024). The Court should reject Robinhood’s invitation to repeat that pattern.

Robinhood went public on July 30, 2021. In the latter months of 2020 and the early months of 2021, Robinhood had experienced a tremendous boost to its business as a result of social-media fueled events. By the date of the initial public offering, 2021 financials were only complete for Q1, although Q2 had ended almost 30 days prior.

Robinhood’s prospectus contained extensive historical performance data highlighting its growth, including on a quarter-by-quarter basis. The documents also provided cherrypicked information about Robinhood’s Q2 performance—for example, using Q2 revenue to estimate 129% year-over-year growth. And Robinhood warned that certain risks might negatively impact its business in the future.

But Robinhood failed to mention that these risks were not a mere possibility; they were already reality.

By the time of the IPO, the pre-IPO exodus of customers from Robinhood's platform was already apparent from the Q2 data that the company knew but did not disclose. Thus, the information in the prospectus painted a public picture of Robinhood's growth and future prospects that was entirely belied by information in Robinhood's possession.

Investors sued Robinhood over its IPO documents, contending that they violated Section 11(a)'s misleading-omissions prong and Item 303's disclosure requirement. The district court dismissed the claims, imposing the judicially created rule that, where intra-quarter data is concerned, omissions are only actionable if they are "extraordinary."

The Ninth Circuit reversed. It rejected the district court's heightened pleading requirements and returned to basics. On Section 11(a), the Ninth Circuit recognized that, under certain circumstances, like those in this case, the failure to disclose material intra-quarter information may render disclosures about past performance misleading. The inquiry the district court should apply, the court held, is the classic materiality standard—considering the total mix of available information—that courts have been applying for decades. And on Item 303, the Ninth Circuit brought the focus back to the text, instructing the district court to ask whether Plaintiffs had alleged that Robinhood failed to disclose a "trend," "uncertainty" or "event" that was "reasonably likely to have a material effect." Then the court remanded for the district court to consider the particular disclosures and omissions in this case.

There is nothing radical—or certworthy—about the decision below. Petitioners disagree with the

outcome. But they do not propose that this Court adopt legal rules in place of the existing standards.

The first question is whether an issuer violates Section 11(a)'s misleading-omissions prong "without an inquiry into whether the omission rendered any affirmative statement misleading." Pet. (I). The answer is simply "no." Neither the court below, nor any other court identified by Petitioners, held otherwise.

Petitioners try to make a conflicting legal rule of the Ninth Circuit's commonsense acknowledgement that, under certain circumstances, if subsequent information shedding light on past events is material to investors, it renders statements about past events misleading, a conclusion echoed by other courts assessing individual cases. Then Petitioners also fault the Ninth Circuit for declining to adopt the "extreme departure" test—which has not been adopted by any court of appeals since the term was coined by the First Circuit in 1996, and which Petitioners do not actually advocate be adopted here.

The Court should not grant certiorari merely to clarify language in the opinion below, or to address a rule that has not proliferated in the lower courts and that none of the parties actually urge the Court to embrace.

The second question is whether the "fail[ure] to disclose and quantify interim financial data before quarterly reporting deadlines" violates Item 303. Pet (I). The undisputed answer is "sometimes." And the text of the regulation explains when. While Petitioners assert that some lower courts impose a durational requirement—that omitted intra-quarter data represent a trend of a certain length—

Petitioners do not offer a categorical trend-length rule, nor go any further than arguing that “temporal persistence” must be considered. *See* Pet. 28.

Petitioners note that the Ninth Circuit broke with the view adopted by certain courts in the Southern District of New York—that a “trend” must be greater than two months. But, again, Petitioners do not actually urge this Court to adopt a bright-line greater-than-two-months rule. Petitioners also highlight cases from the Fifth and Eleventh Circuits acknowledging that applying Item 303 to an alleged “trend” involves an “assessment of whether an observed pattern accurately reflects persistent conditions of the particular registrant’s business environment.” *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1191 (11th Cir. 2002). But all agree that the “obvious focus” of the inquiry is “preventing the latest reported results from misleading potential investors.” *Id.* at 1192.

There’s a reason Petitioners avoid asking this Court to impose the bright-line rules that they criticize the Ninth Circuit for rejecting: this area of law involves the factbound application of well-developed standards to a wide array of companies, market events, business environments, disclosure statements, omission theories, and other circumstances. The rapid pace of technological change—and its effect on the public markets—means that new circumstances continually arise for the existing standards to govern. But debates over how standards apply to different cases are not amenable to resolution in this Court.

Last year, the Court twice took up pleading-stage securities cases, only to discover that the legal

disputes the petitions had teed up were not present, and to dismiss the cases as improvidently granted. Because this petition is in the same mold, the Court should deny certiorari.

### STATEMENT OF THE CASE

This case concerns Robinhood's July 30, 2021 initial public offering of five million shares of common stock for proceeds of over \$2 billion. In association with the IPO, Robinhood issued a registration statement and prospectus. The last quarter for which financials were complete prior to the IPO was Q1 2021, and Q2 2021 ended 28 days prior to the IPO.

The offering documents contained reams of historical financial performance data in multiple charts and tables highlighting Robinhood's virtually unbroken run of year-over-year and quarter-over-quarter growth in its customer base and revenue since its founding. The offering documents also presented certain estimated preliminary results for Q2 2021, indicating that Robinhood expected to report total revenue of \$546 million to \$574 million, representing 129% year-over-year growth at the midpoint of the range. But for Q2 2021, Robinhood did not provide an estimate of transaction-based revenue or break down its revenue by trading type.

The offering documents also did not state that, by the time of the IPO, Robinhood's business was fundamentally changed.

*First*, in the quarters immediately before the IPO, Robinhood experienced an exodus of its traditional customers due to poor customer service, platform outages, and security concerns. The widespread dissatisfaction fueled by these issues was reflected in

Robinhood's performance data, including monthly active users, and its declining "Net Promoter Score," a measure of how likely its customers were to recommend the platform to others, which was viewed by management as an important metric of Robinhood's ability to grow its customer base.

*Second*, beginning in Q1 2021, two social-media fueled events (the "meme stock" event and "Dogecoin") brought an influx of speculative traders to the platform, albeit temporarily. The meme stock event, during which the shares of GameStop and other financially troubled companies were bid up by retail investors in an effort to squeeze short-sellers, increased trading volume in equities on Robinhood's platform in Q1 2021. Then, in Q2 2021, a rally in the cryptocurrency Dogecoin boosted cryptocurrency trading volume on Robinhood's platform and drove Robinhood's revenue to new all-time highs.

By the time of the IPO, both social-media-driven events had ended and the impact of the pre-IPO exodus of customers from Robinhood's platform became manifest: revenue from equities trading fell to a five quarter low in 2Q 2021, equities trading volume on the platform continued to decline, cryptocurrency trading fell 90% from May through July 2021, and several key performance indicators also declined.

Thus, by the time the offering documents were published, Robinhood's business bore little resemblance to the one it depicted.

#### **A. District Court Proceedings**

Plaintiffs filed their first amended complaint alleging that the offering documents contained materially false and misleading statements and

omitted material information that was required to be disclosed in violation of §§ 11, 12, and 15 of the Securities Act of 1933 and Items 105 and 303 of SEC Regulation S-K. The district court dismissed that complaint with leave to amend, and Plaintiffs subsequently filed their Second Amended Complaint (“SAC”). On January 24, 2024, the district court granted Defendants’ second motion to dismiss without leave to amend.

The district court held that disclosure of Robinhood’s pre-IPO 2Q 2021 data was only required if Plaintiffs showed that the declines in its business were “so extraordinary as to be unusual and indicative of larger future trends when viewed in context of the company’s historical data.” Pet. App. 125a. The district court also ruled that the “proper baseline” for that inquiry was “the company’s historical performance” prior to the meme stock and Dogecoin events causing a precipitous increase in the company’s fortunes. *Id.* 130a-31a.

Because the “intra-quarter” decline did not meet that bar, the district court dismissed the Section 11(a) claims. *Id.* 125a. And because the district court concluded that the inquiry under Item 303 “is akin to the inquiry under Section 11 generally” as to whether intra-quarter information is “extraordinary enough to require disclosure[.]” the district court also held there was no duty to disclose the omitted financial metrics under Item 303. *Id.* 139a-43a.

### **B. Ninth Circuit Opinion**

Plaintiffs appealed the decision to the Court of Appeals and, after argument, it issued its opinion on August 29, 2025, remanding the case to the district

court. Defendants sought rehearing *en banc*, which was summarily denied.

1. The Ninth Circuit opinion, authored by Judge M. Smith, began with Plaintiffs' claims under Section 11(a)'s misleading-omissions prong. Pet. App. 20a. The court emphasized that because of the "theoretical distinction between materiality and the duty to disclose," the "materiality of information is different from the issue of whether a statement is false or misleading." *Id.* 22a. Thus, the court explained, "[a]s long as the omissions do not make the actual statements misleading,' disclosure is not required 'even if the company disclosed some [related information] and even if investors would consider the omitted information significant." *Id.* (alteration in original).

The Ninth Circuit then observed that the "context[]" of the alleged omission impacts the import of the distinction between the inquiries and thus that the distinction "has meaning only in certain contexts." Pet. App. 23a (citing *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993)). It explained that "where the disclosure duty arises from the combination of a prior statement and a subsequent event, which, if not disclosed, renders the prior statement false or misleading, the inquiries as to duty and materiality coalesce." *Id.* (quoting *Time Warner*, 9 F.3d at 267). This is because it is "difficult to imagine a circumstance where [a] prior statement would not be rendered misleading' in light of an undisclosed event if the 'undisclosed information is material.'" *Id.*

The Ninth Circuit stated that Robinhood had a duty to disclose information if it was material. *Id.*

23a-24a. Specifically, Plaintiffs allege that Robinhood: (i) omitted several key performance indicators and financial metrics that declined after the end of the last reported fiscal quarter; (ii) disclosed some positive interim results but omitted other negative interim results, “even though those negative results were provided in prior quarters”; and (iii) “warned of certain future risks but did not state that those risks had already come to fruition.” *Id.* 23a-24a. Here, because the alleged omissions all “involve the relationship between a prior statement concerning a particular time period and an event subsequent to that time period” but before the statements were made, the materiality of the intra-quarter information determined whether it made the prior statements misleading. *Id.* 23a–24a & n.4. The court then affirmed that “the longstanding test for assessing the materiality of an omission of interim financial information’ is the same as the test for the ‘duty to disclose such information.’” *Id.* 27a (quoting *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31, 36 (2d Cir. 2017)), 29a.

Instead of that widely used standard, the district court had instead applied a special, heightened rule for intra-quarter information: the extreme-departure test, coined by the First Circuit in 1996. *Id.* 30a, 33a. Under that approach, an issuer need only disclose “nonpublic information indicating that the quarter in progress at the time of the public offering will be an *extreme departure* from the range of results which could be anticipated based on currently available information . . . .” *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1210 (1st Cir. 1996) (emphasis added).

The Ninth Circuit rejected the “extreme departure” test for several reasons. First, courts are already “familiar” with the “classic materiality standard” and thus it is “clearer and more predictable.” Pet. App. 28a (quoting *Stadnick*, 861 F.3d at 37). Second, the “extreme departure” test is “far less administrable.” *Id.* It “leaves too many open questions,” like “the degree of change necessary,” and “which metrics courts should look to.” *Id.* (quoting *Stadnick*, 861 F.3d at 37). Third, the “extreme departure” test can be counterproductive by encouraging a narrow “focus on a small number of metrics” that may not be representative of the company’s performance. *Id.* (quoting *Stadnick*, 861 F.3d at 37). The district court in this case, the Ninth Circuit noted, had “proceeded indicator by indicator and evaluated whether each constituted a sufficient departure to create a duty to disclose,” rather than taking the proper “holistic approach” and focusing on the “total mix of information.” *Id.* 28a-29a.

Thus, because the district court “applied the incorrect legal standard to Plaintiffs’ theory,” the Ninth Circuit vacated and remanded for the district court to “ascertain whether Plaintiffs adequately alleged that the omitted information was material.” *Id.* 29a. In so doing, the court “express[ed] no view on how Plaintiffs’ claims would fare under that legal standard.” *Id.* 29a & n.6.

2. The court then analyzed the district court’s opinion as to Item 303, finding three issues with it: (1) that the regulation is not limited to “sufficiently persistent ‘trends,’” (2) that it requires “quantification of the disclosed uncertainties to the extent reasonably practicable,” and (3) that Item 303 imposes “a

different standard for the disclosure than Section 11's 'misleading prong.'" *Id.* 31a.

As to the first issue, the lower court noted that "trends" does not stand alone but that certain events and uncertainties must be disclosed under 17 C.F.R. § 229.303 (b)(2)(ii), and the district court only looked at whether a trend had adequately been alleged. Pet. App. 37a. The lower court then found that Item 303 does not contain a precise rule on the length of a trend, and that a bright-line rule would contravene its principles.

The Ninth Circuit also found that Item 303 uses a substantially different standard from Section 11's misleading-omissions prong based on the very words in both. Section 11 requires a "substantial likelihood" that the disclosure would have been considered significant by a reasonable investor (looking to *Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1998)), while Item 303 only requires that it be "reasonably likely" that the relevant event will occur. Pet. App. 38a. Unremarkably, the Ninth Circuit then stated: "Because Item 303 imposes a broader duty of disclosure than Section 11's 'misleading' prong, the 'extreme departure' test is especially inapplicable here. Thus, the district court's determination that Robinhood's problems were not 'historically extraordinary' is not a basis for rejecting Plaintiffs' Item 303 theory." *Id.* 39a. Additionally, the lower court held that Item 303's text supports the argument that once a trend is disclosed, its effects must be quantified. *Id.* 38a. Ultimately, the Ninth Circuit expressed no view on whether Plaintiffs' allegations satisfied Item 303, but remanded to the district court

for further consideration under the elucidated Item 303 standards. *Id.* 39a.

3. The dissent took a different approach: it parsed Robinhood’s disclosures for itself, and resolved the case based on that analysis.

In the dissent’s view, the disclosure inquiry begins with analyzing “the statements that were made, any disclaimers accompanying those statements, and the information available to the market.” *Id.* 63a. So, the dissenting opinion begins with a lengthy recitation—spanning 15 pages—of Robinhood’s disclosures. *See Id.* 45a-60a (Rawlinson, J., dissenting). It also recounts in considerable detail the disclosures at issue, and the falsity analysis, in a prior Ninth Circuit case. *See Id.* 63a-76a.

Ultimately, the dissent concludes that “fairly read in light of the disclaimers and the information existing in the market of investors, the statements in the prospectus were not misleading.” *Id.* 78a; *see also id.* 90a-93a.

The dissent confines its discussion of the “extreme departure” test to a single footnote at the end of the opinion. *Id.* 105a-106a n.5. Because the dissent resolved the case on other grounds, it found “no need to address” the proposed rule. *Id.*

## **REASONS FOR DENYING THE PETITION**

### **I. The First Question Presented Does Not Warrant Review**

In pressing the first question presented, Petitioners portray the Ninth Circuit decision as having eliminated the distinction between the duty to disclose and materiality. It did not do so and its

unremarkable conclusion that the inquiries coalesce in specific factual circumstances, like the half-truths alleged here, was both correct and uncertworthy.

Petitioners next take aim at the Ninth Circuit’s rejection of the “extreme departure” test for disclosure of interim financial information, but do not ask this Court to adopt that standard. And with good reason, as the “extreme departure” test is extra-textual, ill-defined, and can lead to anomalous and unpredictable results. The Ninth Circuit correctly adopted the traditional materiality test, which is rooted in Section 11(a)’s text, well-defined, and routinely applied by courts. That holding also does not justify this Court’s review. The “extreme departure” test has not been adopted by any other circuit outside the First and by only a handful of district courts. And the “extreme departure” test is merely a specific application of the traditional materiality test. There is simply no true circuit split deserving of this Court’s attention and Petitioners’ policy arguments, which are belied by the fact that the Ninth Circuit’s decision followed well-established Second Circuit law, do nothing to change that conclusion.

**A. Petitioners Have Not Identified a  
Certworthy Question of Law in the  
Ninth Circuit’s Analysis of Section  
11(a)**

1. Start with the text of the question presented. Petitioners ask this Court to decide whether the misleading-omissions prong can be violated by a failure to disclose material, intra-quarter financial data “without an inquiry into whether the omission rendered any affirmative statement misleading.” Pet. (I).

But Petitioners do not actually disagree with the decision below about the answer to *that* question. The Ninth Circuit did not dispense with the misleading-statements inquiry for interim financial data.<sup>1</sup> Rather, it decided that, in the context of Plaintiffs’ allegations regarding Robinhood’s duty to disclose, and the particular statements and alleged omissions, that inquiry converged with the materiality inquiry. *See infra* p. 23.

Likewise, there is no conflict between that case-specific holding and any decision of this Court or other appellate courts.

The petition marshals some general statements of law from the Third, Fifth, and Eleventh Circuits about how duty and materiality are “distinct requirements,” and that there is no general duty to disclose all material information. Pet. 20–21. But the decision below squarely agrees. *See* App. 22a (the “materiality of information is different from the issue of whether a statement is false or misleading”); *id.* (“not all material adverse events would have to be disclosed”); *id.* (“[A]s long as the omissions do not make the actual statements misleading, disclosure is not required ‘even if the company disclosed some [related information] and even if investors would consider the omitted information significant.’”) (alterations in original).

Nor is the Ninth Circuit’s conclusion that, in certain specific circumstances, materiality and the

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<sup>1</sup> Tellingly, the dissenting opinion—which spans more than 60 pages—nowhere contends that the majority opinion established a freestanding duty to disclose all material information.

duty to disclose coalesce a new rule of law. *See, e.g., Time Warner*, 9 F.3d at 267; *U.S. SEC v. Gu*, 2024 WL 4100369, at \*10 n.18 (D.N.J. Sept. 6, 2024); *Hirtenstein v. Cempra, Inc.*, 348 F. Supp. 3d 530, 553 (M.D.N.C. 2018), *aff'd sub nom. Janies v. Cempra, Inc.*, 816 F. App'x 747 (4th Cir. 2020); *Schwartzman v. Morningstar, Inc.*, 2014 WL 3843875, at \*19 (E.D. Pa. Aug. 5, 2014); *MJK Fam. LLC v. Corp. Eagle Mgmt. Servs., Inc.*, 2009 WL 4506418, at \*7 (E.D. Mich. Nov. 30, 2009). Petitioners do not cite a case rejecting this possibility.

The petition also contends that the Ninth Circuit's opinion is in tension with this Court's opinion in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024). But the cases are entirely consistent.

In *Macquarie*, the Court held that Rule 10b-5(b) “does not proscribe pure omissions”—that is, a complete failure to speak about a topic cannot, standing alone, give rise to liability under the rule. *Id.* at 264. But *Macquarie* expressly distinguished “half-truths” from “pure omissions,” explaining that Rule 10b-5(b) “covers” the former. *Id.* 265. As the Ninth Circuit explained, this case involves classic half-truths: Robinhood affirmatively reported its Q1 2021 financial results in its offering documents, along with selected Q2 data and future projections, creating an impression of continued explosive growth, while simultaneously withholding other Q2 data that showed a dramatic reversal. *Macquarie* confirms that precisely those sorts of omissions—ones that render affirmative statements misleading—are actionable. Further, the *Macquarie* Court pointedly noted that Section 11(a) of the Securities Act, unlike Rule 10b-

5(b), *does* contain language that “creates liability for failure to speak,” because it expressly reaches omissions of facts “required to be stated.” 601 U.S. at 264-65. The Court thus recognized Section 11(a)’s broader scope.

The undisputed answer to the first question presented, then, is “no.” And what Petitioners really seek from this Court is error correction of the determination in the decision below about how to apply the normal standards for duty and materiality to this case. That is manifestly uncertworthy. S. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”); Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c)(3) (11th ed. 2019) (noting that “error correction . . . is outside the mainstream of the Court’s functions and . . . not among the ‘compelling reasons’ . . . that govern the grant of certiorari”).

2. Even more problematic, Petitioners offer the Court no legal rule for when intra-quarter financial data must be disclosed. The petition emphasizes the Ninth Circuit’s rejection of the “extreme departure” test. But it does not urge the Court to adopt that test. Nor does it identify an alternative rule for the Court to select.

Petitioners’ aversion to the “extreme departure” test makes good sense. As the Ninth Circuit explained, further “glossing” the statutory text with additional pleading rules using “enigmatic language” is likely to “obfuscate rather than clarify the standards” that courts have long applied. Pet. App. 28a. The “extreme departure” test is a good example.

It raises more questions than it answers: How different does the data have to be to make the change extreme? What metrics must be considered? How do normal securities-law concepts, like the “familiar ‘reasonable investor’” fit in? *Id.* 28a.

The test thus focuses the analysis on issues adjacent to the ultimate inquiry, which is whether investors were misled by the omissions. That’s why the Second Circuit observed, in *Stadnick*, that the “extreme departure” test “can be analytically counterproductive.” 861 F.3d at 38. It encourages courts to look at whether certain metrics have changed dramatically, even if those metrics are not fair indicators of the company’s performance, rather than considering the “‘total mix’ of information” available to investors. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). That artificial approach can result in the dismissal of meritorious actions. But it can also, as Petitioners note (Pet. 24-25), result in the opposite.

It is thus unsurprising that the “extreme departure” test has not been adopted by any other federal appellate court since the First Circuit coined that term in 1996. Even its acceptance by district courts has been limited.<sup>2</sup>

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<sup>2</sup> Excluding the Second and Ninth Circuits, which rejected the “extreme departure” test, only a handful of district court cases outside of the First Circuit have applied it. Moreover, none of those cases—nearly all of which predate the Second Circuit’s *Stadnick* decision—explicitly weighed the “extreme departure” standard against the materiality standard. *See, e.g., Franchi v. SmileDirectClub, Inc.*, 633 F. Supp. 3d 1046, 1071 (M.D. Tenn. 2022); *Rhodes v. Omega Rsch., Inc.*, 38 F. Supp. 2d 1353, 1364

In all events, there is no true circuit split between the materiality standard and the First Circuit's requirement of an "extreme departure" in *Shaw*. That opinion is best read as a specific application of the traditional materiality standard to interim financial results. The decision rejected defendants' argument that "there can never be a duty to disclose internally known, pre-end-of-quarter financial information." *Shaw*, 82 F.3d at 1210. The court explained that "[t]he question whether . . . present information must be disclosed (assuming the existence of a duty), poses a *classic materiality issue*." *Id.* (emphasis added). This question, *Shaw* reasoned, "cannot be answered by reference" to a "bright-line rule[]," citing this Court's materiality analysis in *Basic, Inc. v. Levinson*, 485 U.S. 224, 237-39 (1988). *Shaw*, 82 F.3d at 1210. Thus, the court explained, "the question is whether the nondisclosure of interim facts rendered the prospectus materially incomplete." *Id.* Answering that question for the specific facts in that case, the court stated that "[i]f, as plaintiffs allege here, the issuer is in possession of nonpublic information indicating that the quarter in progress at the time of the public offering will be an extreme departure from the range of results which could be anticipated based on currently available information, it is consistent with the basic statutory policies favoring disclosure to require inclusion of that information in the registration statement." *Id.*

*Shaw* therefore did not adopt any "extreme departure" *rule* categorically governing the disclosure

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(S.D. Fla. 1999); *In re Children's Place Sec. Litig.*, 1998 WL 35167284, at \*9 (D.N.J. Sept. 4, 1998); *Gart v. Electroscope, Inc.*, 24 F. Supp. 2d 969, 974 (D. Minn. 1998).

of interim information. Rather, the court applied the traditional materiality analysis—as adopted by the Ninth Circuit in this case and the Second Circuit in *Stadnick*—to conclude that on the specific facts before it, disclosure was required because plaintiffs had alleged that the interim results were an “extreme departure” from prior results.

Thus, the Ninth Circuit’s decision not to adopt an extreme-departure test—that even Petitioners do not embrace—does not warrant this Court’s review.

**3.** Contrary to Petitioners’ assertions (Pet. 18), the Ninth Circuit did not create a free-ranging “duty to update.”

Petitioners try and portray the Ninth Circuit’s decision as imposing an onerous duty to update accurate historical financial information in a registration statement. This is incorrect. Robinhood did not merely accurately report its Q1 2021 results, while simply declining to supplement those results with supposedly still-developing Q2 metrics. Rather, the company filed the offering documents on July 27, 2021—after Q2 had closed on June 30—and included *some* Q2 data, showing what appeared to be continued growth. Robinhood then concealed more details from investors which would have shown dramatic shifts and declines in key performance indicators and monthly active users that were already underway. Thus, this is not a case about passive silence triggering a “duty to update.” Instead, this is a classic selective disclosure case. Robinhood chose to speak about Q2 performance but only told part of the story. *Macquarie* makes clear that such half-truths are actionable.

The duty-to-update cases cited by Petitioners are irrelevant. *See, e.g.*, Pet. 17-18 (citing *Kolominsky v. Root, Inc.*, 100 F.4th 675, 686 (6th Cir. 2024); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1432 (3d Cir. 1997)). Those decisions address whether *previously* filed documents containing forward-looking statements must be revised when subsequent events render those projections stale. That scenario bears no resemblance to this one. An IPO registration statement is not a historical statement that is being “updated.” Section 11 requires that it be complete and misleading *as of the effective date*. *See* 15 U.S.C. § 77k(a) (imposing liability for material omissions “when such part [of the registration statement] became effective”). Thus, the inquiry is not whether Robinhood had a “duty to update” its Q1 results, but whether its registration statement, when it became effective, omitted material facts necessary to make its statements not misleading.

4. Absent a conflict over legal rules warranting this Court’s review, Petitioners lean on policy concerns with the Ninth Circuit’s decision. Primarily, Petitioners portray the Ninth Circuit’s Section 11(a) holding as radical and speculate that it will trigger a parade of horrors, including discouraging IPOs. But these concerns are overstated, and don’t move the needle on certworthiness.

Petitioners do not credibly identify any risk from the Ninth Circuit’s adoption of the general-materiality standard to govern the duty to disclose interim financial results. Petitioners gripe that the Ninth Circuit’s ruling “will expose issuers to wide-ranging omissions liability based on materiality

alone.” Pet. 19. But the Ninth Circuit’s application of “the classic materiality standard” to intra-quarter information has been the law in the Second Circuit for at least a decade. *See Stadnick*, 861 F.3d at 37. And it has not resulted in a crush of securities-action filings.

Underscoring that Petitioners’ concerns lack credibility are the numerous Second Circuit decisions applying the materiality standard to interim disclosures that have *rejected* that the issuer had any duty to disclose. *See Mi v. Waterdrop Inc.*, 2024 WL 159191, at \*3 (2d Cir. Jan. 16, 2024) (“registration statement not materially misleading” because “reference to” interim period “growth” while omitting “the precise figure for” interim period “aggregate expenses” “did not affect the overall picture of [issuer] that the registration statement presented”); *Asay v. Pinduoduo Inc.*, 2021 WL 3871269, at \*3 (2d Cir. Aug. 31, 2021) (“interim data was not material given the disclosures on expenses that had already been made”); *Stadnick*, 861 F.3d at 38 (“[w]hen viewed in . . . context, it is plain that the omissions relating to” interim period “income and earnings-per-share . . . did not render the publicly available information misleading”). The Ninth Circuit’s decision did nothing more than agree with long-standing Second Circuit law on evaluating interim financial results, and there is no reason to believe the decision will lead to a flood of meritless securities litigation.

Petitioners also point to a single district court decision, *Brookman v. Webtoon Entm’t Inc.*, 2025 WL 3484589 (C.D. Cal. Dec. 2, 2025), as evidence that the Ninth Circuit’s holding is already being applied. Pet. 19. But one district court decision hardly

demonstrates the sort of widespread legal disruption that warrants this Court’s intervention. To the contrary, the district court’s opinion contravenes Petitioners’ grave warnings about untethering materiality from misleading statements. The court applied the “materiality test for the duty to disclose” to defendants’ “statements that monthly active user levels ‘stabilized,’ ‘scaled,’ and ‘demonstrated durable and consistent growth,’” when, really, the defendants knew the levels were declining. *Brookman*, 2025 WL 3484589, at \*4–5.

As shown above, the worries that the Ninth Circuit’s decision did away with the duty-to-disclose requirement or imposed a freestanding duty to disclose all material information are makeweight. Its holding—that in certain specific circumstances, like those that Plaintiffs here allege, materiality and the duty to disclose coalesce—has been the law of the Second Circuit for more than 35 years and has been recognized by district courts around the country. *See Stadnick*, 861 F.3d 31. Indeed, Petitioners do not point to any cases from the Second Circuit (or elsewhere) that they contend improperly collapsed the duty-to-disclose and materiality inquiries. There is thus no evidence of any ill effects from the Ninth Circuit’s actual holding.

**B. The Decision Below Is Correct as to Section 11(a)**

The Ninth Circuit’s decision is correct, and it announces no new rule of law regarding Section 11(a). The decision below merely rejected the imposition of an “extreme departure” test. In explaining the proper inquiry, the Ninth Circuit repeated black-letter law about how the duty to disclose and materiality are

different requirements. Pet. App. 22a. And it recognized (as other courts have) that, in certain circumstances, the inquiry as to materiality converges with the inquiry as to whether there was a duty to disclose to avoid rendering certain statements misleading. *Id.* 23a. The proper inquiry, the Ninth Circuit emphasized, is the classic materiality standard articulated in *TSC Indus.*, 426 U.S. at 449.

That holding is both modest and correct. The Ninth Circuit did not hold, as Petitioners contend, that issuers must “disclose all material interim data.” Pet. 15. Nor did it hold that “so long as a statement recounts historical performance, any omission of material facts that relate to subsequent performance automatically makes the historical statement misleading.” *Id.* 17. Rather, the court held that where an issuer’s offering documents report financial results for a particular quarter, and the issuer possesses materially different results for the subsequent period, the omission of those subsequent results may render the earlier statements misleading. In those circumstances—where an issuer has made affirmative statements about its financial performance and then withholds information showing a material change—the materiality and misleading inquiries necessarily converge. An omission of information that a reasonable investor would consider significant in light of statements already made is, by definition, an omission that renders those statements misleading.

## **II. The Second Question Presented Does Not Warrant Review**

As to the second question, regarding Item 303, Petitioners again engage in hyperbole and

mischaracterization of the lower court's decision. And, while they and their *amici* point to decisions from the Fifth and Eleventh Circuits, no circuit has adopted a bright line rule regarding a temporal requirement under Item 303 and Petitioners here do not even urge this Court to adopt one.

**A. Petitioners Do Not Articulate a  
Certworthy Question of Law  
Regarding Item 303 and None Exists**

Petitioners ask this Court to look at whether Item 303 requires the disclosure of interim financial data. But, again, they do not dispute that Item 303 can, at times, require such disclosure. They therefore simply dispute that, in this particular case, disclosure might be required. While Petitioners attempt to claim that the Ninth Circuit “expand[ed] the scope of liability under Item 303” and “create[d] a circuit split” in this area (Pet. 14), it actually did neither of those things.

To suggest some conflict between the Ninth Circuit's case-specific holding and any appellate decisions, Petitioners cling to general statements from 20+ year old cases from the Fifth and Eleventh Circuits. The Fifth Circuit case cited by Petitioners (*Kapps v. Torch Offshore, Inc.*, 379 F.3d 207 (5th Cir. 2004)) merely cites to the Eleventh Circuit case, so the analysis begins (and ends) with *Oxford*, 297 F.3d 1182. In that case, the Eleventh Circuit simply said, in passing, that a trend would “require an assessment of whether an observed pattern accurately reflects persistent [business] conditions.” *Id.* at 1191. But the Ninth Circuit here said the exact same thing. For example, when it declined to opine on the necessity of disclosure in this case under Item 303, it stated that

it was not opining on whether the event in question “was sufficiently persistent to qualify as a trend...” Pet. App. 39a n.11.

In fact, in *Oxford*, the Eleventh Circuit explained:

If booming Niaspan sales had carried Kos for the previous several reported quarters but suddenly and significantly declined, a potential investor could be misled by those reported results unless Kos disclosed the importance of Niaspan and discussed the downward trend in Niaspan sales. This is the type of situation Item 303(a)(3)(ii) was designed to address. But that is *not this* case.

*Oxford*, 297 F.3d at 1192. This analysis contains no discussion or requirement of a temporal limitation, but instead states “suddenly and significantly.” Petitioners also hang on the Eleventh Circuit’s unexceptional statement that the purpose of Item 303 is “preventing the latest reported results from misleading potential investors, thereby promoting a more accurate picture of the registrant’s future prospects.” *Id.* But again, this is precisely what the Ninth Circuit said here. The Ninth Circuit thus “rejected” nothing in *Oxford*, and *Oxford* itself did not embrace any bright line rule and certainly none that Petitioners ask this Court to adopt.

The lower court’s decision is also not at odds with the First Circuit. *Glassman v. Computervision Corp.*, 90 F.3d 617, 631 (1st Cir. 1996) did not, in fact, expressly apply the extreme departure standard to disclosure under Item 303. Pet. 30. Instead, it engaged in a highly fact-specific inquiry regarding whether deviations from internal forecasts need to be

disclosed. For example, it said that for Item 303, it had to be read in light of the SEC's instruction expressly stating that forward-looking information need not be disclosed. Instruction 7 to 17 C.F.R. § 229.303(a). Only then did the First Circuit mention *Shaw*: "Here, unlike in *Shaw*, the undisclosed hard information pled did not indicate a 'substantial likelihood that the quarter would turn out to be an extreme departure from publicly known trends and uncertainties.' Thus, the alleged nondisclosures fell neither within the ambit of 17 C.F.R. 229.303 (a) or *Shaw*." *Glassman*, 90 F.3d at 631. *Glassman*, the only circuit court case to mention *Shaw* with regard to Item 303, does so in passing.

Furthermore, Petitioners, as with Rule 11(a), do not suggest a rule for when interim financial data can constitute a trend under Item 303. While the petition points to a handful of cases from the Southern District of New York that have held that trends of less than two months need not be disclosed, it does not suggest that this Court adopt that rule. This makes sense particularly given the Ninth Circuit's acknowledgement and analysis of those cases. It noted that other district courts have held that the "two-month" rule is not a settled rule but that, instead, the only settled "rule" is that whether a trend is of sufficient duration to mandate disclosure is highly fact-specific. *See, e.g., Sundaram v. Freshworks, Inc.*, 2023 WL 6390622 (N.D. Cal. Sept. 28, 2023); *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293 (9th Cir. 1998) (engaging in a highly fact-specific analysis). While acknowledging the existence of these "two-month" cases, the lower court was also careful to note that holding some patterns of less than two months long to be trends under Item 303 "would not

impose an ‘unworkable and potentially misleading . . . system of instantaneous disclosure out [of] the normal reporting periods . . . .’” Pet. App. 34a (alterations in original).

And Petitioners do not even actually urge this Court to adopt a two-month bright line rule here. Therefore, what Petitioners actually seek is, again, error correction of whether the issues in this case constituted “trends,” “events” or “uncertainties” that needed to be disclosed. And again, this is uncertworthy.

### **B. The Ninth Circuit’s Item 303 Analysis Was Correct**

The Ninth Circuit’s decision is also correct and announced no new rule of law regarding Item 303. The decision on Item 303 has three components, each of which is both accurate and unremarkable.

First, the lower court correctly noted that Plaintiffs alleged undisclosed trends, events, and uncertainties, but that the district court only analyzed trends. Petitioners claim that the district court need not have looked at events as it appears in a different part of the regulation. Pet. 28. But Petitioners overlook that the SEC’s 1989 release interpreting Item 303 states that a disclosure duty exists where a “trend, demand, commitment, event or uncertainty” is both known to management and reasonably likely to have a material effect. Management’s Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Securities Act Release No. 6835, Exchange Act Release No. 26831, Investment Company Act Release No. 16961, 43 SEC Docket 1330 at \*4 (May 18, 1989). For decades, courts

have relied upon this release and the inclusion of “events.” *See, e.g., Steckman*, 143 F. 3d at 1297); *Litwin v. Blackstone Group, L.P.*, 634 F.3d 706, 716 (2d Cir. 2011).

For “trends” and “uncertainties,” Petitioners claim that Item 303 has a “durational dimension” for them. Pet. 28. But they are wrong. The regulation states that trends and uncertainties must be disclosed if they “have had” or “are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” 17 C.F.R. § 229.303(b)(23)(ii). Nowhere in the regulation’s language is there any reference to or requirement of a specific duration. The Ninth Circuit noted this lack of a precise rule for duration and pointed out that other securities regulations, in contrast, do contain them. It then commented that Item 303 has not turned on “restrictive mechanical or quantitative inquiries.” *See also Panther Partners Inc. v. Ikanos Commcn’s, Inc.*, 681 F.3d 114, 122 (2d Cir. 2012) (“Item 303’s disclosure obligations . . . do not turn on restrictive mechanical or quantitative inquiries.”). This is not novel and creates no “freewheeling disclosure obligation under Item 303 for any interim developments . . . with no limitations.” Pet. 29. Importantly, the lower court was crystal clear that “[t]o be sure, not every set of interim financial results is a trend” and agreed with Defendants’ cases stating that there is no general obligation to disclose the results of a quarter in progress. Pet. App. 33a.

Similarly, Petitioners offer only hyperbole when describing that the lower court looked to the words of Section 11(a) and those of Item 303 to find that they

use different standards. Unremarkably, the Ninth Circuit merely noted that Section 11 requires a “substantial likelihood” that the disclosure would have been considered significant, while Item 303 only requires that it be “reasonably likely” that the relevant event will occur. *Id.* 38a. This in no way expands the bounds of Item 303 or fails to offer any limitations on it. In fact, the lower court elaborately walked through the existing safeguards against mandatory and continual disclosure in its analysis of Item 303. It listed: that developments required to be disclosed under Item 303 have to be known, must be reasonably likely to reflect changes to the registrant’s business (“rather than statistical noise in the registrant’s performance”), must be material, and must be “persistent, important or unusual enough to be a trend.” Pet. App. 37-38. Therefore, the Ninth Circuit did not create some boundless standard as Petitioners and their *amici* suggest.

Finally, on quantification, the lower court looked to long-existing case law holding that the extent of the trend must be disclosed. App. 40, *citing Litwin v. Blackstone Grp., L.P.*, 634 F.3d 706, 718-19 (2d Cir. 2011). It also applied common sense, because disclosing trends without disclosing any information about the extent of the effects of those trends “would be of little use.” Pet. App. 37a. However, the lower court was careful to say effects must be quantified “to the extent reasonably practicable” and that “there will be cases where no quantification is reasonably practicable. Moreover, any duty to quantify an effect does not necessarily require granular information about that effect.” *Id.* 38a.

While Petitioners claim that the lower court held that Item 303 “did not require disclosure of the interim results” (Pet. 27), it actually said no such thing. Instead, it noted that “interim financial developments may not be material” (Pet. App. 34a) and ultimately expressed “no view” on whether Robinhood had knowledge of any trend, event, or uncertainty, whether any such thing was “sufficiently persistent” or whether quantification would be reasonably practicable here. *Id.* 39a n.11.

### **III. This Case Is a Poor Vehicle for Resolving These Issues**

Even if the Court believes that Petitioners have raised a certworthy question, this case is not a suitable vehicle for resolving them. To begin with, the Ninth Circuit did not actually adopt the legal rules that Petitioners claim it did. As discussed above, at no point did the Ninth Circuit opine on whether Plaintiffs adequately alleged that omitted information was material, whether Robinhood had a duty to disclose it, or whether a trend existed. Instead, the lower court noted these were highly fact-specific questions for the district court to decide under the existing standards.

Similarly, the interlocutory posture of this case makes it an especially poor vehicle. The Ninth Circuit reversed a grant of a motion to dismiss and remanded to the district court to apply the correct legal standards to the facts. This Court “generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction.” *Virginia Mil. Inst. v. United States*, 508 U.S. 946 (1993) (Scalia, J.). The Petitioners even acknowledge as much. Pet. 36-37.

The concerns motivating this longstanding practice are especially acute in this case, given that Petitioners are asking this Court to wade into fact-bound questions before a factual record has been developed—and even before the district court has attempted to address them.

There is nothing urgent or important about reviewing the Ninth Circuit’s determination that no extreme departure is required for disclosure under Section 11 (a) or that Item 303 may at times mandate disclosure of interim results. As noted, the standards the Ninth Circuit reiterated already govern in circuits across the country. Contrary to Petitioners’ assertions (Pet. 34), the future of IPOs is not affected by the decision below. While Petitioners claim that IPOs have dropped since the late 1990s, Pet. 34, research does not link that drop to issuer fears of securities lawsuits, but rather to other factors. *See, e.g., Fewer Companies Are Going Public. Are Regulations Driving the Drop?* COLUMBIA BUSINESS SCHOOL (Aug. 13, 2025); *A Comeback for IPOs and Equity Capital Markets*, MORGAN STANLEY: GLOBAL CAPITAL MARKETS (Jul. 29, 2025), <https://www.morganstanley.com/insights/articles/ipo-outlook-2025>.

The lower court’s opinion in no way thwarts Congress or the SEC’s goals. And as this Court has repeatedly noted, if the SEC wishes to make changes to disclosure regulations, it has the ability to do so or to impose bright line rules within its regulations. Indeed, the SEC has recently requested public comment as part of a “comprehensive review of Regulation S-K,” which contains Item 303. Paul S. Atkins, *Regulation on Reforming Regulation S-K*,

U.S. Securities & Exchange Commission (Jan. 13, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>. That agency is more properly situated to assess the policy concerns raised by Petitioners.

Most importantly, Petitioners here ask the Court to take up legal questions that are not in dispute. Where Petitioners do identify conflicts over legal rules, they avoid asking the Court to embrace the judicially created pleading requirements purportedly adopted by certain lower courts. And for good reason. These pleading-stage securities questions involve the factbound application of well-understood standards to various circumstances. It is not an area of law that begets clean, bright line legal rules. The Ninth Circuit focused on the text of the statute and regulation at issue and the longstanding materiality standards that govern the inquiry. Petitioners do not offer a better approach.

This past year, the Court has twice taken up pleading-stage securities cases, only to discover that the legal disputes the petitions had teed up were not present and then dismissed the cases as improvidently granted. Because this petition is in the same mold, the Court should deny certiorari.

### **CONCLUSION**

For the foregoing reasons, this Court should deny the petition.

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Respectfully submitted,

AMANDA F. LAWRENCE  
*Counsel of Record*  
SCOTT+SCOTT ATTORNEYS  
AT LAW LLP  
156 South Main Street  
P.O. Box 192  
Colchester, CT 06415  
*alawrence@scott-scott.com*

MATTHEW PELLER  
SCOTT+SCOTT ATTORNEYS  
AT LAW LLP  
The Helmsley Building  
230 Park Avenue  
24th Floor  
New York, NY 10169  
*mpeller@scott-scott.com*

*Counsel for Respondents*