No. 25-944

In The Supreme Court of the United States

ROBINHOOD MARKETS, INC., ET AL., PETITIONERS,

vs.

VINOD SODHA, ET AL.,

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

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court, undersigned counsel for petitioners certify that the corporate disclosure statements set forth in the appendix to the petition for a writ of certiorari remain accurate, except that the Vanguard Group, Inc., no longer owns more than 10% of Robinhood Markets' outstanding common stock.

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REPLY BRIEF FOR PETITIONERS

The Ninth Circuit announced a new rule for companies going public: issuers must disclose *all* material interim information that post-dates the last reported results, without a separate inquiry into whether the omitted information rendered any statement made *misleading*. Respondents cannot square the Ninth Circuit's rule with the text of Section 11(a) or the decisions of other circuits. Instead, they try to re-write the decision below in two ways.

First, respondents try to limit the decision to its facts. They contend that the Ninth Circuit merely recognized that the omissions at issue here rendered other statements misleading "half-truths" or "selective disclosure[s]." Br. in Opp. 1-3, 12-16, 19, 22-24. That is *not* what the Ninth Circuit held. The Ninth Circuit did not find that any of Robinhood's statements were

rendered misleading by the alleged omissions; rather, it announced a new materiality-only "legal standard," declined to "express [a] view" on how that standard applied here, and remanded for the district court to determine whether any "omitted information was material." Pet. App. 29a & n.6.

Second, respondents try to limit the decision's import. They repeatedly claim that the Ninth Circuit collapsed the materiality and misleading prongs only in "certain contexts." Br. in Opp. 2-4, 12-16. But as respondents elsewhere admit (*id.* at 23), the Ninth Circuit's rule applies to the entire category of interim financial data. For any such data, "the materiality and misleading inquiries necessarily converge," resulting in "a duty to disclose" any "omitted information [that] was material." Pet. App. 28a-29a. That hugely consequential rule cannot be squared with the text of the statute, this Court's precedents, or the decisions of many other circuits—as the Ninth Circuit recognized in expressly disavowing the First Circuit's approach. *Ibid.*

Compounding its statutory error, the Ninth Circuit drastically expanded a regulatory disclosure requirement, Item 303(b), in similar fashion. According to the Ninth Circuit, that regulation effectively mandates a disclose-everything-material requirement for interim events—an interpretation that respondents defend by insisting that the regulation requires disclosure of all "uncertainties" and "events," regardless of when they occur or whether they are linked to trends "of a specific duration." Br. in Opp. 28. Again, that sweeping rule cannot be squared with the text of Item 303(b), decisions of other courts, or longstanding industry practice.

Nor can respondents wave away the disruptive consequences of the decision below. Companies have never had to disclose all material interim results, and the SEC is currently proposing a move to an opt-in semi-annual disclosure regime. The SEC thus wants to move in the *other* direction, by mandating less frequent disclosure. But the decision below will prevent any such proposal from being effective. Companies will be forced to overload investors with interim information, no matter what regime the SEC adopts. The Court should therefore call for the views of the Solicitor General if it does not simply grant certiorari outright.

I. THE NINTH CIRCUIT'S INTERPRETATION OF SECTION 11 WARRANTS REVIEW.

A. The Decision Below Rewrites Section 11(a)'s Misleading-Omissions Prong And Contradicts This Court's Decision in *Macquarie*.

Section 11(a)'s misleading-omissions prong articulates a clear rule: an issuer must disclose any "material fact[s]" that are "necessary to make the statements" in the offering documents "not misleading." 15 U.S.C. § 77k(a). To trigger liability, an omission thus must be material *and* render an affirmative statement misleading—just as this Court held two terms ago in interpreting virtually identical language in Rule 10b-5, *Macquarie Infrastructure Corp.* v. *Moab Partners, L. P.*, 601 U.S. 257, 264-266 (2024), and just as many courts of appeals have held in interpreting Section 11(a), *see* Pet. 20-21 (collecting cases). Yet the Ninth Circuit's materiality-only rule reads the misleading requirement out of the statute entirely for interim financial data. This Court's review is needed to correct that fundamental interpretive

error, not "merely to clarify language in the opinion below." Br. in Opp. 3.

Respondents try to downplay the Ninth Circuit's holding—even though it is exactly what respondents urged that court to hold. *See* Resp. C.A. Br. 28 ("[T]he applicable standard for whether information is required to be disclosed . . . is simply the standard for materiality."); Resp. C.A. Reply Br. 4-5 (similar). According to respondents, the decision below never "eliminated the distinction between the duty to disclose and materiality." Br. in Opp. 12-14. But as respondents elsewhere admit (*id.* at 8, 13, 23), the Ninth Circuit believed that "theoretical distinction" applies "only *in certain contexts*"—and *not*, as relevant here, to the entire category of interim data concerning events that "took place" after "the previous quarter[]" being reported. Pet. App. 22a-25a (emphasis added). For all such data, the Ninth Circuit explicitly "collaps[ed] the duty to disclose into materiality," so that companies are "required to disclose 'material' interim information," full stop. Pet. App. 28a; *id.* at 23a-25a, 29a.

Respondents never try to square that rule with Section 11's text or this Court's decisions in *Macquarie* and its predecessors. Instead, they repeat the Ninth Circuit's error, asserting that an omission of material fact about subsequent performance necessarily renders statements about the prior quarter's results "misleading." Br. in Opp. 13, 23. But accurate disclosures about past performance are not statements about the future—and thus are not misleading regardless of subsequent performance, let alone *necessarily* misleading. To borrow this Court's analogy, a child who discloses that she had dessert last night might need to disclose that the dessert

was a whole cake to avoid a misleading disclosure about last night's sugar intake, *see Macquarie*, 601 U.S. at 264—but saying that she had cake last night says nothing about what she is eating *today*.

Respondents also insist that certain of the allegedly omitted interim results here rendered specific prior statements misleading "half-truths." Br. in Opp. 1, 5-6, 15-16, 23. But respondents never cite the decision below for that argument, and for good reason: the Ninth Circuit did not find any half-truths or "selective disclosures" here—neither term is even mentioned in its opinion—and *rejected* the requirement that respondents must show that the alleged omissions rendered earlier statements half-truths. Instead, the Ninth Circuit held that material omissions alone were sufficient to impose liability and remanded for the district court to determine *only* "whether [respondents] adequately alleged that the omitted information was material." Pet. App. 29a. Eliminating any doubt, the court stated: "If they did, then they have adequately alleged that Robinhood had a duty to disclose the omitted information." *Ibid.* Nothing about that materiality-only standard turns on allegedly misleading half-truths.

B. The Ninth Circuit's Holding Conflicts With Other Courts of Appeals' Decisions.

The decision below exacerbates a recognized conflict in the lower courts' approach to interim information and required disclosures. Three circuits—the Third, Tenth, and Eleventh—have held that issuers have no duty to update statements about historical performance with new information unless the prior statements are "misleading or deceptive if left unrevised." Pet. 22-23. Respondents

protest that this case does not involve a "*previously* filed document[]" that had to be "updated." Br. in Opp. 19-20. But none of those decisions turned on whether the company made the statement *before* or *after* new information materialized. Rather, each presented the same legal question: does an issuer have a duty to disclose events that post-date the historical performance disclosed in the statement? The Ninth Circuit requires disclosure whenever the subsequent events are material; three other circuits correctly treat the materiality and misleading requirements as distinct. Pet. 23; Grundfest Br. 4.

Nor can respondents square the decision below with the Second Circuit's approach. Pet. 24-25. As the Ninth Circuit did, respondents characterize the Second Circuit as adopting the same atextual rule: materiality alone is sufficient when dealing with interim data. Br. in Opp. 21-22. But in every case that respondents and the Ninth Circuit cite, the Second Circuit went on to determine (or remand for a determination) whether plaintiffs "allege[d] that [a] statement was materially *misleading*." *E.g.*, *Mi* v. *Waterdrop Inc.*, 2024 WL 159191, at *2 (2d Cir. Jan. 16, 2024) (emphasis added); *Stadnick* v. *Vivint Solar, Inc.*, 861 F.3d 31, 37 (2d Cir. 2017); Pet. 25. And even if respondents were right about the Second Circuit, that would mean the two most important securities-law jurisdictions in the Nation are *both* misinterpreting Section 11(a)—further cementing the need for certiorari.

Both the Second and Ninth Circuits also have rejected the First Circuit's requirement that interim data reflect an "extreme departure" from "currently available information" before companies must disclose it. *Compare Shaw* v. *Digit. Equip. Corp.*, 82 F.3d 1194, 1210 (1st Cir. 1996), *with* Pet. App. 27a ("*Shaw* . . . is not the law of this

circuit."); *Stadnick*, 861 F.3d at 37 (similar). Respondents try to avoid that acknowledged split by casting *Shaw* as a "specific application of the traditional materiality standard to interim financial results." Br. in Opp. 18. But that's the point: the First Circuit adopted one interim-results-specific materiality standard, the Ninth adopted another, and still other courts apply the plain statutory text.

Finally, respondents complain that Robinhood did not endorse a single preferred approach. Br. in Opp. 3, 16, 19. But Robinhood urged both this Court and the Ninth Circuit to apply *Macquarie* and endorse the approach of circuits that adhere to the text of Section 11(a) by requiring that an omission be both material and misleading. Pet. 15-23; Pet. C.A. Br. 25-31. Robinhood also made clear (Pet. 23-24, 25-26) that if this Court instead adopts the First Circuit's approach, Robinhood would still prevail, as the district court held. Pet. App. 112a-113a. The fact that Robinhood would prevail under either of the approaches taken by other courts of appeals is a reason to grant review, not deny it. *E.g.*, *Patel* v. *Garland*, 596 U.S. 328, 336 & n.1 (2022) (three-way split; two camps supported petitioner). Either way, the Ninth Circuit's materiality-only standard is wrong and warrants review.

II. THE NINTH CIRCUIT'S INTERPRETATION OF ITEM 303 WARRANTS REVIEW.

A. The Decision Below Misinterprets Item 303.

Item 303(b) of the SEC's regulations requires companies to disclose "known trends or uncertainties" that are likely to materially impact "net sales or revenues or income from continuing operations." 17 C.F.R.

§ 229.303(b)(2)(ii). As the securities industry has long understood, that provision requires disclosure of only "*persistent* conditions" relating to existing disclosures. SIFMA Br. 11-15 (emphasis added); Grundfest Br. 11-14. Yet the Ninth Circuit rejected that view, divorcing Item 303(b) from Section 11 and requiring near-boundless real-time disclosures. Pet. App. 32a-33a.

Respondents insist that Item 303(b) has no "durational dimension" because the regulation also refers to "uncertainties" and "events." Br. in Opp. 27-28. But context is crucial. Item 303(b) refers to "*trends* or uncertainties" in a subsection entitled "[f]ull fiscal years"—while dealing with "[i]nterim periods" in a separate subsection (c). 17 C.F.R. § 229.303(b)(2)(ii), (c) (emphasis added). The text thus requires disclosing only long-term, persistent trends or uncertainties, not brief episodes. Pet. App. 86a (Rawlinson, J., dissenting in relevant part). As for "events," respondents ignore that Item 303(b) requires disclosure of events only in a separate sentence relating to "the relationship between costs and revenues" that is not at issue here. Pet. 28.

Respondents again try to rewrite the decision below as imposing some sort of persistence-based "safeguards" on the term "trends." Br. in Opp. 28-29. But the decision below held that—even as to the term "trends"—"sufficient[] persisten[ce]" is not required. Pet. App. 31a. And the Ninth Circuit went further, as respondents admit (at 27-28), and held that the terms "uncertainties" and "events" do not require *any* "patterns with some minimum duration" or "persistence over time" before disclosure is warranted. *Id.* at 35a. Companies thus will need to disclose and quantify *all* material one-off uncertainties and events, as well as interim brief episodes,

or risk liability. Item 303(b) does not impose such a sweeping mandate.

B. The Split On Item 303 Warrants Review.

In rejecting any temporal limitation for Item 303(b), the Ninth Circuit squarely split from the Fifth and Eleventh Circuits and the Southern District of New York—all of which hold that Item 303(b) requires disclosure only of persistent trends. Pet. 29-31. Respondents do not seriously dispute the rule in the Fifth Circuit or the Southern District. Br. in Opp. 24, 26. Given the importance of the question presented, the undisputed split between the Ninth and Fifth Circuits, compounded by the Ninth Circuit's rejection of the Southern District's approach, warrants review.

The split is broader too. For the Eleventh Circuit, respondents focus on its dicta about a hypothetical case to argue that court's approach somehow aligns with the Ninth's. Br. in Opp. 24-25. But in resolving the actual case before it, the Eleventh Circuit was clear that patterns of a "short duration" do not count, and that the "obvious focus" of Item 303(b) is "preventing the latest reported results from misleading potential investors." *Oxford Asset Mgmt., Ltd.* v. *Jaharis*, 297 F.3d 1182, 1191-92 (2002). Those are two critical guardrails that the Fifth Circuit later embraced. *Kapps* v. *Torch Offshore*, Inc., 379 F.3d 207, 217-21 (2004). The Ninth Circuit explicitly rejected both limitations.

The First Circuit has again charted its own path, holding that Item 303(b) does not require disclosing "intra-quarterly information" unless it portends "an extreme departure from publicly known trends and uncertainties." *Glassman* v. *Computervision Corp.*, 90

F.3d 617, 631 (1st Cir. 1996) (quotation marks omitted). Respondents assert that *Glassman* was "fact-specific" and applied the "extreme departure" test only "in passing." Br. in Opp. 25-26. But the "extreme departure" test was the basis for *Glassman*'s Item 303 holding, and the Ninth Circuit squarely broke from the First Circuit in rejecting that test in this context too. Pet. App. 39a.

The split over Item 303(b) thus closely resembles the split over Section 11. The Fifth and Eleventh Circuits read Item 303 consistent with its text to require disclosure of persistent trends, where omission risks misleading investors; the First Circuit has imposed its own "extreme departure" requirement; and the Ninth Circuit now requires disclosure of interim events and uncertainties without any sort of durational limit, and regardless of whether any reported results are rendered misleading. Just as with Section 11, this Court should adopt the Fifth and Eleventh Circuits' faithful interpretation of the regulatory text—or, at minimum, endorse the First Circuit's approach. Under either standard, respondents' Item 303 claim would fail. Pet. 31.

III. THIS CASE IS AN EXCELLENT VEHICLE TO RESOLVE THESE IMPORTANT QUESTIONS.

A. Recent developments underscore the need for this Court's intervention to correct the Ninth Circuit's overreach. The SEC has proposed regulatory amendments to allow companies to file reports semi-annually, rather than on a quarterly basis. SEC, *SEC Proposes Amendments to Permit Optional Semiannual Reporting by Public Companies* (May 5, 2026), https://tinyurl.com/yc8jsz9j. Yet the Ninth Circuit's rule would render such amendments dead on arrival, because

companies would be required to disclose all material interim information anyway. If the Court has any doubt about the need for review of the decision below, it should call for the views of the Solicitor General.

But there should be no doubt. Neither Congress nor the SEC has ever required companies to disclose all material information, much less on an interim basis, for obvious reasons: such a regime would overload investors with information, require companies to make snap judgments about real-time data, and saddle businesses with extraordinary costs that would be passed onto consumers. Pet. 32-34; SIFMA Br. 15-22. And the decision below expands the disclosure obligations for companies going public at the worst possible time—the weeks leading up to filing the prospectus, when companies are working to finalize and audit the results of previous quarters. Issuers will be forced to make real-time judgments about the materiality of late-breaking events, uncertainties, or other data, regardless of whether that information renders any other statements misleading. That rule will inevitably chill the already overburdened and shrinking IPO markets. SIFMA Br. 18-20; WLF Br. 7-18; Pet. 34-35. And because Section 11's text is materially identical to Rule 10b-5—with Item 303 applying to *all* quarterly and annual reports—disclosures of noisy, unreliable information will become widespread.

Respondents protest that the SEC can change its regulations, and that the SEC is reviewing parts of Regulation S-K. Br. in Opp. 31-32. But the SEC cannot change the Ninth Circuit's interpretation of Section 11. And even if the SEC might amend Item 303(b), public companies would risk massive liability in the interim. This Court's intervention is needed now.

B. Both questions presented are as clean as they come. Respondents' assertion that the decision below was "factbound," Br. in Opp. 32, is flatly wrong. The Ninth Circuit could not have been clearer that it was *not* wading into factual disputes: "We hold only that the district court applied the wrong legal standard" under Section 11(a) and "remand so it may apply the correct one." Pet. App. 29a & n.6; Pet. App. 39a (similar for Item 303). And Robinhood has urged this Court to grant certiorari to hold that those legal rules are incorrect under this Court's precedents and the statutory and regulatory text—not to resolve how the correct standards would apply to respondents' allegations here.

Respondents also repeatedly emphasize (Br. in Opp. 1, 32) that two petitions last Term were dismissed as improvidently granted: *Facebook, Inc.* v. *Amalgamated Bank*, 604 U.S. 4 (2024), and *NVIDIA Corp.* v. *Ohman*, 604 U.S. 20 (2024). Both of those cases involved factbound disputes—such as whether particular statements were misleading half-truths or whether plaintiffs adequately pleaded scienter—that are not implicated by the Ninth Circuit's legal rule. Grundfest Br. 16-18; Pet. 37; Pet. App. 29a, 39a. Respondents' only other complaint is that the decision below was interlocutory. Br. in Opp. 30. But that only confirms this case is of a pair with *Macquarie*, where the Court granted certiorari to review—and ultimately reject—the legal standard announced by a court of appeals reviewing the dismissal of securities-law claims. 601 U.S. at 262, 266 & n.2. The same course is warranted here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 11, 2026