

In the Supreme Court of the United States

ROBINHOOD MARKETS, INC., ET AL., PETITIONERS

v.

VINOD SODHA, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether an issuer can be found liable under the misleading-omissions prong of Section 11(a) of the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, based on a determination that the issuer failed to disclose interim financial information that is material within the meaning of Section 11(a), without an additional inquiry to determine whether the omission rendered any affirmative statement misleading.

2. Whether an issuer violates Item 303 of Regulation S-K, 17 C.F.R. 229.303—and thus Section 11(a)’s required-statements prong—by failing to disclose and quantify interim financial data before quarterly reporting deadlines.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court’s order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted with respect to the first question presented. As explained below, the United States suggests that the Court reformulate that question.

STATEMENT

A. Legal Background

1. The Securities Act of 1933 (Securities Act or Act), 15 U.S.C. 77a *et seq.*, “protects investors by ensuring that companies issuing securities (known as ‘issuers’) make a ‘full and fair disclosure of information’ relevant to a public offering.” *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 178

(2015) (citation omitted). The Act generally requires issuers to file registration statements with the Securities and Exchange Commission (SEC or Commission) before offering securities to the public. See 15 U.S.C. 77e. The registration statement must contain certain information about the issuer and the security. 15 U.S.C. 77g; see 15 U.S.C. 77aa. A registration statement filed under the Securities Act becomes effective 20 days after filing “or such earlier date as the Commission may determine.” 15 U.S.C. 77h(a).

The Securities Act establishes a private right of action for material misstatements or omissions in effective registration statements. Specifically, Section 11(a) provides that “any person acquiring” a security in a registered offering may sue the issuer, its directors, its underwriters, and others if “any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.” 15 U.S.C. 77k(a); see *Omnicare*, 575 U.S. at 179. The Act thus imposes liability as to “what the [registration] statement says,” as well as “what it leaves out.” *Omnicare*, 575 U.S. at 179.

Under Section 11(a), issuers may be liable for omissions in two circumstances. First, the required-statements prong creates liability for the omission of “a material fact required to be stated” by securities laws or regulations. 15 U.S.C. 77k(a). Second, the misleading-omissions prong creates liability for the omission of “a material fact * * * necessary to make the statements [in the registration statement] not misleading.” *Ibid.* The statute “establish[es] a strict liability offense.” *Omnicare*, 575 U.S. at 193.

2. As relevant here, issuers conducting an initial public offering (IPO) generally must register any offering of their securities by using a registration statement called Form S-1. See 17 C.F.R. 239.11; SEC, *Registration Statement Under the Securities Act of 1933 (Form S-1)* (expires Mar. 31, 2029), <https://www.sec.gov/files/forms-1.pdf>. Form S-1 filers must comply with Regulation S-X, which requires audited annual financial statements for a specified number of preceding years. *Form S-1*, at 8; see 17 C.F.R. 210.3-01(a), 210.3-02(a). Regulation S-X also generally requires that financial statements must be as of a date no more than 134 days before the registration statement’s effective date; if they are not, interim financial statements, which may be unaudited, are required. See 17 C.F.R. 210.3-01(e)(2), 210.3-02(b), 210.3-12(a) and (g)(1)(ii).

Form S-1 filers must also provide “[i]nformation required by Item 303 of Regulation S-K,” known as “management’s discussion and analysis of financial condition and results of operations,” or MD&A. *Form S-1*, at 8; see 17 C.F.R. 229.303. MD&A provides “material information relevant to an assessment of the financial condition and results of operations of the registrant,” so that investors can “view the registrant from management’s perspective.” 17 C.F.R. 229.303(a). In particular, Item 303(b)(2)(ii) requires each issuer to describe “any 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.” 17 C.F.R. 229.303(b)(2)(ii).

B. The Present Controversy

1. Petitioner Robinhood Markets, Inc., is an online brokerage firm whose “‘core product offering’ is its retail investing platform, which allows customers to trade”

securities and other assets. Pet. App. 3a; see *id.* at 3a-4a. In early 2021, Robinhood’s trading revenue rose significantly because of two developments. First, in January 2021, retail investors purchased a large number of shares in GameStop and other companies to squeeze institutional short sellers of those stocks, in what became known as the “meme stock event.” *Id.* at 4a; see *id.* at 109a-110a. Second, between January and May 2021, Robinhood “experienced a large increase” in crypto-asset trading due to Dogecoin’s popularity. *Id.* at 110a; see *id.* at 5a.

Consequently, Robinhood’s revenue from equities and options trading rose by 50% from Q4 2020 to Q1 2021, and its revenue from crypto-asset trading rose sevenfold from Q4 2020 through “the initial stage of the Dogecoin rally.” Pet. App. 111a. But both events were short-lived. Meme-stock trading fell in Q1 2021, and Dogecoin trading fell throughout Q2 2021. *Ibid.*

In July 2021, after Q2 2021 ended, Robinhood conducted an IPO. Pet. App. 109a. On July 27, 2021, Robinhood filed its final amendment to the registration statement for that offering (on Form S-1), which the Commission declared effective the next day. *Id.* at 6a; see C.A. E.R. 70. On July 30, the firm filed its final prospectus, which included the IPO price of \$38. See Pet. App. 6a, 109a.

Robinhood’s registration statement included financial statements for 2019 through Q1 2021, which had ended on March 31, 2021. Pet. App. 123a-124a. Because Q1 2021’s financial statements were less than 135 days old by the registration statement’s July 28, 2021 effective date, Regulation S-X did not require Robinhood to include interim financial statements for Q2 2021. See p. 3, *supra*. And Robinhood was not required to report

quarterly results for Q2 2021 on Form 10-Q until 45 days after the effective date, *i.e.*, in September. See 17 C.F.R. 240.13a-13. Nor did Regulation S-X require Robinhood to provide interim financial statements for Q3 2021, which was in progress at the time the registration statement became effective. See Pet. App. 124a-125a.

Robinhood's registration statement discussed the Q1 2021 revenue spike, explaining that the meme-stock and crypto-asset events had "encouraged an unprecedented number of first-time retail investors" to trade on its platform. Pet. App. 8a. Robinhood further explained that "[t]rading activity was particularly high during the first two months of the 2021 period, returning to levels more in line with prior periods during the last few weeks of [Q2 2021], and remained at similar levels into the early part of [Q3 2021]." *Id.* at 9a. The firm accordingly expressed the expectation that its "growth rates in revenue" and certain "key business metrics" would "decline in future periods," and it stated that "such declines could be significant." *Id.* at 12a. The firm disclosed that it "expect[ed] to report revenue of between \$546 million and \$574 million" for Q2 2021, and that Q3 2021 revenue would "be lower * * * as a result of decreased levels of trading activity." *Id.* at 9a. The firm cautioned investors "not [to] rely on [its] revenue or key business metrics for any previous quarterly or annual period as any indication" of likely performance "in future periods." *Id.* at 12a.

On August 18, 2021, Robinhood reported \$565 million in revenue for Q2 2021, which was consistent with the estimates in the registration statement. See Pet. App. 9a; C.A. S.E.R. 11. On October 26, 2021, Robinhood's Q3 2021 results showed declines in revenue and warned

that Q4 2021 revenue was likely to be even lower. See Pet. App. 17a. Robinhood’s stock price then fell by approximately 10%. *Ibid.*

2. Respondents “seek to represent a class of Robinhood investors.” Pet. App. 3a. In December 2021, they sued Robinhood, the firm’s officers and directors, and the underwriters of the IPO, all of whom are petitioners here. *Id.* at 3a, 18a. As relevant here, respondents’ operative second amended complaint alleges that petitioners are liable under Section 11(a)’s misleading-omissions prong because the registration statement omitted revenue, trading volume, and key-performance-indicator reporting from Q2 and Q3 2021, “which showed declines in the business.” *Id.* at 124a; see *id.* at 18a, 122a-124a. Respondents further allege liability under Section 11(a)’s required-statements prong, based on Robinhood’s failure to disclose that interim information under Item 303(b)(2)(ii) of Regulation S-K. See *id.* at 3a, 139a.*

The district court dismissed respondents’ operative complaint. See Pet. App. 107a-154a. As relevant here, the court stated that issuers are required to disclose “out-of-quarter or intra-quarterly” financial information only if that information reflects “declines so extraordinary as to be unusual and indicative of larger future trends when viewed in context of the company’s historical data.” *Id.* at 125a. The court found that the interim

* Respondents also raised claims under Sections 12 and 15 of the Securities Act, 15 U.S.C. 77l, 77o, but the parties agreed that those claims “rise[] or fall[]” with the Section 11 claim. Pet. App. 19a. Respondents further alleged that the registration statement omitted risk-factor information required by Item 105 of Regulation S-K, 17 C.F.R. 229.105. See Pet. App. 39a-44a. The Ninth Circuit affirmed the district court’s dismissal of that claim, *id.* at 44a, and no party seeks review of that ruling.

financial information respondents had cited “d[id] not reflect * * * extraordinary” results relative to Robinhood’s “pre-frenzy” financials. *Id.* at 127a. The court also determined that Item 303(b)(2)(ii) did not require Robinhood to include the omitted interim financial information in its registration statement. *Id.* at 139a-140a. The court explained that “[a] ‘trend’ under Item 303 is an ‘observed pattern that accurately reflects persistent conditions of the particular registrant’s business environment,’” *id.* at 139a (citation omitted), and that the alleged omissions here “were not so persistent as to require disclosure,” *id.* at 140a.

3. A divided panel of the Ninth Circuit vacated the district court’s dismissal order in relevant part and remanded for further proceedings. See Pet. App. 1a-106a.

a. The court of appeals first held that “the district court applied the incorrect legal standard to” respondents’ Section 11(a) misleading-omissions claim. Pet. App. 29a. The court recognized that “‘the materiality of information is different from * * * whether a statement is false or misleading,’” and that there is consequently “a theoretical distinction between materiality and the duty to disclose.” *Id.* at 22a (brackets and citation omitted). The court concluded, however, that where the allegedly misleading omissions “involve the relationship between a prior statement concerning a particular time period and an event subsequent to that time period,” the “‘inquiries as to [disclosure] duty and materiality coalesce.’” *Id.* at 23a (quoting *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993), cert. denied, 511 U.S. 1017 (1994)). The court held that because “all the omissions” at issue here concerned such circumstances, “Robinhood was required to disclose ‘material’ interim information.” *Id.* at 23a-24a.

The court of appeals rejected the First Circuit’s approach, under which issuers must 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.” Pet. App. 26a (quoting *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1210 (1st Cir. 1996)); see *id.* at 26a-29a. The court explained that “the proper test for the duty to disclose is the test for materiality,” *id.* at 27a, and that by “collapsing the duty to disclose into materiality,” the court was “mak[ing] the securities law in [the Ninth Circuit] clearer and more predictable,” *id.* at 28a.

b. The court of appeals further held that the district court had “erred in analyzing [respondents’] Item 303 theory.” Pet. App. 31a. The court explained that “Item 303’s disclosure obligations are not limited to sufficiently persistent ‘trends,’” that “Item 303 requires quantification of the disclosed uncertainties to the extent reasonably practicable,” and that “Item 303 imposes a different standard for disclosure than Section 11’s ‘misleading’ prong.” *Ibid.* In particular, Item 303’s disclosure standard “requires more disclosure than the materiality test typically used in securities law.” *Id.* at 38a. “Thus,” the majority concluded, “the district court’s determination that Robinhood’s problems were not ‘historically extraordinary’ is not a basis for rejecting [respondents’] Item 303 theory.” *Id.* at 39a (citation omitted).

c. Judge Rawlinson dissented in relevant part. Pet. App. 45a-106a. In her view, the majority’s “reasoning is not consistent with [Ninth Circuit] precedent cautioning against reliance on subsequent events to establish the existence of misleading statements.” *Id.* at 78a. Judge

Rawlinson further explained that “[t]he information and disclosures provided by Robinhood, together with the marketplace information, equal or exceed what we have previously accepted as adequate under Item 303 to preclude liability.” *Id.* at 100a.

4. The court of appeals denied rehearing en banc. See Pet. App. 155a-156a.

DISCUSSION

Section 11(a) imposes liability in a private right of action on issuers whose registration statements “contain[] an untrue statement of a material fact” or “omit[] to state a material fact [1] required to be stated therein or [2] necessary to make the statements therein not misleading.” 15 U.S.C. 77k(a). Respondents have not alleged that Robinhood’s registration statement contained any untrue factual statements. Pet. App. 20a. Instead, respondents’ complaint alleges unlawful omissions under prongs 1 and 2 of Section 11(a)’s text concerning omissions. *Ibid.*

The first question presented in the certiorari petition seeks review of the court of appeals’ holding with respect to prong 2, known as the “misleading-omissions” prong. That question warrants this Court’s review. The Ninth Circuit’s analysis erroneously collapses two distinct elements of the statutory violation; conflicts with decisions of other circuits; and threatens significant untoward consequences. The government recommends, however, that the Court reformulate the first question presented to ensure adversity between the parties.

The second question presented seeks review of the Ninth Circuit’s holding with respect to prong 1, known as the “required-statements” prong. Respondents allege that disclosure of Robinhood’s interim financial data was required by Item 303 of Regulation S-K, and that

petitioners violated Section 11(a)’s required-statements prong by failing to disclose that information. The court of appeals’ analysis reflects a misunderstanding of the relationship between the distinct materiality requirements of Item 303 and Section 11(a). Petitioners do not seek review on that basis, however, and the challenges petitioners raise do not warrant the Court’s review.

A. The First Question Presented Warrants This Court’s Review

1. The court of appeals erred in its analysis of Section 11(a)’s misleading-omissions prong.

a. To plead a claim for a misleading omission in a registration statement, a plaintiff must allege both (1) that the registration statement “omitted to state a material fact” and (2) that the omitted fact is “necessary to make the statements therein not misleading.” 15 U.S.C. 77k(a). The misleading-omissions prong “is not a general disclosure requirement” covering *all* material information. *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 194 (2015). Rather, it “affords a cause of action only when an issuer’s failure to include a material fact has rendered a published statement misleading.” *Ibid*.

This Court’s interpretation of the cause of action under SEC Rule 10b-5(b)—which implements Section 10(b) of the Securities Exchange Act of 1934, ch. 404, § 10(b), 48 Stat. 891—reinforces that conclusion. In *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024), this Court addressed what constitutes an actionable misleading omission in the context of Rule 10b-5(b), which (like Section 11(a)) forbids the omission of “a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” *Id.* at 260 (quot-

ing 17 C.F.R. 240.10b-5(b)). The Court recognized that, because Rule 10b-5(b) “prohibits omitting material facts necessary to make the ‘statements made . . . not misleading,’” the Rule covers “half-truths, not pure omissions.” *Id.* at 264.

The *Macquarie* Court “emphasi[z]ed” that [Section] 10(b) and Rule 10b-5(b) do not create an affirmative duty to disclose any and all material information,” 601 U.S. at 264 (quoting *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44 (2011)), because “[s]ilence, absent a duty to disclose, is not misleading under Rule 10b-5,” *id.* at 265 (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988)). Rather, establishing a claim for half-truths under Rule 10b-5(b) “requires identifying affirmative assertions (*i.e.*, ‘statements made’)” and showing that “other facts are needed to make those statements ‘not misleading.’” *Id.* at 264. An omission of material facts is misleading if the omitted “facts conflict with what a reasonable investor would take from the statement itself,” given “all its surrounding text, including hedges, disclaimers, and apparently conflicting information,” as well as “the customs and practices of the relevant industry.” *Omnicare*, 575 U.S. at 189-190.

b. Here, the Ninth Circuit erred by collapsing two distinct elements of a Section 11(a) misleading-omissions claim into one materiality inquiry. The court described respondents as arguing that the appropriate “‘standard for whether information is required to be disclosed under [Section] 11(a)’” is “‘simply the standard for materiality’”—*i.e.*, that petitioners “‘had a duty to disclose” information that a reasonable investor would view “‘as having significantly altered the total mix of information available.’” Pet. App. 20a. The court adopted that standard, describing its own approach as “collap-

sing the duty to disclose into materiality,” *id.* at 28a, whenever “the omissions challenged * * * involve the relationship between a prior statement concerning a particular time period and an event subsequent to that time period,” *id.* at 23a; see *id.* at 21a (“Section[] 11 * * * create[s] a duty to disclose all material information in cases like this one.”).

Under the Ninth Circuit’s approach, the distinct requirement to show that “other facts are needed to make [a] statement[] ‘not misleading,’” *Macquarie*, 601 U.S. at 264, is effectively nullified in an important category of cases. By its terms, the court of appeals’ rule imposes liability if an issuer fails to disclose information that a reasonable investor would view “as having significantly altered the total mix of information available,” Pet. App. 20a (citation omitted), no matter how accurate the issuer’s statements regarding its historical performance, and no matter how clearly those statements disclaim any necessary connection between past and future performance. That approach cannot be reconciled with the statutory text or this Court’s precedents. Rather, this Court has emphasized that a pure omission of material information is *not* a sufficient basis for holding an issuer liable under Section 11(a)’s misleading-omissions prong, and that context is crucial to determining whether an omission renders an affirmative statement misleading. See *Omnicare*, 575 U.S. at 189-190.

To be sure, statements about historical financial data *can* be rendered misleading by a failure to disclose additional information in some circumstances. For example, an issuer might expressly assert that “historical financial data [are] predictive of the future.” Pet. 3. In that circumstance, the omission of known interim results might be misleading, depending on the information pro-

vided elsewhere in the registration statement, if those interim results “conflict with what a reasonable investor would take from the statement itself.” *Omnicare*, 575 U.S. at 189. But statements about historical performance do not inherently imply any view as to likely future events, and issuers routinely disclaim such predictions. Here, for example, Robinhood cautioned that its Q1 2021 performance was not indicative of its future performance, and the company even warned of declines. See p. 5, *supra*. This case accordingly underscores the need to determine *both* whether particular omitted facts are material, *and* whether any material omission renders an affirmative statement misleading, given “all” of a statement’s “surrounding text.” *Omnicare*, 575 U.S. at 190.

2. The Ninth Circuit’s analysis of Section 11(a)’s misleading-omissions prong conflicts with decisions of other circuits.

a. The Third, Tenth, and Eleventh Circuits have correctly recognized that Section 11(a)’s misleading-omissions prong imposes liability only if (1) a registration statement omits a material fact *and* (2) the omission causes an actual statement in the registration statement to be misleading.

Thus, in analyzing whether the plaintiffs in *In re Adams Golf, Inc. Sec. Litig.*, 381 F.3d 267 (3d Cir. 2004), had adequately pleaded a Section 11(a) misleading-omissions claim, the Third Circuit recognized that “[a] determination that information missing from a registration statement * * * is material does not end [the court’s] analysis.” *Id.* at 277. The court explained that it must “also decide whether the issuer had the duty to disclose that material fact such that its omission made the statement misleading.” *Ibid.* The Tenth and Elev-

enth Circuits similarly have recognized that materiality and misleading effect are separate requirements under Section 11(a). See *United Food and Commercial Workers Union Local 880 Pension Fund v. Chesapeake Energy Corp.*, 774 F.3d 1229, 1241-1242 (10th Cir. 2014) (finding that the alleged omission “was not a *material* omission,” and separately concluding that “the omission of information * * * is actionable only if the omission was necessary to make something in the Registration Statement not misleading”), cert. denied, 577 U.S. 816 (2015); *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1190 (11th Cir. 2002) (“disagree[ing]” that “issuers have a duty to disclose, in the prospectus, *all* information material to the offering,” because “Section 11(a) only makes actionable the omission of a material fact *required to be stated in the prospectus or necessary to make the statements in the prospectus not misleading*”), cert. denied, 540 U.S. 872 (2003).

In the context of Rule 10b-5(b) as well, the Third, Tenth, and Eleventh Circuits have recognized that a duty to disclose arises only when omitted information is material *and* the omission renders actual statements misleading. See *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1431-1432 (3d Cir. 1997) (Alito, J.); *Indiana Pub. Ret. Sys. v. Pluralsight, Inc.*, 45 F.4th 1236, 1248 (10th Cir. 2022); *Finnerty v. Stiefel Labs., Inc.*, 756 F.3d 1310, 1316-1317 (11th Cir. 2014), cert. denied, 575 U.S. 912 (2015). Those decisions are relevant, *contra* Br. in Opp. 20, because—as the decision below recognized—Rule 10b-5(b)’s language is “nearly identical” to the text of Section 11(a)’s misleading-omissions prong, Pet. App. 22a n.3.

b. While its position is less clear, the Second Circuit also appears to be in conflict with the decision below.

In re Time Warner Inc. Securities Litigation, 9 F.3d 259 (2d Cir. 1993), cert. denied, 511 U.S. 1017 (1994)—on which the decision below relied, see Pet. App. 23a—held that when a corporation announces a “specific business goal,” “as well as an intended approach for reaching it, it may come under an obligation to disclose other approaches to reaching the goal.” *Time Warner*, 9 F.3d at 268. Consistent with the decision below, *Time Warner* 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.* at 267. But unlike the Ninth Circuit below, *Time Warner* did not hold that the “failure to disclose the simultaneous consideration of * * * an alternative method of raising capital,” *ibid.*, was automatically misleading if that omitted information was material. Rather, the court concluded that “[w]hether consideration of the alternate approach constitutes material information, *and whether nondisclosure of the alternate approach renders the original disclosure misleading*, remain questions for the trier of fact.” *Id.* at 268 (emphasis added).

Citing *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31 (2d Cir. 2017), respondents suggest that the approach taken by the Ninth Circuit in this case “has been the law in the Second Circuit for at least a decade.” Br. in Opp. 21. *Stadnick* stated *both* that “a reasonable investor would not have viewed [the defendant’s] omission as significantly altering the total mix of information made available” *and* that the defendant’s “omissions relating to [interim financial results] * * * did not render the publicly available information misleading.” 861 F.3d at 38 (citation, brackets, and internal quotation marks

omitted). The court did not make clear whether it viewed materiality and misleading effect as separate issues, or instead as two sides of the same coin. In any event, if *Stadnick* is read as consistent with the Ninth Circuit’s approach, that would only “strengthen the case for certiorari.” Pet. 25.

c. In applying Section 11(a) to interim financial information, the First Circuit has assessed materiality by using an “extreme departure” test, under which issuers must 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); see *Glassman v. Computervision Corp.*, 90 F.3d 617, 624, 631-632 & n.24 (1st Cir. 1996) (applying *Shaw* in a misleading-omissions case). The First Circuit does not appear to require an additional showing that the omitted information rendered an affirmative statement misleading. Respondents argue that “there is no true circuit split between the materiality standard and the First Circuit’s requirement of an ‘extreme departure,’” Br. in Opp. 18; but both the court below and the Second Circuit view the two approaches as inconsistent, see Pet. App. 26a-29a; *Stadnick*, 861 F.3d at 37-38.

3. The first question presented warrants this Court’s review.

a. Resolution of the first question presented is important to issuers of securities, to investors, and to the Commission. Section 11(a) creates strict-liability requirements that are enforceable through a private right of action. *Omnicare*, 575 U.S. at 193. By collapsing the two elements of a Section 11(a) misleading-omissions

violation, the decision below upsets the balance that Congress and this Court have struck between ensuring that investors receive accurate information in securities offerings and minimizing disincentives to those offerings by limiting the scope of actionable errors. The Ninth Circuit’s approach also creates a risk that companies will over-disclose in offering documents, including through disclosure of preliminary financial data that lack the robustness of final data reported following completion of management’s closing procedures, thereby subverting the Commission’s determinations regarding what information companies should disclose and when they should disclose it. Cf. *Matrixx*, 563 U.S. at 38 (noting that under Rule 10b-5, the Court has been “‘careful not to set too low a standard of materiality,’ for fear that management would ‘bury the shareholders in an avalanche of trivial information’”) (citation omitted). That result harms both issuers and investors.

b. This case provides a suitable vehicle for resolving the first question presented. Misleading-omission claims under Section 11(a) often “involve the relationship between a prior statement” and “an event subsequent to that period.” Pet App. 23a; see, e.g., *Lilien v. Olaplex Holdings, Inc.*, 765 F. Supp. 3d 993, 1001-1003 (C.D. Cal. 2025); *Sundaram v. Freshworks Inc.*, No. 22-cv-6750, 2023 WL 6390622, at *2-*3 (N.D. Cal. Sept. 28, 2023); *In re Home Point Capital Inc. Sec. Litig.*, No. 21-cv-11457, 2022 WL 18932069, at *1-*3 (E.D. Mich. Oct. 5, 2022). The category of cases in which the Ninth Circuit’s approach “collaps[es] the duty to disclose into materiality,” Pet. App. 28a; see p. 12, *supra*, therefore is a substantial and important one.

In this case, the Ninth Circuit addressed only the “legal standard” applicable to Section 11(a) misleading-

omission claims and “express[ed] no view on how [respondents’] claims would fare under” the materiality standard. Pet App. 29a. This case accordingly does not, *contra* Br. in Opp. 1, present factbound questions concerning the case-specific application of established legal principles. Nor does the interlocutory nature of the case provide a sufficient reason to forgo review here. *Contra id.* at 30. *Macquarie* came to the Court in the same posture. 601 U.S. at 261-262.

c. Respondents assert that the parties do not actually disagree about the answer to the first question presented as framed in the petition. See Br. in Opp. 3, 22-23. Respondents purport to agree (and they describe the court below as agreeing) that the answer to petitioners’ first question presented is “no,” *id.* at 3—*i.e.*, that an issuer *cannot* be held liable under Section 11(a)’s misleading-omissions prong “without an inquiry into whether the omission rendered any affirmative statement misleading,” Pet. I. Respondents argue, however, that in circumstances like those here, the *same* inquiry that is used to determine whether omitted information was material can *also* constitute the required “inquiry into whether the omission rendered any affirmative statement misleading.” *Ibid.*; see Br. in Opp. 23 (describing the court of appeals as holding that, “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”); Pet. App. 29a (concluding that if respondents have “adequately alleged that the omitted information was material[] * * * , then they have adequately alleged that [petitioners] had a duty to disclose the omitted information”).

To ensure an adversary presentation between the parties, we recommend that the Court reformulate the first question presented if certiorari is granted on that question. See, *e.g.*, *Dawson v. Steager*, 585 U.S. 1015, 1015-1016 (2018). The United States proposes the following reformulation: “Whether an issuer can be found liable under the misleading-omissions prong of Section 11(a) of the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, based on a determination that the issuer failed to disclose interim financial information that is material within the meaning of Section 11(a), without an additional inquiry to determine whether the omission rendered any affirmative statement misleading.” p. I, *supra*. The reformulated question’s reference to an “additional inquiry” highlights the point on which the parties disagree, *i.e.*, whether a finding of materiality logically and necessarily compels a finding of misleading effect in the relevant category of cases, or whether (as we argue above, see pp. 10-13, *supra*) the two prerequisites to a misleading-omissions claim must be analyzed separately. The reformulation therefore should ensure an adversary presentation as to the proper resolution of the first question presented.

B. The Second Question Presented Does Not Warrant This Court’s Review

Petitioners’ second question presented seeks review of the court of appeals’ holding with respect to Section 11(a)’s required-statements prong. Respondents have argued that disclosure of Robinhood’s interim financial information was mandated by Item 303(b)(2)(ii) of Regulation S-K, which requires issuers to describe “any 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.” 17 C.F.R. 229.303(b)(2)(ii). The district court dismissed respondents’ Item 303-based required-statements claim, but the court of appeals vacated and remanded for further proceedings. Pet. App. 29a-39a.

Petitioners raise an array of challenges to the court of appeals’ analysis of Item 303’s disclosure requirements. The holdings that petitioners contest do not warrant this Court’s review.

In analyzing respondents’ claim under Section 11(a)’s required-statements prong, the court of appeals appeared to assume that any failure to disclose information as required by Item 303 would render petitioners liable under Section 11(a). As we explain below, that assumption was erroneous; but petitioners have not sought review on that basis. For that reason and others, this case is not a suitable vehicle for clarifying the materiality standards that apply when a Section 11(a) required-statements claim is premised on an alleged violation of Item 303. The second question presented therefore does not warrant this Court’s review.

1. Petitioners challenge the Ninth Circuit’s interpretations of the terms “trends,” “events,” and “uncertainties” in Item 303. See Pet. 27-28 (citations omitted). Petitioners also contest (Pet. 29) the court of appeals’ holding that, “when a trend must be disclosed pursuant to Item 303, its effects must be quantified to the extent reasonably practicable.” Pet. App. 37a-38a (citation omitted). Those aspects of the court’s analysis, however, do not conflict with the court of appeals decisions that petitioners cite. Petitioners quote the Eleventh Circuit’s statement that the term “trend” in Item 303 does not encompass episodes “of such short duration that [they] will not support any conclusions about the

registrant’s business environment.” Pet. 27 (quoting *Oxford*, 297 F.3d at 1191) (brackets in original). But the decision below favorably cited that Eleventh Circuit case. See Pet. App. 32a. And petitioners do not assert that the Eleventh Circuit or any other court of appeals has adopted a bright-line rule concerning the minimum length of an Item 303 “trend.”

In addition, the Commission is engaged in a “comprehensive review of Regulation S-K,” of which Item 303 is a part. Chairman Paul S. Atkins, *Statement on Reforming Regulation S-K* (Jan. 13, 2026) (Atkins Statement), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>. The current initiative is exploring “how the Commission can amend Regulation S-K, with the goal of revising the requirements to focus on eliciting disclosure of material information and avoid compelling the disclosure of immaterial information.” *Ibid.* And it is already part of the Commission’s regulatory agenda. *Regulatory Flexibility Agenda*, 91 Fed. Reg. 53,164, 53,166 (Aug. 14, 2026) (referring to “Rationalization of Disclosure Practices”). It is therefore possible that the Commission could propose and ultimately adopt changes to Item 303 that would effectively resolve the issues raised by the second question presented.

2. As noted above, Item 303(b)(2)(ii) requires disclosure of “known trends or uncertainties” that “are *reasonably likely* to have a material” effect on the issuer’s results of operations. 17 C.F.R. 229.303(b)(2)(ii) (emphasis added). In analyzing whether that provision required disclosure of Robinhood’s interim financial data here, the court of appeals emphasized that Item 303’s “‘reasonably likely’” language “requires more disclosure than the materiality test typically used in securi-

ties law.” Pet. App. 38a (citation omitted). The court “vacate[d] the district court’s conclusion that Item 303 does not require disclosure of the interim results at issue and remand[ed] for further consideration of that theory.” *Id.* at 39a.

The court of appeals appeared to assume that, if Item 303 required disclosure of Robinhood’s interim financial data, then petitioners’ failure to disclose that information *necessarily* renders them liable under Section 11(a)’s required-statements prong. That assumption was erroneous. The required-statements prong requires proof that a registration statement “omitted to state a *material* fact required to be stated therein.” 15 U.S.C. 77k(a) (emphasis added). Even assuming that Item 303 required petitioners to disclose Robinhood’s interim financial data, respondents could invoke Section 11(a)’s required-statements prong only if the omitted information was “material” *within the meaning of Section 11(a)*. And as the court of appeals recognized, materiality under Section 11(a) is governed by the traditional test derived from *Basic, supra*, and *TSC Industries v. Northway, Inc.*, 426 U.S. 438 (1976). See Pet. App. 38a-39a.

Accordingly, when a Section 11(a) required-statements claim is premised on an alleged violation of Item 303, “a plaintiff must prove *both* that Item 303 required disclosure *and* that the omitted information was material under *Basic*.” U.S. Amicus Br. at 27, *Macquarie, supra* (No. 22-1165) (addressing Rule 10b-5(b) claims); see *Oran v. Stafford*, 226 F.3d 275, 288 (3d Cir. 2000) (Alito, J.) (“hold[ing] that a violation of [Item 303’s] reporting requirements does not automatically give rise to a material omission under Rule 10b-5”). This aspect of the Section 11(a) private right of action may warrant clari-

fication by the Court in a future case. The petition here, however, does not provide a suitable vehicle for such clarification. The need for separate Item 303 and Section 11(a) materiality inquiries does not appear to have been raised before the court of appeals; the court did not analyze the issue in any meaningful way but simply assumed that any breach of Item 303's disclosure requirements would create liability under Section 11(a)'s required-statements prong; and the petition for a writ of certiorari does not seek review on this basis.

* * * * *

That the second question presented does not warrant this Court's review does not detract from the importance of the first question presented. While respondents' required-statements claim would continue to be litigated, the guidance that this Court would provide on the first question presented would be important not only in this case but also to Section 11(a) misleading-omission claims more generally.

CONCLUSION

The petition for a writ of certiorari should be granted with respect to the first question presented, as reformulated at pp. I, 19, *supra*.

Respectfully submitted.

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