

No. 25-944

In the Supreme Court of the United States

ROBINHOOD MARKETS, ET AL.,
Petitioners,

v.

VINOD SODHA, ET AL.,
Respondents.

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

RESPONDENTS' SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

The United States correctly recognizes that neither of the questions presented in Robinhood’s petition are appropriate for certiorari—the first for lack of any actual controversy between the parties, and the second for lack of any circuit split. But rather than outright denial of the petition, the government recommends granting review limited to a restyled version of Robinhood’s first question, which the United States has proposed for the stated purpose of ensuring a degree of adversity. U.S. Br. 9-10, 18-19. The government’s edits do not solve the petition’s defects or justify further review.

Granting certiorari merely to reiterate that the misleading-omissions prong of Section 11(a) has “two distinct elements” (U.S. Br. 9) would be a pointless academic exercise in grading stray language in the opinion below. Everyone—including the United States and the Ninth Circuit—agrees that the misleading-omissions prong of Section 11(a) has two elements, not just one. A misleading-omissions theory requires showing both that the registration statement “omitted to state a material fact” and that the omission rendered what the registration statement *did* say “misleading.” 15 U.S.C. § 77k(a). The Ninth Circuit confirmed that the statute requires satisfying both of those “different” elements in a portion of the decision below that the United States quotes but ignores. U.S. Br. 7 (quoting the Ninth Circuit’s observation that “the materiality of information is different from * * * whether a statement is false or misleading” (omission in original)).

Like Robinhood, the United States fixates on isolated language in the decision below about “collapsing the duty to disclose into materiality.” Pet. App. 28a; *see* U.S. Br. 9, 11, 16-17 (invoking this supposed “collapse” of the two

elements). But judicial opinions should not be “parsed” like statutes, with snippets taken out of context. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979). Read as a whole, the decision below makes clear that the Ninth Circuit was not purporting to eliminate either of the two statutory elements. The court was instead merely describing why proving one element will also suffice to prove the other on the particular facts of this case and others like it. At a minimum, the mere possibility that isolated language in the panel’s opinion could be misread in a future case is not a compelling reason to grant certiorari now.

That is especially true in light of the United States’ recognition that Robinhood’s second question, concerning Item 303, does not warrant certiorari. Denying review of the second question will mean that the Section 11(a) claim will go forward in the district court regardless of how the first question is resolved. And, if it still wishes to do so, Robinhood may re-raise its first question at an appropriate later stage of this case. *See Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating that this Court “ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent” judgment). But there is no compelling reason for this Court to intervene now.

I. The first question presented does not warrant review, even as restyled by the United States.

As previously explained, this case concerns classic half-truths in the registration statement that Robinhood used for its IPO in July 2021. BIO 5-6. The relevant SEC rules and forms required Robinhood to disclose financial statements covering the first quarter of 2021, which had ended on March 31. Pet. App. 2a-3a, 8a; U.S. Br. 3. By the time of the IPO, Robinhood’s second quarter had also

closed, and its third quarter had begun. Pet. App. 3a. The gravamen of the securities violation alleged here is that Robinhood selectively disclosed positive interim financial information from its second and third quarters, but those disclosures were misleadingly incomplete because they omitted information—already known to the company, but not to the investing public—showing that Robinhood’s results and performance had veered downwards in the second quarter onwards. When the omitted information came to light after the IPO, the value of the shares that investors had purchased dropped sharply.

Robinhood argued below (and persuaded the district court to hold) that it had no duty to disclose any additional financial information from Q2 or the beginning of Q3 unless that information showed an “extraordinary” or “extreme” decline in the company’s performance relative to historical data. Pet. App. 21a & n.2; *see id.* at 112a-114a, 125a, 127a-129a; Robinhood C.A. Br. 31-48. The court of appeals properly rejected that argument, holding that whether Robinhood had a duty to disclose the omitted information depended not on any special “extreme departure” test but rather on “the ‘classic materiality standard in the omission context.’” Pet. App. 27a-28a (quoting *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31, 37 (2d Cir. 2017)).

The United States nowhere disagrees with that holding, which is consistent with the SEC’s longstanding approach to the disclosure of intra-quarterly financial results in connection with a registration statement. The SEC’s rules require a registration statement to include any “material information,” including material financial data, necessary to ensure that the registration statement is “not misleading.” 17 C.F.R. § 230.408(a). Citing that provision, the agency has long taken the position that “an

issuer may have to disclose interim financial information, if the failure to make disclosure is a material omission that would render what has been disclosed false or misleading.” SEC Amicus Br. 19, *DeMaria v. Andersen*, 318 F.3d 170 (2d Cir. 2003) (No. 01-7505). The Second Circuit adopted the agency’s position in *DeMaria*, and the Ninth Circuit expressly adhered to that same approach here. Pet. App. 27a.

Rather than disputing the actual legal standard to be applied in cases like this one, the United States endorses Robinhood’s framing of the decision below as having “collapse[d]” the separate elements of materiality and misleadingness into a single element. U.S. Br. 9; *see id.* at 10-13. But the court of appeals recognized at the outset of its analysis that the “materiality” of omitted information is “different from the issue of whether a statement is false or misleading”; that not all material information “ha[s] to be disclosed”; and that the misleading-omissions prong of Section 11(a) does not require disclosure “even if the company discloses some related information and even if investors would consider the omitted information significant,” *unless* the omissions “make the [issuer’s] actual statements misleading.” Pet. App. 22a (citations and internal quotation marks omitted). The United States partially quotes (at 7) those caveats in summarizing the decision below but makes no effort to address them.

The court of appeals also concluded that the inquiries into materiality and misleadingness “coalesce” in certain limited contexts, including this one. Pet. App. 21a; *see id.* at 23a. But that is simply to say that what made Robinhood’s half-truths about its financial performance in the run-up to the IPO misleading was that Robinhood left out other information that a reasonable investor would view as “having significantly altered the ‘total mix’

of information made available.” *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (defining materiality); *see* Pet. App. 27a; BIO 22-23. Beyond insisting that there must be two separate inquiries for the two separate elements, *see* U.S. Br. 11, the United States never clearly explains what else it thinks the plaintiffs must show here. If proving that the omitted financial data would have been important to a reasonable investor is not enough to show that omitting it caused the incomplete data in the registration statement to be misleading, what else must the plaintiffs prove? The United States does not say.

Particularly given that silence, this case continues to present the same danger of an improvident grant as in *Facebook, Inc. v. Amalgamated Bank*, 604 U.S. 4 (2024), and *NVIDIA Corp. v. E Ohman J:or Fonder AB*, 604 U.S. 20 (2024). *See* BIO 1-2, 16-17, 32. In both cases, this Court granted review of pleading-stage questions about the adequacy of allegations of securities fraud, only for merits briefing and oral argument to reveal that each case turned on highly fact-bound disputes about the application of settled legal standards.

The United States contends (at 17-18) that this case is different because it supposedly concerns the “legal standard applicable to Section 11(a) misleading-omission claims,” rather than the application of that standard. But like Robinhood itself, the United States has not identified the legal standard that it thinks should govern the inquiry into whether Robinhood’s material omissions rendered its registration statement misleading. The United States can therefore offer this Court no assurance that merits briefing will center on an actual question of law with broad significance, rather than devolving into a highly fact-bound dispute about whether the materiality of

Robinhood's particular omissions suffices to show that its statements in the offering documents were misleading.

The United States nonetheless insists (at 16-17) that the first question warrants this Court's review—on the theory that the decision below “upsets the balance” struck by Congress regarding disclosure and liability and creates a risk of “over-disclosure.” Those concerns are unfounded. To reiterate, the Ninth Circuit did not even decide whether this particular registration statement contained any material omissions, let alone whether Robinhood or anyone else may be held liable based on those omissions. No reasonable issuer would radically alter its disclosure practices in response to this single interlocutory decision, under which Robinhood's own potential liability remains an open question.

Makeweight policy concerns aside, the United States identifies no urgent or compelling reason to grant review of the first question at this time. The United States contends (at 13-15) that the first question implicates a circuit split, but that contention is entirely premised on the conceit that the Ninth Circuit just eliminated one of the statutory elements for a misleading-omissions theory. It did not. And the Ninth Circuit's approach was based on decades of precedent in the Second Circuit. *See* Pet. App. 27a (rejecting Robinhood's extreme-departure test and instead adhering to the “longstanding test for assessing the materiality of an omission of interim financial information,” as set forth by the Second Circuit).

The United States professes (at 14-16) some uncertainty about the law of the Second Circuit. But the Second Circuit has long made clear that an issuer must disclose interim financial information in a registration statement if the information is material and its omission would therefore render the registration statement

misleading. *Stadnick*, 861 F.3d at 37; *see id.* at 36-38 (explaining that the circuit adopted that approach in *DeMaria*); BIO 21-22. Accordingly, the approach the panel endorsed here has been on the books for more than a decade in the circuit encompassing New York—the center of U.S. capital markets—without causing any of the harmful effects that the United States now envisions.

If this Court is concerned about the possibility that the Ninth Circuit’s single reference to “collapsing” the two statutory elements (Pet. App. 28a) could be read to relieve plaintiffs of their burden to plead and prove both materiality and misleading effect, the Court would be better served by waiting for a future case in which that possibility actually materializes.

Doing so would be consistent with the Court’s ordinary practice of declining to grant certiorari in an interlocutory posture. BIO 30-31. On that point, the United States is mistaken to assert (at 18) that this case comes to the Court in the same posture as *Macquarie Infrastructure Corp. v. Moab Partners, LP*, 601 U.S. 257 (2024). The Second Circuit had held in *Macquarie* that the complaint adequately alleged a Rule 10b-5 violation—meaning that, absent further review by this Court, the case would proceed to discovery. *Id.* at 262. Here, by contrast, the Ninth Circuit remanded without deciding whether the complaint states a viable claim under Section 11(a). Pet. App. 3a; *see id.* at 29a n.6 (confirming that the panel did “not decide which omissions, if any, [were] adequately alleged to be material”).

If the district court determines on remand that the complaint does *not* plausibly allege material omissions, Robinhood’s first question will be of no practical significance to this case—unlike the potentially outcome-determinative issue that the Court resolved in

Macquarie. And if the district court determines that the alleged omissions *are* material, Robinhood will be able to re-raise its first question in this Court at an appropriate later time. *See supra* 2. Either way, there is no good reason for this Court to step into the fray now, before any other court at any level has evaluated whether this complaint plausibly alleges material omissions. This is a Court of “review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

II. The United States correctly recognizes that the second question does not warrant review.

The United States correctly recognizes (at 19) that Robinhood’s second question, about the disclosures required by Item 303, “does not warrant this Court’s review.” As the United States explains, Robinhood raises scattershot objections to how the Ninth Circuit interpreted the terms “trend,” “event,” and “uncertainty” in Item 303(b)(2)(ii), 17 C.F.R. § 229.303(b)(2)(ii), but Robinhood fails to show any conflict between the Ninth Circuit’s approach to those issues and the other “court of appeals decisions that [Robinhood] cite[s]” as evidence of a purported circuit split. U.S. Br. 20; *accord* BIO 24-25. And the United States further explains that ongoing SEC rulemakings could alter Item 303 in ways that would obviate “the issues raised by the second question.” U.S. Br. 21; *accord* BIO 31-32.

Although we welcome the United States’ agreement that Robinhood’s second question is not cert-worthy, the United States fails to appreciate that denying review of that question will also provide yet another reason to deny review of Robinhood’s first question. *Contra* U.S. Br. 23. If this Court denies review of the second question, the Section 11(a) claim will necessarily need to return to the district court. The Ninth Circuit held that the district

court misapplied Item 303 and remanded to the district court to reassess whether the complaint plausibly alleges a Section 11(a) violation based on Item 303. *See* Pet. App. 39a (“express[ing] no view” on how the plaintiffs’ Item 303-based theory “would fare under the correct legal standard”); BIO 27-29.

If the result of the remand is a determination that Robinhood was required by Item 303 to disclose the financial metrics showing its deteriorating performance and outlook in Q2 and the beginning of Q3, it does not matter for liability whether Robinhood was *also* required to disclose those same metrics in order to render its registration statement not misleading. As pleaded here, those are simply two alternate theories of liability for a single Section 11(a) claim. *See* Pet. App. 19a-20a, 44a; Second Am. Compl. ¶¶ 107, 131, 185. Further review of an abstract question about the misleading-omissions prong of Section 11(a) makes no practical sense if the defendants are liable under the statute’s required-statements prong for omitting the same information.

The United States has its own perceived problem with Ninth Circuit’s discussion of Item 303, but the government candidly omits that this case would not be a suitable vehicle for addressing that separate issue. U.S. Br. 20-23. According to the United States, the Ninth Circuit failed to appreciate that Item 303(b)(2)(ii) requires the disclosure of known trends or uncertainties that are “*reasonably likely* to have a material favorable or unfavorable impact,” 17 C.F.R. § 229.303(b)(2)(ii) (emphasis added), whereas Section 11(a) imposes liability when a registration statement omits “a material fact required to be stated therein,” 15 U.S.C. § 77k(a)—creating the theoretical possibility that an issuer might violate Item 303 by failing to disclose a trend, event, or

uncertainty that was “reasonably likely” to be material, but the issuer might escape liability under Section 11(a) because the omission was not actually material.

The Ninth Circuit did not address that issue because Robinhood did not raise it below, including in its petition for rehearing. *See* Robinhood C.A. Pet. for Reh’g 15-17 (challenging the panel’s analysis of Item 303(b)(2)(ii) only on other grounds). Robinhood also concededly did not seek this Court’s review of the issue the United States identifies. U.S. Br. 23. And the United States does not suggest that the issue would make any difference here even if Robinhood had not waived or forfeited any argument about it below. The financial information that Robinhood failed to include in its registration statement was material, not merely “reasonably likely” to be material. 17 C.F.R. § 229.303(b)(2)(ii).

This Court does not address issues there that were “neither pressed nor passed upon below,” *Timbs v. Indiana*, 586 U.S. 146, 155 (2019), especially when the issues are interjected into the case only by an amicus rather than a party, *see United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (adhering to “the principle of party presentation”). The Court should deny further review of both of Robinhood’s questions and leave for another day any consideration of the unpreserved and unrepresented issue raised by the United States.

CONCLUSION

The petition for a writ of certiorari should be denied.

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