

IN THE
Supreme Court of the United States

SAFRON CAPITAL CORPORATION, *et al.*,
Petitioners,

v.

ELANCO ANIMAL HEALTH INC., *et al.*,
Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF INDIANA**

BRIEF IN OPPOSITION OF ALL RESPONDENTS

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QUESTION PRESENTED

Whether the Securities Act of 1933 categorically prohibits a state court from concluding as a matter of law that a plaintiff has failed to adequately allege the materiality element of a Securities Act claim.

CORPORATE DISCLOSURE STATEMENTS

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BRIEF IN OPPOSITION

The petition does not present a question worthy of this Court's review. The question it *purports* to ask—whether the materiality element of a federal securities claim can ever be decided as a matter of law—has already been answered (and repeatedly reaffirmed) by this Court, and the substantive rule derived from that answer has been applied consistently by the lower courts. There is, in other words, no circuit split and no unsettled question for this Court to resolve. That alone is sufficient reason to deny the petition.

But additional reasons abound. For one, the question presented is hopelessly intertwined with questions of state law—namely, the proper construction and application of Indiana's standards for granting judgment as a matter of law on claims asserted in its courts. If the Court is ever to revisit the objective nature of the materiality inquiry and whether, in turn, materiality can be determined as a matter of law prior to trial—and there is no reason to do so—it should avoid doing so in a state-court action, where the presence of state-law issues will necessarily limit the Court's review.

For another, Petitioners seek a rule—that *no* Securities Act claim can *ever* be resolved before trial on materiality grounds—that is breathtaking in its scope and potential impact on courts nationwide. Taken to its logical conclusion, Petitioners would have this Court declare that *every* securities claim would need to reach a jury, at least on the question of materiality. To Respondents' knowledge, *no* court in the country has endorsed such a rule. Consequently, even if Petitioners' demand for an

upending of Securities Act jurisprudence might someday be fit for this Court's review, today is not that day.

Ultimately, Petitioners' real goal appears to be nothing more than error-correction review of the Indiana Court of Appeals' decision. That is not an appropriate focus for a petition for certiorari. And in any event, there is no error to correct. The Indiana appellate court correctly applied this Court's settled precedent—and Indiana's pleading rules—to Petitioners' complaint. It found the complaint's allegations irredeemably wanting. There is no compelling basis for Petitioners' claims of error, much less for this Court's review. The petition should be denied.

STATEMENT OF THE CASE

A. Factual Background

1. Elanco's Business

A former division of Eli Lilly and Company, Elanco became a stand-alone entity after a September 2018 IPO. Pet. 47a. Elanco sells pharmaceutical products in two primary market segments: a companion animal segment, including dogs, cats, and other household pets, and a food animal segment, focusing on animals like pigs, chickens, and cattle. *Id.* at 48a-49a. In 2019, the companion animal segment accounted for approximately 37% of Elanco's total (worldwide) revenue. *Id.* at 49a.

At that time, in the United States market, Elanco sold its companion animal products through veterinary channels and had relationships with eight distributors. *Id.* The largest distributor accounted for 12% of Elanco's

companion animal revenue in 2019. *Id.* at 53a. Another accounted for 7% of that revenue, and of the other six distributors, none represented more than 5%. *Id.*

In December 2019, Elanco adopted a plan to reduce its reliance on third-party distributors. Pet. 6; *id.* at 49a-50a. That plan, which also anticipated reducing distributor inventory (*id.* at 50a), was initiated at the beginning of 2020 as Elanco ended its relationship with certain “smaller, regional” distributors. *Id.*¹ Elanco maintained its relationship with its “big four” distributors. *Id.*

2. The Offering and the Offering Documents

To fund part of a \$7.5 billion acquisition of Bayer’s animal health business, Elanco made a public offering of common shares and equity units.² Pet. 5a-6a. Elanco filed a registration statement and preliminary prospectuses for the offering with the SEC on January 21, 2020, and filed its final prospectuses days later (the registration statement and prospectuses collectively, the “Offering Documents”). Pet. 51a.

These Offering Documents provided investors with hundreds of pages of detailed financial information, market and industry information, a detailed description

1. To the extent the petition suggests the distribution changes affected Elanco’s worldwide companion animal operations, that is incorrect. The changes were limited to distributors that served the U.S. companion animal market only.

2. The equity units are hybrid securities composed of a stock purchase contract and a note. They obligate the holder to buy a specific number of common shares from Elanco by a future date.

of the transaction and the purpose of the offering, and an extensive discussion of “Risk Disclosures” and “Business Disclosures,” which are the subject of Petitioners’ Second Amended Complaint and this petition.

a. Risk Disclosures

The Risk Disclosures addressed, among other things, Elanco’s distribution channels. They cautioned investors that Elanco’s primary customers—third-party distributors, veterinarians, and food animal producers—had recently begun to consolidate (Pet. 74a-75a (quoting Offering Documents at S-28)³), warning that further consolidation *could* lead customers to “leverage[] their buying power to obtain favorable pricing,” which could have a corresponding “adverse effect on [Elanco’s] business, financial condition and results of operations.” *Id.* at 75a. Elanco also warned that consumer trends toward increased use of alternative distribution channels, like retail stores, *could* “negatively impact [Elanco’s] market share, margins, and distribution of [its] products.” *Id.* For example, “if one or more of [Elanco’s] companion animal distributors discontinues or modifies their relationship with [Elanco], [Elanco’s] business, financial condition and results of operations may be materially adversely affected.” *Id.* at 76a. And Elanco warned that inventory levels at its distributors “*may* increase or decrease,” and that these changes “*can* lead to variations in [Elanco’s] quarterly and annual revenues.” *Id.* at 76a-77a (emphases added).

3. Pages 74a through 77a contain the Indiana trial court’s recitation of the Risk Disclosures and include citations to the Offering Documents themselves.

b. Business Disclosures

The Business Disclosures described Elanco’s internal sales organization, including sales representatives, veterinary consultants, and other specialists. They explained that Elanco “sales representatives visit[] customers, including consultants, veterinarians, food animal producers, and resellers, to inform, promote and sell [Elanco or its] products and to support customers.” Pet. 70a. The disclosures also addressed Elanco’s

- **deep customer relationships** through its “sales representatives and veterinary consultants” that “allow [it] to understand their needs” (Pet. 23a);
- **sales and marketing organization** with knowledgeable representatives and specialists, as well as third-party distributors that “provide logistics and sales and marketing support for [its] products” in markets where Elanco lacks a “direct commercial presence” (*id.* at 23a-25a);
- **competitive strengths** that include “a global presence, diversified product portfolio and full channel coverage” with both a local sales force in 43 countries and “third-party distribution relationships serving other relevant markets” (*id.* at 25a-26a);
- **targeted value-generating strategies** related to its product portfolio, innovation, and productivity that included: 1) a portfolio strategy of focusing resources in the categories of “[companion animal] Disease Prevention, [companion animal]

Therapeutics and FA Future Protein & Health, where [Elanco] believe[d it was] well positioned to grow faster than the market,” and 2) a *productivity/sales strategy focused on “increasing productivity within [its] sales force”* as well as a plan to use “both [its] sales force’s strong customer relationships and [its] strategic distributor partnerships to efficiently grow [product] demand” (*id.* at 26a-28a); and

- **customers** including distributors, specifying that Elanco primarily sells companion animal products to “third-party distributors, as well as directly to veterinarians that typically then sell [] products to pet owners,” and its largest distributors accounted for 12% and 7% of companion animal revenue in 2018. *Id.* at 28a.

The offering closed on January 27, 2020; in total, Elanco sold approximately 25 million shares of common stock and 11 million equity units, resulting in approximately \$1.3 billion in net proceeds. Pet. 6a.

3. Subsequent Earnings Reports

During the first earnings call after the public offering, on February 19, 2020, Elanco announced that it had cut ties with the smaller distributors and that it had not seen disruption in the year or in the quarter. Pet. 6a. Its CEO emphasized that distributors remain “key” to its “value-based” distribution strategy. *Id.* The market had no reaction to this announcement. *Id.* at 57a.

On May 7, 2020, Elanco released its first-quarter financial results—its first quarterly report following the

onset of the COVID-19 pandemic. Pet. 8a. Though Elanco’s share price had remained steady after Elanco announced the shift in its distribution strategy, *id.* at 57a, after disclosure of the first-quarter results, the share price fell significantly, *id.* at 9a. This action ensued.

B. Procedural Background

Petitioners filed their initial complaint on October 16, 2020. Pet. 10a. They alleged violations of several provisions of the Securities Act. Sections 11 and 12(a)(2) provide that specified categories of people may be held liable if a registration statement or prospectus used in connection with a public offering (i) included an untrue statement of material fact, or (ii) omitted facts necessary to make other statements made in the registration statement or prospectus not misleading. *See* 15 U.S.C. §§ 77k(a); 77l(a)(2). Section 15, in turn, extends liability to certain people who control those liable under Sections 11 and 12(a)(2). *See id.* § 77o. A Securities Act claim must allege that facts omitted by a defendant *both* would “have been material to a reasonable investor” and make the defendant’s statement “misleading to a reasonable person reading [it] fairly and in context.” *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 194, 196 (2015) (characterizing the standard as “no small task for an investor”).

Petitioners filed a first amended complaint on December 23, 2020. Pet. 10a. Respondents moved to dismiss. *Id.* at 11a. One week before the hearing on Respondents’ motion—and with the benefit of Respondents’ briefing—Petitioners sought leave to amend, and Respondents did not oppose their request. *Id.* Petitioners filed their second

amended complaint on June 8, 2023. Pet. 11a. In August 2023, Respondents again moved to dismiss. *Id.* at 12a.

On April 17, 2024, the trial court granted Respondents' motion and dismissed the case. Pet. 12a. Applying Indiana's pleading standards, the trial court concluded that Petitioners had failed to state a claim. Among other things—and based on a review of the text of the challenged disclosures—the court concluded that Petitioners had not adequately alleged that the Offering Documents' omissions regarding the distribution changes “would have been material to a reasonable investor.” *Id.* at 85a-86a, 88a, 90a, and 92a (citing *Omnicare*, at 194, 196). The court further concluded that Petitioners had not succeeded in pleading falsity, explaining that their “bare allegations that the omission of the Distribution Changes rendered the [Offering Documents] false and misleading is . . . a conclusory, nonfactual allegation that the Court cannot accept as true.” *Id.* at 102a. And finally, the court concluded that for certain of the challenged statements, the Private Securities Litigation Reform Act's “safe harbor” provision precluded liability. *Id.* at 95a-99a.

Petitioners appealed, and the Indiana Court of Appeals affirmed. Pet. Appx. B. In summarizing its decision, the Indiana Court of Appeals stated:

Accepting all the alleged facts as true and drawing every reasonable inference in favor of the Investors, there is a substantial likelihood that the reasonable investor would not have viewed information about Elanco's changes to its relationships with some of the Companion Animal Distributors as significantly altering

the total mix of the information in the Offering Documents. The distribution change information was therefore not material,¹⁵ so the Offerors had no duty to disclose it and its omission from the Offering Documents is not actionable under Sections 11(a), 12(a)(2), and 15. Consequently, the Investors have failed to state a claim upon which relief can be granted, and the trial court did not err by dismissing the Second Amended Complaint.

Id. at 41a. Petitioners sought rehearing, which the Indiana Court of Appeals denied. Petitioners also sought—and were denied—transfer to the Indiana Supreme Court. This petition followed.

REASONS TO DENY THE PETITION

Certiorari should be denied for three reasons. First, the question presented is not new or unresolved. This Court's precedents have long established that materiality in securities actions is an objective inquiry that may be resolved as a matter of law, and every circuit has faithfully applied that standard; there is no conflict of authority on this point. Second, this case inevitably turns on issues of state law, as the Indiana courts dismissed Petitioners' complaint under Indiana's procedural rules and pleading standards, so the case inevitably turns on questions of state law beyond this Court's purview. And third, even if this Court were in the business of error correction, there is no error to correct in this case. The Indiana Court of Appeals faithfully applied both federal precedents and state pleading standards to find that Petitioners had failed

to state a claim. Nothing about its decision requires this Court's review. The petition should be denied.

I. The materiality standard is settled, and the circuit courts apply it consistently.

Petitioners urge the Court to grant certiorari to resolve whether “a securities action can be dismissed as a matter of law on the grounds of materiality” and to determine what standard should apply if so. Pet. 12. They contend the question needs answering because the circuits have taken “inconsistent” views and applied “differing” standards. *Id.* at 1, 12. Petitioners’ framing is doubly incorrect. This Court settled the objective nature of the materiality inquiry decades ago, and courts have applied that standard without meaningful divergence ever since. In that time, innumerable Securities Act cases have been dismissed based on a plaintiff’s failure to plead materiality as a matter of law.

A. The legal standard is well settled.

“The question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor.” *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976). In *TSC Industries*, this Court resolved a circuit split over the proper threshold for materiality in proxy statements under Section 14(a) of the Exchange Act. This Court rejected the more lenient test some circuits had adopted, which asked only whether the misstatement or omission involved information a reasonable shareholder “*might* consider important.” *Id.* (emphasis added). The Court reasoned:

[I]f the standard of materiality is unnecessarily low, not only may the corporation and its management be subjected to liability for insignificant omissions or misstatements, but also management’s fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information a result that is hardly conducive to informed decisionmaking.

Id. at 448–49. The Court instead adopted a higher bar, holding that a fact is material only “if there is a *substantial likelihood* that a reasonable shareholder would consider it important in deciding how to vote.” *Id.* at 449 (emphasis added). As a mixed question of law and fact, materiality is usually reserved for the trier of fact, but because the standard is rooted in a “reasonable person” inquiry, courts may resolve the question as a matter of law in clear-cut cases. *Id.* Reversing the court of appeals’ grant of summary judgment for the plaintiffs, this Court concluded that information may be material as a matter of law when it is “so obviously important to an investor, that reasonable minds cannot differ on the question.” *Id.* at 550 (quotation omitted).

Twelve years later, in *Basic Inc. v. Levinson*, this Court reaffirmed the *TSC Industries* standard of materiality in securities law, expressly adopting it for actions under Section 10(b) of the Exchange Act and Rule 10b-5. 485 U.S. 224, 231 (1988). And in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*—which addressed Section 11 omission claims based on “statements of both opinion and fact”—the Court again endorsed the *TSC Industries* objective

standard as the benchmark for whether an omission is material, directing the district court on remand to apply that standard at the pleading stage. 575 U.S. 175, 187, 193, 196 (2015).

There is no doubt, decades after *TSC Industries*, that the Court has “explicitly . . . defined a standard of materiality under the securities laws,” *Basic*, 485 U.S. at 983, and the courts of appeals have applied that standard to determine materiality across the range of securities actions. Indeed, *every* circuit has applied this objective standard to determine the materiality of alleged misstatements or omissions in registration statements or prospectuses under the Securities Act as a matter of law at the motion to dismiss or summary judgment stage.⁴

4. *E.g.*, *SEC v. Commonwealth Equity Servs., LLC*, 133 F.4th 152, 168-71 (1st Cir. 2025) (applying language from *TSC Industries* on summary judgment); *In re ProShares Tr. Sec. Litig.*, 728 F.3d 96, 102-05 (2d Cir. 2013) (applying *TSC Industries* and affirming dismissal based on lack of materiality); *Klein v. Gen. Nutrition Cos, Inc.*, 186 F.3d 338, 343-45 (3d Cir. 1999) (same); *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216, 221 (4th Cir. 1978) (quoting *Johns Hopkins Univ. v. Hutton*, 422 F.2d 1124, 1129 (4th Cir. 1970)) (applying “so obviously important” standard as developed in *Johns Hopkins*, which was cited in *TSC Industries*); *Kapps v. Torch Offshore, Inc.*, 379 F.3d 207, 216-17 (5th Cir. 2004) (reciting *TSC Industries* standard and stating, “Appellants claim that materiality should be a question of fact for the jury, but many Section 11 cases have been properly dismissed on the pleadings for lack of materiality.”); *In re Ford Motor Co. Sec. Litig., Class Action*, 381 F.3d 563, 570-71 (6th Cir. 2004) (quoting standard articulated in *TSC Industries* and affirming dismissal for immaterial statements that amounted to puffery and hyperbole); *Kuebler v. Vectren Corp.*, 13 F.4th 631, 641-42, 644-45 (7th Cir. 2021) (affirming dismissal of complaint for failure to plausibly

Petitioners cherry-pick quotations from this Court’s admiralty-law decision in *CITGO Asphalt Refining Co. v. Frescati Shipping Co., Ltd.*, 589 U.S. 348 (2020), to attempt to undermine the unbroken line of Supreme Court and circuit precedent on this foundational securities law issue. Pet. 14–17. But *CITGO* cannot bear the weight that Petitioners place on it. In that case—which addressed the proper interpretation of a charter party under admiralty law—the concept of materiality made only a cameo appearance in dicta: the majority opinion discussed whether an assurance in the charter party was material enough to constitute a warranty. 589 U.S. at 357. The Court then noted in a footnote that materiality is a context-dependent issue that can be resolved as a matter of law in some contexts, but not others, citing as one example *TSC Industries*’ general rule that materiality in securities law “involves factual determinations uniquely suited for a jury.” *Id.* at 357 n.4 (quoting 426 U.S. at 450). Obviously, *CITGO*’s dicta does not and cannot undermine the flood of precedent recognizing that in some instances (and depending on the applicable procedural rules), a plaintiff’s showing may be so insufficient that there is

allege materiality); *S.E.C. v. Alliance Leasing Corp.*, 28 F. App’x 648, 652 (9th Cir. 2002) (agreeing with district court regarding whether statements were so obviously important on summary judgment); *S.E.C. v. Cochran*, 214 F.3d 1261, 1267-68 (10th Cir. 2000) (concluding information would be material as matter of law at summary judgment); *Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1320-22 (11th Cir. 2019) (quoting *TSC Industries* standard and affirming dismissal because “the complained-of statements are quintessential puffery” that was immaterial); *Kas v. Fin. Gen. Bankshares Inc.*, 796 F.2d 508, 510-11 (D.C. Cir. 1986) (applying same standard); *cf. Alton Box Bd. Co. v. Goldman Sachs & Co.*, 919-20, 922 (8th Cir. 1977) (quoting *TSC Industries* and applying standard to find judgment in favor of plaintiff on materiality).

no need for any “factual determinations” at all. And Justice Thomas’s dissent had even less of a nexus to federal securities law. After surveying cases discussing materiality *in the context of admiralty contract law*—and without any reference to *TSC Industries* or any other securities-law decision—Justice Thomas observed that he was “not aware of a case in which this Court has treated the materiality inquiry as a pure question of law without relying on any factual findings whatsoever.” *Id.* at 372 (Thomas, J., dissenting). This too did not purport to overrule the ample precedent that permits the application of ordinary pleading standards and summary judgment burdens to questions of materiality.

Petitioners argue that these statements “support [a] holding that, in the securities law context, materiality cannot be decided as a question of law.” Pet. 15. They do not. Indeed, the petition’s very next sentence is a string citation to circuit court decisions standing for the opposite proposition—none of which this Court has disturbed. *Id.* The notion that this Court used an admiralty case to silently overrule decades of settled securities law is unsupported by *CITGO* itself and refuted by the uniform practice of the lower courts in the years since *CITGO* was decided.

B. There is no circuit split.

Consistent with long-established jurisprudence, the Indiana Court of Appeals held that a court can decide materiality as a matter of law when the information in question “is so obviously unimportant that reasonable minds could not differ” on the question. Pet. 18a (quoting *Smykla v. Molinaroli*, 85 F.4th 1228, 1236 (7th Cir. 2023)).

Petitioners argue that this standard “differ[s]” from “the standards enunciated by multiple circuits, including the First, Eighth and Ninth.” Pet. 18. But there is no substantive difference among the circuits on this issue. Instead, the different formulations that Petitioners quote show nothing more than that different courts and judges have at times employed varied verbal and rhetorical expressions of the same objective standard.

Start with the Eighth Circuit, which Petitioners say has held that a misrepresentation or omission is immaterial as a matter of law where “a reasonable investor could not have been swayed” if it were accurately stated. Pet. 18 (quoting *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 (8th Cir. 1997)). Petitioners suggest that this approach, which considers the information’s impact on a “hypothetical reasonable investor,” diverges meaningfully from the Seventh Circuit’s inquiry into whether “the alleged misrepresentation is so obviously unimportant that reasonable minds cannot differ.” Pet. 18. But the Eighth Circuit itself treats the *Parnes* formulation as interchangeable with the Seventh Circuit’s. The same year as it decided *Parnes*, the Eighth Circuit recited in another securities case that the issue of materiality is “appropriately decided as a matter of law, . . . when *reasonable minds could not differ*.” *Silver v. H & R Block Inc.*, 105 F.3d 394, 396 (8th Cir. 1997) (emphasis added). That decision was no outlier. The Eighth Circuit has repeatedly applied a test practically indistinguishable from the language the Indiana courts borrowed from the Seventh Circuit here. *See, e.g., Campbell v. Transgenomic, Inc.*, 916 F.3d 1121, 1124 (8th Cir. 2019); *In re K-tel Int’l, Inc. Sec. Litig.*, 300 F.3d 881, 897 (8th Cir. 2002) (also citing the *Parnes* formulation). In short, there is no substantive

distinction between the approach taken by the Seventh and Eighth Circuits.

Petitioners’ attempt to find a conflict with the Ninth Circuit fares no better. *See* Pet. 18 (quoting *In re Novatel Wireless Sec. Litig.*, 830 F. Supp. 2d 996, 1012 (S.D. Cal. 2011), *abrogated by Sodha v. Golubowski*, 154 F.4th 1019 (9th Cir. 2025)). That discussion quotes one district court’s recitation of the materiality standard, which that court drew verbatim from *Basic*—in language that, in turn, was drawn verbatim from *TSC Industries. Id.*; *see Basic*, 485 U.S. at 231–32 (quoting *TSC Indus.*, 426 U.S. at 449). There is no discord—much less circuit-level discord—in a single district court’s faithful recitation of longstanding Supreme Court precedent. Indeed, the Ninth Circuit, like the other courts of appeals, has admonished that materiality *can* be determined as a matter of law when the omissions are either “so obviously important to an investor,” *Siracusano v. Matrixx Initiatives, Inc.*, 585 F.3d 1167, 1178 (9th Cir. 2009) (quoting *TSC Indus.*, 426 U.S. at 450), or so “obviously . . . *unimportant* to an investor,” *Aaron v. Empresas La Moderna, S.A. de C.V.*, 46 F. App’x 452, 454 (9th Cir. 2002) (emphasis added), that reasonable minds cannot differ on the question.

Petitioners also point to the First Circuit—but there is no conflict there either. In the sole First Circuit decision they cite, *S.E.C. v. Ficken*, that court, like its sister circuits, applied this Court’s substantive test for materiality. 546 F.3d 45, 47 (1st Cir. 2008). The First Circuit has also recognized the logical corollary to the reasonable-investor test: materiality, as a mixed question of law and fact, may be withdrawn from the factfinder and resolved as a matter of law where the omissions are “so obviously

important to an investor that reasonable minds cannot differ.” *S.E.C. v. Commonwealth Equity Servs., LLC*, 133 F.4th 152, 168 (1st Cir. 2025) (cleaned up). Petitioners nonetheless claim that the First Circuit has never applied the inverse formulation—testing whether information was “obviously *unimportant*.” Pet. 19 (emphasis added). That is incorrect. The First Circuit has held that materiality may “be resolved as a matter of law where the relevant misstatements are so obviously important *or unimportant* to an investor that reasonable minds cannot differ on the question.” *United States v. Weed*, 873 F.3d 68, 73 (1st Cir. 2017) (cleaned up) (emphasis added).

Petitioners urge this Court to grant certiorari to “establish a uniform standard to evaluate materiality.” Pet. 17. There is no need. The petition itself demonstrates that, while the courts of appeals may not always use identical language, they are in substantial harmony on the question presented.

II. The question presented is hopelessly entangled with questions of state law.

There is another problem as well: the substantive issues of federal securities law in this case are inextricably intertwined with determinations involving Indiana procedural law. Indeed, the Indiana Court of Appeals concluded that “The Trial Court Did Not Err by Dismissing the [Petitioners’] Second Amended Complaint Pursuant to [Indiana] Trial Rule 12(B)(6).” Pet. 14a. In reaching that conclusion, the court applied Indiana’s pleading standards and analyzed whether the facts as alleged in Petitioners’ complaint adequately pleaded materiality under those standards. Pet. 14a-41a.

The petition takes this intertwinement even further, asking whether a Securities Act claim can *ever* be decided as a matter of law. Pet. i. But that question turns in substantial part on the applicable procedural rules—here, Indiana’s pleading standards, summary adjudication rules, and rubric for granting a judgment on the evidence (directed verdict). *See* Indiana Trial Rules 8(A), (E), (F), 9, 12(B), 50(A), 56(B). Indeed, if the availability of judgment as a matter of law were a feature of *substantive* law, federal courts sitting in diversity would need to apply *state-law* standards whenever a party seeks judgment as a matter of law on a state-law claim. But of course, district courts do no such thing, instead applying the Federal Rules of Civil Procedure to those questions, just as they do to claims arising under federal law. Accordingly, Petitioners’ invocation of *federal* decisions applying *federal* pleading standards do not present an apples-to-apples comparison with the state-court decision at issue here.

Because the petition cannot be resolved without delving into state-law questions outside this Court’s purview, Petitioners’ request for certiorari should be denied.

III. There is no error to correct in the Indiana Court of Appeals’ decision.

The Indiana Court of Appeals relied on well-established precedent, as articulated by both the Seventh Circuit and the Indiana courts, to hold that the eight disclosures challenged in Elanco’s registration statement and prospectus did not contain material misstatements or omissions as a matter of law. Pet. 19a, 32a, 38a. Even if

this Court were in the business of error correction, there is no error to correct.

With respect to the Business Disclosures, the court concluded that “the changes in Elanco’s relationship with the Companion Animal Distributors were not material because such information would have been unimportant to the reasonable investor in evaluating the Business Disclosures.” *Id.* at 32a. The court specifically reasoned that the Business Disclosures “primarily concerned historical facts that were accurately reported, general statements of belief and intent rather than specific commitments, and information that constituted a small portion of Elanco’s overall business operations.” *Id.*

Invoking the same standard, the court concluded that omission of information about Elanco’s forthcoming changes to its distribution model in its companion animal segment from the three Risk Disclosures would have been unimportant to the reasonable investor and immaterial as a matter of law, chiefly because the omitted information was not germane to the types of risks covered by the disclosures and was not of a type that SEC regulations imposed a positive duty to disclose. Pet. 32a–39a.

There was no error in that decision. Searching for a federal law hook, Petitioners contend (without elaboration) that Elanco’s prospectus and registration statement failed to include the “detailed information” needed for prospective buyers to “fairly assess whether to invest.” Pet. 19 (quoting *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 762 (2023)). With only marginally more specificity, they argue that SEC Regulation S-K, Items 303 and 105 mandated disclosure of certain information about

the “Distribution Changes” and that the omission of this information from the offering documents was therefore *per se* material. Pet. 20.

These arguments fall wide of the mark. The Indiana Court of Appeals discussed the interrelated requirements of Items 303 and 105 in some detail, including their interplay with the materiality standard under the Securities Act. Pet. 20a–21a. In particular, the court reasoned that the forward-looking contents of Business Disclosure 4, because they were “general statements of belief and intent,” did not run afoul of Regulation S-K for failing to include information about the planned companion animal distribution changes. *Id.* at 30a–32a (distinguishing *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259 (2d Cir. 1993)). The court similarly considered, and rejected, Petitioners’ argument that any of the three Risk Disclosures were materially misleading for failure to fold in disclosure of the planned distribution changes.⁵ The court’s conclusion that the Risk Disclosures did not “fail[] to include information required by Items 105 and 303[,]” Pet. 39a, proceeded from a thorough, well-reasoned application of settled law.

Petitioners spill much ink on the treatment of post-offering analyst statements, contending that by declining to consider after-the-fact analyst reactions as evidence of materiality, the court below shortchanged

5. Risk Disclosure 1 concerned the possibility of *customer* (not distributor) consolidation; Risk Disclosure 2 concerned potential changes in distribution patterns if companion animal products were increasingly purchased from non-veterinarian retailers; and Risk Disclosure 3 contained a “generic, forward-looking” discussion of the impact of distributors’ inventory level changes on Elanco’s overall business operations. Pet. 36a–39a.

“the importance of analysts in the securities law context” and contravened “this Court’s guidance” on the subject. Pet. 20-21 (citing *Dirks v. S.E.C.*, 463 U.S. 646 (1983)). Petitioners’ invocation of *Dirks* shears that case from its context. Although the Court mentioned market analysts in *Dirks*, that discussion concerned the scope of the statutory duty to disclose insider tips, not the materiality element at issue in Petitioners’ claims. 463 U.S. at 658–59 & n.17–18.

Moreover, and as the Indiana Court of Appeals explained, precedent supports the opposite conclusion. Courts evaluating claims under the Securities Act take an “ex ante,” not “ex post,” approach to the sufficiency of disclosures. Pet. 39a–40a (quoting *Wielgos v. Commonwealth Edison Co.*, 892 F.2d 509, 518 (7th Cir. 1989)); see, e.g., *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 165 (2d Cir. 2000) (“Materiality is determined in light of the circumstances existing at the time the alleged misstatement occurred.”); *Nguyen v. MaxPoint Interactive, Inc.*, 234 F. Supp. 3d 540, 545-46 (S.D.N.Y. 2017) (applying the same principle and noting that “plaintiffs are not allowed to plead Section 11 claims with the benefit of 20/20 hindsight because Section 11 claim[s] cannot be based on a backward looking assessment of the registration statement” (internal citations omitted)). That principle is also consistent with this Court’s precedents, which command that materiality is tested based on the “total mix of information made available” to a reasonable investor at the time of the relevant decision. *Basic*, 485 U.S. at 231–32 (quoting *TSC Indus.*, 426 U.S. at 449).⁶ The

6. To the extent that some of the arguments raised in the petition could be read as challenging the objective “reasonable investor” standard, Petitioners have not presented that question in their petition, have not sought to overrule the half-century of precedent applying it, and have not presented a question that can

court below did not depart from settled law in this or any other respect.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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be said to “fairly encompass” that issue. Thus, that issue has been forfeited and cannot support a grant of certiorari. Sup. Ct. R. 14.1(a); *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992).