No. 26-_____

IN THE
Supreme Court of the United States

BRENDA CHRISTINE BARRY, ERIC CHRISTOPHER CANNON, AND CALEB AUSTIN MOODY (DBA SKY STONE),
Petitioners,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In federal securities law, "investment contracts" is a catchall term that denotes some non-standard securities. Under this Court's precedent, an asset is an investment contract, and therefore a security, only if the purchaser is "led to expect profits solely from the efforts of the promoter or a third party." *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99 (1946). The courts of appeals are divided on whether a promoter's efforts completed before the sale can satisfy that requirement. The D.C. Circuit holds that a promoter's efforts completed before the sale "cannot by themselves suffice," because their value is already reflected in the price the purchaser pays. *SEC v. Life Partners, Inc.*, 87 F.3d 536, 547–48 (D.C. Cir. 1996). The Ninth Circuit, joining the Fifth and Eleventh Circuits, disagrees and counts those efforts toward satisfying *Howey*'s requirement.

The question presented is:

> Whether work undertaken by a promoter before an asset's sale can satisfy the requirement of *SEC v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946), that the purchaser be "led to expect profits solely from the efforts of the promoter or a third party."

PARTIES TO THE PROCEEDINGS

Petitioners Brenda Christine Barry, Eric Christopher Cannon, and Caleb Austin Moody (doing business as Sky Stone) were defendants in the district court and appellants in the court of appeals. Respondent United States Securities and Exchange Commission was the plaintiff in the district court and the appellee in the court of appeals.

Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, BAK West, Inc., Andrew B. Calhoun, Jr., Century Point, LLC, and Michael Wayne Dotta were defendants in the district court and are named as defendants in the caption of the court of appeals' opinion, but were not parties to the appeal.

Petitioners are individuals. No corporate disclosure statement is required under Rule 29.6.

RELATED PROCEEDINGS

SEC v. Pacific West Capital Group, Inc., No. 2:15-cv-02563 (C.D. Cal.) (final judgments as to petitioners entered August 10, 2023; amended judgments entered December 12, 2023 (Eric Cannon) and December 28, 2023 (Caleb Moody); receivership proceedings ongoing).

SEC v. Barry, No. 23-2699 (9th Cir.) (judgment entered August 11, 2025; rehearing en banc denied June 11, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Brenda Christine Barry, Eric Christopher Cannon, and Caleb Austin Moody respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a–44a) is reported at 146 F.4th 1242. The order denying rehearing en banc (App. 45a) is unreported. The district court's order granting summary judgment (App. 46a–73a) is reported at 670 F. Supp. 3d 976. The district court's remedies order (App. 74a–89a) is unreported but available at 2023 U.S. Dist. LEXIS 120200. The district court's order denying a preliminary injunction (App. 90a–109a) is unreported but available at 2015 U.S. Dist. LEXIS 174800.

JURISDICTION

The court of appeals entered its judgment on August 11, 2025. Petitioners timely filed a petition for rehearing en banc on October 3, 2025, within the time extended by the court of appeals. The court of appeals denied rehearing on June 11, 2026. App. 45a. On August 19, 2026, Justice Kagan extended the time to file this petition until November 9, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Securities Act of 1933, 15 U.S.C. §§ 77b(a)(1), 77e(a), (c), and the Securities Exchange Act of 1934, 15 U.S.C. §§ 78c(a)(10), 78o(a)(1), are reproduced at App. 110a–113a.

INTRODUCTION

Federal securities law governs securities only; other financial instruments and assets are regulated by state law. Whether an asset is a "security" is therefore a threshold question in the Securities and Exchange Commission's enforcement actions. The answer decides whether the interest must be registered before it is sold, whether those who sell it must register as federal brokers, and whether strict liability attaches if the registration requirements were not followed. Federal securities laws define many securities expressly, but leave open a broad category called an "investment contract." 15 U.S.C. §§ 77b(a)(1), 78c(a)(10). This Court interpreted the catchall category as turning in large part on whether the purchaser expects profits derived purely from "the efforts of others." *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The Court later explained that the efforts on which the investor relies must be "entrepreneurial or managerial." *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975).

The courts of appeals are divided in evaluating the efforts of third-party promoters, and deciding which efforts satisfy the *Howey* test. The D.C. Circuit holds that efforts a promoter undertakes before the sale—finding, evaluating, and pricing the asset—"cannot by themselves suffice." *SEC v. Life Partners, Inc.*, 87 F.3d 536, 548 (D.C. Cir. 1996). The value of those efforts is already reflected in the price, and once the sale closes, the purchaser depends on no one's further efforts. *Id.* at 547. The Eleventh and Fifth Circuits reject that rule. *In re Living Benefits Asset Mgmt., L.L.C.*, 916 F.3d 528, 541 (5th Cir. 2019); *SEC v. Mut. Benefits Corp.*, 408 F.3d 737, 743 (11th Cir. 2005). In the decision below, the Ninth Circuit expressly chose their

side: "we join the Eleventh and Fifth Circuits and depart from a conclusion reached by the D.C. Circuit." App. 5a.

The difference in those circuits' application of the *Howey* test is outcome-determinative, as those courts themselves have acknowledged. As the Fifth Circuit said in the context of sales of life settlement instruments, "[w]ere we to follow the *Life Partners* majority, we would thus conclude that the life settlements at issue here are not investment contracts." *In re Living Benefits Asset Mgmt., L.L.C.*, 916 F.3d 528, 541 (5th Cir. 2019).[1] The same is true here. Petitioners are three individual sales agents who sold fractional interests in life insurance policies on commission. They "played no managerial role," and the SEC charged them with no fraud. App. 10a. They are being held liable for failure to register with the SEC (and for selling ostensibly unregistered securities) because the court below counted the seller's pre-sale selection and pricing of policies, and its pre-sale design of a premium reserve, as "efforts of others." The D.C. Circuit would have "heavily discounted, if weighed at all," those efforts. App. 19a. This Court should take up this question and restore uniformity to the application of *Howey*'s test for determining whether a financial asset is subject to federal securities laws.

Though the question arises in the context of life settlement arrangements, it reaches well beyond them. The Ninth Circuit's test would have *Howey* govern every asset whose value depends on work done

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[1] In life settlement arrangements, private investors buy the future interest in another's life insurance policy, providing the insured with the necessary liquidity in the immediate term. *See* App. 6a-7a.

before the asset is sold: fractional interests, collectibles, precious metals, and the digital assets now at the center of federal securities enforcement and policy. The Court should grant certiorari to resolve the extent to which federal securities laws—and the SEC's authority to enforce them—extend to these varied assets.

STATEMENT OF THE CASE

A. Legal Background.

The Securities Act of 1933 and the Securities Exchange Act of 1934 define "security" to include an "investment contract." 15 U.S.C. §§ 77b(a)(1), 78c(a)(10). In *Howey*, this Court defined an investment contract as "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." 328 U.S. at 298–99. The Court later described the "touchstone" of the test as "a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975). Accordingly, courts ask whether the efforts of others are "the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 482 (9th Cir. 1973); *see also* App. 11a–13a.

If an interest is a security, its offer and sale must be registered (unless statutorily exempt), 15 U.S.C. § 77e(a), (c), and a person who effects transactions in it for others generally must register as a broker, *id.* § 78o(a)(1). Both requirements are strictly enforced,

and liability does not depend on a showing of fraud or intent.

B. Factual Background

A life settlement is a sale of a life insurance policy by the insured to buyers who then pay the premiums and collect the death benefit. App. 6a. Life settlements allow insureds to receive more money for their policies by selling them to private investors than they could otherwise receive by surrendering the policies to the issuing life insurance company. App. 6a. The investor profits if the insured dies early enough to outweigh the cost of the policy and its premiums. As the Fifth Circuit put it, "a life settlement is a bet on the length of the insured's life." *Living Benefits*, 916 F.3d at 531, *quoted in* App. 7a.

Pacific West Capital Group, Inc. ("PWCG") identified life insurance policies to buy, established a trust to be the policies' owner and beneficiary, and offered investors fractional shares of the trust's beneficial interest in specific policies. App. 7a-8a. Before offering a policy, PWCG screened it. It looked for insureds at least 75 years old, reputable carriers, and policies free of loopholes that could restrict payment, and it reviewed medical records to estimate whether the insured would die within four to seven years. App. 7a. Investors received each policy's terms and a summary of the insured's medical records, and each investor decided which policies to buy. App. 15a–16a; C.A. App. 6-ER-1328–36.

PWCG also designed, before any sale, a plan for paying premiums from reserves funded out of the purchase price. App. 8a. To administer those premiums, part of each purchase price went into a primary reserve. The primary reserve was meant to

pay that policy's premiums for six to nine years. App. 23a. As a safety net, PWCG set up a general reserve funded with one percent of all investor money and a second general reserve made up of unused primary reserves from policies that had matured. App. 8a, 23a-24a. The purchase agreement told investors that the seller "has established" this plan. C.A. App. 10-ER-2507, 2577. It also told them that, if the plan fell short, the third-party trustee would notify the purchaser, who would have "to make pro rata premium payments." App. 51a-52a; *see also* C.A. App. 10-ER-2577 (2005 form); App. 119a (same, 2014 form). PWCG's marketing materials said the same: "We have established this plan to pay premiums so that every policy is kept in force." App. 24a.

After each sale, a third-party trustee, Mills, Potoczak & Co., held the policies, paid premiums, monitored the insureds, and distributed death benefits. App. 7a–8a. The trustee described its role under oath as "administrative and/or clerical services": "In short, the Trustee acts as servicer, performing monitoring, bookkeeping, and clerical functions." C.A. App. 6-ER-1275.

Many insureds lived longer than PWCG had estimated, and the reserves proved inadequate. App. 8a-9a. Beginning in 2012, PWCG paid some premiums itself, telling investors that it was "going beyond its contractual obligations." C.A. App. 13-ER-3603. A court-appointed receiver later reported that PWCG had funded those payments with proceeds of new sales, and that the shortfalls had been "predestined" by PWCG's poor judgment as to insureds' lifespans when selecting the original policies and the setting of inadequate reserve amounts. App. 27a; *see also*

App. 9a. About 150 investors eventually received premium calls. App. 9a.

Petitioners Brenda Barry, Eric Cannon, and Caleb Moody were sales agents for PWCG. App. 5a. They "played no managerial role at PWCG," and the SEC, when it sued petitioners for violating federal securities laws, alleged "only nonfraud violations" against them. App. 10a.

C. Procedural Background

In 2015, the SEC sued PWCG, its founder, the trust, petitioners, and others. App. 9a. It charged PWCG and its founder with fraud. Petitioners, however, were charged only with offering and selling unregistered securities, in violation of Section 5(a) and (c) of the Securities Act, and with acting as unregistered brokers, in violation of Section 15(a) of the Exchange Act. *Id.* Every other defendant settled or was dismissed. App. 9a–10a.

The district court initially denied the SEC's motion for a preliminary injunction, ruling that the SEC had not shown that the life settlement interests were securities under *Howey*. App. 90a–109a. The district court then denied the parties' cross-motions for summary judgment, finding disputed issues of material fact as to whether the investors' profits derived from the efforts of others. App. 53a-54a. In 2023, after the case was reassigned to a different judge, the court granted the SEC's renewed motion for summary judgment, ruling that PWCG's life settlements were securities under *Howey*. App. 10a; App. 47a–67a. The court ordered each petitioner to disgorge one-third of his or her commissions and to pay a $15,000 civil penalty, and it enjoined Mr. Cannon. App. 10a; App. 75a–89a.

The court of appeals affirmed. It held that "pre-purchase activities are relevant in assessing whether an investor is dependent on the efforts of others," and it refused to "limit [its] consideration" to post-purchase activities. App. 18a. The court recognized that the D.C. Circuit treats pre-purchase activities as something to be "heavily discounted, if weighed at all," while the Eleventh and Fifth Circuits "expressly declined to adopt the D.C. Circuit's approach" and instead consider promoters' pre-purchase efforts in holding that life settlements are securities. App. 20a (citing *Mut. Benefits*, 408 F.3d at 745; *Living Benefits*, 916 F.3d at 540-41).

The Ninth Circuit then rejected each premise underlying the rationale of the D.C. Circuit's decision in *Life Partners*. It said the D.C. Circuit's reasoning that "information about pre-purchase efforts will be appreciated by investors and thus become 'impounded' into the final price" was "unrealistic[]," that "a bright line" between pre- and post-purchase efforts would be "inappropriately formalistic," and that disregarding pre-purchase efforts "could open loopholes in the securities laws' otherwise broad coverage." App. 20a–22a. Instead, the Ninth Circuit "agree[d] with the Eleventh and Fifth Circuits" in their approach to evaluating pre-purchase activities under *Howey*. App. 20a.

The court of appeals then held that three features of PWCG's program "together" satisfied *Howey*: PWCG's selection and pricing of policies, its premium reserve system, and the fractional nature of the interests. App. 14a. The court declined to "consider whether any one feature would alone be sufficient," while noting that the Fifth Circuit had treated pre-purchase selection alone as sufficient. App. 14a n.3.

In reaching its conclusion, the Ninth Circuit expressly took sides in the circuit split: "we join the Eleventh and Fifth Circuits and depart from a conclusion reached by the D.C. Circuit." App. 5a.

The court held petitioners' petition for rehearing en banc pending this Court's decision in *Sripetch v. SEC*, 608 U.S. 555 (2026), and then denied it. App. 45a.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve a long-standing circuit split on the proper application of this Court's decision in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946), in evaluating a third-party promoter's pre-purchase efforts when determining whether a financial asset constitutes an investment contract subject to federal securities laws. The D.C. Circuit held that such efforts cannot, by themselves, satisfy the *Howey* test. The Fifth, Eleventh, and now Ninth Circuits disagree, and have expressly rejected the D.C. Circuit's approach.

These circuits' approach misapplies the *Howey* test and unwarrantedly expands the reach of federal securities laws. The question presented occurs not only in the context of life settlements—the financial instruments at issue here—but extends to many other assets, such as fractional interests in art and collectibles, precious metals, and digital assets. The courts on the respective sides of this split have considered the other side's reasoning, and have adhered to their stated views. This Court's intervention is therefore imperative to restore uniformity in the application of federal securities laws in this important area.

I. The Circuits Are Divided on Whether Pre-Sale Efforts Can Satisfy *Howey*.

A. The D.C. Circuit's Approach.

The D.C. Circuit held, in *SEC v. Life Partners, Inc.*, that fractional interests in life insurance policies were not investment contracts. 87 F.3d 536, 545–48 (D.C. Cir. 1996). The promoter there (as here) located insureds, evaluated them and their policies, and negotiated the purchase price, and investors relied on the promoter "heavily, if not exclusively," to do so. *Id.* at 539, 547. The promoter sold life settlements through commissioned agents. *Id.* at 539. And at closing, a trust (as the legal owner of the policies) escrowed funds for future premiums, and then held the policy and paid the premiums. *Id.* at 540.

The D.C. Circuit held that the time of sale is not "an artificial dividing line": "[I]f the value of the promoter's efforts has already been impounded into the promoter's fees or into the purchase price of the investment, and if neither the promoter nor anyone else is expected to make further efforts that will affect the outcome of the investment, then the need for federal securities regulation is greatly diminished." *Id.* at 547; *see also* App. 19a. The court therefore held "that pre-purchase services cannot by themselves suffice to make the profits of an investment arise predominantly from the efforts of others," since any "entrepreneurial activities" that occurred pre-purchase have already been impounded into the purchase price. *Id.* at 547-48; *see also* App. 19a. And, as the D.C. Circuit observed, the post-purchase activities of holding the policy, monitoring the insured, and paying premiums were "ministerial functions" that could not affect profits. *Id.* at 545–46, 548.

The SEC sought rehearing, contending that the panel had adopted an "artificial bright-line" rule. *SEC v. Life Partners, Inc.*, 102 F.3d 587, 588 (D.C. Cir. 1996) (statement of Ginsburg, J.). The panel majority denied rehearing and restated its holding: "'pre-purchase services cannot by themselves suffice to make the profits of an investment arise predominantly from the efforts of others.'" *Id.* (quoting 87 F.3d at 548). The panel majority underlined that while pre-purchase efforts are not irrelevant, "[a]bsent even one entrepreneurial post-purchase service . . . there simply is no ongoing common enterprise involved in owning an interest in an insurance contract from which the profit depends entirely upon the mortality of the insured." *Id.*

B. The Eleventh, Fifth, and Ninth Circuits' Approach.

Three other circuits take a different approach. The Eleventh Circuit expressly declined to adopt the *Life Partners* test. *SEC v. Mut. Benefits Corp.*, 408 F.3d 737, 743 (11th Cir. 2005). It saw "no basis for excluding pre-purchase managerial activities from the analysis," and it held that "[s]ignificant pre-purchase managerial activities undertaken to insure the success of the investment may also satisfy *Howey*." *Id.* Among the pre-purchase efforts the Eleventh Circuit counted was the promoter's decision about "how much money would be placed in escrow to cover payment of future premiums." *Id.* at 744.

The Fifth Circuit adopted the same approach. Applying *Howey* under the Investment Advisers Act, it considered life settlements in which the investor would have relied on the promoter for pre-purchase evaluation and pricing, and would have relied on the

promoter post-purchase only to "help it find a custodian to administer the life settlements," which would perform "the ministerial actions required to administer a life settlement." *Living Benefits*, 916 F.3d at 540–41. The court recognized that "[u]nder the *Life Partners* rule, . . . this would not be enough," and that "[w]ere we to follow the *Life Partners* majority, we would thus conclude that the life settlements at issue here are not investment contracts." *Id.* at 541. The Fifth Circuit, however, declined to follow the D.C. Circuit's *Life Partners* decision, which it called "overly rigid," and held that the interests were investment contracts. *Id.*; *see also* App. 14a n.3.

The Ninth Circuit has now expressly joined the Fifth and the Eleventh Circuits. App. 5a, 20a–23a. And, as the court of appeals recognized, those circuits "expressly declined to adopt the D.C. Circuit's approach." App. 20a. The Ninth Circuit has done the same: "In concluding that the fractional interests were securities, we join the Eleventh and Fifth Circuits and depart from a conclusion reached by the D.C. Circuit." App. 5a.

C. The Conflict Is Acknowledged, Real, and Entrenched.

The courts of appeals on both sides recognize the conflict. App. 5a, 19a–20a; *Living Benefits*, 916 F.3d at 541; *Mut. Benefits*, 408 F.3d at 743. So does the SEC. In opposing rehearing below, it acknowledged that the panel "placed greater weight on PWCG's pre-purchase efforts than did the D.C. Circuit in addressing similar investments," and noted that the Fifth Circuit had held life settlements to be investment contracts "solely because" of the

promoter's "substantial pre-purchase efforts." C.A. Dkt. 84, at 2, 15 n.2.

The SEC nonetheless sought to characterize the disagreement not as a difference in definition but as one over "the precise weight to afford to pre-purchase efforts." C.A. Dkt. 84, at 13. But the question is binary: can pre-sale efforts suffice to make an asset into a security? Under the D.C. Circuit's rule, pre-sale efforts cannot carry a transaction across the line; at least one significant post-sale managerial or entrepreneurial undertaking is required. *Life Partners*, 87 F.3d at 548; *Life Partners*, 102 F.3d at 588 (statement of Ginsburg, J.). Under the Fifth Circuit's rule, however, pre-sale efforts alone can suffice. *Living Benefits*, 916 F.3d at 541. The Fifth Circuit said that the choice between the two rules decided its case. *Id.* And the SEC itself treated the D.C. Circuit's *Life Partners* decision as having adopted a "bright-line" rule. 102 F.3d at 588 (statement of Ginsburg, J.). The circuit conflict is not over a mere difference in emphasis placed on pre-purchase efforts.

The conflict is also entrenched. *Life Partners* has been the D.C. Circuit law for thirty years, and that court continues to apply it. *See Liberty Prop. Trust v. Republic Props. Corp.*, 577 F.3d 335, 339, 341 (D.C. Cir. 2009). Nor is there a prospect of the courts of appeals healing the split on their own. The D.C. Circuit denied rehearing en banc in *Life Partners*, and the Ninth Circuit denied rehearing en banc here. App. 45a. Courts on both sides of the split have considered the other side's reasoning and rejected it in reasoned opinions. Further percolation will add nothing.

II. The Decision Below Misreads the *Howey* Test.

The Ninth Circuit erred by taking the "efforts of others" test out of context. *Howey* asks not whether the asset's value depends on the efforts of others but whether the purchaser "is led to expect profits" from the efforts of others. 328 U.S. at 299. And this Court's later decision in *Forman* asks whether there is "a reasonable expectation of profits to be derived from" those efforts. 421 U.S. at 852. Both describe a purchaser who invests now in reliance on work that others will do later.

Howey's facts reflect the anticipated action that is central to investment contracts. There, a promoter sold fractional plots of citrus groves. 328 U.S. at 296. The buyers themselves had "no desire to occupy the land or develop it themselves." *Id.* at 300. Instead, they relied on the promoter to cultivate the groves and harvest and market the crop after the sale to earn them a return on their investment. *Id.* The *Howey* test draws the line between a return based on someone's continuing work and a return based on the natural fluctuation of the value of an asset. *Life Partners* drew the line in the same place, observing that the SEC had not identified "a single case in which an investment vehicle was deemed a security . . . although the investor did not look to the promoter (or another party) to provide significant post-purchase efforts." 87 F.3d at 548. That approach reflects the reality that the value of every asset depends on pre-sale efforts—the specific difference for investment contracts is that the purchaser's return comes "solely" from the efforts the purchaser expects others to make.

In contrast, when a buyer pays for a promoter's completed work, that work is reflected in the price, and

nothing remains for the buyer to rely on. The Ninth Circuit's failure to recognize the specific difference would sweep impossibly broadly. A buyer who pays for a house built by a skilled builder does not thereby acquire a security, however much the seller's skill affects the asset's later value. Similarly, an art dealer's acquisition of a rare painting for a client (after a careful search) does not make that artwork a security. Vendors daily ensure that their patrons get the best value for their purchase. Experts in sports memorabilia track the careers of various players, acquire autographs, execute certificates of authenticity, and set their prices accordingly. Bookies keep careful tabs on past races, the pedigree of the horses, the stables' training programs, and the skill of the jockeys to make the best guess on the betting line. Art appraisers study the lives of artists, the chemistry of their paints, the brush strokes, and the medium to assess the value of a piece. Though all that pre-purchase work affects the price, the value, and the ultimate return on the given ware, it does not make any into a security. The ultimate expected return on each asset depends on factors that are not "efforts of others."

The Ninth Circuit offered three reasons why the pre-sale efforts should not be impounded into the price of the asset. App. 20a–22a. None holds.

First, the court said that impoundment assumes, "unrealistically," that investors appreciate the value of pre-purchase efforts, and that disclosure is what allows prices to reflect them. App. 20a-21a. But impoundment does not assume that prices are perfect. It recognizes that the buyer has paid for work already done and depends on no further work. A buyer who overpays because of a misrepresentation has a claim

for fraud; the buyer does not thereby hold an investment in someone else's ongoing enterprise. As the D.C. Circuit put it, "the securities laws [are not] a broad federal remedy for all fraud." 87 F.3d at 547 (quoting *Marine Bank v. Weaver*, 455 U.S. 551, 556 (1982)). The court of appeals' reasoning, by contrast, would treat every expertly selected asset as a security to prevent fraudulently high prices. Such an approach far outstrips the protections baked into securities law.

Second, the court called a line drawn at the moment of sale "inappropriately formalistic." App. 21a. But that line tracks *Howey*'s own question: What is the purchaser led to expect? As the D.C. Circuit explained, the time of sale is "a legal construct but a significant one." 87 F.3d at 547.

Third, the court was concerned that promoters could "front-load their activities" to evade the securities laws. App. 22a. But a promoter that promises continuing managerial efforts remains covered, and the instruments that most concern the SEC involve exactly such efforts. The D.C. Circuit in *Life Partners* made that point in response to the same concern: a mortgage pool "must be managed on a continuing basis," and commercial real estate must be leased, improved, and maintained. 102 F.3d at 589. Nor does the D.C. Circuit's rule leave fraud unremedied. Here, the promoter settled fraud charges. App. 10a.

The court of appeals also distinguished circuit precedent holding that sales of precious metals were not securities, on the ground that petitioners confused "profit" with "payout." App. 17a (discussing *Noa v. Key Futures, Inc.*, 638 F.2d 77, 79 (9th Cir. 1980) (per curiam); *SEC v. Belmont Reid & Co.*, 794 F.2d 1388, 1391 (9th Cir. 1986)). But in those cases, too, the

investor's profit depended on the price the seller charged. What made them non-securities was that "[o]nce the purchase of silver bars was made, the profits to the investor depended upon the fluctuations of the silver market, not the managerial efforts of Key Futures." *Noa*, 638 F.2d at 79; *see also Belmont Reid*, 794 F.2d at 1391. The same is true of a policy interest whose return, once purchased, turns on how long the insured lives. In both instances, the investor receives a payout. In the former, market fluctuations between purchase and sale determine the profit; in the latter, length of time between sale and the death of the insured does. But neither payment is based on expecting future actions of others.

III. The Question Is Central to Securities Law and Recurring.

1. The question presented defines the reach of federal securities law. Whether an interest is a security determines whether the federal regime (registration, broker registration, and the SEC's enforcement authority) applies at all. But the federal securities laws do not reach every asset sold with professional skill. Common-law fraud and state deceptive-practices laws may govern the sale of instruments such as life settlements; that does not make them subject to federal securities regulation.

Because that threshold determination—is it a security subject to federal regulation—applies strictly, clarity and uniformity are vital to ensure that vendors are on notice. Liability under Section 5 of the Securities Act and Section 15(a) of the Securities Exchange Act attaches without regard to fraud or intent, and it reaches not only promoters but also everyone who sells a security. A threshold test that

turns on the circuit in which the SEC brings its enforcement lawsuit fails at its most basic function: telling people in advance whether the law applies to them. That failure falls hardest on people like petitioners, commissioned agents who designed nothing, controlled nothing, and were accused of no fraud. App. 10a.

Regulators have acknowledged the problem. In upholding a disciplinary sanction against registered representatives who sold viatical-settlement products in reliance on *Life Partners*, the National Association of Securities Dealers' appellate body recognized that "the state of the law was unsettled as to whether certain viatical settlement contracts products might be securities," yet held that reliance on counsel's advice was no defense. *Dep't of Enforcement v. Fergus, Devine, and Blake*, Complaint No. C8A990025, at 18 n.30, 26, 2001 NASD Discip. LEXIS 3 (Nat'l Adjudicatory Council May 17, 2001). The same is the case with petitioners here. They face disgorgement of more than $600,000 in the aggregate, civil penalties, and, for Mr. Cannon, an injunction, solely because the interests they sold were deemed securities. App. 34a-35a, 40a–43a.

2. The forum can decide the outcome of a plethora of cases. The D.C. Circuit applies *Life Partners* in private litigation as well as in SEC cases. *Liberty Prop. Trust*, 577 F.3d at 339, 341. And a person aggrieved by a final SEC order entered under the Exchange Act—the statute whose broker-registration requirement petitioners were held to have violated—may seek review in that court irrespective of where he resides. 15 U.S.C. § 78y(a)(1). The same transaction can therefore be deemed a sale of a security in an SEC enforcement action filed in California, Texas, or

Florida, and not a sale of a security in an SEC enforcement suit filed in Washington, D.C., or on review of an SEC order there. Only this Court can end that disparity.

3. The question is not confined to life settlements. The life settlements market alone has produced repeated litigation in federal and state courts. *See Living Benefits*, 916 F.3d at 538–39 (collecting cases). So the question would be worth this Court's attention even if it were confined to that context. But many other assets are built, selected, or curated by a promoter before sale and then simply held: fractional interests in art and collectibles, precious metals, and digital assets whose software and networks are completed before tokens are sold. Under the rule adopted by the Ninth Circuit, the promoter's completed work can make each of them a security even when no one promises any further effort after the sale. Under the D.C. Circuit's rule, it cannot. This Court should review this question and restore uniformity.

4. The SEC's own guidance looks forward to post-sale managerial efforts, not back at completed pre-sale work. In a 2026 interpretive release, the SEC explained that a crypto asset "becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise with representations or promises to *undertake essential managerial efforts* from which a purchaser would reasonably *expect to derive profits*." *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Securities Act Release No. 11412, 91 Fed. Reg. 13714, 13721 (Mar. 23, 2026) (emphasis added). And once the issuer "has fulfilled the essential managerial efforts it represented or

promised it would undertake, purchasers no longer have any reasonable expectations of profits to be derived from those efforts." *Id.* at 13722.

That is the premise of *Life Partners*: Work already done does not create an expectation of profit from the efforts of others. The release addresses crypto assets and does not purport to resolve the question presented. But it shows that the SEC's own account of *Howey* is in tension with the rule it defended below. Regulated parties should not have to reconcile the two, or guess which circuit's rule will govern them.

IV. This Case Is an Ideal Vehicle.

A. The Question Is Cleanly Presented.

The case arises on summary judgment, which the court of appeals reviewed de novo. App. 10a. Petitioners were charged only with strict-liability registration violations. App. 9a–10a. If the interests they sold were not securities, petitioners are not liable. Petitioners pressed the *Life Partners* rule at every stage, including advancing that decision's impoundment rationale as applied to the premium reserve in this case. *See* Pet'rs C.A. Br. 27–28; Pet'rs C.A. Reply Br. 13 & n.5; Pet. for Reh'g En Banc 1, 7–14. The Ninth Circuit resolved the question in a published opinion that chose sides expressly, and the full court of appeals declined to revisit it.

B. The Decision Below Rests on Pre-Sale Efforts.

Each of the three features on which the court of appeals relied was, at bottom, work PWCG completed before the sale, and so would not qualify the life settlements as securities under the D.C. Circuit's test. The test, thus, was outcome determinative.

1. Selection and pricing. PWCG's evaluation of insureds, choice of policies, and negotiation of prices all occurred before any investor bought anything. The court itself called them "pre-purchase activities." App. 18a.

2. The premium reserve. The court of appeals held that profitability "turned on how skillfully PWCG structured that system," because the reserves depended on PWCG's estimates of the insureds' lifespans. App. 26a. It credited PWCG's judgment in "structuring the system initially." App. 27a. The receiver's account, on which the court relied, says the same thing: the shortfalls were "predestined" by PWCG's "original selection of Policies and the setting of inadequate reserve amounts." C.A. App. 3-ER-631; *see also* App. 27a. The reserve's size, structure, and funding were fixed and disclosed at the time of sale, as a plan the seller "has established." C.A. App. 10-ER-2507, 2577; App. 23a–24a. The Eleventh Circuit, for its part, likewise counted the same kind of decision—"how much money would be placed in escrow to cover payment of future premiums"—as a pre-purchase effort. *Mut. Benefits*, 408 F.3d at 744.

3. Fractionalization. PWCG subdivided policies into smaller packages to open up opportunities to more investors. That the interests were sold in fractions was a feature of the product as sold. The court found that fractionalization made investors dependent on PWCG "to have properly structured the premium reserve system" and to bring together enough investors to maintain each policy. App. 28a. Both describe things PWCG did, or failed to do, before the sale. Under *Life Partners*, none of these three "efforts" could carry the case.

C. The Post-Sale Activities Do Not Take the Case Outside the Question Presented.

The SEC argued below, while opposing en banc rehearing, that PWCG's post-sale administration of the reserve independently satisfies *Howey*. C.A. Dkt. 84, at 15–17. That argument does not avoid the question presented; it depends on the answer to it. The court of appeals did not hold that post-sale activity alone would suffice. Rather, it held that three features "together" did, and it declined to decide whether any one would suffice alone. App. 14a & n.3. If this Court adopts the D.C. Circuit's rule, whether PWCG undertook essential post-sale managerial efforts that purchasers were led to expect can be addressed on remand under the correct standard.

First, the post-sale functions here are the same ones *Life Partners* held to be ministerial: holding the policies, paying premiums, and monitoring the insureds. 87 F.3d at 545–46, 548. Even the dissent in *Life Partners* agreed that those functions are not enough to satisfy *Howey*. *Id.* at 550 n.1 (Wald, J., dissenting); *see also Living Benefits*, 916 F.3d at 541. And the Fifth Circuit has recognized that without counting pre-sale efforts, a life-settlement interest administered by a custodian after the sale is not an investment contract. *Living Benefits*, 916 F.3d at 541. Here, that shortcoming is especially stark because a third-party trustee performed those tasks and described its own work under oath as "administrative and/or clerical." C.A. App. 6-ER-1275.

Second, the SEC emphasized premium calls made when resources to pay premiums ran short. Those calls were not a managerial undertaking that purchasers were led to expect. They were a contingency fixed by contract at the time of sale. Each

purchase agreement provided that if the reserves were depleted, "it will become the responsibility of the Purchaser to make pro rata premium payments," on notice from the trustee. C.A. App. 10-ER-2577; C.A. App. 10-ER-2507. Investors were warned that premium calls were possible. App. 24a.

To be sure, PWCG paid premiums itself for a time, telling investors it was "going beyond its contractual obligations." C.A. App. 13-ER-3603. But that was not something purchasers were led to expect when they bought life settlements, and a promoter's performance of its contract, or its choice to do more than the contract requires, is "not the sort of entrepreneurial exertion[]" that *Howey* contemplates. *Life Partners*, 87 F.3d at 545; *see also SEC v. Belmont Reid & Co.*, 794 F.2d 1388, 1391 (9th Cir. 1986) (no investment contract where "the ability of the seller to perform is dependent, in part, on both his managerial skill and some good fortune").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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