No. 25-944

IN THE

Supreme Court of the United States

ROBINHOOD MARKETS, INC., 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

BRIEF OF *AMICI CURIAE* THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

The Securities Industry and Financial Markets Association ("SIFMA") is a securities industry trade association representing the interests of hundreds of securities firms, banks, and financial asset managers across the United States. SIFMA's mission is to support a strong financial sector while promoting investor opportunity, capital formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every economic sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Many of *amici*'s members are subject to the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77a *et seq.*, and accordingly, Section 11(a) of the

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, *amici curiae* state that all counsel of record for the parties received notice of the intention of *amici curiae* to file this brief in support of Petitioners at least 10 days before the deadline to file this brief.

Securities Act, 15 U.S.C. § 77k(a). They are also subject to Regulation S-K and, specifically, to its Item 303, which calls for management to discuss and analyze certain "trends" and "uncertainties." 17 C.F.R. § 229.303. For decades, *amici*'s members and other issuers of public securities have been issuing quarterly data, and publishing disclosures that include all material information that, if omitted, would render the public statements misleading. And, pursuant to Item 303, *amici*'s members have been reporting trends and uncertainties that are reasonably likely to have a material impact on net sales, revenue, or income, as well as events that are reasonably likely to cause a material change in the relationship between costs and revenues.

Breaking with four other federal courts of appeals and creating conflicts with this Court's precedent along the way, the Ninth Circuit's decision (Pet. App. A) upended these settled reporting requirements, including the well-established quarterly reporting cadence. Over a dissent by Judge Rawlinson, the panel majority created new, burdensome intra-quarter reporting requirements and significantly expanded the scope of information required to be disclosed. First, the Ninth Circuit held that when a company's registration statement discloses prior quarterly results, the company has an obligation to disclose all material events that occur in the quarter in progress, regardless of whether those events render statements in the registration statement misleading. Second, the court held that Item 303 requires the disclosure and "quantification" of intra-quarter "events," "trends," and "uncertainties" of no minimum duration.

These reporting requirements not only affect how public companies must monitor interim data and draft already-lengthy public disclosures, but they also

significantly increase the litigation risk associated with issuing public securities. *Amici* have an interest in restoring the proper balance between disclosure and practicability that allows companies to access efficient public capital markets.

SUMMARY OF ARGUMENT

Certiorari is warranted because the Ninth Circuit's decision departs from the text of the relevant statutes and regulations as well as from the precedent of its sister circuits and this Court. The need for review is significant and immediate because *amici*'s members and other businesses and investors participating in the public securities markets now face a more burdensome, unprecedented disclosure regime. The Ninth Circuit's ruling also improperly expands the scope and relaxes the elements of Section 11 liability, threatening greater litigation risk for companies trying to access capital and providing a significantly easier path to discovery for plaintiffs.

The circuits were already split, as lower courts remain confused about how to apply Section 11 to undisclosed information from the quarter in progress. The Ninth Circuit exacerbated this split and strayed from this Court's precedents in holding that the materiality and duty-to-disclose analyses "coalesce" for Section 11 liability anytime an issuer discloses prior quarterly results without disclosing any material events in the interim. The holding amounts to a bright-line rule that issuers must disclose any material information from the quarter in progress without regard to whether omission would render a statement in registration materials misleading. Such a rule is contrary to the express statutory text; it significantly widens the scope of liability; and it departs from the existing multi-circuit split in a way

that only introduces more burdens and impracticalities for issuers.

Further, the Ninth Circuit's reading of Item 303 departs from the understanding of disclosure requirements in two other circuits. The Fifth and Eleventh Circuits have held that Item 303's disclosure obligations are limited to persistent conditions or sudden and dramatic changes in conditions—practical bounds placed on an otherwise confusing regulation that courts and issuers alike struggle to interpret. This additional conflict introduced by the decision below is highly significant to business. The Ninth Circuit's requirement that companies disclose all events, trends, or uncertainties with no minimum duration or principled limits is an unworkable standard—effectively a real-time disclosure obligation. The result will be a burden on businesses and information overload for investors, with little use except to fend off litigation over any minor "event" or "uncertainty." That is antithetical to the purpose of Item 303, which is to give investors a window into management's perspective on business conditions.

The Ninth Circuit's additional requirement that issuers "quantify" the potential effects of even transitory events or uncertainties is impractical and found nowhere in the text of Item 303. The Ninth Circuit's decision poses many questions for businesses regarding how and when interim data needs to be collected, how much analysis businesses must do to "quantify" transitory ebbs and flows of the business environment, and how to deal with changes that arise between the event date, the date analyses are finalized, and the ultimate disclosure date.

The Ninth Circuit is an important locus of public offerings and hosts a large share of the nation's securities class action litigation. And given the

Securities Act's flexible venue provision, more plaintiffs will seek to avail themselves of the Ninth Circuit's newfangled standards. Allowing the panel's burdensome and atextual ruling to go without review is intolerable for both the business community and investors. This Court should grant review to resolve an ongoing circuit split and reject the Ninth Circuit's decision.

ARGUMENT

I. THE NINTH CIRCUIT'S HOLDING ON SECTION 11 MISLEADING OMISSIONS DEPARTS FROM TEXT AND PRECEDENT, WIDENS A CIRCUIT SPLIT, AND INVITES A SURGE OF EVENT-DRIVEN SECTION 11 CLAIMS.

The Ninth Circuit's ruling on Section 11's misleading-omissions standard warrants this Court's review because it exacerbates a pre-existing circuit split and departs from statutory text and this Court's precedent.

The Ninth Circuit held that the duty to disclose "coalesce[s]" with the materiality requirement anytime "Plaintiffs' theory concerns a prior time period . . . and some subsequent event." Pet. App. A at 23a–24a. The court reasoned that because "there was a statement related to a particular time period (*i.e.*, the disclosure of the results from the last reported fiscal quarter), followed by an undisclosed event (*i.e.*, the decline in Robinhood's performance) that took place after that period," the court need not "draw a distinction between materiality and the duty to disclose." *Id.* at 24a. The court thus created a bright-line rule that anytime an issuer reports prior quarterly results in a registration statement, it must also report all potentially material events from the quarter in

progress, or otherwise risk Section 11 liability. Such an intra-quarter reporting requirement is found nowhere in Section 11's text.

There was already confusion among lower courts as to when to apply Section 11 liability when an issuer fails to disclose material information from the quarter in progress. The Ninth Circuit's decision splits in principle from the Third, Tenth, and Eleventh Circuits, which have each held that issuers must only update their disclosures when new information (not required to be disclosed) is material *and* renders the prior disclosures misleading. The Ninth Circuit also expressly rejected the First Circuit's bespoke rule for disclosure of interim information in a registration statement. And though it purported to follow the Second Circuit, its holding in fact departs from Second Circuit law as well. The Third, Tenth, and Eleventh Circuit's rulings align with this Court's precedents, which have consistently distinguished materiality from the duty to disclose.

A. The Ninth Circuit's New Section 11 Standard Deepens a Multi-Circuit Split.

The Ninth Circuit's new Section 11 standard exacerbates a multi-circuit split, breaking from the Third, Tenth, and Eleventh Circuits in one way, from the First Circuit in another way, and from the Second Circuit in yet another way.

The majority of those circuits hold that, in the duty to update context,[2] disclosure of new information (not

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[2] While this case is not strictly a duty-to-update case, the Ninth Circuit's ruling applies the analysis of a duty-to-update standard by requiring disclosure of all material information (not already required to be disclosed) implicating "the relationship between a prior statement concerning a particular time period," such as

otherwise required to be disclosed) is only required where the new information renders the prior required disclosures misleading. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1431 (3d Cir. 1997) ("The duty to update, in contrast to the duty to correct, concerns statements that, although reasonable at the time made, become misleading when viewed in the context of subsequent events."); *Indiana Pub. Ret. Sys.* v. *Pluralsight, Inc.*, 45 F.4th 1236, 1248 (10th Cir. 2022) (holding that materiality does not "create an affirmative duty to disclose"); *Finnerty* v. *Stiefel Lab'ys, Inc.*, 756 F.3d 1310, 1317 (11th Cir. 2014) ("Specifically, a duty exists to update prior statements if the statements were true when made, but misleading or deceptive if left unrevised."). For example, unlike the Ninth Circuit, the Third Circuit has rejected the notion that "the accurate disclosure of a line of past successes . . . contain[s] the implication that the current period is going just as well." *Burlington Coat Factory*, 114 F.3d at 1433.

The Ninth Circuit also expressly split (Pet. App. A at 26a–29a) from the First Circuit, which itself deviates from the Third, Tenth, and Eleventh Circuits. The First Circuit uses an "extreme departure" test to assess whether an issuer has a duty to disclose interim information for purposes of Section 11 liability. *See Shaw* v. *Digital Equip. Corp.*, 82 F.3d 1194, 1210–11 (1st Cir. 1996). Under this test, an issuer has a duty to disclose interim information (since the last reported quarter) if the non-public information indicates that the quarter in progress will be an extreme departure from the range of results one would reasonably anticipate from the prior reported results. *Id.* The Ninth Circuit's approach, by contrast, undermines the

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prior financial results, "and an event subsequent to that time period." Pet. App. A at 23a.

quarterly reporting regime altogether. It expands the duty to disclose interim events with no principled limitation—*any* "subsequent event" that may be material to a reasonable investor must be disclosed because the corporation "disclos[ed] [] the results from the last reported fiscal quarter." Pet. App. A at 24a; *compare Shaw*, 82 F.3d at 1202 ("[T]he mere possession of material nonpublic information does not create a duty to disclose it."). This split, even standing alone, would warrant review.

The Ninth Circuit also departed from the Second Circuit, even while purporting to follow it. The court below (Pet. App. A at 23a) cited *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259 (2d Cir. 1993), as the basis for its new disclosure standard.

But *Time Warner* in fact reasons that the duty to disclose and the materiality test coalesce when a subsequent event "*renders the prior statement false or misleading*" if not disclosed. *Id.* at 267 (emphasis added). *Time Warner* thus acknowledges that, in the absence of a regulatory duty to disclose, liability for an omission requires finding that a prior statement was rendered misleading. While the *Time Warner* court said, in dicta, that it is "difficult to imagine a circumstance" in which a prior statement would not be rendered misleading if a subsequent event "significantly altered the 'total mix' of information available," it did not hold that would always be the case. *Id.* at 268 (internal citation omitted). Plainly, that would only be true if the subsequent event altered the mix of information related to that prior statement in such a way as to affect its truth or falsity. That is why courts must separately inquire into whether a statement by the issuer is alleged to have been rendered misleading, as the majority of courts hold, and not only consider its materiality. *See In re Adams*

Golf, Inc. Sec. Litig., 381 F.3d 267, 277 (3d Cir. 2004) ("A determination that information missing from a registration statement and prospectus is material does not end our analysis. We must also decide whether the issuer had the duty to disclose that material fact such that its omission made the statement misleading.").

Further percolation of this issue is unlikely and unnecessary. The Ninth Circuit's decision breaks with a number of other circuits, and, as discussed *infra* Section III.A., a substantial portion of securities litigation is already concentrated in the Ninth Circuit because many IPOs originate within the Ninth Circuit. *See* SEC, *Staff Report from the Office of the Advocate for Small Business Capital Formation*, at 56 (2025) [https://perma.cc/DN5X-A73E] (showing concentration of offerings in California). And given the Securities Act's flexible venue provision, plaintiffs may flock there to take advantage of this ruling. The Ninth Circuit has already declined to review the decision *en banc*. *Sodha* v. *Golubowski*, No. 24-1036, 2025 WL 3142085 (9th Cir. Oct. 8, 2025). Therefore, to ensure uniformity, this Court should review the Ninth Circuit's ruling and clarify the Section 11 standard for the divided lower courts.

B. The Ninth Circuit's Decision Collapses Distinct Elements of the Disclosure Standard Recognized by This Court's Precedents.

The Ninth Circuit read the express "misleading" requirement out of Section 11 liability for statements rendered misleading by omission. Section 11(a) requires that registration statements disclose, among other things, "material fact[s] . . . necessary to make the statements therein not misleading." 15 U.S.C. § 77k(a). By its plain text, Section 11 thus requires disclosure when information is both material to a

reasonable investor *and* necessary to make the registration statement not misleading; materiality alone does not create a disclosure obligation.

This Court's precedents repeatedly acknowledge the distinction between the materiality and duty-to-disclose elements of statements rendered misleading by omission. *See, e.g.*, *Omnicare, Inc.* v. *Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 194 (2015) ("Section 11's omissions clause, after all, is not a general disclosure requirement; it affords a cause of action only when an issuer's failure to include a material fact has rendered a published statement misleading."); *see also Basic Inc.* v. *Levinson*, 485 U.S. 224, 235 (1988) (under the Exchange Act's similar language, arguments that disclosure of merger discussions would be premature are "more properly considered under the rubric of an issuer's duty to disclose" but are "inapposite to the definition of materiality").

Moreover, this Court recently held that nearly identical language in Section 10(b) of the Exchange Act and Rule 10b-5(b) "do[es] not create an affirmative duty to disclose any and all material information. Disclosure is required under these provisions only when necessary to make statements made . . . not misleading." *Macquarie Infrastructure Corp.* v. *Moab Partners, L. P.*, 601 U.S. 257, 264 (2024) (cleaned up) (quoting *Matrixx Initiatives, Inc.* v. *Siracusano*, 563 U.S. 27, 44 (2011)); *see* 17 C.F.R. § 240.10b-5. "Logically and by its plain text, the Rule requires identifying affirmative assertions (*i.e.*, 'statements made') before determining if other facts are needed to make those statements 'not misleading.'" *Macquarie*, 601 U.S. at 264. The Ninth Circuit's decision therefore flies in the face of the plain text of the statute and the precedents of this Court.

II. THE NINTH CIRCUIT'S INTERPRETATION OF ITEM 303 DEPARTS FROM BOTH THE REGULATION'S TEXT AND ITS UNDERSTANDING ACROSS OTHER CIRCUITS, AND IS UNWORKABLE.

The Ninth Circuit's atextual expansion of the disclosure obligations under Item 303 also warrants this Court's review. Item 303 of Regulation S-K requires disclosures that include "discussion and analysis" of "known trends or uncertainties" that are reasonably likely to materially impact a company's financial condition and results of operations (called MD&As). 17 C.F.R. § 229.303. The SEC intended this provision to give investors the opportunity to view a company "through the eyes of management by providing both a short and long-term analysis." *Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*, SEC Release No. 6835, 1989 WL 1092885, at *3 (May 18, 1989) ("1989 Release"). The provision is "intentionally general" to allow "a flexible approach [that] elicits more meaningful disclosure." 1989 Release, 1989 WL 1092885, at *1. Item 303 thus centers on management's informed assessment of developments that are reasonably likely to affect the company—not on continuous disclosure of every interim fluctuation.

The Ninth Circuit's holding frustrates that central purpose: it splits from the Fifth and Eleventh Circuits by eliminating meaningful limiting principles for what constitutes a "trend" or "uncertainty" requiring disclosure, and it imposes a vague and extra-textual obligation to "quantify" interim developments. Item 303 is already difficult for courts and businesses to interpret. The Ninth Circuit's imprudent expansion guarantees that Item 303 disclosures will become the

very "avalanche of trivial information" the SEC sought to avoid, *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 448 (1976), rather than a clear, candid insight into management's judgment.

This rule would impose significant burdens on regulated entities subject to Item 303 disclosures. But even over-disclosure may not fully protect issuers from event-driven litigation that exploits the Ninth Circuit's amorphous standard to create liability from hindsight. This Court's intervention is warranted to restore the balanced disclosure requirements intended by Item 303.

A. The Ninth Circuit Abandons the Careful Limitations Drawn by the Fifth and Eleventh Circuits.

The decision below conflicts with decisions of the Fifth and Eleventh Circuits. Those courts recognize that Item 303 requires disclosure of known interim data likely to have a material impact where: (1) "an observed pattern accurately reflects persistent conditions of the particular registrant's business environment," or (2) where interim financial metrics "suddenly and significantly declined" from the previous reported period. *Oxford Asset Mgmt., Ltd.* v. *Jaharis*, 297 F.3d 1182, 1191–92 (11th Cir. 2002); *see also Kapps* v. *Torch Offshore, Inc.*, 379 F.3d 207, 217–19 (5th Cir. 2004). Grounded in the text of Item 303, these approaches tether disclosure to durability, reliability, and significance.

Item 303 focuses on significant patterns, not volatile fluctuations—even when the change is "sudden." As the court explained in *Oxford*, disclosure may be required where a metric was "booming . . . for the previous several reported quarters," then abruptly reversed, if this reversal would render the prior results misleading. 297 F.3d at 1192. But an abrupt change

alone does not require disclosure absent representations or implications that the past performance would continue. *See Kapps*, 379 F.3d at 221. Thus, courts recognize that intra-quarter information is "necessarily incomplete" and avoid requiring premature disclosure of expectedly volatile metrics. *Id.* (internal citation omitted). In *Kapps*, for example, a 60% decline in natural gas prices over 5.5 months did not require disclosure under Item 303 because it provided "no complete picture," given recent price volatility. *Id.* at 218, 221. This limitation is important because incomplete information prematurely disclosed can disrupt markets by causing overreaction. *See, e.g.*, *Higginbotham* v. *Baxter Int'l, Inc.*, 495 F.3d 753 (7th Cir. 2007) (describing market reaction after initial announcement of problem, followed by rebound after more complete information of problem's scale disclosed to market).

The Ninth Circuit, by contrast, expressly disavowed any requirement of "some minimum duration" or "persistence over time," removing the limitation that ties the duty to disclose under Item 303 to those matters which management considers impactful. Pet. App. A at 35a. The decision below seemingly requires by-the-minute updates to disclosures before publication, lest issuers risk devastating liability over the omission of incomplete information.

B. The Ninth Circuit Imposes an Atextual Quantification Mandate.

Beyond expanding disclosure triggers to include incomplete information about minor fluctuations, the Ninth Circuit went even further to require "quantification" of the potential impacts of such events and uncertainties, even absent duration or persistence, subject only to the vague qualifier "to the extent reasonably practicable," (Pet. App. A at 37a)—

an empty caveat that invites hindsight-driven scrutiny. The court below derived this requirement from a single illustrative example in the 1989 Release, while ignoring the same guidance's recognition that forward-looking impact estimates may be optional. *Compare id.* at 30a (citing 1989 Release, 1989 WL 1092885, at *6) with 1989 Release, 1989 WL 1092885, at *4 ("anticipating a less predictable impact of a known event, trend, or uncertainty" is an "optional forward-looking disclosure[]," not an Item 303 requirement) (emphasis in original omitted).

The Ninth Circuit then failed to elaborate on the new rule it birthed, providing no meaningful detail that would allow issuers to determine *ex ante* what quantification the court will deem "reasonably practicable" or what level of "granular information" is necessary.

C. The Ninth Circuit's Item 303 Holding Muddies a Complicated Regulatory Regime.

The Ninth Circuit's rule makes an already confusing and burdensome set of regulatory obligations into something wholly opaque. Long before the decision below, it was widely recognized that Item 303 is no paragon of clarity. *See* Mark S. Croft, *MD&A: The Tightrope of Disclosure*, 45 S.C. L. Rev. 477, 478 (1994) ("Item 303 . . . MD & A disclosure requirements are open-ended and exceedingly complex."). By requiring management to identify relevant trends or uncertainties, assess their likelihood, and evaluate whether their consequences would materially affect financial conditions or results of operations, the regulation calls for an exceptionally difficult, predictive determination of whether forward-looking information crosses the line from optional to mandatory. *See* Suzanne J. Romajas, Note, *The Duty*

to Disclose Forward-Looking Information: A Look at the Future of MD&A, 61 Fordham L. Rev. S245, S286 (1993) ("[T]he distinction that the SEC has drawn between required and optional disclosures is so subtle that corporations and courts alike find Item 303 of Regulation S-K difficult to apply.").

That was before the decision below expanded Item 303 to require disclosure and quantification of intra-quarter information. The SEC's annual and quarterly disclosure framework that courts have long applied, at the very least, sought a balance between frequency and completeness.[3] The decision below abandons that attempt at equilibrium. The Ninth Circuit's new standard will require near-instant disclosure and extrapolation of a limitless universe of potentially impactful events and uncertainties—guaranteeing that investors will be flooded with voluminous and tenuous projections rather than benefiting from a concise narrative statement of management's reasoned judgment as Item 303 intends.

III. THE COURT SHOULD GRANT REVIEW TO PREVENT SIGNIFICANT DISRUPTION OF CAPITAL MARKETS.

Federal securities laws operate against the backdrop of a compelling national interest in uniform and predictable disclosure standards. As this Court has recognized, "[t]he magnitude of the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be

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[3] Notably, the SEC is reconsidering its quarterly regime in favor of a less demanding semi-annual cadence. *See* Statement of James Moloney, Director, *Coming Attractions From the Division of Corporation Finance* (Feb. 13, 2026) [https://perma.cc/G3KG-YQX9] (previewing rule proposal allowing semi-annual reporting).

overstated." *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 78 (2006). The Ninth Circuit's decision—by expanding Section 11 liability and Item 303's disclosure obligations—threatens that uniformity. The Ninth Circuit's role as one of the country's most significant jurisdictions for public offerings and securities litigation means that the consequences will be felt far beyond the parties to this case.

A. The Ninth Circuit's Section 11 Liability Standard and Item 303 Reporting Requirements Have Material Consequences for the Business Community.

The Ninth Circuit is a key jurisdiction for the public securities market. Every year, hundreds of companies based in the Ninth Circuit attempt to go public, and thousands of companies in the Ninth Circuit issue quarterly reports. In the twelve months ending June 30, 2025, California alone accounted for 489 registered public offerings—more than any other state—and more offerings occurred within the Ninth Circuit than in any other circuit. *See* SEC, *Staff Report from the Office of the Advocate for Small Business Capital Formation*, at 56 (2025) [https://perma.cc/DN5X-A73E].

The Ninth Circuit also consistently ranks among the leading venues for securities class actions. It sees on average 51 non-M&A securities class actions filed annually. *See 2025 Year in Review, Securities Class Action Filings*, CORNERSTONE RESEARCH at 22 (2026) [https://perma.cc/KZW7-47JD]. This is nearly equal to the Second Circuit (56 actions annually) and more than any other circuit by far—in third place, the Third Circuit sees an average of 18 such cases. *Id.*

The Ninth Circuit's departure from the text of the securities laws and from other circuits' limiting principles will therefore shape the conduct of a substantial share of public companies and market participants across the country. Absent this Court's review, issuers operating in the nation's largest markets will face a materially different and more uncertain liability regime.

1. The Ninth Circuit's Holding Will Increase Over-Disclosure.

This Court has warned that overly expansive disclosure requirements can harm investors by overloading them with "an avalanche of trivial information" that undermines "informed decisionmaking." *TSC Indus.*, 426 U.S. at 448–49; *see also, generally Jackvony* v. *RIHT Fin. Corp.*, 873 F.2d 411, 415 (1st Cir. 1989) (Breyer, J.) (disclosure of immaterial information may "more likely confuse, than inform, the marketplace"). The Ninth Circuit's misreading of Section 11 and Item 303 will require issuers to burden investors with less reliable intra-quarter information, including one-off "events" that may be irrelevant and hypothetical "uncertainties" that may ultimately never materialize.

The Ninth Circuit's holding will also necessarily lower the quality of disclosures. It encourages corporate officers to include more speculation about increasingly remote contingencies because of the risk that a decision to omit a particular "event" or "uncertainty" may be subject to second-guessing by a private plaintiff and, ultimately, a jury operating with hindsight. And the new Section 11 "misleading" standard *requires* disclosure of "incomplete" intra-quarter information for every potentially material fact related to a prior statement, regardless of whether its omission would be misleading.

2. Over-Disclosure and Increased Litigation Risk Will Raise the Cost of an IPO.

Needless to say, excessive disclosure requirements increase the cost of issuing securities and going public. A constant, ill-defined duty to update disclosures imposes a substantial and unwieldy burden on businesses. In one study of 25 large, well-known companies, the number of pages devoted to MD&A disclosures increased 300% between 1972 and 1992—the period during which Item 303 took shape. Ernst & Young, *To the Point: Now Is the Time to Address Disclosure Overload*, at 1 (June 21, 2012) [https://perma.cc/4X5N-LNLG]. MD&A disclosures went from an average of three pages in 1972 (before Item 303 was promulgated) to 48 pages in 2011. *Id.* at 2. The Ninth Circuit's ruling only promises to continue this burdensome trend, further increasing the costs on businesses attempting in good faith to comply and raise capital.

That cost is further increased by the added risk of litigation, which has already discouraged public offerings altogether. IPOs are plagued by securities litigation—often driven by a newsworthy event—a trend that has worsened since the 2008 financial crisis. *See 2019 Year in Review, Securities Class Action Filings*, CORNERSTONE RESEARCH at 29 (2020) [https://perma.cc/W8S8-RJMW] (describing rise in post-IPO litigation). This landscape has contributed to a decades-long decline in the number of publicly traded companies, as private companies can avoid litigation risks by relying on private capital markets to which the common investor does not have access. *See* Paul S. Atkins, Chairman of the SEC, Revitalizing America's Markets at 250 (Dec. 2, 2025) [https://perma.cc/Z56B-3NT7] (observing that the

number of public companies fell by roughly 40% from the mid-1990s until 2025); Jay R. Ritter, *Initial Public Offerings: Updated Long-run Statistics* (Feb. 18, 2026) [https://perma.cc/2XR8-LBXL] (analyzing the number of IPOs per year).

When companies do choose to go public, riskier legal environments increase transaction costs and reduce market efficiency. *See* Yangyang Chen et al., *Litigation Risk and IPO Underpricing: Evidence from Federal Judge Ideology*, REV ACCOUNT STUD (2025) [https://perma.cc/A84M-N392]. The decision below raises litigation risk by watering down what plaintiffs must plead to impose burdensome discovery.[4] The Ninth Circuit's indeterminate standards invite hindsight-driven litigation about what may have been material or "reasonably practicable" for a company to disclose. And given the difficulties of "quantification," particularly of one-off events and uncertainties, the new disclosure standards open the door to securities claims anytime good faith "quantification" errs one way or another.

The Ninth Circuit's ruling, if allowed to stand, will only increase the costs and risks associated with

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[4] The Private Securities Litigation Reform Act of 1995 stays discovery pending resolution of a motion to dismiss in securities cases, but materiality is a low barrier to clear at the pleading stage because it is considered a fact-bound inquiry generally inappropriate for resolution at the dismissal stage. *See In re Morgan Stanley Info. Fund Sec. Litig.,* 592 F.3d 347, 360 (2d Cir. 2010) (dismissal on materiality grounds only where "so obviously unimportant . . . that reasonable minds could not differ" (quotation omitted)); *Ieradi* v. *Mylan Lab'ys, Inc.*, 230 F.3d 594, 599 (3d Cir. 2000) (same); *Siracusano* v. *Matrixx Initiatives, Inc.*, 585 F.3d 1167, 1178 (9th Cir. 2009) (materiality "peculiarly within the province of the trier of fact"), *aff'd*, 563 U.S. 27 (2011); *TSC Indus.,* 426 U.S. at 450 (materiality questions are "peculiarly ones for the trier of fact").

securities issuance, therefore introducing more inefficiency in capital markets.

3. These Impacts Contravene the SEC's Intended Regulatory Regime.

The SEC Chairman recently described the impact of decades of over-regulation: "the path to public ownership has become narrower, costlier, and overly burdened with rules that often create more friction than benefit." Paul S. Atkins, Chairman of the SEC, Revitalizing America's Markets at 250 (Dec. 2, 2025) [https://perma.cc/Z56B-3NT7].

In light of this negative trend, the SEC has undertaken to clarify and simplify its disclosure requirements. *See, e.g.*, SEC, Release No. 33-10890, 86 FR 2080 (Feb. 10, 2021) ("adopting amendments to modernize, simplify, and enhance certain financial disclosure requirements in Regulation S-K" while "simplifying compliance efforts for registrants"); Paul S. Atkins, Chairman of the SEC, *Statement on Reforming Regulation S-K*, SEC (Jan. 13, 2026) [https://perma.cc/Z56B-3NT7] (announcing a "comprehensive review of Regulation S-K" in light of the "myriad requirements" imposed on issuers); SEC, Statement of James Moloney, Director, Coming Attractions From the Division of Corporation Finance (Feb. 13, 2026) [https://perma.cc/G3KG-YQX9] (previewing rule proposal allowing semi-annual reporting).

The decision below moves in the opposite direction, layering atextual and indeterminate disclosure demands onto an already complex regime.

B. The Ninth Circuit's Decision Is Unworkable for Companies Attempting in Good Faith to Monitor and Report Information to Investors.

When companies and purchasers cannot properly assess risk *ex ante*, capital markets are disrupted. As such, securities liability is "an area that demands certainty and predictability." *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994) (quoting *Pinter* v. *Dahl*, 486 U.S. 622, 652 (1988)). The Ninth Circuit's decision does the opposite, sowing confusion about what the securities laws require and exposing issuers to unpredictable *ex post* judgments.

The opinion leaves open a number of difficult questions for businesses to operationalize, or else risk liability: How significant must a transitory "event" be to require Item 303 disclosure? What if the "trend" develops or changes by the time the disclosure is drafted and ready for publishing? How should a company quantify "uncertainties" or trends of some undefined minimum duration? What intra-quarter results are "material," given that all interim results (whether showing a decline, flatline, or growth) may be interesting to an investor? What happens to companies whose performance metrics are not linear within a quarter? What if interim data is not indicative of end-of-quarter results or sustained trends or is otherwise less reliable? Are companies now required to keep reportable interim data?

The decision below disrupts the policy balance the SEC has established and leaves management without a basis for effectively exercising judgment to determine what must be disclosed. This Court's intervention is warranted to restore clear, nationwide liability and disclosure standards.

CONCLUSION

For the foregoing reasons and those set forth by Petitioners, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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