

[Securities Regulation Daily Wrap Up, SUPREME COURT DOCKET— U.S.: Court to decide whether Section 11 lawsuits cover only securities traceable to registration statement, \(Dec. 15, 2022\)](#)

Securities Regulation Daily Wrap Up

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By [Jay Fishman, J.D.](#)

The Petition arose from the Ninth Circuit granting the plaintiff shareholder standing to sue, which the defendant company disputes.

The United States Supreme Court granted Slack Technologies' (Slack) Petition for Certiorari, along with granting various parties leave to file *amicus curiae* briefs, on the question of whether under federal Securities Act Section 11, a plaintiff shareholder is required to plead and prove that he bought shares registered under the registration statement in order to allege the registration statement is misleading ([Slack Technologies v. Pirani](#), December 13, 2022).

The Ninth Circuit Court of Appeals panel granted the shareholder standing to sue, concluding that his shares could not have been bought without the issuance of Slack's registration statement. But Slack contends that both the district court and Ninth Circuit went beyond Section 11's and the SEC's intent about securities purchased within or outside of a Section 11 registration statement and, hence, should have dismissed the shareholder's complaint.

The securities purchase—district court against Slack—Ninth Circuit affirms. In August 2022, the plaintiff (who is the respondent in this Petition for Certiorari) bought 250,000 Slack shares soon after the company went public (with an IPO). But when Slack's share price dropped, the shareholder sued under Securities Act Sections 11, 12(a)(2), and 15, claiming that Slack's registration statement was misleading. Slack, however, contended the shareholder lacked standing to sue because his shares could not be traced back to the registration statement. At issue was the phrase "any person acquiring such security" referring to who may sue over a misleading registration statement under Section 11.

The district court denied Slack's motion to dismiss by broadly reading the phrase to mean (for both Sections 11 and 12(a)(2)) "acquiring a security of the same nature as that issued pursuant to the registration statement." The Ninth Circuit panel affirmed the district court's denial of Slack's motion, concluding that the shareholder had standing to sue because his shares could not have been purchased without the issuance of Slack's registration statement ([Slack Technologies, LLC \(FIKIA Slack Technologies, Inc.\) v. Pirani](#), August 31, 2022).

Slack's support for petition. Slack's [arguments](#) for why the Supreme Court must decide this Petition's question are as follows:

- **The Ninth Circuit decision conflicts with the decisions of seven other circuits.** Seven other circuits have held that plaintiffs may sue only if they bought registered shares, and here only some of Slack's available shares were registered; moreover, those shares that were registered versus those that were not cannot be traced back to the registration statement; as a result, the plaintiff has no way of knowing and cannot, therefore, say whether his shares were registered or not registered in the Section 11 registration statement. Slack concludes the shareholder does not have standing to sue over misrepresentations in the registration statement.

The respondent shareholder counters that there is no conflict here because: (1) other cases involving registered and unregistered shares did not become available for trading on an exchange at exactly the same time unlike in this case; and (2) the phrase "such security" refers to any security of the same "nature and type" whether

registered or not. Petitioner Slack, however, says the shareholder never explains why the distinction in (1) above makes any difference, and his point in (2) above was rejected by a judge in a Second Circuit case 55 years ago.

- **The Ninth Circuit decision conflicts with the decisions of the Supreme Court.** Slack's main point here is that the 1983 Supreme Court in *Herman & MacLean v. Huddleston* ruled that Exchange Act Section 11 complaints are reserved for plaintiffs who bought registered shares, while Section 10 complaints are for plaintiff buyers or sellers of "any security" whether registered or not. The petitioner argues that allowing lawsuits under Section 11 for purchased shares that are not traceable to a registration statement would defy the *Huddleston* precedent, as well as Congress's and the SEC's intent to uphold this distinction between Section 10 and 11 cases.
- **The petition presents an exceptionally important question.** Here, Slack declares the importance for the Supreme Court to take this case since 11 institutional investors that "collectively manage assets totaling \$35.5 trillion" and that frequently serve as plaintiffs in securities lawsuits have filed an *amicus curiae* brief emphasizing the "critical" importance for properly interpreting Section 11.

The case is [No. 22-200](#).

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Companies: Slack Technologies, LLC.

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