Investor Alert

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SUPREME COURT CLARIFIES PLEADING REQUIREMENTS FOR CLAIMS BROUGHT PURSUANT TO SECTION 11 OF THE SECURITIES ACT OF 1933

On June 1, 2023, the Supreme Court issued a unanimous opinion clarifying the pleading requirements for claims brought pursuant to Section 11 of the Securities Act of 1933. The opinion in *Slack Technologies v. Pirani*[1] involved the narrow question of whether a plaintiff who alleges claims regarding an allegedly defective registration statement must specifically allege that he purchased shares traceable to that registration statement. The Supreme Court held a plaintiff must do so, resolving a circuit split between the Ninth Circuit and several of its sister circuits. Specifically, the Court held that: "Section 11 [of the 1933 Act] requires a plaintiff to plead and prove that he purchased shares traceable to the allegedly defective registration statement."[2]

Facts of the Case

The case involved claims against Slack Technologies, a company that offers a platform for instant messaging. In 2019, Slack conducted a "direct listing" on the New York Stock Exchange.[3] It filed a registration statement that "offered for purchase 118 million registered shares and 165 million unregistered shares."[4] "[B]ecause Slack employed a direct listing rather than an IPO, there was no underwriter and no lockup agreement," and thus, "holders of preexisting unregistered shares were free to sell them to the public right away."[5] As the Supreme Court explained, using a direct listing rather than an IPO allowed Slack to avoid paying "significant transaction costs."[6] The plaintiff bought 30,000 Slack shares on the day the direct listing went public and 220,000 additional shares over the next few months.[7] After Slack's stock price dropped, the plaintiff filed a securities class-action complaint against Slack. The complaint alleged that Slack violated sections 11 and 12 of the 1933 Act by filing a materially misleading registration statement.[8] Specifically, it alleged that Slack's offering materials touted its business and falsely "implied that the Slack App was a market leader with unique advantages over its competitors and that [Slack] possessed the ability to scale up its services to reach more lucrative enterprise customers."[9] It further alleged that, to the contrary, Slack's growth was actually "slowing down in several aspects."[10]

Slack moved to dismiss the case, arguing that Sections 11 and 12 of the 1933 Act "authorize suit only for those who hold shares issued pursuant to a false or misleading registration statement" and "this feature of the law was dispositive in this case because [the plaintiff] had not alleged that he purchased shares

[1] *Slack Techs., LLC v. Pirani*, No. 22-200, 598 U.S. (June 1, 2023).
[2] *Slack Techs.*, No. 22-200, slip op. at 2.
[3] *Pirani* v. *Slack Technologies, Inc.*, 13 F. 4th 940, 944, 947 (CA9 2021).
[4] *Slack Techs.*, No. 22-200, slip op. at 4.
[5] *Id.*
[6] *Id.* at 3.
[7] *Id.*
[8] *Id.*
[9] *Pirani* v. *Slack Technologies, Inc.*, 445 F. Supp. 3d 367, 374 (ND Cal. 2020).
[10] *Id.*

traceable to the allegedly misleading registration statement."[11] The district court and the Ninth Circuit had both sided with the plaintiff, holding that he was not required to allege that he purchased shares traceable to the registration statement. That created a circuit split between the Ninth Circuit and at least six other courts of appeal.[12] The Supreme Court granted *certiorari* and, as explained more fully below, unanimously overturned the Ninth Circuit's holding with respect to the pleading requirements for Section 11 claims.[13]

The Supreme Court's Opinion

Section 11 of the 1933 Act requires a company to "register the securities it intends to offer to the public with the Securities and Exchange Commission (SEC)" and "as part of that process, a company must prepare a registration statement that includes detailed information about the firm's business and financial health so prospective buyers may fairly assess whether to invest."[14] Further, "the law imposes strict liability on issuing companies when their registration statements contain material misstatements or misleading omissions."[15]

Section 11(a) of the 1933 Act provides:

> *In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue [certain enumerated parties].* [16]
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> *The Supreme Court analyzed whether the term "such security" refers only to a security issued pursuant to the allegedly misleading registration statement, or also includes a security not issued pursuant to that registration statement.* [17] *The Supreme Court explained that "there is no clear referent in §11(a) telling us what 'such security' means" and thus, "must ascertain the statute's critical referent 'from the context or circumstances.'"* [18]

The unanimous Supreme Court's opinion concluded that the statute "imposes liability for false statements

[11] *Slack Techs.*, No. 22-200, slip op. at 4.
[12] *Pirani* v. *Slack Technologies, Inc.*, 13 F. 4th 940, 952 (CA9 2021) (Miller, J., dissenting).
[13] *Slack Techs.*, No. 22-200, slip op. at 3, 5.
[14] *Id.* at 1 (citing 5 U. S. C. §§77b(a)(8), 77e, 77d, 77f, 77g, 77aa).
[15] *Id.* (citing §77k; see also *Herman & MacLean* v. *Huddleston*, 459 U. S. 375, 380 (1983)).
[16] 15 U. S. C. §77k(a) (emphasis added).
[17] *Slack Techs.*, No. 22-200, slip op. at 5.
[18] *Id.* at 6.

or misleading omissions in '***the*** registration statement'" and "the statute uses the definite article to reference the particular registration statement alleged to be misleading, and in this way seems to suggest the plaintiff must 'acquir[e] such security' under that document's terms."[19] Furthermore, the Court's opinion highlighted that the 1933 Act uses the word "such" often, and each time, "the law trains our view on particular things or statements. . . [a]ll of which suggests that, when it comes to 'such security,' the law speaks to a security registered under the particular registration statement alleged to contain a falsehood or misleading omission."[20] The opinion also pointed to Section 11(e), which "caps damages against an underwriter in a §11 suit to the 'total price at which the securities underwritten by him and distributed to the public were offered to the public.'"[21] Thus, if Section 11 liability "extended beyond registered shares presumably available damages would too."[22] Accordingly, the Court unanimously held that "Section 11 [of the 1933 Act] requires a plaintiff to plead and prove that he purchased shares traceable to the allegedly defective registration statement."

Key Takeaways

Companies had increasingly opted to go public through a "direct listing," so the NYSE proposed rules to facilitate and regulate direct listings, which the SEC approved with modifications.[23] Going forward, shareholders bringing claims under Section 11 of the 1933 Act must allege that they purchased shares traceable to the defective registration statement they claim caused them to suffer harm. A future battle before the Supreme Court may also be in the offing with respect to claims under Section 12 of the Securities Act, which the Court declined to address.

Labaton Sucharow's lawyers are available to address any questions you may have regarding these developments. Please contact the Labaton Sucharow lawyer with whom you usually work or the contacts below.

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[19] *Slack Techs.*, No. 22-200, slip op. at 6 (citing §77k) (emphasis in original).
[20] *Id.*
[21] *Slack Techs.*, No. 22-200, slip op. at 6 (citing §77k(e)).
[22] *Id.* at 7 (citing *Barnes v. Osofsky*, 373 F.2d 269, 272 (2d Cir. 1967).
[23] 83 Fed. Reg. 5650 (2018).