ALERT MEMORANDUM

Supreme Court Grants Certiorari To Address Section 11 Liability Based on Issuer's Omission of Interim Financial Information

November 17, 2026

On November 13, 2026, the U.S. Supreme Court granted certiorari in *Robinhood Markets, Inc. v. Sodha*, No. 25-944, agreeing to review the Ninth Circuit's decision in *Sodha v. Golubowski*.[1] At issue is whether an issuer that accurately reports its results for the most recently completed quarter must also disclose material interim results for the quarter in progress. In *Sodha*, a divided Ninth Circuit panel held that it must, reasoning that under Section 11's misleading omissions prong a statement about a prior period is rendered misleading by the omission of a material subsequent event, so that the duty to disclose turns on materiality alone.[2] The panel also read Item 303 of Regulation S-K to reach short-term "events" and "uncertainties" as well as persistent "trends," and to require quantification of their effects where reasonably practicable. The Court limited its grant to the Section 11 question. A decision is expected in 2027. The Court's ruling is likely to bear directly on IPO disclosure practices and underwriter diligence.

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[1] *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Nov. 13, 2026); *Sodha v. Golubowski*, 154 F.4th 1019, 1025–26, 1034–35, 1039–40 (9th Cir. 2025).

[2] *Sodha*, 154 F.4th at 1033–36.

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Background

Robinhood Markets, Inc. (Robinhood) completed an initial public offering of more than $2 billion at $38.00 per share in late July 2021, following a period of exceptional growth in 2020 and early 2021 driven in substantial part by trading in meme stocks and cryptocurrencies, including Dogecoin. Its registration statement presented results through the first quarter of 2021, disclosed certain interim data for the second quarter, and warned that revenue and the growth rate of certain key performance metrics were expected to decline in the third quarter.[3] Plaintiffs allege, however, that during the second quarter, revenue from equity, options, and cryptocurrency trading declined, along with key metrics, including monthly active users and average revenue per user.[4]

In December 2021, investors filed a putative class action in the Northern District of California asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act. The operative complaint advanced three theories of liability: that the omitted interim financial information was necessary to make the statements in the registration statement not misleading; that its disclosure was independently required by Item 303 of Regulation S-K, which governs management's discussion and analysis; and that its omission violated Item 105, which governs risk factors.[5]

The district court (Chen, J.) dismissed the complaint with prejudice.[6] It held that to bring a misleading omission claim based on the failure to disclose intra-quarter data, the data must "reflect declines so extraordinary as to be unusual and indicative of larger future trends when viewed in context of the company's historical data."[7] The court concluded that, measured against Robinhood's performance before the meme-stock surge, the alleged declines reflected "the leveling off after a huge and unprecedented spike."[8] Treating the Item 303 inquiry as "akin to" the Section 11 analysis, it also concluded that the omitted information did not reflect a sufficiently persistent "trend" to require disclosure, and it rejected the Item 105 theory.[9]

The Ninth Circuit's Decision

In August 2025, a divided Ninth Circuit panel affirmed in part, vacated in part, and remanded. Judge Smith wrote for the majority, joined by Judge Rakoff of the Southern District of New York (sitting by designation), while Judge Rawlinson concurred in part and dissented in part. The panel unanimously affirmed the dismissal of the Item 105 theory. The majority held, however, that the district court had applied the wrong legal standard to both the misleading omissions theory and the Item 303 theory.[10]

Misleading Omissions

The majority crafted a rule that a statement about a prior event is rendered misleading by the failure to disclose a subsequent event that is material.[11] While acknowledging that the materiality of information is analytically distinct from whether a statement is false or misleading, the majority asserted that the two inquiries merge where a statement about a prior event omits a material subsequent event.[12] The majority concluded that plaintiffs' allegations met its test: Robinhood allegedly reported its first-quarter results without also reporting the subsequent decline in its performance; Robinhood allegedly disclosed some favorable interim results without disclosing unfavorable ones it allegedly disclosed in prior quarters; and Robinhood allegedly warned of future risks without stating that those risks had already materialized.[13] Therefore, the majority held that Section 11's misleading omissions prong required Robinhood to disclose material interim information.[14]

The court discussed the tests applied by the First Circuit and the Second Circuit to assess alleged

[3] *Sodha*, 154 F.4th at 1025–29.
[4] *Sodha*, 154 F.4th at 1026–27.
[5] *Sodha*, 154 F.4th at 1025, 1031–33.
[6] *Golubowski*, 2024 WL 269507, at *1, *19.
[7] *Id.* at *7.
[8] *Id.* at *11.
[9] *Id.* at *8–9, *11–18.
[10] *Sodha*, 154 F.4th at 1025–26, 1043.
[11] *Id.* at 1034.
[12] *Id.* at 1033–34.
[13] *Id.* at 1034–35.
[14] *Id.* at 1035.

violations of Section 11 due to the omission of interim financial information. The majority rejected the First Circuit's test, which denies a general duty to disclose interim financial information unless it will be an "extreme departure" from the range of results that could be anticipated based on currently available information.[15] The opinion invoked the Second Circuit, which also applies a materiality standard but considers whether disclosure of the omitted information would have been viewed by the reasonable investor as having significantly altered the total mix of information, therefore making the registration statement misleading.[16] The majority remanded for the district court to determine whether plaintiffs sufficiently pled that the omitted information was material, expressly declining to decide that question itself.[17]

Judge Rawlinson's dissent explained that Robinhood's statements should not be assessed in hindsight and that "fairly read in light of the disclaimers and the information existing in the market of investors," the prospectus was not misleading.[18] She defended an "extreme departure" test as "much closer to the intent of the statute than collapsing the analysis for interim reports and annual reports into one mushy 'materiality' standard."[19]

Item 303

The majority held that the district court erroneously dismissed the Item 303 theory. Item 303 requires a registrant to "[d]escribe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."[20] In addition, if the registrant "knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues . . . , the change in the relationship must be disclosed."[21] In the majority's view, the district court erred by limiting its analysis to whether the alleged declines were sufficiently persistent "trends," without considering whether they qualified as "events" or "uncertainties"; by failing to recognize that the effects of a disclosed trend must be quantified to the extent reasonably practicable; and by treating Item 303 like Section 11's misleading omissions prong, although the two provisions "use substantially different standards."[22] Judge Rawlinson faulted the majority for imposing requirements beyond those in the regulations.[23]

Proceedings in the Supreme Court

The Ninth Circuit denied rehearing en banc in October 2025, with Judge Rawlinson voting to grant rehearing, and petitioners sought certiorari in February 2026.[24] The petition presents two questions: (1) whether an issuer violates Section 11(a)'s misleading omissions prong by failing to disclose interim financial data that investors may consider material, without an inquiry into whether the omission rendered any affirmative statement misleading; and (2) whether an issuer violates Item 303, and thus Section 11(a)'s required statements prong, by failing to disclose and quantify interim financial data before quarterly reporting deadlines.[25] Petitioners argued that the decision cannot be reconciled with the Supreme Court's decision in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, which held that the prohibition against misleading omissions in Rule 10b-5(b) does not create a duty to disclose "any and all material information."[26] Petitioners also argued that the decision conflicts with other circuit courts' decisions.[27]

[15] *Id.* at 1035–36.
[16] *Id*. (citing *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31, 36–38 (2d Cir. 2017)).
[17] *Sodha*, 154 F.4th at 1037 & n.6.
[18] *Id.* at 1043–49, 1057 (Rawlinson, J., dissenting).
[19] *Id*. at 1068 n.5 (Rawlinson, J., dissenting).
[20] 17 C.F.R. § 229.303(b)(2)(ii).
[21] *Id.*
[22] *Sodha*, 154 F.4th at 1037–41.
[23] *Id.* at 1058–61 (Rawlinson, J., dissenting).
[24] *Sodha v. Golubowski*, No. 24-1036 (9th Cir. Oct. 8, 2025) (order denying rehearing en banc); Petition for a Writ of Certiorari at 6, 14, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Feb. 5, 2026) ("Pet.").
[25] Pet. i.
[26] *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 264 (2024); *see* Pet. 19–21.
[27] Pet. 4–5, 14–15, 19–25, 27–33.

Three amicus briefs supported the petition: one filed jointly by the Securities Industry and Financial Markets Association and the U.S. Chamber of Commerce, one by the Washington Legal Foundation, and one by former SEC Commissioner and Stanford Law School professor Joseph A. Grundfest. Each emphasized the decision's practical consequences, warning that it would make IPOs costlier and transform a system of periodic disclosure into one of "quasi-continuous disclosure."[28]

Respondents opposed review, characterizing the case as involving "classic half-truths" and stressing its interlocutory posture.[29] At petitioners' suggestion, the Court called for the views of the Solicitor General in June 2026.[30]

The Solicitor General filed the government's brief in October 2026, recommending that the Court grant certiorari on the Section 11 question and advising that the Item 303 question does not warrant review.[31] Because respondents claim to agree with petitioners that Section 11 requires an inquiry into whether the omission rendered any affirmative statement misleading, the government proposed reformulating the Section 11 question to ask whether liability may rest on an issuer's omission of interim financial information that is material "without an additional inquiry to determine whether the omission rendered any affirmative statement misleading."[32] The government argued that the Ninth Circuit's analysis of the Section 11 issue "erroneously collapses two distinct elements of the statutory violation" (whether omitted information is material and whether a material omission makes affirmative statements misleading, given the context); conflicts with decisions of other circuits, including the Third, Tenth, and Eleventh Circuits, which analyze the two elements separately; and "threatens significant untoward consequences."[33]

The government agreed that the Ninth Circuit had erred on the Item 303 question, though on a ground petitioners had not raised: a plaintiff must show both that the omitted information was required by Item 303 and material.[34] It nonetheless found the case an unsuitable vehicle for that point and concluded that the panel's reading of "trends," "events," and "uncertainties" does not conflict with the court of appeals decisions on which petitioners rely.[35] It also noted that the SEC's ongoing review of Regulation S-K could resolve the issues raised by the Item 303 question.[36]

In supplemental briefs, petitioners stated that they had no objection to the reformulated Section 11 question[37] and urged review of the Item 303 question as well.[38] Respondents urged the Court to deny review of both questions, arguing that review of the Section 11 question would be "a pointless academic exercise" because the Ninth Circuit itself recognized that materiality is "different from the issue of whether a statement is false or misleading,"[39] and that the materiality issue the government had identified with respect to the Item 303 question was not raised

[28] Brief of Amici Curiae the Securities Industry and Financial Markets Association and the Chamber of Commerce of the United States of America at 12, 17; Brief of Amicus Curiae Washington Legal Foundation at 19; Brief of Amicus Curiae Professor Joseph A. Grundfest at 3, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Mar. 11, 2026).
[29] Brief in Opposition at 12–15, 18, 30–31, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Apr. 23, 2026).
[30] Reply Brief for Petitioners at 3, 10–11, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. May 11, 2026); *Pet.* 36; Docket, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. June 1, 2026).
[31] Brief for the United States as Amicus Curiae at 1, 9–10, 24, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Oct. 7, 2026) ("U.S. Br.").
[32] U.S. Br. 9, 18–19.
[33] U.S. Br. 9, 11–14, 16–17.
[34] U.S. Br. 20, 22.
[35] U.S. Br. 20–23.
[36] U.S. Br. 21.
[37] Supplemental Brief for Petitioners at 1–2, 5–7, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Oct. 20, 2026) ("Pet. Supp. Br.").
[38] Pet. Supp. Br. 2–3, 9–12.
[39] Respondents' Supplemental Brief at 1–2, 4, *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Oct. 21, 2026) ("Resp. Supp. Br."); *see Sodha*, 154 F.4th at 1033–35.

below.[40] The Court granted review of the Section 11 question as framed by the government and did not grant review of the Item 303 question.[41]

Takeaways

The Court's decision is likely to provide guidance about the application of Section 11's misleading omissions prong and the disclosure of interim financial results. The Ninth Circuit panel's opinion indicates that registrants have a duty to disclose interim results that lag behind their last reported results. As discussed above, the Ninth Circuit's approach conflicts with the approach taken by other circuit courts.

The Court's decision is also likely to reach beyond the Securities Act. The Ninth Circuit drew on Rule 10b-5 precedent, observing that the misleading omissions language of Rule 10b-5 and Section 11 is "nearly identical," and petitioners warned that, because Rule 10b-5 applies "in connection with the purchase or sale of any security," the panel's rule would expose public companies to liability whenever they report historical results in periodic filings without disclosing more current financial information.[42] Accordingly, the Court's ruling may affect the standards governing misleading omission claims under Section 10(b) of the Exchange Act and Rule 10b-5.

Until the Court issues its decision, issuers and underwriters conducting offerings that may be litigated in the Ninth Circuit should assume that the panel's standards apply. In practice, that counsels close attention in diligence to intra-quarter results available before pricing, careful consideration of whether selective disclosure of favorable interim data could be characterized as a half-truth, and continued review of risk factors.

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[40] Resp. Supp. Br. 9–10.

[41] *Robinhood Markets, Inc. v. Sodha*, No. 25-944 (U.S. Nov. 13, 2026) (order granting certiorari limited to the question presented).

[42] *Sodha*, 154 F.4th at 1033 n.3; Pet. 35.