No. 20-16419
Decided September 20, 2021, by Thomas, C.J.,
Restani, J. (Ct. Int'l Trade), and Miller, J. (dissenting)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FIYYAZ PIRANI,
Plaintiff-Respondent,

v.

SLACK TECHNOLOGIES, INC., ET AL.
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 3:19-cv-05857-SI
The Honorable Susan Illston

BRIEF OF INVESTOR *AMICI CURIAE* IN OPPOSITION TO DEFENDANTS'-APPELLANTS' PETITION FOR REHEARING EN BANC

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Rule 26.1 Corporate Disclosure Statement

Each of the Investor Amici Curiae state that they have no parent corporations and there is no publicly held corporation that owns 10% or more of their stock.

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

This brief is submitted by twelve institutional investors, which are identified in Appendix 1 (the "Investor Amici").[1] The Investor Amici are among the largest U.S. public pension funds and collectively invest billions of dollars on behalf of hundreds of thousands of American workers, including firefighters, police officers, teachers, and healthcare workers. Pursuant to Ninth Circuit Rule 29-2(a), all parties consent to the filing of this *amici curiae* brief.

American pension funds collectively manage assets totaling $35.5 trillion and are responsible for millions of American workers' retirement funds. Pension funds are the primary vehicle through which these workers invest their savings in the public markets, and thus have a strong interest in effective enforcement of the securities laws to deter fraud and to ensure compensation for those injured by fraud.

The Investor Amici rely on the investor protections provided by the Securities Act of 1933 (the "Securities Act" or "Act"). For almost ninety years, the Securities Act has been a critical safeguard for investors to deter issuers from making material misstatements in public offering materials. The panel's majority opinion preserved

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[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

this important safeguard for the U.S. capital markets. Reversing the panel's opinion would severely harm investors.

Amici respond to briefs that were filed by the Cato Institute ("Cato"); the Securities Industry and Financial Markets Association, Chamber of Commerce, and National Venture Capital Association (collectively, "SIFMA"); and Professor Joseph A. Grundfest ("Grundfest").

II. SUMMARY OF ARGUMENT

Since 1933, §11 has provided a cause of action to investors who purchase securities offered through a registration statement containing "an untrue statement of a material fact or omit[ting] to state a material fact required to be stated therein or necessary to make the statements therein not misleading." 15 U.S.C. §77k(a).

Deciding an issue of first impression, the panel held that in the specific situation of a direct-listing offering of both registered and unregistered securities—a new mechanism that first became available in 2018—§11's reference to "such security" encompasses all securities issued in the direct listing because sale of all the securities was authorized by the registration statement.

The SIFMA, Cato, and Grundfest briefs present unrealistic "the sky is falling" scenarios. The panel's opinion invites no catastrophic consequence; it simply maintains the long-embraced protections provided by Congress. The panel's opinion is correct, and rehearing should be denied for several reasons.

First, §11 is a remedial statute intended to be interpreted broadly to protect investors and "provide full and fair disclosure of the character of securities . . . and to prevent frauds in the sale" of securities. 48 Stat. 74. *See* §III.A.

Second, the panel's decision breaks no new ground. Since its inception, §11 protects investors from misrepresentations in initial public offerings ("IPOs") and secondary offerings, where the duty of full and fair disclosure is heightened.

Were the Court to grant rehearing *en banc* and reverse the panel's opinion, the Act would be materially weakened in a stark break from precedent. Companies and their officers, directors, and private investors could seize on this loophole to evade the Act at investors' expense. Allowing public offerings of securities without the risk of liability if investors were not provided the complete and accurate disclosures required under the Act would chill investment, harming both the capital markets and investors. *See* §III.B.

Finally, the panel's opinion comports with traditional statutory construction. *See* §III.C. Grundfest wrongly argues that the panel's interpretation of "such security" conflicts with how that phrase is used elsewhere in the Securities Act. But he ignores that in ***every other occurrence***, "such security" has an antecedent defining it. In §11, the term is undefined and should be interpreted in light of the Act's remedial intent. *Id.*

III. ARGUMENT

A. The Panel's Opinion Furthers "Full And Fair Disclosure" Under The Securities Act

Congress enacted §11 to protect investors by compelling issuers and their insiders "[t]o provide full and fair disclosure . . . and to prevent frauds . . . ." 48 Stat. 74. Indeed, the Supreme Court has long affirmed that a "fundamental purpose" of the Securities Act is "to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963). Through its liability provisions, §11 effectuates Congress's determination that those who publicly offer securities bear a "moral responsibility to the public [that] is particularly heavy." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 581 (1995) (quoting H.R. Rep. No. 85, 73d Cong., 1st Sess., at 5 (1933)).

Courts, including the district court here, this Court, and the Supreme Court, routinely invoke the Act's purpose of protecting investors. *See Wilko v. Swan*, 346 U.S. 427, 438 (1953) (because Congress "enacted the Securities Act to protect the rights of investors . . . the intention of Congress . . . is better carried out by holding invalid" arbitration agreements concerning claims under the Act); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1090 (9th Cir. 2010) ("Our conclusion that the Rule 144 safe harbor does not apply . . . is reinforced by the purposes underlying Securities Act registration[:] . . . the protection of investors through public

disclosure of information necessary to make informed investment decisions."); *Pirani v. Slack Techs., Inc.*, 445 F. Supp. 3d 367, 379 (N.D. Cal. 2020) ("[A]mong the central purposes of [the Act] is full and fair disclosure relative to the issuance of securities.") (citation omitted).

Consistent with this purpose, §11 is a critical tool for investors seeking to recoup losses attributable to false offering materials. Between 2011 and 2020, investors recovered hundreds of millions of dollars to compensate them, at least in part, for violations of §11. Specifically, in that period of time, investors (largely institutions like the Investor Amici) settled 77 cases brought exclusively under the Securities Act and an additional 109 cases brought under both the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act").[2] Nearly 85% of the settled cases that were brought exclusively under the Securities Act involved IPOs, the type of offering that is most impacted by the extreme stance taken by Defendants and their *amici*. *Id.*

[2] *See* Cornerstone Research, *Securities Class Action Settlements: 2020 Review and Analysis* (https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2020-Review-and-Analysis). Investors, including the Investor Amici, have recovered upwards of $2 billion in settlements of actions involving Securities Act claims in just the past few years since the new direct-listing rules have been in effect. *See* Appendix 2, listing a sampling of top recent settlements involving §11 claims.

B. The Panel's Opinion Upholds Long-Standing Principles Recognizing Liability For Misrepresentations In Public Securities Offerings

1. The Panel's Ruling Preserves The Status Quo And Creates No New Liability Under The Securities Act

Defendants and their *amici* incorrectly contend that the panel's opinion will upset settled law and invite a flood of new Securities Act suits against issuers that conduct direct-listing IPOs and other types of securities offerings. The panel's decision actually affirms current law, which for decades has recognized that companies accessing the public markets are subject to Securities Act liability. It is Defendants and their *amici* who advocate for a new regime.

Defendants' arguments echo arguments that were rejected—and proved unfounded—when Congress adopted the Act. Opponents argued that §11 liability would be the "bête noire that was going to stifle legitimate financing."[3] In fact, §11 has not prevented public offerings since 1933, including thousands in the past decade. Rather, §11's directive that companies making public offerings tell investors the truth has created a healthy securities market where honesty is expected and dishonesty deterred or remedied. The panel's opinion simply ensures compliance with the existing statutory scheme, which will not prevent direct listings—only dishonest direct listings.

[3] Benjamin J. Nickerson, *The Underlying Underwriter: An Analysis of the Spotify Direct Listing*, 86 U. Chi. L. Rev. 985, 1025 (2019).

The parade of horribles invoked by Cato, SIFMA, and Grundfest is a fiction. For example, contrary to their assertions (SIFMA Br. 10-13; Cato Br. 9; Grundfest Br. 10), it is Defendants' proposed construction, not the panel's, that would make early-stage investing riskier and more expensive for startups. As Cato notes, "uncertainty has a price tag." Cato Br. 9. Since 1933, shareholders have had the certainty of §11 to recoup losses in misleading offerings. Stripping investors of those protections would make early-stage investments riskier and chill investment. Conversely, the current framework ***supports*** fair, efficient public markets, which also encourage investment in innovative private companies hoping to go public.

Section 11 requires only that companies describe their business to investors honestly. If Defendants' *amici* fret that honesty has a price, the Investor Amici respectfully submit that is a price worth paying.

Moreover, *Adena Exploration, Inc. v. Sylvan*, 860 F.2d 1242 (5th Cir. 1988), cited by SIFMA, comports with the panel opinion. First, SIFMA tellingly omits the mechanism by which the Securities Act establishes *Adena's* "certainty, reliability, and stability," which is its "program of 'full and fair disclosure'" *Id.* at 1254. The *Adena* court recognized that "full and fair disclosure" bolsters, rather than undermines, public markets. Second, the *Adena* court recognized the market risks created by judicial uncertainty, which could "make the applicability of the Securities and Exchange Acts turn upon extended litigation." *Id.* For that reason, the *Adena*

court rejected a result that would have been contrary to the "express statement or . . . apparent implication" of "at least five circuits and the Supreme Court . . . ." *Id.* at 1244. The Court here should similarly be wary of upsetting the decades-long status quo that companies making material misrepresentations in public offerings are subject to §11. The panel's framework promotes judicial continuity.

2. Overturning The Panel's Opinion Would Significantly Weaken, If Not Vitiate, §11

While the panel's opinion maintains the status quo, a reversal that allows issuers and their insiders to flood the market simultaneously with registered and unregistered securities, all inoculated from §11 liability, would significantly and immediately harm the market.

For example, SIFMA argues that the possibility of §11 liability does not impact companies' choices between traditional IPOs and direct listings. SIFMA Br. §I.A. This argument is specious. Indeed, the same attorneys who signed the SIFMA brief wrote an article stating that an "important advantage of the direct listing" was that it could evade §11.[4] Moreover, the SEC has recently expanded the use of direct listings to allow issuers (as opposed to only insiders) to raise capital through these new direct listings. In so doing, the SEC specifically pointed to the underlying

[4] "Complex and Novel Section 11 Liability Issues of Direct Listings," *Corporate Counsel* (Dec. 20, 2019) (https://www.lw.com/thoughtLeadership/section-eleven-liability-direct-listings).

district court opinion assuring §11 liability in these offerings.[5] A reversal would create a new §11 loophole for all issuers raising capital.

A reversal here would also likely impact the recent explosion of Special Purpose Acquisition Company ("SPAC") transactions and subsequent "de-SPAC" public offerings, to investors' detriment.[6] In 2020 and 2021, over 700 SPAC IPOs were completed, and within the next few years, many of those SPACS will "de-SPAC." As recently reaffirmed by the SEC, §11 protects investors and ensures honesty in these de-SPAC transactions.[7]

But a reversal of the panel opinion would enable issuers to combine de-SPAC transactions with unregistered direct listings. This could significantly harm investors. Indeed, SPACs present increased risks to investors, as demonstrated by high-profile examples of companies merging with SPACs and subsequently

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[5] *See* SEC Release No. 34-91947, at 30 (May 19, 2021).

[6] For information on SPAC transactions, *see* SEC Office on Investor Education and Advocacy, "What You Need to Know About SPACs – Updated Investor Bulletin" (May 25, 2021) (https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/what-you).

[7] *See* John Coates, Acting Director, SEC Division of Corporate Finance, Public Statement: SPACs, IPOs and Liability Risk Under the Securities Laws, at 2 (Apr. 8, 2021) ("any material misstatement in or omission from an effective Securities Act registration statement as part of a de-SPAC business combination is subject to Securities Act Section 11"; "a de-SPAC transaction gives no one a free pass for material misstatements or omissions").

collapsing and causing massive investor losses.[8] Defendants' interpretation of §11 would provide issuers with an enormous "loophole large enough to undermine the purpose of Section 11 as it has been understood since its inception," as the panel warned. Opn. at 16.

SIFMA's assertion that SPAC and de-SPAC transactions do not present serious §11 liability concerns is simply wrong. SIFMA Br. 5-6. First, SIFMA is incorrect that only two of the then-36 (now 42) SPAC-related securities class actions have included §11 claims. For example, one of those cases—*Akazoo*—not only included §11 claims but resulted in a $35 million settlement with investors and a $38.8 million settlement with the SEC.[9] Second, former SEC Director Coates' recent confirmation that §11 protects investors in SPAC transactions will likely result in more investors seeking that protection when needed. Third, commentators have proposed SPAC transactions with direct listings: "The SPAC model is constantly evolving and, should a primary direct listing become an option [as it now has], it is likely that SPACs would consider using it."[10]

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[8] *See, e.g.*, https://www.bloomberg.com/news/articles/2021-05-14/ev-startups-lose-over-40-billion-after-taking-spac-route-public.

[9] *See https://securities.stanford.edu/current-trends.html* (last visited December 28, 2021); *see also* Appendix 2

[10] Carol Anne Huff, "Direct Listings: SPAC Friend or Foe?," *SPAC Insider* (Jan. 2, 2020).

C. The Panel's Opinion Is Supported By Traditional Statutory Construction

Section 11 is ambiguous with respect to the meaning of "such security," as recognized by the district court's decision, *see* 445 F. Supp. 3d at 379, Judge Miller's dissent from the panel decision, *see* Opn. at 22, and the seminal opinion in *Barnes v. Osofsky*, 373 F.2d 269, 271 (2d Cir. 1967). Grundfest challenges this long-acknowledged ambiguity by pointing to other Securities Act provisions where the phrase "such security" is not ambiguous and then incorrectly extrapolating that the term as used in §11 cannot therefore be either ambiguous or applicable to unregistered securities offered using a registration statement. Grundfest Br. 10-13.

First, unlike every other occurrence in the Securities Act listed in Grundfest's Appendix A, §11's "such security" has ***no*** antecedent, and so can mean either only securities registered under a registration statement or also securities whose public offering is made possible by the registration statement, as held by the panel. It is indisputable that "[a] word or phrase is ambiguous when the question is which of two or more meanings applies . . . ." Antonin Scalia & Bryan A. Garner, *Scalia and Garner's Reading Law: The Interpretation of Legal Texts* 46 (Thomson West, Kindle ed., 2012). Given this ambiguity, the Court should construe §11 in light of Congress's principal purpose in enacting the Securities Act: "full and fair disclosure" and "the protection of investors." 48 Stat. 74; 15 U.S.C. § 77b(b).

Both "textualists" and proponents of "purposive" statutory interpretation agree that legislative purpose is a necessary key to resolving statutory ambiguity: "words are given meaning by their context, and context includes the purpose of the text." Scalia & Garner, at 64. Thus, "it can be said . . . that the resolution of an ambiguity . . . that achieves a statute's purpose should be favored over the resolution that frustrates its purpose." *Id.* So say textualists. Purposive interpreters agree:

> The task of the judge is to make sense of legislation in a way that is faithful to Congress's purposes. When the text is ambiguous, a court is to provide the meaning that the legislature intended. In that circumstance, the judge gleans the purpose and policy underlying the legislation and deduces the outcome most consistent with those purposes.

Robert A. Katzmann, *Judging Statutes* 31 (Oxford University Press, Kindle ed., 2014).

Thus, where statutory language is ambiguous, courts are guided by the statute's fundamental purpose in resolving the ambiguity:

> "[H]owever well [statutory canons such as *expressio unius*] may serve at times to aid in deciphering legislative intent, they have long been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy."

United States v. Singh, 979 F.3d 697, 717 (9th Cir. 2020) (quoting *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943)); *see also Watt v. W. Nuclear,*

Inc., 462 U.S. 36, 58 (1983) (same); *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1169 (9th Cir. 2006) (same).

Similarly, "[a] preamble, purpose clause, or recital is a permissible indicator of meaning," so that the prologue can "be considered in determining which of various permissible meanings the dispositive text bears." Scalia & Garner, at 177-78. Thus, the Act's preamble properly informs §11's meaning and favors applying §11 to direct listings to promote "full and fair disclosure" and "prevent[] fraud" in securities offerings. 48 Stat. 74.

The panel correctly held that accepting Defendants' "interpretation of Section 11 would create a loophole large enough to undermine the purpose of Section 11 as it has been understood since its inception." Opn. at 16. This is consistent with this Court's long-held understanding that "[t]he [Securities and Exchange] Acts must be interpreted liberally to effect their purpose of ensuring full and fair disclosure to purchasers of securities and protecting the public from speculative or fraudulent schemes of promoters." *El Khadem v. Equity Sec. Corp.*, 494 F.2d 1224, 1227 (9th Cir. 1974). As the district court correctly held, "'[t]he 1933 and 1934 Acts are remedial legislation'" (citing *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 480 (9th Cir. 1973)), and the Securities Act therefore "'should be construed broadly to effectuate its purposes.'" 445 F. Supp. 3d at 379 (quoting *Tcherepnin v. Knight*,

389 U.S. 332, 336 (1967)); *see also FTC v. v. AT&T Mobility LLC*, 883 F.3d 848, 854 (9th Cir. 2018) (same).

Of course, Congress could not foresee in 1933 that the SEC would adopt rules permitting direct listing of unregistered securities alongside a registered offering. But the broad language Congress used—"such security"—should be given its full scope, which encompasses this new type of public offering. "General terms are to be given their general meaning," and "the presumed point of using general words is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions." Scalia & Garner, at 92. Moreover, as noted above, the SEC's citation to the district court's holding that §11 applies to direct listings as support for the SEC's approval of the new rules allowing direct listings supports the panel decision maintaining the historic application of §11 to public offerings.

Second, the entire premise of Grundfest's argument is incorrect. Grundfest argues that the panel ignored sixty other instances of "such security" in the Act, but he ignores the fact that ***in every instance other than the one at issue here***, the phrase has a clear antecedent specifying its meaning. In particular, "such security" in §5 refers to "a security" for which "a registration statement is in effect," 15 U.S.C. § 77e(a), and "such security" in §12(a)(2) refers to "a security" sold "by means of a prospectus or oral communication." 15 U.S.C. § 77*l*(a)(2). (The phrase "such security" in §11(e) refers back to §11(a) and shares the same ambiguity.) The

argument that "such security" must refer to registered securities in §11 because it does so in some other sections—but far from all, as Grundfest's own Appendix A shows—is baseless:

> The meaning of particular phrases must be determined in context. Congress itself has cautioned that the same words may take on a different coloration in different sections of the securities laws; both the 1933 and the 1934 Acts preface their lists of general definitions with the phrase "unless the context otherwise requires."

SEC v. Nat'l Sec., Inc., 393 U.S. 453, 466 (1969) (quoting 15 U.S.C. §§ 77b, 78c).

Grundfest's Appendix A lists the sixty instances where the Act refers to "such security" and highlights that phrase, but it fails to highlight the phrase's antecedents—and in many instances misleadingly ***omits*** the antecedents using ellipses. *See* §2(a)(4) (antecedent omitted by Grundfest is "certificates of deposit, voting certificates, or collateral certificates, or . . . certificates of interest or shares in an unincorporated investment trust not having a board of directors . . . or of the fixed, restricted management, or unit type"); §4(c)(2)(A), (B) (omitted antecedent is "securities offered and sold in compliance with Rule 506" in §4(c)(1)); §4(c)(3)(A) (same); §5(b)(2) (omitted antecedent is "any security with respect to which a registration statement has been filed" in §5(b)(1)); §6(b)(1) (omitted antecedent is "the securities specified [in a registration statement]" in §6(a)); §7(b)(1)(C) (omitted antecedent is "distribution of securities by [a blank check company]" in §7(b)(1)(B)); §12(b) (omitted antecedent is "a security" sold "by means of a

prospectus or oral communication" in §12(a)(2); §19(d)(4) (reference is to "such securities associations"; omitted antecedent is "duly constituted securities associations" in §19(d)(3)); §28, Schedule B (14) (omitted antecedent is "the security to be offered" in §28, Schedule B (2)-(3), (8)-(12)).

Attached as Appendix 3 are complete quotations of the sixty citations with both "such security" and its antecedents highlighted, confirming that §11 is unique in having no antecedent.

Third, Grundfest cites *Colonial Realty Corp. v. Brunswick Corp.*, 257 F. Supp. 875 (S.D.N.Y. 1966), but that case (like *Barnes*) concerned a plaintiff who purchased only previously issued stock on the aftermarket, not any of the stock issued under a registration statement. *Id.* at 876-77 & n.1. Thus, *Colonial Realty*'s conclusion that "the phrase 'such security' refers only to securities offered to the public under the registration statement" actually supports the panel's opinion here, since all the securities at issue could be and were offered to the public only via the registration statement. *Id.* at 878. Grundfest misleadingly suggests that *Central Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164 (1994), construes the phrase "such security," but that phrase does not even appear in the opinion. Thus, *Central Bank*'s statement that §12(a)(2) "limits liability to those who offer or sell the security" sheds no light on the question here. *Id.* at 179.

Moreover, contrary to Grundfest's argument (Grundfest Br. 9-10), applying §11 to unregistered securities sold alongside registered securities in a direct offering does not expand damages beyond §11(e)'s damages cap. Thus, his alarmist assertion that §11 liability for direct listings could bankrupt issuers is unfounded. The fact that all direct offerings previously included only shares sold by insiders, so the issuers received no proceeds, in no way distinguishes these offerings from registered public offerings of securities sold by selling shareholders rather than by the issuer, to which §11 indisputably applies. The issuer, as the party best positioned to provide complete and accurate disclosure in the registration statement, is properly held liable there by the unambiguous statutory text. There is no basis in the statute for reaching a different result here where "such security" is ambiguous and must be construed in light of Congress's intent to protect investors.

In addition, Grundfest and SIFMA both assert that direct offerings are analytically indistinguishable from IPOs without lockups (Grundfest Br. 17; SIFMA Br. 13-14), but this fanciful hypothetical ignores market reality—underwriters and investors insist on lockups to protect investors from insider sales flooding the market soon after an offering and depressing the securities' price, and Defendants' *amici* cite no instances where they did not. Equally beside the point is SIFMA's argument that corporate spinoffs, uplistings, and Level 2 ADR listings (which do not raise new

capital) are other ways of going public without §11 liability, because none of these types of transactions involve registered public offerings.

Finally, Cato's argument that the panel decision may harm innovation in traditional IPOs, such as looser lockup periods and pricing at the expected post-IPO market price (i.e., not at a lower price intended to result in a post-offering price increase) (Cato Br. §II.A), is baseless. The panel decision is limited to simultaneous registered offerings and direct listings and in no way prevents looser lockups or more aggressive pricing, should the market find them acceptable.

IV. CONCLUSION

The panel decision is important, as Professor Grundfest says (quoting an article by two authors of this brief), but that does not mean that rehearing is appropriate, because the decision rests on sound statutory construction and maintains the status quo.

December 30, 2021

Respectfully submitted,

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Certificate of Compliance

This brief complies with the type-volume limitation of the 9th Cir. R. 29-2(c)(2) because it contains 4,110 words, excluding the parts exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface in Times New Roman, 14-point font.

December 30, 2021

/s/ Lauren A. Ormsbee
Lauren A. Ormsbee

Certificate of Service

I hereby certify that I electronically filed the foregoing with the Clerk of Court, who will enter it into the CM/ECF system, which will send a notification of such filing to the appropriate counsel.

December 30, 2021

/s/ Lauren A. Ormsbee
Lauren A. Ormsbee

Appendix 1

Indiana Public Retirement System

Indiana Public Retirement System ("INPRS") is a $36.9 billion pension fund operated for the benefit of public employees in the State of Indiana. INPRS serves the needs of approximately 467,332 members and retirees representing more than 1,200 employers, including public universities, schools, municipalities, and state agencies.

Louisiana Sheriffs' Pension & Relief Fund

Louisiana Sheriffs' Pension & Relief Fund ("Louisiana Sheriffs") is a public pension fund that provides pension and other benefits for sheriffs, deputy sheriffs, and tax collectors in the State of Louisiana. Louisiana Sheriffs manages approximately $4 billion in assets for the benefit of its approximately 20,000 active and retired participants.

Public School Teachers' Pension and Retirement Fund of Chicago

The Public School Teachers' Pension and Retirement Fund of Chicago ("Chicago Teachers") is a pension fund established for the benefit of the current and retired public school teachers of the city of Chicago, Illinois. Chicago Teachers provides benefits for over 29,000 retirees and beneficiaries, manages over $11.2 billion in assets for its beneficiaries, and is responsible for providing retirement benefits to more than 30,000 current public employees and 10,000 vested inactive employees.

Allegheny County Employees' Retirement System

The Allegheny County Employees' Retirement System ("Allegheny County") is a single-employer defined benefit, contributory retirement benefit plan established in 1915 and headquartered in Pittsburgh, Pennsylvania. As of December 31, 2020, Allegheny County managed approximately $1 billion in assets on behalf of nearly 12,600 participants.

Southeastern Pennsylvania Transportation Authority

Southeastern Pennsylvania Transportation Authority ("SEPTA) is an institutional investor based in Philadelphia, Pennsylvania that manages more than $1.4 billion in assets on behalf of approximately 14,000 participants in SEPTA's five single-employer, defined benefit pension plans for all non-regional rail-union employees in Southeastern Pennsylvania.

City of Cambridge Retirement System

City of Cambridge Retirement System ("Cambridge") is a contributory retirement system for active and retired employees of the City of Cambridge, Massachusetts, the Cambridge Housing Authority, the Cambridge Public Health Commission, and the Cambridge Redevelopment Authority. As of September 1, 2021, Cambridge manages approximately $1.7 billion in assets on behalf of approximately six thousand participants.

City of Miami Fire Fighters' and Police Officers' Retirement Trust

City of Miami Fire Fighters' and Police Officers' Retirement Trust ("Miami Fire Fighters") was founded in 1939 and provides retirement and disability benefits to over 2,000 Miami-based firefighters and police officers. As of September 30, 2020, Miami Fire Fighters manages more than $1.6 billion in assets.

City of Miami General Employees' & Sanitation Employees' Retirement Trust

The City of Miami General Employees' & Sanitation Employees' Retirement Trust ("Miami") is a government entity that was founded in 1985 to provide benefits—including retirement, death, and disability benefits—to eligible employees of the government of the City of Miami, Florida. Miami manages more than $704 million in assets for the benefit of active and retired members.

Lehigh County Employees' Retirement System

Lehigh County Employees' Retirement System ("Lehigh"), based in Pennsylvania, is a defined benefit governmental plan. Lehigh provides retirement, disability, and death benefits to workers within the County of Lehigh, Pennsylvania. Currently, Lehigh manages approximately $544 million in assets on behalf of approximately 3,600 participants.

Hollywood Firefighters' Pension Fund

Hollywood Firefighters' Pension Fund ("Hollywood Firefighters") is a pension fund established for the benefit of the current and retired firefighters of the city of Hollywood, Florida. Hollywood Firefighters manages over $248 million in assets for its beneficiaries.

West Palm Beach Firefighters' Pension Fund

West Palm Beach Firefighters Pension Fund ("WPBFPF") is a pension fund based in West Palm Beach, Florida that provides retirement benefits for firefighters. As of September 30, 2019, WPBFPF managed total assets in excess of $233 million on behalf of over 364 current employees, retirees, and beneficiaries.

West Palm Beach Police Pension Fund

West Palm Beach Police Pension Fund ("West Palm Beach Police") is a public pension fund that provides retirement benefits to over 500 police officers and their families. As of June 30, 2021, West Palm Beach Police manages approximately $450 million in pension assets.

Appendix 2

Sample of Recent Settlements Involving Securities Act Claims

Case	Year	Result
Snap. Inc. Securities Cases (Case No. 2:17-cv-03679-SVW-AGR (C.D. Cal.), No. BC669394 (Cal. Super. Ct., Los Angeles Cty.), and No. 17CIV03710 (Cal. Super. Ct., San Mateo Cty.))	2021	Collective settlement of Securities Act and Exchange Act claims for $187.5 million, the second-largest securities settlement of 2021
Akazoo S.A. Sec. Litig., Case No. 1:20-cv-01900-BMC (E.D.N.Y.)	2021	Settlement of Securities Act and Exchange Act claims for $35 million
In re GreenSky Sec. Litig., Case No. 1:18-cv-11071-AKH (S.D.N.Y.)	2021	Settlement of Securities Act claims for $35 million
In re ADT Inc. S'holder Litig., No. 502018CA003494XXXXMB-AG (15th Cir. Ct. Fla.)	2021	Settlement of Securities Act claims for $30 million
Deka Investment GmbH v. Santander Consumer USA Holdings Inc., Case No. 3:15-cv-02129-K (N.D. Tex.)	2021	Settlement of Securities Act and Exchange Act claims for $47 million
City of Westland Police and Fire Retirement System v. Metlife Inc., et al, Case No. 1:12-cv-00256-LAK (S.D.N.Y.)	2021	Settlement of Securities Act and Exchange Act claims for $84 million
In re Valeant Pharmaceuticals International, Inc. Sec. Litig., Case No. 3:15-cv-07658-MAS-LAG (D.N.J.)	2020	Settlement of Securities Act and Exchange Act claims for $1.2 billion
In re American Realty Capital Properties, Inc. Litig., Case No. 1:15-mc-00040-AKH (S.D.N.Y.)	2020	Settlement of Securities Act and Exchange Act claims for $1.025 billion, the largest securities settlement of 2020
Baker v. SeaWorld Entertainment, Inc., et al., Case No. 3:14-cv-02129-MMA-AGS (S.D. Cal.)	2020	Settlement of Securities Act and Exchange Act claims for $65 million
Chicago Laborers Pension Fund v. Alibaba Group Holding Limited, No. CIV535692 (Cal. Super. Ct., San Mateo Cty.)	2019	Settlement of Securities Act claims for $75 million
In re Petrobras Sec. Litig., Case No. 1:14-cv-09662-JSR(S.D.N.Y.)	2018	Settlement of Securities Act and Exchange Act claims for $3 billion
Schuh v. HCA Holdings, Inc., Case No. 3:11-cv-01033-KHS (M.D. Tenn.)	2016	Settlement of Securities Act claims for $215 million
In re: Bank of America Corp. Securities, Derivative, & ERISA Litigation, Case No. 1:09-md-02058-PKC (S.D.N.Y.)	2013	Settlement of Securities Act and Exchange Act claims for $2.4 billion
Rubin v. MF Global, Ltd., et al., Case No. 1:08-cv-02233-VM (S.D.N.Y.)	2011	Settlement of Securities Act claims for $90 million
In re WorldCom, Inc. Sec. Litig., Case No. 1:02-cv-03288-DLC (S.D.N.Y)	2005	Settlement of Securities Act and Exchange Act claims for $6.15 billion

Appendix 3

Investor Amici Response to Grundfest Appendix A:

Section 11 of the Securities Act of 1933 Is Unique Because Every Other Use of "Such Security" in the Act Refers to a Specific Antecedent

Securities Act Section	Relevant Excerpt
2(a)(3)	Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of **such security** the right to convert **such security** into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security . . . . Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell **such securities**.
2(a)(4)	The term ''issuer'' means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term ''issuer'' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which **such securities** are issued . . . .
3(a)(2)	any security which is an industrial development bond . . . the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code . . . paragraph (1) of such section 103(c) does not apply to **such security** . . .
3(a)(11)	Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of **such security** is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.
3(b)(1)	The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any

	class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to **such securities** is not necessary in the public interest . . . .
3(b)(2)(D)	(2) ADDITIONAL ISSUES.—The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions . . . . (D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling **such securities**.
3(b)(3)	Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of **such securities**.
3(c)	The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to **such securities** is not necessary in the public interest and for the protection of investors.
4(a)(3)(C)	(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except . . . (C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of **such securities** by the issuer or by or through an underwriter.
4(c)(1)(A)-(C)	(c)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because— (A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of **such securities**, whether online, in person, or through any other means; (B) that person or any person associated with that person co-invests in **such securities**; or (C) that person or any person associated with that person provides ancillary services with respect to **such securities**.
4(c)(2)(A), (B)	(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title 17, solely because . . . . (2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if— (A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of **such security**; (B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of **such security** . . . .

4(c)(3)(A)	(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title 17, solely because . . . (C) that person or any person associated with that person provides ancillary services with respect to **such securities** . . . . (3) For the purposes of this subsection, the term ''ancillary services'' means— (A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of **such security** . . . .
4A(b)(1)(H)(i), (iv)	(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between **such securities**, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer; . . . (iv) how the securities being offered are being valued, and examples of methods for how **such securities** may be valued by the issuer in the future, including during subsequent corporate actions . . .
4A(c)(1)(A)	Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for **such security** with interest thereon, less the amount of any income received thereon, upon the tender of **such security**, or for damages if such person no longer owns the security.
4A(e)(1)	Securities issued pursuant to a transaction described in section 4(6)— (1) may not be transferred by the purchaser of **such securities** during the 1-year period beginning on the date of purchase, unless **such securities** are transferred— (A) to the issuer of the securities; (B) to an accredited investor; (C) as part of an offering registered with the Commission; or (D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission . . . .
5(a)(1), (2)	(a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly— (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell **such security** through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any **such security** for the purpose of sale or for delivery after sale.
5(b)(2)	It shall be unlawful for any person, directly or indirectly— (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or (2) to carry or cause to be carried through the mails or in

	interstate commerce any **such security** for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.
5(c)	(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to **such security** . . .
5(d)	Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to **such securities** with the Commission, subject to the requirement of subsection (b)(2).
6(a)	(a) Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions . . . except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of **such security**.
6(b)(1)	(a) A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered . . . (1) FEE PAYMENT REQUIRED.—At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $92 per $1,000,000 of the maximum aggregate price at which **such securities** are proposed to be offered . . . .
7(b)(1)(C)	(b)(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors . . . (B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and (C) provide a right of rescission to shareholders **of such securities**.
11 (the only section where "such security" has no antecedent)	(a) 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 . . . (5) every underwriter with respect to **such security** . . . . (e) The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which **such security** shall have been disposed of in the market before suit, or (3) the price at which **such security** shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: Provided, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of **such security** resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable.
12(a)(2)	(a) IN GENERAL.—Any person who— (1) offers or sells a security in violation of section 5, or (2) offers or sells a security . . . by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading . . . and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing **such security** from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for **such security** with interest thereon, less the amount of any income received thereon, upon the tender of **such security**, or for damages if he no longer owns the security . . . .
12(b)	(a) IN GENERAL.—Any person who . . . (2) offers or sells a security . . . by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading . . . and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing **such security** from him . . . . (b) In an action described in subsection (a)(2), if the person who offered or sold **such security** proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of

	the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading then such portion or amount, as the case may be, shall not be recoverable.
17(b)	It shall be unlawful for any person . . . to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes **such security** for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.
18(b)(1)	(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if **such security** is— . . .
18(b)(2)	(2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if **such security** is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.
18(b)(4)(A)	(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to . . . (A) paragraph (1) or (3) of section 4, and the issuer of **such security** files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 . . . .
18(b)(4)(D)	(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to . . . (D) a rule or regulation adopted pursuant to section 3(b)(2) and **such security** is (i) offered or sold on a national securities exchange; or (ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale . . . .
18(b)(4)(E)	(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to . . . (E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of **such security** in the State in which the issuer of **such security** is located . . . .
19(d)(4)	(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas . . . (4) In order to carry out these policies and purposes, the Commission shall conduct an annual conference as well as such other meetings as are deemed

	necessary, to which representatives from **such securities associations**, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate.
23	Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, **such security** . . . .
28, Sched. A (16)	the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of **such security** is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class.
28, Sched. A (17)	[A]ll commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of **such security**. A commission paid or to be paid in connection with the sale of **such security** by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer.
28, Sched. A (19)	[T]he net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which **such security** was offered to the public, and the names of the principal underwriters of **such security**; . . .
28, Sched. B (17)	all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of **such security**. A commission paid or to be paid in connection with the sale of **such security** by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer . . . .
28, Sched. B (14)	(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated. . . . (14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all

	laws, decrees, ordinances, or other acts of Government under which the issue of **such security** has been authorized.
204(4)	Negotiate and carry out, or assist in negotiating and carrying out, arrangements for the resumption of payments due or in arrears in respect of any foreign securities in default or for rearranging the terms on **which such securities** may in future be held or for converting and exchanging the same for new securities or for any other object in relation thereto; and under this paragraph any plan or agreement made with respect to **such securities** shall be binding upon depositors, providing that the consent of holders resident in the United States of 60 per centum of the securities deposited with the Corporation shall be obtained.
207	The Corporation may in its discretion levy charges, assessed on a pro rata basis, on the holders of foreign securities deposited with it: Provided, That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 per centum of the face value of **such securities**: Provided further, That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 203 and 204 and shall not exceed 1 per centum of the face value of **such securities**.