New York Supreme Court

Appellate Division—First Department

CAMELOT EVENT DRIVEN FUND, a Series of Frank Funds Trust,

Plaintiffs-Respondents-Appellants,

Appellate Case No.: 2023-00983

– against –

MORGAN STANLEY & CO. LLC, J.P. MORGAN SECURITIES, LLC, CITIGROUP GLOBAL MARKETS INC., GOLDMAN SACHS & CO. LLC, MIZUHO SECURITIES USA LLC, SIEBERT WILLIAMS SHANK & CO., LLC, BNP PARIBAS SECURITIES CORP., RBC CAPITAL MARKETS, LLC, U.S. BANCORP INVESTMENTS, INC., SMBC NIKKO SECURITIES AMERICA, INC., TD SECURITIES (USA) LLC, SG AMERICAS SECURITIES, LLC, MUFG SECURITIES AMERICAS INC., CASTLEOAK SECURITIES, L.P., SAMUEL A. RAMIREZ & COMPANY, INC., ACADEMY SECURITIES, INC., R. SEELAUS & CO. LLC,

(For Continuation of Caption See Inside Cover)

BRIEF OF *AMICUS CURIAE* SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLANTS-RESPONDENTS

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WELLS FARGO SECURITIES, LLC, BNY MELLON CAPITAL MARKETS, LLC, INTESA SANPAOLO S.P.A. and ICBC STANDARD BANK PLC,

Defendants-Appellants-Respondents,

– and –

VIACOMCBS, INC., ROBERT M. BAKISH, KATHERINE GILL-CHAREST, SHARI E. REDSTONE, CANDACE K. BEINECKE, BARBARA M. BYRNE, LINDA M. GRIEGO, ROBERT N. KLIEGER, JUDITH A. MCHALE, RONALD L. NELSON, CHARLES E. PHILLIPS JR, SUSAN SCHUMAN, NICOLE SELIGMAN and FREDERICK O. TERRELL,

Defendants-Respondents.

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INTEREST OF *AMICUS CURIAE*

The Securities Industry and Financial Markets Association ("SIFMA") is the leading securities industry trade association for broker-dealers, investment banks, and asset managers operating in the capital markets. SIFMA serves as an industry-coordinating body to support and promote a strong financial industry, fair and orderly markets, informed regulatory compliance, efficient market operations, and trust and confidence in the financial markets. SIFMA has an interest in ensuring that courts properly enforce the regulatory regime governing public offerings of securities, to ensure the consistency and predictability on which the securities markets depend. SIFMA supports a strong financial industry by representing its members in cases important to the proper functioning of the financial markets.

This is such a case. In the order under review, the Trial Court created two new duties for underwriters of securities offerings: (i) a duty to investigate and disclose potential conflicts of interest created by underwriters' own securities and derivative trading activities relating to the issuer, and (ii) a duty to perform due diligence into whether *other* underwriters within the syndicate have such potential conflicts of

interest. The decision lacks a basis in law, and contravenes the choices of legislators and regulators *not* to impose on underwriters the kinds of duties they have imposed on other actors in the capital markets. The framework imagined by the Trial Court is also simply unworkable. It would place underwriters in the impossible position of risking the violation of laws that *limit* their ability to share information internally and externally. And even if the conflicting compliance regimes could be squared up, the order would necessitate the development of extraordinary new processes that would disrupt the efficiency and availability of underwriting services, to the detriment of the capital markets.

Public offerings through the capital markets contribute to the health and growth of the economy. Underwriters are critical to large offerings because of their expertise in helping issuers navigate disclosure requirements under securities laws and in pricing and marketing securities to the public. The decision below hampers the operation of this vital sector. It undermines the certainty and predictability that is essential for underwriters to participate in underwriting syndicates, without enhancing the protections for the

investing public that are the central object of the securities laws. The Court should reverse the Trial Court's order and restore the legal framework that for decades has functioned effectively to facilitate economic activity and protect the investors who participate in it.

ARGUMENT

I. The Current Legal Regime Governing Underwriters' Conduct Protects Investors and Fair Markets, While Maintaining Underwriters' Value to Securities Issuances.

A. The Capital Markets Rely on Underwriters.

Underwriters provide a valuable function for capital markets. *See, e.g.*, *Chris-Craft Indus., Inc. v. Piper Aircraft Corp.*, 480 F.2d 342, 370 (2d Cir. 1973). Whereas public companies only occasionally sell their stock, underwriters repeatedly engage in capital-raising activities and thus bring extensive experience and know-how to the marketing, pricing, and selling of stock to investors. 1 Thomas L. Hazen, *Treatise on the Law of Securities Regulation* § 2:4 (2023); William K. Sjostrom, Jr., *The Untold Story of Underwriting Compensation Regulation*, 44 U.C. Davis L. Rev. 625, 641 (2010).

In a typical large offering, underwriters expend enormous sums of money, often in the hundreds of millions of dollars, and a failed offering

can accordingly result in underwriters losing many millions of dollars.[1] In the first six months of 2023, underwriters participated in forty-seven initial public offerings in the United States, resulting in $10.4 billion in capital raised.[2] Globally, there were 615 initial public offerings, resulting in $60.9 billion in capital raised.[3] Given the value underwriters provide to companies seeking to raise significant capital through public offerings in order to continue and grow their businesses, as the Securities and Exchange Commission ("SEC") has recognized, "broker-dealers play an important role in our capital markets and our economy more broadly." *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248, 84 Fed. Reg. 336699, 2019 WL 3043881 (July 12, 2019); *see also Chris-*

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[1] Deal Point Data, IPOs, https://www.dealpointdata.com/rj?vb=Action.intras&app=ipo&id=q686326441 (last visited Sep. 15, 2023) (showing that over the last twelve months, underwritten initial public offerings in the United States resulted in $145.51 million in proceeds on average).

[2] Deal Point Data, IPOs, https://www.dealpointdata.com/rj?vb=Action.intras&app=ipo&id=q686326441 (last visited Sep. 15, 2023).

[3] Paul Go, *In Q2 2023, Emerging Markets Are Thriving Amid a Slow Global IPO Market*, EY (July 25, 2023), https://www.ey.com/en_us/ipo/1h-2023-ipo-market-trends.

Craft Indus. Inc., 480 F.2d at 357 ("[O]ur entire economy is dependent upon [securities] markets.").

B. The Framework Governing Underwriters' Obligations Protects Investors by Focusing on Issuer Disclosures.

In regulating the securities markets, Congress and the SEC have adopted disclosure-based protections to ensure that investors can make informed assessments of the issuer's future prospects. William W. Barker, *SEC Registration of Public Offerings Under the Securities Act of 1933*, 52 Bus. Law. 65, 82 (1996). The laws promote a careful balance between protecting investors and stifling underwriting activity with overbroad liability exposure. *See Slack Techs., LLC v. Pirani*, 143 S. Ct. 1433, 1441 (2023) ("Congress sought a balanced [securities] liability regime[.]"). This legal framework protects investors by requiring underwriters and issuers to "act truthfully in the offering of public securities," and to "decide what information [in offering materials] will be useful without burying investors under a blizzard of paper." (JA-56); *Wielgos v. Commonwealth Edison Co.*, 892 F.2d 509, 518 (7th Cir. 1989).

The legal framework governing underwriters likewise reflects the reality that to make informed investment decisions, investors require thorough information about an issuer—with whom they are entering an

enduring business relationship—and little about the underwriters who facilitate a one-time transaction for investors' purchase of an issuer's stock. Specifically, the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") require that securities offering materials include extensive information about an issuer but only certain minimal information about the underwriters. *See, e.g.*, 17 C.F.R. § 229.508 (2023).

Underwriters face potential liability for any material misstatements or omissions in offering materials, and the consequences of an underwriter failing to conduct adequate due diligence of an issuer are acute. Statutory damages for violation of Section 11, for example, can be in the hundreds of millions. *See*, *e.g.*, *In re WorldCom, Inc. Sec. Litig.*, 2005 WL 335201, at *9 (S.D.N.Y. Feb. 14, 2005) (noting that requested Section 11 damages in a securities class action for two offerings totaled approximately $17 billion); Paul Grier, *A Methodology for the Calculation of Section 11 Damages*, 5 Stan. J.L. Bus. & Fin. 99, 114–17 (1999).

Against this backdrop, underwriters take their responsibility to conduct due diligence of issuers very seriously, and focus on ensuring

that investors have relevant, accurate, information about the issuer. Underwriters conduct extensive independent due diligence on an issuer's business, finances, and risks, to ensure that the issuer's disclosures are accurate. *See generally* William K. Sjostrom, Jr., *The Due Diligence Defense Under Section 11 of the Securities Act of 1933*, 44 Brandeis L.J. 549, 555 (2006). Underwriters engage in a variety of financial, business, regulatory, and other due diligence activities leading up to an offering, such as analyzing the relevant industry and issuer; conducting internal approval exercises; meeting with company management; meeting with third parties, such as customers and auditors; compiling and reviewing extensive materials related to the disclosures; and participating in sessions with the company to draft offering materials, all with the help of lawyers trained in the requirements of the securities laws. *See, e.g.*, *id.*

C. The Multi-Service Firms That Participate in Large Issuances Require Ethical Walls to Ensure Fair Markets.

Companies that wish to raise substantial capital through a public issuance often require the participation of large banks with enough capital to purchase and sell the offering. These firms necessarily face

conflicts of interest because of the various financial services they offer. Banks that underwrite large public securities offerings also commonly offer, for example, retail brokerage services, portfolio management, mutual fund management, trading for the bank's own account, and investment banking. *See* James A. Fanto, Jill I. Gross, & Norman S. Poser, *Broker-Dealer Law and Regulation* §§ 1.02, 2.01, 2.03 (5th ed. Supp. 2023). These services are generally separated into discrete business units with hundreds of thousands of clients. Some business units act on behalf of the firm's interests, while other business units act on behalf of clients' interests. The corresponding risk of potential conflicts of interest is inherent and routine. For example, a large financial services firm's investment banking division, which includes underwriting services, could possess confidential information about an upcoming securities offering that would be material to a trading division that trades on behalf of the firm. Similarly, a trading division may know confidential information about an investor's (or its own) planned trades before the public does, which could materially affect the market.

This state of play is well known to market participants. Indeed, large financial institutions disclose in annual reports and other public disclosures that they expect to face potential conflicts of interest among their business units in the ordinary course of business. *See, e.g.*, JPMorgan Chase & Co., Annual Report 30 (Form 10-K) (Feb. 21, 2023) ("JPMorgan Chase's ability to manage potential conflicts of interest is highly complex due to the broad range of its business activities which encompass a variety of transactions, obligations and interests with and among JPMorgan Chase's clients and customers."). As courts have observed, the SEC has recognized that the complete elimination of potential conflicts is "obviously quite out of the question," and that if "multiple roles were prohibited, the capital-raising capability of the industry and its ability to serve the public would be significantly weakened." *In re Enron Corp. Secs., Derivative & ERISA Litig.*, 238 F. Supp. 3d 799, 890 (S.D. Tex. 2017), *aff'd sub nom. Lampkin v. UBS Fin. Servs., Inc.*, 925 F.3d 727 (5th Cir. 2019) (cleaned up).

For exactly that reason, to help keep markets fair, multi-service banks are subject to regulations requiring them to guard against the misuse of material nonpublic information and insider trading and to

manage conflicts of interest. For example, Section 15 of the Securities Act requires registered broker-dealers to establish measures designed to restrict the use of material nonpublic information held on the private side of firms. *See* 15 U.S.C. § 78o(g) ("Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed . . . to prevent the misuse . . . of material nonpublic information[.]"). Rule 10b-1(b)–(c) under the Exchange Act provides a safe harbor from liability for the use of material nonpublic information if the person accused of misconduct can establish that they were not aware of the information at the time. *See* 17 C.F.R. § 240.10b5-1(b)–(c) (2023).[4] The Office of the Comptroller of the Currency ("OCC") requires that national banks exercising fiduciary powers must adopt written procedures "for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security," and to "prevent[] self-dealing and conflicts of interest." 12 C.F.R. § 9.5(b)–(c) (2023). And the

[4] *See also, e.g.*, Section 21A of the Exchange Act, 15 U.S.C. § 78u-1, under which financial services firms can be liable for failing to prevent insider trading by employees, and requiring securities firms to maintain supervisory procedures to prevent insider trading.

OCC has issued guidance to examiners that bank policies "should require an information barrier . . . that prevents the passage of material inside information between a bank's fiduciary department and . . . commercial lending or investment banking." Off. of the Comptroller of the Currency, Comptroller's Handbook, AM-CI, *Conflicts of Interest* (2015). Underwriters are also governed by regulations requiring them to keep their clients' information (including certain trading information) private. The Gramm-Leach-Bliley Act prohibits financial institutions from disclosing nonpublic information about consumers without notice and permission. *See* 15 U.S.C. § 6802. A primary purpose of the Gramm-Leach-Bliley Act is to impose on financial institutions an "affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." *Id.* § 6801(a).

To avoid enforcement actions by the SEC and civil claims, and to comply with the above obligations to secure confidential information, multi-service firms over the last several decades have carefully established ethical walls consisting of internal rules, policies, and physical boundaries that block the flow of information among

potentially conflicting business units. *See* Fanto, Gross, & Poser, *supra,* § 6.09. Ethical walls help firms to both (i) manage conflicts of interest, and (ii) comply with regulations concerning insider trading. *Id.* Ethical walls enable business units to manage conflicts because when information is isolated to one business unit, another unit that could be conflicted by learning of the information remains uncontaminated. Similarly, ethical walls help guard against material nonpublic information reaching individuals in units who could improperly trade on that information for their own benefit. *See, e.g.*, *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 238 F. Supp. 3d at 890 ("Multi–service financial institutions have a duty to prohibit bankers from giving nonpublic information to other bank employees; in fact barring such allows brokerage and research operations to continue unimpeded by bankers' 'institutional' knowledge.").

Ethical walls are widely used in the finance industry. The standards for admission to the self-regulatory organization Financial Industry Regulatory Authority ("FINRA"), for example, specifically require that an applicant "that proposes to engage in investment banking activities" demonstrate that "consistent with the practices and

standards regularly employed by the industry—it has developed and implemented policies and procedures" to implement ethical certain walls. FINRA, *Standards for Admission*, https://www.finra.org/rules-guidance/guidance/finra-standards-admission (last visited Sep. 15, 2023).

II. The Duty Created by the Trial Court Contravenes Decades of Established Precedent Governing Multi-Firm Underwriting.

The Trial Court's order threatens to upend the careful balance of the current securities-liability regime outlined above. Markedly absent from the foregoing framework, until the decision below, was any requirement that underwriters disclose their firms' own potential transactions in an issuer's securities, or any requirement that underwriters diligence each other's potential transactions in an issuer's securities. The focus of these laws is instead on the information disclosed to investors about the *issuer* whose securities are being brought to market—Sections 11 and 12 of the Securities Act impose liability for underwriters who have failed to sufficiently due diligence the *issuer*, not themselves, or other underwriters. *See, e.g.*, 17 C.F.R. § 230.17(g) (2023) (reasonableness of due diligence is assessed based on

"the type of underwriting arrangement, the role of the particular person as an underwriter, and the availability of information *with respect to the registrant*" (emphasis added)); 11 U.S.C. §§ 77g; 77aa (enumerating dozens of items that must be "in" the registration statement, only three of which concern underwriters). The disclosure obligation extends to information about the market for an issuer's outstanding securities, but this framework has never before contemplated the disclosure of *non-*public information about the underwriter's firm's own potential market transactions (other than a limited subset of statutorily-defined "stabilizing transactions," defined in Item 508), or its customers' potential transactions. *See* 17 C.F.R. § 229.508. After all, such information would necessarily provide an incomplete picture of the market for the issuer's securities, and could therefore be misleading—contrary to the fundamental objectives of the securities laws. *See Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 565 (1980) ("[J]udges are not accredited to supersede Congress or the appropriate agency by embellishing upon the regulatory scheme. Accordingly, caution must temper judicial creativity in the face of legislative or regulatory silence.").

In addition, there are already specific standards and rules defining and governing underwriters' potential conflicts requiring disclosure, none of which encompass the Trial Court's definition or requirement. Specifically, FINRA Rule 5121 identifies when an underwriter has a conflict of interest requiring disclosure in securities offering materials, such as when the underwriter beneficially owns 10% or more of stock in the issuer. And FINRA Rules 5130 and 5131 specifically prohibit certain trading activities and allocations in the context of initial public offerings. The Trial Court's order would expand significantly the established rules set by regulators to manage conflicts in the context of underwriting securities.

III. If Upheld, the Trial Court's Ruling Would Fundamentally Disrupt the Underwriting Process and the Efficient Functioning of Securities Markets.

A. The Requirement to Investigate and Disclose Internal and Other Underwriters' Potential Conflicts Is Unworkable in the Business Reality in Which Underwriters Operate.

For numerous reasons, the Trial Court's requirement that underwriters investigate internal and other banks' hypothetical conflicts of interest is also impracticable and would add extraordinary

complexity to securities offerings, hampering the efficient operation of the capital markets.

First, the Trial Court did not provide any concrete guidance as to how an underwriter could possibly determine whether a potential conflict meets the threshold to be disclosed. As described above, multi-service banks regularly encounter potential conflicts of interest because of the extensive services they provide as both brokers and dealers. Given the hundreds of thousands of clients banks could service with hundreds of thousands of positions in various investments at one time, there would be no practical way for a bank to actually carry out the kind of "conflict check" apparently contemplated by the decision below without outsized burden and significant delay. This is particularly so since under the Trial Court's decision, to determine any potential conflicts, banks could in theory be required not only to diligence their own positions in an issuer's stock, but to also confirm with their hundreds of thousands of clients that those clients have no imminent plans to engage in any potential conflict-creating investment activity in an issuer's stock. It is not clear that pinpointing such a fast-moving target would even be possible.

Second, even if such an investigation were possible as a practical matter, it is unclear whether the exercise would be reliable or useful to investors in real time for several reasons. The stock market is affected minute-by-minute by myriad factors independent of a bank's or its clients' market activity, including for example macroeconomic factors, global events, interest rates, and activities of other market participants. Banks also cannot determine with certainty how third parties over whom they have no control may dispose of or invest in positions in the market at any time. A bank also cannot consistently predict with reasonable certainty, for example, how activities in its trading department may impact the price of stock its investment banking division is underwriting. And even if such an investigation were possible, and could be undertaken with certainty at a given moment, a conflict disclosure in offering materials could still be of little use to investors because stock-price reactions happen moment to moment, such that information from 1 PM could be useless by 2 PM. Issuers and underwriters could be in a position where they would be required to amend offering materials daily or even multiple times a day—with no concomitant benefit to investors. And as described above, investors

already have access to banks' own public filings, which already disclose that financial firms encounter the potential for conflicts among business units in the normal course.

Third, as noted above, the Trial Court's requirement would also place underwriters in the impossible position of either transgressing regulations by breaching ethical walls and client confidentiality obligations, or face securities liability for failing to do so. The Trial Court's conclusion that "[s]omeone working at some senior risk management level . . . (presumably at least the Chief Compliance Officer) had not only the ability to look over the walls but an obligation to do so" ignores the business reality in which compliance departments operate. (JA-82.) Even assuming that a department within a firm that "sits above the wall" such as a compliance or risk group could practically determine every hypothetical conflict, and could reliably determine that the hypothetical conflict meets the undefined threshold requiring disclosure, that department could not use that information to either cure a conflict or facilitate disclosure without either eroding the core purpose of separating brokers from investment bankers, or breaching the public side of the bank's confidentiality obligations to its

clients. Disclosing underwriting activity for a confidential imminent offering to the bank's public-side business units—to allow those units to investigate and eliminate trading activity that could create a conflict—would contaminate the public-side business units with material nonpublic information. In other words, there would be no way to disclose the conflict without effectively creating a conflict. Likewise, disclosing to an investment banking division a hypothetical conflict created by a bank client's potential trading activity—for the purpose of complying with an investment banking disclosure requirement—would breach the bank's public side's client-confidentiality obligations.

For similar reasons, underwriters could not practicably carry out a duty to investigate other underwriters' hypothetical conflicts to ensure that none exists or that such conflicts are disclosed. Since underwriters are hemmed in by their confidentiality obligations to their customers by contract and federal law, they cannot share sensitive information about their trading clients' positions with other underwriters. In addition, the level of diligence that would be required for each underwriter to independently ensure that other underwriters are sufficiently identifying and disclosing potential conflicts—even if possible as a

practical matter and without transgressing ethical walls, confidentiality obligations, and insider trading regulations—would dramatically expand and transform the role of non-lead underwriters, making it potentially economically prohibitive for such banks to join a syndicate. This is especially so for non-lead underwriters, who calculate their risks of participating in a syndicate based on their agreement only to underwrite a minority of shares in an offering. Thus, requiring those underwriters—who typically rely primarily on the due diligence efforts of the lead underwriters—to undertake independent and extensive investigations into several other underwriters' potential conflicts, would frustrate the efficient underwriting process.[5] Moreover, the requirement asks the impossible insofar as it requires underwriters to disclose what transactions other underwriters and those underwriters' clients might undertake, information a third-party underwriter would never know.

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[5] *See Nat'l Credit Union Admin. Bd. v. UBS Secs. LLC,* 2017 WL 411338, at *11 (D. Kan. Jan. 31, 2017) ("[T]o survive summary judgment, a defendant who has merely relied on the due diligence performed by another must be able to point to some evidence that it had notice of facts that would give it some comfort or assurance about the other's due diligence practices generally or its due diligence performance with respect to the particular securitization. In the absence of such evidence, no reasonable jury could conclude that the defendant had a reasonable basis for its reliance on the other and for its failure to perform any due diligence of its own.").

B. The Trial Court's Order Would Erode the Predictability and Certainty That Are Essential to the Efficient Functioning of the Securities Markets.

In light of the significant financial risk underwriters assume to participate in offerings, underwriters rely on a consistent and clear framework governing their conduct. The Trial Court's decision creates uncertainty when the need for predictability is paramount. If left undisturbed, the Trial Court's order would no doubt discourage underwriters from participating in underwriting syndicates. "[S]tability and reliance are essential components of . . . expectation for financial actors." *Cal. Pub. Emps.' Ret. Sys. v. ANZ Secs., Inc.*, 137 S. Ct. 2042, 2055 (2017). The novel and vague duties required by the Trial Court's order would place underwriters in a position where they could not predict with sufficient consistency the financial risks and their potential liability for participating in a syndicate. It would also place them in unrealistic and irreconcilable positions that would force them to violate duties to clients and requirements under federal laws and regulations, and to operate out of step with the marketplace. Most underwriters of large issuances are multi-service financial institutions, which, as described above, commonly consist of numerous business

units that carry out various services. If upheld, the Trial Court's requirement could compel underwriters to violate the regulations meant to keep the markets fair, prevent the misuse of material nonpublic information, and protect client confidentiality. *See, e.g.*, *In re Enron Corp. Secs., Derivative & ERISA Litig.*, 2016 WL 4095973, at *31 (S.D. Tex. 2016, Aug. 2, 2016); 15 U.S.C. § 78o(g). The only way to investigate and disclose potential conflicts of interest, and ensure that other underwriters have likewise disclosed such potential conflicts, would be to share sensitive, confidential client, and potentially material non-public, information internally among business units whose interests could conflict, and externally to other banks. This would place underwriters in an untenable position of either violating confidentiality obligations, or contravening securities laws. Few underwriters would agree to invest significant amounts of capital while being placed in such an untenable position.

At the same time, companies wishing to raise capital through large offerings of securities to the public require large multi-service firms with enough capital to finance large issuances. Those exact firms regularly offer both brokerage and dealer services that have the

potential to conflict. (*See* pp. 8–12, *supra*.) The standard advanced by the Trial Court would erode the certainty and predictability essential for the effective functioning of the securities markets. Without the participation of underwriters in securities issuances, it is ultimately investors that would lose out—exactly opposite of the goal of the securities regulation framework. *See Cent. Bank of Denver, N.A. v. First Int. Bank of Denver, N.A.*, 511 U.S. 164, 189 (1994) (holding that "increased costs incurred by professionals because of the litigation and settlement costs . . . may be passed on to their client companies, and in turn incurred by the company's investors").

CONCLUSION

For these reasons, the Court should reverse the order in relevant part and direct dismissal of the claims against all underwriters.

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