

Supreme Court Holds All Plaintiffs Suing Under Section 11 of the Securities Act of 1933 Must Show They Bought Registered Shares

Client Alert | June 1, 2023

Decided June 1, 2023 *Slack Technologies, LLC v. Pirani*, No. 21-200 Today, the Supreme Court unanimously held that in a direct listing (just as in traditional IPOs), plaintiffs who claim that a company's registration statement is misleading and who sue under Section 11 of the Securities Act of 1933 must plead and prove that they bought shares registered under that registration statement. **Background:** The Securities Act of 1933 requires companies to file a registration statement with a prospectus before certain shares can trade on an exchange. 15 U.S.C. § 77e. The Act exempts some shares and transactions from that requirement, *id.* §§ 77c-77d, and provides that a registration statement is "effective only as to the securities specified therein," *id.* § 77f(a). Section 11 enforces the registration requirement: if a registration statement is misleading, any person acquiring "such security" may sue. *Id.* § 77k(a).

In 2019, Slack went public through a direct listing in which both registered and exempt shares could be traded immediately. Pirani bought Slack shares after they were listed and later sued, claiming that the registration statement and prospectus Slack filed were misleading. Pirani conceded he could not show which (if any) of the shares he bought were registered as opposed to exempt. Slack moved to dismiss, invoking the longstanding rule that '33 Act plaintiffs must show they bought shares registered under the challenged registration statement. The district court denied the motion, and the Ninth Circuit affirmed, holding that Pirani had to show only that he bought shares that could not have traded on an exchange but for the registration statement—for instance, because the New York Stock Exchange's rules for direct listings require a registration statement before exempt shares can trade.

Issue: Whether Section 11 of the Securities Act of 1933 requires plaintiffs to plead and prove that they bought shares registered under the registration statement they claim is misleading. **Court's Holding:** Plaintiffs suing under Section 11 of the '33 Act must plead and prove that they bought shares registered under the registration statement they claim is misleading.

"[W]e think the better reading of [Section 11] requires a plaintiff to plead and prove that he purchased shares traceable to the allegedly defective registration statement."

Justice Gorsuch, writing for the Court

Gibson Dunn represented the winning party: *Slack Technologies, LLC*

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- The Court's opinion adopts the longstanding "tracing" requirement—that plaintiffs suing under Section 11 of the '33 Act must plead and prove that they bought shares registered under the registration statement they are challenging. That requirement had been recognized as a core feature of Section 11 by lower courts, the SEC, and scholars dating back to the 1960s.
- Plaintiffs who challenge statements in a company's '33 Act registration statement, but who cannot trace their shares to that statement, cannot sue under Section 11's specialized liability provision. But they may have other remedies, such as a securities-fraud claim under Section 10(b) of the Securities Exchange Act of 1934.
- In rejecting Pirani's view of Section 11, the Court avoided an interpretation that could have unsettled the scope of liability under that section in cases beyond direct listings, including traditional IPOs and follow-on offerings. The Court's holding protects reasonable expectations and avoids a massive increase in potential liability for companies that recently went public.
- The Court declined to resolve whether Section 12 of the '33 Act, which enforces the Act's prospectus requirement and permits anyone who buys "such security" from the defendant to sue, 15 U.S.C. § 77(a)(1), likewise requires proof of purchase of registered shares. It "express[ed] no views" about that question and remanded the matter to the lower courts to decide that question in the first instance.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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