Press Release

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Supreme Court Agrees to Clarify Section 11 Liability for Omitting Intra-Quarter Data

(*Robinhood Markets, Inc. v. Sodha*)

"The Ninth Circuit's flawed reading of Section 11 would chill IPO activity at a critical time for the American economy."

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—The U.S. Supreme Court today agreed to review an expansive reading of Section 11 of the Securities Act by the U.S. Court of Appeals for the Ninth Circuit. The grant of certiorari was welcome news for WLF, which filed an amicus brief urging review. WLF's brief argued that the Ninth Circuit's reading of the law would collapse the duty to disclose into materiality alone, undermining Section 11's limits on liability for omissions in IPO registration statements. The brief was prepared with pro bono support from Mark Fleming, Timothy Perla, Peter Spaeth, and Mark Hanin of the firm Wilmer Cutler Pickering Hale & Dorr LLP.

The case arises from Robinhood's 2021 IPO. Plaintiffs alleged that the registration statement omitted material intra-quarter financial data showing declines in key metrics after a strong first quarter. The district court dismissed the claims, but the Ninth Circuit reversed, holding that material omissions of interim results are actionable even if they do not render prior backward-looking statements misleading.

In its amicus brief, WLF argued that accurate historical financial statements imply nothing about future performance, so new information can never render them misleading under Section 11. The decision below deviates from the SEC's regulatory framework, increases litigation risks, and exacerbates regulatory burdens that have already driven IPOs to near 30-year lows.

Celebrating its 49th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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