No. 11-15

IN THE

Supreme Court of the United States

THE BLACKSTONE GROUP, L.P., ET AL.,

Petitioners,

v.

MARTIN LITWIN, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, consistent with this Court's decisions in *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011) and *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), the Second Circuit Court of Appeals correctly applied fact-specific quantitative and qualitative factors on a motion to dismiss under Fed. R. Civ. P. 8(a) and 12(b)(6) to determine the sufficiency of the pleading of materiality of the misrepresentations and omissions in a registration statement issued in connection with an initial public offering of securities, rather than applying the bright-line quantitative percentage urged by Petitioners.

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

STATEMENT OF THE CASE AND PROCEEDINGS BELOW

This is a federal securities class action against The Blackstone Group, L.P. ("Blackstone" or "Company") and its principals Stephen A. Schwarzman, Peter J. Peterson, Hamilton E. James, and Michael A. Puglisi (collectively, "Petitioners"). Lead Plaintiffs Martin Litwin, Max Poulter and Francis Brady ("Respondents") seek remedies on behalf of themselves and all others similarly situated under §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 ("1933 Act"), 15 U.S.C. §§ 77k, 77l(a)(2), and 77o, in connection with Blackstone's initial public offering of common units ("IPO" or "Offering"), which occurred on or about June 25, 2007. *See* Appendix to Petition for Writ of Certiorari ("Pet. App."), at 4a.

The initial complaint was filed in this action on April 15, 2008. Following their appointment as Lead Plaintiffs, Respondents filed a Consolidated Amended Complaint ("Complaint") on October 27, 2008.

The Complaint alleges that Petitioners negligently prepared and disseminated a registration statement and prospectus (collectively, "Registration Statement") in connection with the Offering that contained misrepresentations of fact and omitted to state facts necessary under the circumstances to make the statements made not false and misleading that in turn distorted the true investment value of Blackstone's units in violation of the 1933 Act. In particular, Respondents allege that the Registration Statement failed to disclose or made misrepresentations concerning the following:

Freescale: In December 2006, Blackstone acquired what was, at the time, its largest stake in any individual company: a $3.1 billion equity stake in Freescale Semiconductor, Inc. ("Freescale"), a semiconductor designer and manufacturer. *Id.* at 10a. At the time of the IPO, Blackstone's investment in Freescale accounted for 9.4% of Blackstone's *flagship* Corporate Private Equity segment's assets under management and 3.5% of Blackstone's total assets under management. *Id.* Shortly before the IPO, on March 21, 2007, Motorola announced that it was terminating its exclusive 3G chipset relationship with Freescale. *Id.* at 11a. On April 25, 2007, Freescale management announced that its revenues and profits had declined due to the issues with Motorola. *Id.* The problems with Freescale subjected Blackstone to the risk that it would have to write down the value of its investment in Freescale and/or that its investors would be entitled to refunds, or "claw-backs," of previously paid performance fees.[1] *See id.* at 7a, 11a, 30a-31a. Although Blackstone knew about the problems and risks associated with Freescale before the IPO, it made no mention of them in the Registration Statement. *Id.* at 7a.

FGIC: In 2003, as part of a consortium of investors, Blackstone acquired an equity interest in FGIC Corporation ("FGIC"), a municipal bond company engaged in issuing collateralized debt obligations backed by subprime mortgages. *Id.* at 7a-8a. The FGIC investment was valued at $331 million at the time of the IPO. *Id.* at 9a. Before the IPO, FGIC faced a serious risk of substantial

1. Blackstone's performance fees are subject to a "claw-back" provision, which requires it to refund to limited partners previously-earned performance fees if the investments perform poorly, thereby materially affecting future revenues. Pet. App. at 6a, 7a.

losses in connection with the evolving subprime mortgage crisis, which would negatively impact Blackstone's profitability. *Id.* While Blackstone knew of these risks, *id.* at 7a, the Registration Statement did not disclose that FGIC was one of Blackstone's portfolio companies or that its carrying value on Blackstone's financial statements was overstated, *id.* at 27a.

Real Estate Investments: At the time of the IPO, Blackstone managed certain real estate investments, which accounted for 22.6% of Blackstone's total assets under management. *Id.* at 6a. Of those investments, $3 billion were in residential real estate, representing 3.4% of Blackstone's $88.4 billion in total assets under management. *Id.* at 12a n.6. Both the real estate and credit markets had shown obvious signs of deterioration before the IPO, making it foreseeable that Blackstone would have performance fees clawed back and generate no additional fees on its real estate investments. *Id.* at 12a-13a. Not only did Blackstone fail to disclose this risk in the Registration Statement, it affirmatively misrepresented that the real estate industry was "experiencing historically high levels of growth and liquidity." *Id.* at 13a.

GAAP Violations and Risk Disclosure Allegations: The Registration Statement included unaudited Combined Statements of Financial Condition as of March 31, 2007. *Id.* These statements included inflated valuations of the underlying assets in Blackstone's funds, including FGIC and the real estate investments, in violation of Generally Accepted Accounting Principles ("GAAP"). *Id.* at 13a-14a. Further, due to claw-back provisions, the income Blackstone derived from the value of these investments was overstated. *Id.* at 12a-13a. Blackstone also made misleadingly vague, generic disclosures in the

Registration Statement regarding its "use of leverage to enhance returns" and "risks inherent in the operation of real estate and real estate-related businesses," but failed to inform investors adequately of the risks related to the real estate and credit markets with sufficient specificity. *Id.* at 13a-14a.

Petitioners moved to dismiss the Complaint on December 4, 2008, and oral argument on Petitioners' motion was heard on May 5, 2009. On September 22, 2009, the District Court issued an order and opinion dismissing the Complaint with prejudice for failure to state a claim upon which relief could be granted under Fed. R. Civ. P. 12(b)(6). In so doing, the District Court held as a matter of law that Blackstone's omissions and misrepresentations were immaterial. Respondents filed a timely notice of appeal on October 23, 2009.

On February 10, 2011, the Second Circuit Court of Appeals ("Court of Appeals") issued an order and opinion reversing the District Court ("Decision"). Pet. App. at 1a-37a (*Landmen Partners Inc. v. Blackstone Group, L.P.*, 634 F.3d 706 (2d Cir. 2011)). The Court of Appeals began by rejecting Petitioners' argument that Blackstone was not required by Item 303 to disclose trends in the real estate market for the purpose of §§ 11 and 12(a)(2) of the 1933 Act.[2] Specifically, the Court of Appeals found

2. Item 303 of SEC Regulation S-K, 17 C.F.R. § 229.303(a)(3)(ii), provides the basis for Blackstone's disclosure obligation. Pursuant to Subsection (a)(3)(ii) of Item 303, a registrant must "[d]escribe any known trends or uncertainties . . . that the registrant reasonably expects will have a material . . . unfavorable impact on . . . revenues or income from continuing operations." Instruction 3 to paragraph 303(a) provides that "[t]he discussion and analysis shall focus specifically on material events and

that Respondents had "adequately pleaded a presently existing trend, event, or uncertainty" known at the time of the IPO, leaving the question of "whether the effect of the 'known' information was 'reasonably likely' to be material for the purpose of Item 303 and, in turn, for the purpose of Sections 11 and 12(a)(2)." Pet. App. at 22a.

Turning to the question of materiality, the Court of Appeals stressed that the inquiry was inherently fact-specific and that a complaint should not be dismissed on materiality grounds unless the alleged misstatements and omissions "'are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance.'" *Id.* at 23a (quoting *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 162 (2d Cir. 2000)). The Court of Appeals further emphasized that a numerical test like the 5% "rule of thumb" was merely a starting point for analysis, quoting the SEC's statement in Staff Accounting Bulletin ("SAB") No. 99, that:

> [t]he use of a percentage as a numerical threshold, such as 5%, may provide the basis for a preliminary assumption that . . . a deviation of less than the specified percentage with respect to a particular item . . . is unlikely to be material. . . . But quantifying, in percentage terms, the magnitude of a misstatement . . . cannot appropriately be used as a substitute for a full analysis of all relevant considerations.

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uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition." 17 C.F.R. § 229.303(a).

Id. at 24a (quoting SAB No. 99, 64 Fed. Reg. at 45,151). Additionally, the Court of Appeals concluded that a court must consider both quantitative and qualitative factors in assessing an item's materiality, *id.*, and that consideration should be undertaken in an integrative (*i.e.*, holistic) manner, *id.* at 24a-25a (citing *Ganino*, 228 F.3d at 163; *In re Kidder Peabody Sec. Litig.*, 10 F. Supp. 2d 398, 410–11 (S.D.N.Y. 1998); SAB No. 99, 64 Fed. Reg. at 45,152).

The Court of Appeals then applied the foregoing principles to the materiality of Petitioners' alleged misstatements and omissions, starting with those concerning FGIC and Freescale, two significant investments in Blackstone's Corporate Private Equity segment. The Court of Appeals expressly considered – and found unavailing – Petitioners' contention that the negative facts about these Corporate Private Equity investments were already public knowledge by time of the IPO and thus immaterial as a matter of law. *Id.* at 25a-26a. As the Court of Appeals explained, Respondents did not seek disclosure of the mere fact of Blackstone's investment in FGIC, the downward trend in the real estate market, or Freescale's loss of the Motorola contract. *Id.* at 26a. "Rather, plaintiffs claim that Blackstone was required to disclose the manner in which those then-known trends, events, or uncertainties might reasonably be expected to materially impact Blackstone's future revenues." *Id.* at 27a.

The Court of Appeals then considered the quantitative and qualitative materiality of the alleged misstatements and omissions. While the Court of Appeals noted that FGIC and Freescale each fell short of the 5% numerical threshold advocated as a bright-line rule by Petitioners when compared to the quantitative metric of total assets under management, *id.*, it found that the District Court erred in failing to properly consider certain qualitative factors and other quantitative factors that supported a finding of materiality. Concluding that the District Court placed "too much emphasis on Blackstone's structure and on the fact that a loss in one portfolio company might be offset by a gain in another portfolio company," *id.* at 27a-28a, the Court of Appeals explained, "Blackstone is not permitted, in assessing materiality, to aggregate negative and positive effects on its performance fees in order to avoid disclosure of a particular material negative event," *id.* at 28a.

Additionally, the Court of Appeals found that "the District Court erred in finding that the alleged omissions did not relate to a significant aspect of Blackstone's operations." *Id.* at 29a. The Court of Appeals found that, pursuant to SAB No. 99, a matter relating to segment information may be qualitatively material despite being quantitatively immaterial to the financial statement as a whole, particularly where the misstatement or omission relates to an important business segment of the registrant:

> In discussing "considerations that may well render material a quantitatively small misstatement," SAB No. 99 provides that "materiality . . . may turn on where [the misstatement] appears in the financial statements:" "[S]ituations may arise . . . where the auditor will conclude that a matter relating to segment information is qualitatively material even though, in his or her judgment, it is quantitatively immaterial to the financial statements taken as a whole." SAB No. 99, 64 Fed. Reg. at 45,152. SAB No. 99 also provides

> that one factor affecting qualitative materiality is whether the misstatement or omission relates to a segment that plays a "significant role" in the registrant's business.

Id.

The Court of Appeals explained that Blackstone itself touted Corporate Private Equity as a flagship segment, emphasizing its "significant role in the company's history, operations, and value." *Id.* The Court of Appeals reasoned that, because "the [Corporate Private Equity] segment plays such an important role in Blackstone's business and provides value to all of its other asset management and financial advisory services, a reasonable investor would almost certainly want to know information related to that segment that Blackstone reasonably expects will have a material adverse effect on its future revenues." *Id.* at 30a.

The Court of Appeals also stressed that Blackstone's investment in Freescale accounted for 9.4% of the Corporate Private Equity segment's assets under management – nearly three times more than the next largest investment in that segment as reported in the Registration Statement. *Id.* The Court of Appeals found this omission material, explaining that where a misstatement or omission may be quantitatively small compared to a registrant's firm-wide financial results, its significance to a particularly important segment of a registrant's business tends to show its materiality. *Id.*[3]

3. At 9.4% of the Corporate Private Equity segment, which in turn represented 37.4% of Blackstone's total assets under management, Freescale was presumptively a material part of Blackstone.

Further, the Court of Appeals ruled that "the District Court failed to consider another relevant qualitative factor – that the omissions 'mask[] a change in earnings or other trends.'" *Id.* at 31a (quoting SAB No. 99, 64 Fed. Reg. at 45,152). The Court of Appeals explained that "Blackstone omitted information related to FGIC and Freescale that plaintiffs allege was reasonably likely to have a material effect on the revenues of Blackstone's Corporate Private Equity segment and, in turn, on Blackstone as a whole." *Id.* Thus, "Blackstone's failure to disclose that information masked a reasonably likely change in earnings, as well as the trend, event, or uncertainty that was likely to cause such a change." *Id.*

The Court of Appeals found that these qualitative factors, together with the District Court's correct observation that the alleged omissions had the effect of increasing management's compensation, showed that the alleged omissions were material. *Id.* (quoting SAB No. 99, 64 Fed. Reg. at 45,152). The Court of Appeals thus held "that plaintiffs have adequately pleaded that Blackstone omitted material information related to FGIC and Freescale that it was required to disclose under Item 303 of Regulation S-K." *Id.*

Having resolved that question, the Court of Appeals considered the materiality of the alleged affirmative misstatements and omissions related to Blackstone's investments in its real estate segment ("Real Estate segment"). The Court of Appeals began by rejecting the District Court's requirement that the Complaint identify specific real estate investments made or assets held by Blackstone funds that might have been at risk as a result of the then-known trends in the real estate industry.

Id. at 31a-32a.[4] The Court of Appeals explained that such a requirement "misses the very core of plaintiffs' allegations, namely, that Blackstone omitted material information that it had a duty to report." *Id.* at 32a. Rather, pursuant to Item 303, the Court of Appeals found that Blackstone was required to disclose adverse trends in the real estate market (*i.e.*, the downward trend in housing prices, the increasing default rates for subprime mortgage loans, and the pending problems for complex mortgage securities) that might materially affect its income and investments, whatever the specific assets and investments affected might be. *Id.*

The Court of Appeals also rejected the District Court's finding that Respondents failed to link declines in the residential real estate market with Blackstone's heavy investments in commercial real estate. *Id.* First, the Court of Appeals noted that Blackstone had at least one modest-sized residential real estate investment that could constitute as much as $3 billion, or 15% of the Real Estate segment's assets under management. *Id.* at 32a-33a. Second, the Court of Appeals explained that Blackstone's own disclosures supported the plausibility of allegations that a collapse in the residential real estate market – and, more importantly, in the market for complex securitizations of residential mortgages – might adversely affect commercial real estate investments as well, *id.* at 33a, thus adversely impacting the other 85% of Blackstone's Real Estate segment.

4. All citations by the Court of Appeals to *Landmen Partners Inc. v. Blackstone Group, L.P.*, 659 F. Supp. 2d 532 (S.D.N.Y. 2009), are omitted.

The Court of Appeals also faulted the District Court for finding that Respondents had failed to allege facts showing the falsity of Blackstone's affirmative misrepresentations regarding the real estate market. *Id.* Properly drawing all inferences in Respondents' favor, the Court of Appeals reached the opposite conclusion, finding that Respondents had provided "significant factual detail" about the general deterioration of the real estate market and specific facts that directly contradicted statements in the Registration Statement. *Id.*

With the District Court's errors corrected, the Court of Appeals applied the same combination of quantitative and qualitative factors that it did to the omissions regarding the Corporate Private Equity segment to analyze materiality of the omissions regarding the Real Estate segment. First, the Court of Appeals noted that Blackstone's Real Estate segment constituted 22.6% of Blackstone's total assets under management, and concluded that a reasonable investor "may well have wanted to know of any potentially adverse trends concerning a segment that constituted nearly a quarter of Blackstone's total assets under management." *Id.* at 34a-35a. Second, the Court of Appeals concluded that "the alleged misstatements and omissions regarding real estate were qualitatively material because they masked a potential change in earnings or other trends." *Id.* at 35a. Third, the Court of Appeals found that the misstatements and omissions regarding the Real Estate segment had the effect of increasing management's compensation. *Id.* This combination of quantitative and qualitative considerations led the Court of Appeals to conclude that "Plaintiffs plausibly allege that Blackstone omitted material information that it was required to disclose and that it made material misstatements in its IPO offering documents." *Id.*

On February 24, 2011, Petitioners filed a petition for rehearing *en banc* by the Second Circuit. On March 30, 2011, the Second Circuit denied that petition.

On June 29, 2011, Petitioners filed a Petition for a Writ of Certiorari in this Court ("Pet.").

REASONS FOR DENYING THE PETITION

Petitioners seek to recast the Decision as conflicting with this Court's precedents by arguing that the Court of Appeals adopted an "impermissible bright-line rule that any alleged omissions related to a 'significant' business segment are per se material." Pet. at 19. In fact, the Court of Appeals articulated no such rule. Rather, it was Petitioners who urged an impermissible bright-line test, consistently advocating that the materiality of the alleged misstatements and omissions should only be measured in comparison to Blackstone's total assets under management, which Blackstone argued (without factual support) was the only metric IPO investors cared about. Not only was Blackstone's unproven factual assertion regarding the importance of total assets under management a matter outside the pleadings, but the proposition is logically incorrect as assets under management is merely a proxy for an investment manager's past success (and consequent prior attraction of funds to it for investment), and new investors are typically more concerned with current and potential future revenues and earnings. Thus, Petitioners would have one fact – a single numerical figure – be the *sole* binding determinative measure for materiality. That approach clearly conflicts with this Court's recent decision in *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1318-19 (2011), as well as *Basic Inc. v. Levinson*, 485 U.S. 224, 236 (1988), where this Court rejected the proposition that materiality can be reduced to a single fact that is outcome determinative.

In rejecting Petitioners' demand for a bright-line test for materiality based on a specific numerical cut-off calculated in relation to Petitioners' unsupported view of the only relevant metric for that threshold, the Court of Appeals emphasized that its determination reflected a fact-specific analysis of all relevant quantitative and qualitative factors applicable to the facts alleged in this particular case. That approach is entirely consistent with this Court's *Matrixx* and *Basic* precedents.

In addition, while admitting that consideration of both quantitative and qualitative factors is appropriate in assessing materiality, Pet. at 21, Petitioners complain about the Court of Appeals' application of those considerations to the unique facts of this case. Thus, the Petition represents nothing more than a request for review of the Court of Appeals' correct application of law to the facts here, simply because Petitioners disagree with the outcome of that analysis. Disappointment with the correct application of well-established law to the facts of a particular case, however, does not warrant interlocutory review by this Court.

Petitioners also attempt to invent a circuit split by arguing a conflict exists between the Court of Appeals' Decision and decisions of two other circuits in *Parnes* *v. Gateway* 2000, 122 F.3d 539 (8th Cir. 1997), and *In re Westinghouse Securities Litigation* 90 F.3d 696 (3d Cir. 1996). Pet. at 16-17. First, whatever conflict may have existed among the circuits was resolved by *Matrixx*, with which the Decision is entirely consistent. Second, as explained below, nothing in either *Parnes* or *Westinghouse* conflicts with the Decision here. In *Parnes,* the Eighth Circuit Court of Appeals specifically acknowledged "there may certainly be many cases where this [quantitatively insignificant] amount of money would be material and would dramatically affect the total mix of information relied on by a reasonable investor." 122 F.3d at 544. Likewise, in *Westinghouse,* the Third Circuit specifically rejected the "categorical assertion that materiality must be quantified at a specified percentage of income or assets." 90 F.3d at 714 n.14.

Petitioners also contend that the Decision conflicts with a decision of another panel of the Second Circuit in *ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.,* 553 F.3d 187, 196 (2d Cir. 2009). Pet. Br. at 21. However, since this Court's decision in *Matrixx*, and the denial of rehearing *en banc* in this case, the Second Circuit, in *Hutchison v. Deutsche Bank Sec., Inc.*, No. 10-1535-cv, 2011 U.S. App. LEXIS 15310 (2d Cir. July 26, 2011), expressly reconciled its decision in *ECA & Local 134 IBEW* with its Decision here, by focusing on the factual differences between the two cases. Thus, Petitioners' assertion of a split within the Second Circuit also does not exist.

Finally, there are no important policy concerns that merit review by this Court. Petitioners warn that the Decision will create uncertainty in the markets and result in the opening of a floodgate of information as companies increase their disclosures concerning important business segments. Both concerns, however, rely on the incorrect premise that the Decision somehow deviated from the appropriate test for materiality. On the contrary, it is Petitioners who wish to alter corporate disclosure obligations by turning the clock back to pre-1933 days, and return investors in public companies to an environment of *caveat emptor.* Here, the Court of Appeals applied well-established principles regarding an issuer's duty to disclose material information in a registration statement. Not surprisingly, when Petitioners' hyperbole concerning unleashing a flood of information upon investors was considered by the Court of Appeals, it was rejected because the requirements that the information be material, and that there be a duty to disclose that information, offered sufficient protection against that risk of excessive disclosure. Pet. App. at 35a-36a. Petitioners' specious policy argument should fair no better before this Court.

I. THE DECISION WAS CORRECTLY DECIDED

The Court of Appeals' holding comports with the decisions of this Court. In fact, it is Petitioners' advocacy of a fixed (and arbitrary) numerical threshold for materiality that conflicts with this Court's precedents in *Matrixx* and *Basic*, which squarely reject bright-line tests for materiality. Nor did the Decision somehow alter the pleading standards articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). Indeed, the language relied on by Petitioners, Pet. at 24-25, was simply the Court of Appeals' recognition that when the usual pleading standards applicable to a Fed. R. Civ. P. 12(b)(6) motion to dismiss purely non-fraud 1933 Act claims under Fed. R. Civ. P. 8(a) are applied to the fact-intensive question of materiality, which is typically reserved for determination by the trier of fact, a plaintiff faces a lower burden of pleading plausible facts – not particular facts as required by Fed. R. Civ. P. 9(b). *Bell Atlantic*, 550 U.S. at 576 n.3.

A. The Decision Is Consistent With *Matrixx* and *Basic*

In an attempt to manufacture a conflict with Supreme Court precedents, Petitioners claim that the Court of Appeals adopted an "impermissible bright-line rule that any alleged omissions related to a 'significant' business segment are *per se* material." Pet. at 19. In fact, the Court of Appeals announced no such "*per se* rule." There is no suggestion whatsoever in the Decision that qualitative significance must always trump quantitative considerations, like the percentage of total assets under management that Petitioners advocate as solely determinative. To the contrary, the Court of Appeals approached materiality by applying both quantitative and qualitative factors to the specific facts of this case, rejecting Petitioners' invitation to apply a single, strict numerical threshold irrespective of other measures of quantitative and qualitative significance.

Thus, it is Petitioners' proposed approach – and not the Court of Appeals' approach – that offends this Court's precedents that have rejected bright-line tests of the sort Petitioners advocate and that is anathema to the materiality analysis. *E.g.*, *Matrixx*, 131 S. Ct. at 1313-14 (holding that "the materiality of adverse event reports cannot be reduced to a bright-line rule"); *Basic*, 485 U.S. at 236 ("Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be over- or underinclusive.").

In *Matrixx*, which was decided after the Decision at issue here, defendants urged this Court to adopt a bright-line rule that "reports of adverse events associated with a pharmaceutical company's products cannot be material absent a sufficient number of such reports to establish a statistically significant risk, that the product is in fact causing the events." *Matrixx*, 131 S. Ct. at 1318-19. The defendants in *Matrixx* argued that, absent such "statistical significance," adverse event reports provide only "anecdotal" evidence that "the user of a drug experienced an adverse event at some point during or following the use of that drug," sufficient to "'reflect a scientifically reliable basis for inferring a potential causal link between product use and the adverse event." *Id.* at 1319.

This Court unanimously rejected defendant's contention, stating:

> As in *Basic*, Matrixx's categorical rule would "artificially exclud[e]" information that "would otherwise be considered significant to the trading decision of a reasonable investor." 485 U.S., at 236. Matrixx's argument rests on the premise that statistical significance is the only reliable indication of causation. This premise is flawed. . . .

* * *

Applying *Basic*'s "total mix" standard here, respondents adequately pleaded materiality. The complaint's allegations suffice to "raise a reasonable expectation that discovery will reveal evidence" satisfying the materiality requirement, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, and to "allo[w] the court to draw the reasonable inference that the defendant is liable," *Ashcroft v. Iqbal*, 556 U.S. __, __. Assuming the complaint's allegations to be true, Matrixx received reports from medical experts and researchers that plausibly indicated a reliable causal link between Zicam and anosmia. Consumers likely would have viewed Zicam's risk as substantially outweighing its benefit. Viewing the complaint's allegations as a whole, the complaint alleges facts suggesting a significant risk to the commercial viability of Matrixx's leading product.

* * *

It is substantially likely that a reasonable investor would have viewed this information "'as having significantly altered the 'total mix' of information made available.'" *Basic*, 485 U.S., at 232 (quoting *TSC Industries*, 426 U.S., at 449). Matrixx told the market that revenues were going to rise 50 and then 80 percent. Assuming the complaint's allegations to be true, however, Matrixx had information indicating a significant risk to its leading revenue-generating product. Matrixx also stated that reports indicating that Zicam caused anosmia were "'completely unfounded and misleading'" and that "'the

> safety and efficacy of zinc gluconate for the treatment of symptoms related to the common cold have been well established.'" App. 77a-78a. Importantly, however, Matrixx had evidence of a biological link between Zicam's key ingredient and anosmia, and it had not conducted any studies of its own to disprove that link. In fact, as Matrixx later revealed, the scientific evidence at that time was "'insufficient . . . to determine if zinc gluconate, when used as recommended, affects a person's ability to smell.'" *Id.*, at 82a.
>
> Assuming the facts to be true, these were material facts "necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 CFR § 240.10b-5(b). We therefore affirm the Court of Appeals' holding that respondents adequately pleaded the element of a material misrepresentation or omission.

Id. at 1319-23.

Thus, the Court addressed – and appropriately rejected – the use of a single, bright-line quantitative test to determine materiality, finding qualitative facts sufficient to meet the materiality pleading test. Nonetheless, Petitioners are claiming here that the materiality analysis should be reduced to a "single fact" as outcome determinative. There is functionally no difference between setting a quantitative threshold for materiality at 5% of total assets and the "statistical significance" bright-line rejected in *Matrixx*. Indeed, one could substitute the phrase "statistical significance" with "5% of assets under management" and see that Petitioners' argument is no different from the argument made by defendants in *Matrixx* and unanimously rejected by this Court. The Decision here instead represents precisely the sort of fact-specific balancing of quantitative and qualitative factors to determine materiality envisioned by this Court in *Matrixx*.

B. The Decision Is Consistent With *Bell Atlantic* and *Ashcroft*

Contrary to Petitioners' assertion, the Court of Appeals did not hold that the standard for pleading materiality is "even lower" than that required under *Bell Atlantic* and *Ashcroft* for a Fed. R. Civ. P. 8 pleading. Pet. at 24-25 (citing *Bell Atlantic*, 550 U.S. at 544; *Ashcroft*, 129 S. Ct. at 1937)). Rather, the language in question was simply recognition of the uncontroversial principle that 1933 Act claims are solely governed by the "basic notice pleading requirements of Rule 8." Pet. App. at 25a. Thus, "so long as plaintiffs plausibly allege that Blackstone omitted material information that it was required to disclose or made material misrepresentations in its offering documents they meet the relatively minimal burden of stating a claim pursuant to Sections 11 and 12(a)(2), under which, should plaintiffs' claims be substantiated, Blackstone's liability as an issuer is absolute." *Id. Accord Herman & Maclean v. Huddleston*, 459 U.S. 375, 382 (1983).[5]

5. In addressing the pleading standards, the Court of Appeals distinguished the 1933 Act claims in this case from claims under the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) ("1934 Act"). Pet. App. at 20a. Then, in approaching its application of both quantitative and qualitative factors for determining

The Court of Appeals found that, for the purpose of pleading materiality under Fed. R. Civ. P. 8, which is "an inherently fact-specific finding," the burden of pleading plausible facts to satisfy the materiality element of a 1933 Act claim is "even lower" than pleading other elements of a federal securities law claim. Pet. App. at 25a. As the Court of Appeals explained in the next sentence of its Decision, at the preliminary pleading stage of the action, where all reasonable inferences must be drawn in plaintiffs' favor on a Fed. R. Civ. P. 12(b)(6) motion to dismiss, to find materiality lacking, the alleged omissions and misstatements must be "'so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance.'" *Id.* (citing *Ganino,* 228 F. 3d at 162). Thus, where there is a factual dispute between the parties as to materiality, a court must make a fact-intensive determination of whether the false or omitted information would have been viewed by the hypothetical "reasonable investor as having significantly altered the 'total mix' of information made available." *Basic,* 485 U.S. at 231-32 (quoting *TSC Indus., Inc. v. Northway, Inc.,* 426 U.S. 438, 449). The Court of Appeals' comment merely acknowledges that, as a practical

materiality, the Court of Appeals looked to Second Circuit 1934 Act jurisprudence, finding that the test of materiality is the same under both the 1933 and 1934 Acts. *See id.* at 22a n.10. Claims under the 1933 and 1934 Acts otherwise differ markedly, placing a higher burden on a plaintiff to plead a claim under the 1934 Act which is governed by Fed. R. Civ. P. 9(b) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4. *See Merck & Co. v. Reynolds*, 130 S. Ct. 1784, 1801 (2010) (distinguishing the "elements of § 10(b) claims, which include scienter," from "the elements of claims under [§§ 11 and 12 (a)(2)], which do not") (citations omitted).

matter, a plaintiff will more easily meet the materiality standard on a motion to dismiss because such a factual dispute will generally be resolved in plaintiff's favor. This is entirely consistent with this Court's admonition that "even at the summary judgment stage, the 'determination [of materiality] requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him, and these assessments are particularly ones for the trier of fact.'" Pet. App. at 23a (quoting *TSC Indus.*, 426 U.S. at 450).

Therefore, the Court of Appeals did not lower the pleading standards enunciated in *Bell Atlantic* or *Ashcroft*. Rather, accepting the allegations as true, and drawing all inferences in Respondents' favor, there can be no question that the allegations of the Complaint "'raise a reasonable expectation that discovery will reveal evidence' satisfying the materiality requirement" under *Bell Atlantic*, 550 U.S. at 556, and properly "'allo[wed] the [Court of Appeals] to draw the reasonable inference that [Petitioners are] liable for the misconduct alleged." *Matrixx*, 131 S. Ct. at 1323 (citing *Ashcroft*, 129 S. Ct. at 1937).[6]

C. The Court of Appeals Correctly Applied Relevant Supreme Court Precedent

Petitioners claim this case "squarely concerns the importance of the magnitude prong of the *Basic* analysis."

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6. Furthermore, to the extent there was any question that the Court of Appeals correctly applied the pleading standards set forth in *Bell Atlantic* and *Ashcroft*, its application of the materiality standard to the specific facts of this case dispel any such question.

Pet. at 14. They contend that a misstatement concerning less than 5% of total assets can never be "significant," no matter what the probability of the risks. *Id.* But Petitioners' theory would erroneously determine materiality based on a single quantitative metric (like total assets). The point of the Decision is that other quantitative and qualitative considerations can matter, which is why materiality is an inherently fact-specific inquiry. The Petition evinces no more than disagreement with the Court of Appeals' particular choice of quantitative metrics and qualitative considerations on a motion to dismiss, a dispute that does not warrant this Court's review.

1. The Decision Does Not Render Quantitative Analysis Irrelevant

Petitioners complain that the Decision "renders quantitative analysis a nullity and eviscerates any 5% rule of thumb." Pet. at 21. As Petitioners themselves admit, however, SAB No. 99 urges "consideration of both quantitative and qualitative factors in assessing materiality," and counsels that the 5% rule of thumb is simply a starting point before "considering all relevant circumstances." *Id.* (quoting 64 Fed. Reg. 45,150, 45,151). Petitioners' claim is thus unfounded.

Indeed, the Court of Appeals expressly recognized that FGIC and Freescale each comprised less than 5% of Blackstone's total assets. Pet. App. at 27a. The Court of Appeals then considered quantitative factors (*e.g.*, size of the investments in proportion to the entire Corporate Private Equity segment), in conjunction with qualitative factors (*e.g.*, importance of the Corporate Private Equity segment to Blackstone's business). *Id.* at 29a-30a. After considering "all relevant circumstances" as counseled by SAB 99, *id.* at 24a, the Court of Appeals decided that, even though the case did not meet the 5% quantitative rule of thumb when measured against total assets, *id.* at 27a, the combination of other quantitative and qualitative factors nevertheless weighed in favor of a finding of materiality under the unique facts of this case, *id.* at 27a-31a.

As the Court of Appeals explained, "***[i]n this case***, Blackstone makes clear in its offering documents that Corporate Private Equity is its ***flagship segment***, playing a significant role in the company's history, operations, and value." *Id.* at 29a (emphasis added). The Court of Appeals concluded that because "Blackstone's Corporate Private Equity segment plays such an important role in Blackstone's business and provides value to all of its other assets under management and financial advisory services, a reasonable investor would almost certainly want to know information related to that segment that Blackstone reasonably expects will have a material adverse effect on future revenues." *Id.* at 30a. It is perfectly reasonable to conclude that poor results in a registrant's flagship division, which belie a company's reputation, would be important information to an investor in deciding whether to invest.

As the foregoing confirms, the Court of Appeals properly considered quantitative metrics – including, but not limited to, the 5% rule of thumb – in conjunction with qualitative metrics, including the importance of the business segments at issue, to reach a materiality conclusion tailored to the specific facts of this case. There was no suggestion that qualitative factors must always trump quantitative factors as a matter of law, or that courts should ignore quantitative factors in future cases.

2. Petitioners' Dispute over Quantitative Metrics Does Not Merit Supreme Court Review

Petitioners' real quarrel is with the Court of Appeals' consideration of other quantitative metrics besides percentage of total assets under management.[7] Before the District Court and Court of Appeals, Petitioners took the position that an investment company like Blackstone has no obligation to disclose information about individual investments – or even the fact that the company invested in them – because investors buy shares in the company, not the particular assets it manages. But it does not logically follow that, just because investors are attracted to Blackstone's investment acumen and financial performance overall, the only relevant quantitative metric is the percentage of total assets under management. The Court of Appeals correctly recognized that investors may also care a great deal about assets that are small compared to the company as a whole, but that have a significant impact on the financial performance of a particularly important business segment. Pet. App. at 30a.

7. In any event, Blackstone's investments in FGIC (0.4%), Freescale (3.5%), and residential real estate (3.4%) collectively comprised 7.3% of Blackstone's total assets under management. *See* Pet. App. at 10a, 12a n.6, 14a. It is well established that "the complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Vila v. Inter-Am. Inv. Corp.*, 570 F.3d 274, 285 (D.C. Cir. 2009); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-23 (2007)). And SAB No. 99 expressly urges auditors to consider "the aggregate effect of all misstatements." Accordingly, using this proper aggregate quantitative analysis yields a presumption of materiality consistent with even the improper 5% rule urged by Petitioners.

Petitioners counter that such a holding "leads to an inherently illogical result" because FGIC only represents 1% of assets under management within the Corporate Private Equity unit and would thus be immaterial if that unit were a standalone business. Pet. at 19. As the Court of Appeals noted, however, the FGIC write-down accounted for 69% of the Corporate Private Equity segment's 18% decline in revenues for the year (*i.e.*, 12%) and was a primary cause of the segment's negative revenues for the fourth quarter of 2007 as compared to revenues of $533.8 million for the same quarter in the prior year. Pet. App. at 9a-10a. Petitioners' disagreement with the Court of Appeals' consideration of FGIC's impact on Blackstone's business segment as a relevant quantitative metric for materiality thus does not justify this Court's review. Moreover, Petitioners' standalone Corporate Private Equity segment analysis neglects to note that Freescale would be material under Petitioners' preferred quantitative metric of percentage of total assets under management because it would account for 9.4% of the total assets managed by an independent Corporate Private Equity segment.

Petitioners further object that companies should not be required to increase their disclosures simply because they choose to report operating results on a segment-by-segment basis. Pet. at 20. But the Decision simply applied standards already promulgated by SAB No. 99 to the specific facts of this case. Moreover, the very fact that many companies like Blackstone actually break down their results on a segment-by-segment basis simply confirms that analysis by reference to important business segments is material to investors. Otherwise, such a breakdown by issuers would burden a registration statement with immaterial information, which all parties agree is not the goal of the disclosure laws. It is thus reasonable to presume that investors want disclosure concerning investments that are quantitatively significant within important business segments.

Petitioners offer a series of hypotheticals in which 5% of an important business segment comprises progressively tinier percentages of the company's total assets under management. Pet. at 21. But such *reductio ad absurdum* simply confirms Petitioners' failure to appreciate the contextualized, case-specific nature of the materiality inquiry. Again, the Court of Appeals selected a combination of quantitative and qualitative metrics tailored to the unique facts of this case. As a result, one cannot mechanically apply the Decision's holding to a series of numerical hypotheticals and conclude that it nullifies quantitative analysis. *Id.* at 21-22. To make for valid comparison, each hypothetical would have to specify "all the relevant circumstances," including how the business segments in question were qualitatively significant to the company, whether the investments in question were significant within those segments, and what the impact would be according to other quantitative metrics like earnings, revenues, and other implications. That is the nature of an inherently fact-specific inquiry like materiality.

Indeed, by focusing on such self-serving hypotheticals, Petitioners lose sight of information that investors actually consider important for a company like Blackstone. Petitioners themselves repeatedly touted throughout this litigation and the Registration Statement that people invested in Blackstone because of the investment acumen of its professionals. *See* Pet. at 2-3; *see also* Pet. App. at 6a, 29a-30a. Under that premise, investors should be less concerned with the size of the investments relative to assets under management, and care much more about the performance of those investments – a factor that is measured more accurately by considering the effect of the assets on Blackstone's revenues and earnings rather than their size relative to total assets under management. *See id.* at 30a (reasoning that because of the Corporate Private Equity segment's significance to Blackstone as a "flagship segment," "a reasonable investor would almost certainly want to know information related to that segment that Blackstone reasonably expects will have a material adverse effect on its future revenues").

II. THE DECISION CREATES NO SPLIT AMONG THE CIRCUITS

Petitioners seek to create a conflict between the Decision here and two decisions from other circuits: the Eighth Circuit's decision in *Parnes*, 122 F.3d at 544, and the Third Circuit's decision in *Westinghouse*, 90 F.3d at 714-15 & n.16. *See* Pet. at 17.

First, whatever conflict may have existed among the circuits, that conflict has been resolved by *Matrixx*, and the Decision here is entirely consistent with this Court's subsequent *Matrixx* decisions. Thus, even if the courts in *Parnes* and *Westinghouse* had ruled as Petitioners contend –mandating specific bright-line numerical thresholds to satisfy the materiality requirement, which they did not – they have been overruled *sub silentio* by this Court's decision in *Matrixx*.

Second, neither of these cases contradicts the Court of Appeals' holding that a combination of quantitative and qualitative factors must be considered. Nor do these cases hold that a 5% rule of thumb preempts all other possible considerations in evaluating the materiality of an alleged misstatement or omission, or mandate percentage of total assets under management (Petitioners' unilaterally chosen metric for determination of the materiality of their own alleged misstatements and omissions), or any other single measure, as the sole fact relevant to determining materiality. Indeed, both *Parnes* and *Westinghouse* make it clear that amounts involved or the proper metrics to consider for assessing materiality will vary on a case-by-case basis.

In *Parnes*, the Eighth Circuit held that an amount of money equivalent to 2% of total assets was immaterial as a matter of law. 122 F.3d at 547. However, there was no indication that the company assigned those assets to different corporate segments as did Blackstone. Nor was there any indication that any party disputed that the proper measure for consideration of materiality was anything other than percentage of total assets. Moreover, in reaching its conclusion, the Eighth Circuit recognized that "there may certainly be many cases where this amount of money would be material and would dramatically affect the total mix of information relied on by a reasonable investor." 122 F.3d at 546. Thus, far from foreclosing the possibility of cases like this one, where misstatements and omissions are material to investors despite falling below a numerical threshold based on a single quantitative metric (like percentage of total assets), *Parnes* expressly recognizes that such cases will arise.

Similarly, in *Westinghouse,* the defendants allegedly misclassified certain assets that comprised 1.2% of the company's total assets. 90 F.3d at 715. As in *Parnes,* there was no suggestion that the misclassified assets were significant to an important business segment. Moreover, although the Third Circuit agreed with the district court that the misclassifications were immaterial, it expressly ***rejected*** the defendants' "categorical assertion that materiality must be quantified at a specified percentage of income or assets." *Id.* at 714 n.14; *see also id.* (admonishing "the single rule of thumb materiality criterion of 5%-10% of net income or loss should be used – if at all, and by itself – with extreme caution") (quotation omitted). By so holding, the Third Circuit acknowledged that a result, like the one reflected in the Court of Appeals' Decision, will arise.

Additionally, in *Westinghouse,* the Third Circuit did not simply apply Petitioners' preferred metric of percentage of total assets under management to the exclusion of all other metrics. Rather, that court considered other quantitative indicia for materiality. For example, in assessing the plaintiff's allegation that a particular asset should have been written down, the Third Circuit considered the asset's quantitative materiality not by reference to total assets under management or even total annual revenues, but rather (and more logically) to the company's net income for the quarter. *Id.* at 715. Such a contextualized approach reflects the Third Circuit's recognition that "the question of materiality must be considered on a case-by-case basis under the standards set forth in *TSC Industries* and our cases." *Id.* at 714 n.14.

If decisions like *Parnes* and *Westinghouse* stand for any principle, therefore, it is that highly fact-specific holdings as to materiality cannot be mechanically applied across different cases.

Finally, Petitioners argue that the Decision in this case conflicts with a decision of a prior panel of the Second Circuit in *ECA & Local 134 IBEW*, 553 F.3d 187. Pet. Br. at 21. However, since this Court's decision in *Matrixx*, and the Second Circuit's denial of rehearing *en banc* to Petitioners, the Second Circuit, in *Hutchison*, 2011 U.S. App. LEXIS 15310, has expressly reconciled its decision in *ECA & Local 134 IBEW* with its Decision here based on the factual differences between the two cases. As the Court of Appeals explained, the holdings are consistent because the Decision involved "the firm's 'flagship segment,'" which had "independent significance for investors" (*Hutchison*, 2011 U.S. App. LEXIS 15310, at *24 (citation omitted)), while in *ECA & Local 134 IBEW* and *Hutchison*, no such allegations were made, *id.* at *25-26. Thus, Petitioners' assertion of a split within the Second Circuit itself also does not exist.

III. PETITIONERS' PURPORTED POLICY CONCERNS DO NOT MERIT SUPREME COURT REVIEW

Petitioners warn that the Decision threatens to create uncertainty because corporations will issue inconsistent disclosures, Pet. at 9-10, and be forced to disclose minute details about their major business segments, inundating investors with a flood of immaterial information, *id.* at 26-27. Petitioners' dire warnings, however, rest upon the incorrect premise that the Decision altered the existing law of materiality. As demonstrated above, the Decision did no such thing and, therefore, Petitioners' policy concerns vanish.

Since the Decision was entirely consistent with existing law, it will not cause any increased market uncertainty. Indeed, by insisting that qualitative factors can never satisfy the materiality requirement where the amounts in dispute represent less than 5% of total assets under management, it is actually *Petitioners* who would fundamentally alter the law, creating the very type of "single fact," bright-line rule for assessing materiality that this Court rejected in *Matrixx* and *Basic*. *Matrixx*, 131 S. Ct. at 1313-14; *Basic*, 485 U.S. at 236 ("We reject 'agreement-in-principle as to price and structure' as the bright-line rule for materiality.").[8]

Petitioners' alternate contention that the Decision "may effectively require Blackstone and a host of public companies like it to disclose minute details about their major business segments," Pet. at 26, is also wrong. As

8. Not only would the result advocated by Petitioners alter existing market expectations, it would allow companies to "game" the materiality standard to avoid disclosure. Petitioners would be excused for misstatements concerning investments that comprise only a small percentage of total assets, irrespective of the extent to which the misstated matter would impact the company's financial prospects. This case illustrates the problem. In a company as large as Blackstone, it is entirely possible that no single asset will exceed 5% of total assets by itself. Yet as the facts here demonstrate, the performance of individual assets can have a massive impact according to other quantitative metrics that matter very much to investors. For example, even FGIC – which represented less than 1% of Blackstone's total assets – encountered problems that accounted for 69% of the Corporate Private Equity unit's 18% decline in revenues for the year. This resulted in the Corporate Private Equity unit reporting negative revenues for the fourth quarter of 2007 as compared to positive revenues of $533.8 million for the same quarter in the prior year. Pet. App. at 9a-10a.

noted, the Court of Appeals did not simply rule that "***any*** omissions relating to investments in Blackstone's Corporate Private Equity and Real Estate segments [would be] material." *Id.* (emphasis added). In fact, with regard to Corporate Private Equity, the Court of Appeals found (1) the problems regarding FGIC were material because of their large impact on Blackstone's ***revenues***, and (2) the problems regarding Freescale were material because it represented the largest investment within one of Blackstone's most important business segments. And with regard to the Real Estate segment, the Court of Appeals found that the misrepresentation and omissions concerned not specific investments within the Real Estate segment, but rather "the manner in which those unidentified, particular investments might be materially affected by the then-existing downward trend in housing prices, the increasing default rates for sub-prime mortgage loans, and the pending problems for complex mortgage securities." Pet. App. at 32a.

The Court of Appeals also considered these same arguments and concluded its Decision posed no such dangers. *Id.* at 35a. Explaining that "it is only when there is both materiality and a duty to disclose that a company may be held liable for omitting information from a registration statement or prospectus," *id.* at 36a, the Court of Appeals concluded that plaintiff's burden to meet both of these is "sufficient protection against the opening-of-the-floodgates argument advanced by Blackstone," *id.*

Indeed, Petitioners are not concerned that the Decision will open a floodgate of information, but, consistent with their position taken below, Petitioners seek a judicial repeal of the federal securities laws for companies like

Blackstone that would provide it with license to disclose little more than the fact that Blackstone is an investment manager.[9] Such a return to a *caveat emptor* approach to disclosure by companies that sell their securities to the public would clearly violate the very purpose of the federal securities laws. *See, e.g., SEC v. Capital Gains Research*

9. The Registration Statement attributed its success to the "extensive experience and financial acumen of [Blackstone's] management and professionals [that] provide [it] with a significant competitive advantage." Joint Appendix at A-31, *Landmen Partners, Inc. v. Blackstone Group, L.P.*, (2d Cir.) (No. 09-4426-cv). As Petitioners' counsel argued: "First of all, these investors, in investing in Blackstone, were not investing in the hundreds of investments that Blackstone's funds invested in. . . . When these people bought the units in Blackstone, they were investing in an investment manager, Blackstone. . . . The [R]egistration [S]tatement does not list the hundreds of investments or the 43 portfolio companies that the funds invest in. These [investors], when they made their investment going in with their eyes open, bought into Blackstone as a manager without the knowledge of any of the underlying investments by the funds." Transcript of May 5, 2009 Oral Argument at 5:8-5:24, *Landmen Partners Inc. v. Blackstone Group, L.P.*, (S.D.N.Y.) (08-CV-3601). Thus, it was Petitioners' position in the courts below that companies like Blackstone are not required to disclose *any* details regarding their underlying investments or the performance of those individual investments because Blackstone investors only invest in Blackstone for its investment expertise, and the existence and performance of its individual investments – even if disclosures of the performance of those investments would undermine Blackstone's purported investment acumen – were, as a matter of law, immaterial to a reasonable investor's decision to invest in Blackstone. Thus, Petitioners essentially advocated that companies like Blackstone should be relieved of the disclosure obligations applicable to all other types of companies that publically issue their securities pursuant to the 1933 Act.

Bureau, Inc., 375 U.S. 180, 186 (1963) ("A fundamental purpose, common to these [federal securities law] statutes, was 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.") (citing H.R. Rep. No. 85, 73rd Cong., 1st Sess. 2, quoted in *Wilko v. Swan*, 346 U.S. 427, 430 (1953)).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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Respectfully submitted,

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