No. 11-510

In the Supreme Court of the United States

DELOITTE & TOUCHE LLP and JAN A. LOMMELE,
Petitioners,

v.

THE RGH LIQUIDATING TRUST,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("the Chamber"), is the Nation's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. A central function of the Chamber is to represent the interests of its members in important matters before the courts, the Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the Nation's business community, such as those involving the federal securities laws. *See*, *e.g., Janus Capital Group Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011); *Stoneridge Investment Partners, LLC v. Scientific Atlanta Inc.*, 552 U.S. 148 (2008); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71 (2006).

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[1] Pursuant to Supreme Court Rule 37.6 of the Rules of this Court, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to this brief's preparation or submission. Pursuant to Supreme Court Rule 37.2, *amicus curiae* states that counsel of record for both petitioners and respondent were timely notified of the intent to file this brief; the parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

The Chamber offers this brief because the decision below raises issues of vital importance to the Nation's business community. The issue raised by this case is whether the acts of Congress to curb vexatious securities litigation by enacting uniform national requirements will be undermined. Congress enacted the Private Securities Litigation Reform Act of 1995 ("the PSLRA"), 15 U.S.C. § 77z-1 & 78u-4, to rein in some of the worst abuses of securities class action litigation. When litigants attempted to circumvent the PSLRA by bringing national class actions in state court under state law, Congress enacted the Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. § 78bb(f), to preclude such actions, mandating that fraud claims on behalf of more than 50 or more persons involving nationally traded securities be brought only under the federal securities laws. *Amicus* regularly called on Members of Congress to preclude class actions under state law that evaded and undermined the PSLRA and supported SLUSA's enactment. In this case, however, the New York Court of Appeals created an implied exception to the plain language of SLUSA by allowing a "liquidating trust" to bring state law fraud claims on behalf of more than 800 bondholders who assigned their claims to the trust. In so holding, the New York Court of Appeals' decision conflicts with this Court's decision in *Dabit,* which warned against judicially-created "implied exceptions" to SLUSA. 547 U.S. at 88.[2]

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[2] *Dabit* unanimously overturned a Second Circuit decision holding that SLUSA did not preclude state-law claims of

(continued…)

This matter is not just important because New York is such a significant state for the Nation's business community and capital markets. If the erroneous decision below is left undisturbed, it may influence courts across the country to provide plaintiffs with an escape mechanism from the protections of the PSLRA that SLUSA provides Chamber members who are often the targets of securities class action, and whose directors, officers and auditors are often named as defendants in such suits. The Chamber, therefore, has a vital interest in the issues presented in this case and its views and experience of its members can assist the Court in deciding whether certiorari should be granted.

INTRODUCTION

This case concerns the applicability of certain provisions of SLUSA in cases involving state claims brought on behalf of more than 50 purchasers or holders of nationally traded securities. SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging. . a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15

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wrongfully-induced "holders" of securities. This Court concluded that the "implied exception" recognized by the Second Circuit defied both "ordinary principles of statutory construction" and "the particular concerns that culminated in SLUSA's enactment," namely, that class actions based on state law securities claims would "frustrate the objectives" of the PSLRA. 547 U.S. at 86.

U.S.C. § 78bb(f)(1). SLUSA defines the precluded "covered class action" to include "any" single lawsuit in which damages are sought "on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class . . . predominate over any questions affecting only individual persons or member;" 15 U.S.C. § 78bb(f)(5)(B)(i)(I). SLUSA further provides, under the caption "Counting of certain class members" that, for purposes of determining whether there are in fact more than 50 persons on whose behalf damages are being sought, "a corporation, investment company, pension plan, partnership or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action." 15 U.S.C. § 78bb(f)(5)(D) (the "counting provision").

In this case, respondent, the RGH Liquidating Trust ("the Trust"), purports to bring New York common law fraud claims as assignee and on behalf of hundreds of bondholders of Reliance Group Holdings ("RGH"), against RGH's former outside auditor, Deloitte & Touche LLP, in connection with the bondholders' purchase or holding of the bonds prior to RGH's bankruptcy. The New York Court of Appeals ruled that the Trust qualified for a "single-entity exemption" under the counting provision, finding that the "primary purpose" of the Trust was not to pursue the bondholders' claims. App. 24. The lawsuit, according to the decision below, was therefore not precluded by SLUSA, notwithstanding the fact the Trust was asserting assigned claims on behalf of more than 50 persons.

Compelling reasons warrant granting certiorari. This case presents the Court with a valuable and timely opportunity to halt the erosion of SLUSA, caused by the creation of an erroneous implied exception to SLUSA preclusion. Such review would also resolve a conflict in the circuit courts of appeal, a conflict which is deepened by the decision below, and provide clarity to multiple courts grappling with the treatment of single-entity plaintiffs in SLUSA cases. The conflict and the question presented concern whether SLUSA's "Counting of certain class members" provision creates a "single-entity exemption" from SLUSA when a named entity plaintiff, as assignee, brings state-law fraud claims on behalf of more than 50 bondholders if the entity plaintiff was not established for the "primary" purpose of bringing the lawsuit. This conflict and uncertainty—and the growing use of the "liquidating trust" device—threaten the national uniformity and efficient operations of the securities markets that SLUSA was enacted to promote.

The question presented is plainly recurring, important, and should be resolved by this Court.

REASONS FOR GRANTING THE PETITION

I. THIS COURT'S REVIEW IS NEEDED TO RESOLVE A CONFLICT TO ENSURE UNIFORM APPLICATION OF SLUSA

The New York Court of Appeals held that because the "primary purpose" of the Trust was not to assert the bondholders' litigation claims, SLUSA did not preclude the Trust's suit. App. 23-24. In so

holding, the New York Court of Appeals followed the Ninth Circuit's decision in *Smith v. Arthur Andersen LLP*, 421 F.3d 989 (9th Cir. 2005), and took sides in an existing conflict between the Ninth and Third Circuits.

In *Smith*, a trustee in bankruptcy brought state-law claims alleging that company officials and outside advisers misrepresented the Debtor's financial condition. Defendants asserted that the claims were barred by SLUSA because the trust had more than 50 beneficiaries. However, the Ninth Circuit held that the trust was entitled to a single-entity exemption from SLUSA under the counting provision because the trust was not established for the "primary purpose" of litigation, even though the court admitted that the trust was established "at least in part" to pursue litigation. 421 F.3d at 1007-08.[3]

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[3] As further discussed below, *Smith's* "primary purpose" test represents a judicial engraftment upon the statute. In *Smith*, the Ninth Circuit relied on a Massachusetts district court decision that "suggested" that an entity is not one person under SLUSA's counting provisions if its "primary purpose" is to pursue causes of action. 421 F.3d at 1007. The Massachusetts district court, however, merely noted that the trust agreement in that case "describes the primary purpose" of the trust "as prosecuting the Causes of Action contributed to it." That district court held that the trust's claims on behalf of more than 50 shareholders were barred by SLUSA, *not* because the language of the trust agreement established the "primary" purpose of bringing claims, but because the trust's role was "no different than that of any shareholder class representative." *Cape Ann Investors LLC v. Lepone*, 296 F. Supp. 2d 4, 10 (D. Mass. 2003). The Massachusetts district court decision cannot bear the weight that the Ninth Circuit placed on it.

In *LaSala v. Bordier et Cie*, 519 F.3d 121 (3d Cir. 2008), the Third Circuit employed a different, and conflicting, test for SLUSA preclusion. The Third Circuit reasoned that SLUSA preclusion must be based on determining "the true 'injured party' on whose 'behalf' the litigation was brought." App. 24. The trust at issue in *LaSala* was not an assignee of the claims of any shareholder—it was asserting the claims of the bankrupt estate. The Third Circuit ruled that a lawsuit is barred by SLUSA if the original owners of the claim—those injured by complained of conduct—number more than 50 and assigned their claims to a liquidating trust, regardless of whether the entity asserting the claim "can be deemed to have been established for the purpose of litigation." 519 F.3d at 135. The Third Circuit explained that the meaning of the text "on behalf of 50 or more persons" in conjunction with the definitional requirement that questions of law or fact common to "those persons" must predominate,

> seems to refer to someone bringing a claim on behalf of 50 or more *injured* persons. In other words, the phrase refers to the assignors of a claim, not to the assignee . . . Under this reading, the Trust is not bringing its claims 'on behalf of'" the Purchasers, as SLUSA uses the term, because the Purchasers are not the injured parties; rather, the Trust is bringing the claims on behalf of' [the bankrupt] AremisSoft.

519 F.3d at 134 (emphasis by the Court). In short, SLUSA's "text and legislative history signal that the

definition [of a 'covered class action'] was designed to prevent securities-claims owners from bringing what are, in effect, class actions by assigning claims to a single entity." *Id.* 136.

The New York Court of Appeals below acknowledged that under the Third Circuit's test in *LaSala*, it is "irrelevant whether the [entity] was established for purpose of litigation," App. 23, and that the Third Circuit's test conflicts with the "majority of federal courts" (*i.e.*, *Smith* and *Cape Ann*) that adopted the "primary purpose" test. *Id.* Under the Third Circuit's test, as Judge Smith's dissent observed, "[i]t is apparent that the *LaSala* court would have held the present case to be barred by SLUSA." App. 32. That is because the bondholders in this case "are the 'injured parties,' and this action is brought on their 'behalf.'" *Id.*

In addition to taking sides in the conflict between the Ninth Circuit in *Smith* and the Third Circuit in *LaSala*, the decision of the New York Court of Appeals implicates a recurring question. Other courts have voiced uncertainty about the validity and scope of the "single-entity exemption." Pet. at 23-24 (discussing varying conclusions of multiple district court decisions); App. 13 n.6 (majority acknowledging that, with respect to single-entity plaintiffs, "the federal courts continue to grapple with SLUSA"). A prompt resolution from this Court is essential to resolve this conflict and to remove the uncertainty.

II. THE DECISION BELOW IS INCONSISTENT WITH SLUSA'S TEXT AND STRUCTURE

Review is also warranted because the decision below is erroneous.

Through passage of SLUSA, Congress precluded any "covered class action" brought on behalf of more than 50 persons from proceeding under the statutory or common law of any State in any state or federal court if such action alleges "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A), (5)(B).

A "covered class action" includes not only actions styled as class actions, but also, in pertinent part, "any single lawsuit in which . . . damages are sought on behalf of more than 50 persons or prospective class members . . . and questions of law or fact common to those persons . . . predominate . . ." *Id.* § 78bb(f)(5)(B)(i)(I). To determine whether there are, in fact, more than 50 persons or prospective class members, the provision captioned "Counting of certain class members" states that "[f]or purposes of this paragraph," an entity on whose behalf damages are sought "shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action." *Id.* § 78bb(f)(5)(D).

It is undisputed that if the bondholders themselves had brought the claims in a single action, the claims would be barred by SLUSA because there are

far more than 50 bondholders and RGH bonds were nationally traded. The plain language of the statute should have dictated dismissal. The Trust is the assignee of more than 50 bondholders, and any damages it recovers will be distributed to those bondholders. *See* Pet. at 7-8 (describing the bondholders' assignment of their claims to the Trust). In addition, the Trust's amended complaint says that it is suing "on behalf of the general unsecured creditors" of RGH, a term that includes the bondholders, and that the bondholders are the claim holders and injured parties. *Id.* (describing the claims in the amended complaint).

However, in the decision below, the majority held that the action may be treated as though it were brought on behalf of only one person, the Trust. The majority reasoned that a named *plaintiff* entity suing on behalf of more than 50 persons can qualify for a "single entity exemption" from SLUSA preclusion if the plaintiff would be treated as a "single entity" under SLUSA's "counting of certain class members" provision. In so holding, the New York Court of Appeals misread a provision that it never should have looked to in the first instance.

First, this purported "exemption" runs afoul of the text and structure of SLUSA that reflects the decision by Congress to preclude state law actions brought on behalf of more than 50 persons. The counting provision does not create an exemption from SLUSA's definition of "covered class action" because "even if the Trust is 'treated as one person' it is still suing 'on behalf of' more than 50 others—just as a class representative may be one person, but a

class action will still be barred by SLUSA." App. 28–29 (Judge Smith's dissent). SLUSA specifies that, *for purposes of counting* whether there are 50 or more persons or class members, "a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action." §78bb(f)(5)(D). However, the decision below wrongfully allowed a single entity *named plaintiff* to bring claims on behalf of hundreds of bondholders by writing into SLUSA's "covered class action" definition an implied "single-entity exemption" based on SLUSA's *separate* provision governing how to count whether there are 50 or more class members.

Second, even if the counting provision were relevant, the decision below misread it. The New York Court of Appeals looked at SLUSA's "for the purpose of participating in the action" text (*see id.*) and interposed a "for the *primary* purpose" limitation to that text. It did so by adopting the test under which even if the plaintiff entity was established "for the purpose of participating in the action" (and therefore could not be treated as "one person" under the plain language of the "counting" provision), the plaintiff entity is nevertheless treated as "one person" so long as vindicating claims on behalf of more than 50 bondholders was not its *primary* purpose. The majority found that SLUSA does not bar the Trust's claims as assignee and on behalf of the hundreds of bondholders because it was not established for the "primary" purpose of bringing the lawsuit. App. 24. But seeking to litigate numerous claims involving the nationally-traded bonds of RGH was *one* of the

several purposes for the establishment of the Trust. As Judge Smith explained in dissent:

> In short, bringing lawsuits like this one was one of the major purposes of the Trust. To treat the Trust as a single person when it is implementing that purpose, and to ignore the obvious fact that it is acting on behalf of more than 50 other persons, simply invites evasion of SLUSA. That, as I view it, is all there is to this case.

App. 30.

Like the Second Circuit's narrow construction of SLUSA that this Court overturned in *Dabit*, the New York Court of Appeals' interpretation of SLUSA conflicts with the "broad construction" that Congress envisioned. *Dabit*, 547 U.S. at 86. This Court's review is necessary to once again overturn judicially-created "implied exceptions" to SLUSA. *Id.* at 88.

III. THE REOPENING OF THE LOOPHOLE CONGRESS CLOSED BY SLUSA THREATENS THE CAPITAL MARKETS AND WARRANTS THE COURT'S ATTENTION

The decision below, if not reversed, reopens a loophole in the protections from vexatious securities litigation enacted by the Congress. As the majority below recognized, the use, popularity and importance of "liquidating trusts" to the bankruptcy process is growing because of the "'post-*Enron/Worldcom* world of Sarbanes-Oxley' in which

we live, 'where claims might exist against the debtor's former insiders, accountants, financiers, and others . . .'" App. 15-16. In addition, of particular concern to the Chamber and its members, the majority's reasoning would extend far beyond liquidating trusts to many other types of assignees asserting claims on behalf of more than 50 persons. *See* Pet. at 24-25 ("There is every reason to believe such assignments to entities that purport to meet the 'primary purpose test,' perhaps to pre-existing shell corporations, will be the norm."). This end-run to evade the PSLRA's protections is not what Congress intended.

A. Congress Enacted the PSLRA to Rein In Abuses and Bolster the Economy

The purpose of the PSLRA was to improve the efficiency of the capital markets and to foster economic growth by deterring frivolous and burdensome securities litigation. S. Rep. No. 104-98, at 4-7 (1995). The PSLRA represents Congress' effort to curb, among other abuses, nuisance filings, targeting of deep-pocket defendants, vexatious discovery requests, and extortionate settlements, and other "ways in which the class action device was being used to injure 'the entire U.S. economy.'" *Dabit*, 547 U.S. at 81.

Extensive hearings before the Congress produced evidence that the abuses of securities class actions inflicted on business "resulted in extortionate settlements, chilled any discussion of [public companies'] future prospects, and deterred qualified indi-

viduals from serving on boards of directors." *Id.*, citing H.R. No. 104-369, at 31-32 (1995) (Conf. Rep.). "Fear of litigation keeps companies out of the capital markets," and "businesses suffer as auditors and directors decline engagements and board positions," H.R. Rep. No. 104-369, at 20. By way of further example, testimony and studies presented to the Congress leading up to PSLRA's passage supported the proposition that businesses often faced strike suits following a drop of 10 percent or more in the security's price. *See, e.g., Private Litigation Under the Federal Securities Laws: Hearings Before the Subcomm. on Sec. of the S. Comm. on Banking, Hous., & Urban Affairs*, 103d Cong., 1st Sess. 10, 12 (1993).

The PSLRA took far-ranging steps to rein in meritless litigation and increase incentives to disclose information to investors. These included:

- To ensure that investors rather than their lawyers exercise primary control over litigation and eliminate the race-to-the-courthouse mentality that discouraged pre-filing investigation of complaints, the PSLRA requires national publication of a notice advising class members of the filing of a class action and selection of a "lead plaintiff," with a presumption that the most suitable plaintiff is the class member or group that has the largest financial stake in the litigation. 15 U.S.C. §§ 77z-1(a)(3)(B), 78u-4(a)(3)(B). The presumption is in-

tended to "encourage institutional investors to take a more active role in securities class action lawsuits." H.R. Rep. No. 104-50, at 34.

- The PSLRA prohibits bonus payments to class representatives (*id.* §§ 77z-1(a)(4), 78u-4(a)(4)) and limits investors to serving as a class representative no more than five times during any three-year period. *Id.* §§ 77z-1(a)(3)(B)(vi), 78u-4(a)(3)(B)(vi).
- To better align the incentives of class counsel with the class, the PSLRA limits attorneys' fees to a reasonable percentage of the damages and pre-judgment interest actually paid to the class. *Id.* §§ 77z-1(a)(6), 78u-4(a)(6).
- To reduce the "fraud by hindsight" problem, the PSLRA creates a "safe harbor" for projections of future performance that were not knowingly false. 15 U.S.C. §§ 77z-2(c)(1)-(2), 78u-5(c)(1)-(2).
- The PSLRA imposes a heightened pleading standard to prevent plaintiffs from suing first and attempting to identify actionable fraud only after expensive fishing-expedition discovery. Plaintiffs must identify

each allegedly fraudulent statement and explain why it is fraudulent, and must state with particularity facts giving rise to a "strong inference" that the defendant acted with "the required state of mind." *Id.* § 78u-4(b)(2).

- The PSLRA mandates imposition of sanctions for violations of Rule 11 of the Federal Rules of Civil Procedure, with the presumptive award being the amount of defendants' attorneys' fees and costs for defending the suit. *Id. §§ 77z-1(c), 78u-4(c).*

- The PSLRA imposes a stay of discovery during the pendency of a motion to dismiss, unless the court finds that discovery is necessary to preserve evidence or prevent undue prejudice. *Id.* §§ 77z-1(b), 78-u-4(b)(3). In combination with the heightened pleading standards, the discovery stay is intended to ensure that nonmeritorious complaints do not impose enormous litigation costs on defendants.

- The PSLRA codified the "loss causation" requirement; in addition to showing that fraud induced the purchase of a security, plaintiffs must show that the fraud actually

caused the security's price to be artificially inflated. 15 U.S.C. § 78u-4(b)(4); *see also id.* § 771(b). Otherwise, private securities actions "would become an insurance plan for the cost of every security purchased in reliance upon a material misstatement or omission." *Huddleston v. Herman & MacLean,* 640 F.2d 534, 549 (5th Cir. 1981), *aff'd in part and rev'd in part on other grounds*, 459 U.S. 375 (1983).

- To help prevent the prospect of massive damage awards coercing otherwise unjustified settlements, the PSLRA replaced joint and several liability for peripheral defendants with proportionate liability if those defendants did not knowingly violate the securities laws. *Id.* §§ 77z-2(c)(2), 78u-4(g)(3), 78u-5(c)(2).

- In addition to addressing the litigation incentives of plaintiffs, defendants and lawyers, the PSLRA strengthened other enforcement mechanisms. For example, it required firms auditing public companies to take certain measures to detect fraud and to disclose any unlawful acts they uncover (15 U.S.C. § 78j-1); the statute vested the SEC with the power to prosecute those

> who aid and abet violations of the securities laws. *Id.* § 78t(f).

B. Congress Enacted SLUSA to Prevent Frustration of the PSLRA's Reforms

Before the enactment of the PSLRA, state securities laws—the subject of SLUSA—had played virtually no role in class action litigation involving securities traded on national exchanges. But that changed as plaintiffs and their attorneys attempted to circumvent the PSLRA's reforms and the "special burdens" those reforms placed on plaintiffs seeking to bring federal securities fraud class actions. *Dabit*, 547 U.S. at 82. As this Court has recognized, the effects of the PSLRA had an unintended consequence:

> It prompted at least some members of the plaintiffs' bar to avoid the federal forum altogether. Rather than face the obstacles set in their path by the Reform Act, plaintiffs and their representatives began bringing class actions under state law, often in state court . . .

Id. To stem this end-run around PSLRA, "Congress enacted SLUSA." *Id*.

Indeed, the weaker cases, which would not pass muster in federal court after the PSLRA, were the ones filed in state court. *See* Michael A. Perino, *Fraud and Federalism: Preempting Private State Securities Fraud Causes of Action*, 50 Stan. L. Rev. 273, 307-318 (1998). Congress, in hearings leading

up to the passage of SLUSA, heard evidence that the proliferation of state securities litigation threatened to resurrect the abusive practices that Congress had sought to discourage, including the safe harbor provisions of the PSLRA. *See* S. Rep. No. 105-182 (1998), at 4. For example, the Securities and Exchange Commission warned that "[c]ompanies have been reluctant to provide significantly more forward-looking disclosures than they had prior to the enactment of the safe-harbor" provision of the PSLRA because, in part, of "fear of state court liability, where forward looking statements may not be protected by the Federal safe harbor." *Id.* at 27.

Unless the decision below is reversed, the Trust—and the hundreds of traders and holders of the RGH covered security—will circumvent the firewall established by Congress: the mandated filing of federal securities fraud claims in federal court. Congress understood that, as in this case, many such claims would be (i) time-barred under the federal statute of limitations, App. 27, citing *Lampf, Pleva, Lipkind, Prupis & Pettigrow v. Gilbertsen*, 501 U.S. 364 (1991)[4], and (ii) prohibited with respect to the bondholders' "holder" claims, as dictated by *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723 (1975).

[4] Judge Smith, in his dissent, found that "[t]he reason for bringing the case under State law is apparent: a federal securities law claim against Deloitte would have been time-barred [citations omitted] . . . Congress enacted SLUSA to prevent exactly this kind of evasion of federal securities law barriers to suit." App. 27.

But the Chamber's support for the petition is compelled by more than the impact of the decision below on the petitioners. The ruling by the influential New York Court of Appeals significantly erodes SLUSA's intended protection against abusive class action litigation by furnishing an inappropriate sanctuary in state court from the "special burdens" imposed by the PSLRA, and presents a blueprint for the evasion of the multitude of PSLRA reforms listed above. For example, plaintiffs' lawyers can orchestrate the assignment of state claims otherwise captured by SLUSA to a "trust" and paper that its mission is not "primarily" to vindicate those claims. The decision below, and other rulings that find it persuasive, *see* App. 28 n.7, will open the floodgates to SLUSA evasion. Corporations, officers, directors and auditors will face the return to the damaging pre-PSLRA era of vexatious class action litigation.

Review is necessary to preserve the work of the Congress to close the PSLRA loophole and assure uniform national standards.

CONCLUSION

For the foregoing reasons and those stated in the petition for writ of certiorari, this Court should grant the writ.

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