Paul, Weiss

Client Memorandum

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District Court Dismisses Section 11 Suit on Traceability Grounds Where IPO Allowed Sale of Certain Preexisting Shares to the Public

On June 23, 2025, the District Court for the Northern District of California dismissed a Section 11 claim where non-executive employees of the issuer were permitted to sell a portion of their preexisting shares to the public in connection with the company's IPO. The court applied the U.S. Supreme Court's unanimous decision in *Slack Technologies, LLC* v. *Pirani*, 598 U.S. 759 (2023), which requires that a Section 11 plaintiff plead and prove that it purchased shares traceable to the registration statement it claims is materially misleading. The court held that plaintiffs had not adequately alleged that the shares they purchased were issued pursuant to the allegedly deficient registration statement because both registered and unregistered shares of the issuer's stock were available at the time of the IPO. Consistent with our prior analysis of *Slack*, this decision reinforces the strict tracing requirement for Section 11 plaintiffs—even at the pleading stage. And while courts have previously noted that *Slack*'s rigorous traceability requirement likely forecloses Section 11 liability in the direct listing context, this opinion suggests those same protections—and reduced litigation exposure—extend to companies that go public through a traditional IPO, so long as registered and unregistered shares commingle at or near the time of the offering.

Background: The IPO

The lawsuit, *Shnayder* v. *Allbirds, Inc.*, No. 23-cv-01811-AMO (N.D. Cal.), concerned Allbirds, Inc., a retail footwear company that went public through an initial public offering in November 2021. The registration statement filed in connection with the IPO provided that "beginning at the commencement of trading of our Class A common stock on the first trading day on which our common stock is listed on Nasdaq and through the seventh consecutive trading day thereafter, any of our current employees (but excluding current executive officers and directors) may sell in the public market up to 25% of the shares of our common stock." After Allbirds' share price declined, a putative class of shareholders sued, alleging that defendants misled the market about Allbirds' business strategy. Among other claims, plaintiffs alleged that Allbirds made misleading statements in its registration statement in violation of Section 11 of the Securities Act of 1933.

The District Court's Dismissal Decision

The district court granted defendants' motion to dismiss the Section 11 claim. The court acknowledged *Slack*'s requirement that Section 11 plaintiffs must plead sufficient facts to establish that they "purchased shares traceable to the allegedly defective registration statement." Plaintiffs argued that they had sufficiently alleged that their shares were traceable to the registration statement because "Allbirds issued shares in a single offering under one registration statement." The court rejected that contention because certain employees were permitted to sell preexisting shares not subject to registration requirements during the first seven days of public trading, meaning that "by definition not all of the company's shares will be directly traceable" to the registration statement. Accordingly, plaintiffs' "cursory allegation" did not suffice, and "further factual enhancement [was] needed" to adequately plead statutory standing. The court accordingly dismissed the Section 11 claims, but granted

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plaintiffs leave to amend "if they can in good faith add allegations that their shares are directly traceable" to the registration statement.

Implications

While courts have previously recognized that *Slack*'s strict tracing requirement may effectively insulate companies that go public through a direct listing from Section 11 liability, this decision further extends *Slack*'s reasoning to traditional IPOs. The decision suggests that companies that allow certain employees to sell preexisting, unregistered shares in an IPO may frustrate investors' ability to trace their shares to an IPO registration statement, and, accordingly, reduce associated litigation exposure. The decision may have further implications at the class certification stage, where the ability to trace shares to the IPO may limit the class of investors with Section 11 claims to those who purchased stock prior to the commingling of registered and unregistered shares, such as at the end of an initial lock-up period for company insiders.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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