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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CITIGROUP INC., CHARLES PRINCE, VIKRAM PANDIT, GARY CRITTENDEN, ROBERT RUBIN, ROBERT DRUSKIN, THOMAS G. MAHERAS, MICHAEL STUART KLEIN, and DAVID C. BUSHNELL,	
Defendants Below / Appellants,	
v.	Case No. 641, 2015
AHW INVESTMENT PARTNERSHIP, MFS, INC., and ANGELA H. WILLIAMS, as Trustee of the Angela H. Williams Grantor Retained Annuity Trust UAD March 24, 2006, the Angela Williams Grantor Retained Annuity Trust UAD April 17, 2006, the Angela Williams Grantor Retained Annuity Trust UAD May 9, 2006, the Angela Williams Grantor Retained Annuity Trust UAD November 1, 2007, the Angela Williams Grantor Retained Annuity Trust UAD May 1, 2008, the Angela Williams Grantor Retained Annuity Trust UAD July 1, 2008, and the Angela Williams Grantor Retained Annuity Trust UAD November 21, 2008,	Certification of Question of Law from the United States Court of Appeals for the Second Circuit C.A. Nos. 13-4488-cv(L) and 13-4504-cv(XAP)
Plaintiffs Below / Appellees.	

ANSWERING BRIEF OF APPELLEES

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NATURE OF PROCEEDINGS

Arthur L. Williams and his family lost more than $800 million because they relied on lies Citigroup told them about its exposure to subprime mortgages. Citigroup now argues that the only remedy for its fraud is a derivative suit in which ***Citigroup itself*** keeps any recovery. That "remedy," of course, is no remedy at all. Citigroup is effectively asking this Court to eliminate holder claims under the guise of shareholder standing rules – even though many States have chosen to allow those claims for almost a century. Nothing in Delaware law supports that result.

The district court properly recognized that the Williamses' fraud claim against Citigroup was direct: "[P]laintiffs, not Citigroup, are the victims of Citigroup['s] . . . alleged deception, and therefore plaintiffs are the ones with standing to sue." *AHW Inv. P'ship v. Citigroup Inc.*, 980 F. Supp. 2d 510, 517 (S.D.N.Y. 2013). The Second Circuit largely agreed: "It would be a strange outcome indeed," the court noted, "for Citigroup to pay itself for losses sustained by certain shareholders arising from alleged misrepresentations made to those shareholders by the Company and its officers." Citigroup Br. Ex. A at 13. The Second Circuit nonetheless certified the question to this Court, asking the Court to determine whether a plaintiff's claim that a corporate defendant defrauded him into refraining from selling his shares is direct or derivative under Delaware law. *Id.* at 25.

Those claims are direct. This is a fraud suit: The Williamses are suing Citigroup because Citigroup defrauded them. Mr. Williams had concrete plans to sell his Citigroup stock. But Citigroup dissuaded him from doing so by making fraudulent statements to Mr. Williams and his advisors about its subprime risk. In reliance on those misrepresentations, Mr. Williams held onto his stock. The share price plummeted, and Mr. Williams lost the bulk of his life's savings. That Citigroup fraudulently induced the Williamses to ***refrain*** from selling shares, rather than ***purchasing or selling*** shares, does not fundamentally alter the nature of the claim or the harm the Williamses suffered. That harm differs fundamentally from any injury that ***Citigroup*** may have suffered due to mismanagement by its corporate officers.

It cannot be that, when a corporation defrauds a shareholder, the only remedy is a derivative suit in which the corporation keeps any recovery. That is no remedy at all: Citigroup's position would effectively eliminate holder claims entirely (and many purchaser and seller claims as well). Whether to allow holder claims is a question of substantive securities law, not shareholder standing. Any debate over the propriety of such claims should be left to the state courts and legislatures with authority to establish that substantive law. This Court should not distort settled principles of corporate governance just to eliminate a category of securities fraud claims that Citigroup dislikes.

SUMMARY OF ARGUMENT

1. Denied. In *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004), this Court established a straightforward two-part test for whether a claim is direct or derivative: "Who suffered the alleged harm – the corporation or the suing stockholder individually – and who would receive the benefit of the recovery or other remedy?" *Id.* at 1035. The Williamses' fraud claims are direct under that standard.

i. The Williamses, not Citigroup, suffered the alleged harm. This is a suit for fraud: The "harm" occurred when Citigroup's false representations about its subprime exposure induced the Williamses to abandon stock sale plans that would have avoided hundreds of millions of dollars in losses. The Williamses, not Citigroup, suffered that harm. And that harm is independent from any injury that Citigroup may have suffered when its managers acquired the subprime assets.

ii. Indeed, Citigroup may not have suffered any injury at all. Its managers' investment decisions may have been within the broad scope of the business judgment rule. And its false statements may even have benefited the company.

iii. That the Williamses' ***measure of damages*** depends on the lost value of their Citigroup shares does not make their claims derivative. The Williamses measured their damages based on lost share value because, but for Citigroup's fraud, they would have sold those shares and avoided those losses – not because

Citigroup's officers made poor management decisions that caused the value of the shares to go down. The harm the Williamses suffered was thus qualitatively different from any injury to the company.

iv. Citigroup's theory would foreclose not just holder claims but also many purchaser/seller claims as well. Courts have long allowed defrauded purchasers to seek damages, not only for fraudulent inflation on the purchase date, but also for the loss in share value that occurs upon the materialization of a concealed risk. Citigroup's reasoning would foreclose those claims. That cannot be correct.

v. The Williamses' claims are also direct under *Tooley*'s second prong. The Williamses, not Citigroup, would receive the benefit of any recovery. Citigroup's contrary theory defies common sense. It cannot be that the only remedy when a corporation defrauds a shareholder is a damages award in favor of the corporation. Yet that is Citigroup's position.

2. Denied. This Court's more recent decisions confirm that the Williamses' claims are direct. In *NAF Holdings, LLC v. Li & Fung (Trading) Ltd.*, 118 A.3d 175 (Del. 2015), this Court made clear that claims based on a "tort, contract, or statutory cause of action" differ fundamentally from claims for breach of fiduciary duty. *Id.* at 180. With respect to the former, a court must first determine whether "the plaintiff seek[s] to bring a claim belonging to her personally or one belonging to the corporation itself." *Id.* Here, the Williamses are pursuing

their ***own*** tort claims based on misrepresentations Citigroup made ***to them*** in violation of duties it owed ***to them*** as members of the investing public.

By contrast, neither *In re J.P. Morgan Chase & Co. Shareholder Litigation*, 906 A.2d 766 (Del. 2006), nor *Feldman v. Cutaia*, 951 A.2d 727 (Del. 2008), sheds any light on the issues here. Both cases involved claims for breach of fiduciary duty, not fraud. And the harm in each case was harm to the corporation.

3. Numerous other courts have agreed that holder claims are direct. And in many cases, standing was not even challenged – confirming that claims like these have traditionally been understood to be direct, not derivative.

4. Citigroup ultimately seeks to distort the law of shareholder standing to eliminate a category of securities fraud claims it dislikes. This Court should resist that effort. Many States allow holder claims for legitimate reasons. And any debate over the propriety of those claims is a question of substantive securities fraud law for other state courts and legislatures to resolve. This Court should not cut short that discussion by distorting the law of shareholder standing.

STATEMENT OF FACTS

I. BACKGROUND

A. The Parties

Arthur L. Williams is a successful entrepreneur and former insurance executive who resides in Florida. A.13 ¶¶1, 2. In 1998, he became a significant Citigroup shareholder when Citigroup merged with the successor to a company he founded. A.13 ¶3. Mr. Williams then transferred that stock to the family-owned entities that are plaintiffs in this case. A.13-18 ¶¶3, 14-16, 27-29.

To inform his investment strategy, Mr. Williams established a "family office" of professionals who worked exclusively for him. A.13-14 ¶4. Those advisors "were intimately involved in monitoring and gathering information" on his investments, including his Citigroup stock. A.60 ¶185.

Citigroup, the principal defendant here, is a global financial services company incorporated in Delaware and headquartered in New York. A.18 ¶30. The other defendants are Citigroup executives. A.18-22 ¶¶31-38.

B. Citigroup's False Statements About Its Subprime Exposure

As the housing crisis unfolded from 2007 to 2009, Citigroup made a series of false statements to the Williamses and the broader market about its exposure to subprime mortgages. Citigroup trumpeted its " 'highly disciplined . . . credit management.' " A.32 ¶75. It represented that it had " 'avoided the riskier products' " in the U.S. mortgage area. A.66 ¶204. And it claimed to have only $13 billion in secured-lending subprime exposure. A.34 ¶84.

Those representations were false. Citigroup's credit management was not "highly disciplined" – it was atrocious. The company's chief underwriter later admitted to the Financial Crisis Inquiry Commission that 80% of Citigroup's loans in 2007 were defective. A.29 ¶65. Rather than "avoid[ing] the riskier products," Citigroup purchased over $50 billion of subprime mortgages per year. *Id.* And Citigroup did not have a mere $13 billion in subprime exposure: It had ***$55 billion*** of subprime exposure, including $43 billion in collateralized debt obligations ("CDOs") that Citigroup was unable to sell. A.31 ¶73.

The Securities and Exchange Commission filed an enforcement action accusing Citigroup of making "'material misstatements about its investment bank's exposure to sub-prime mortgages.'" A.22 ¶40; *see SEC v. Citigroup Inc.*, No. 10-cv-01277 (D.D.C. July 29, 2010). The SEC charged that Citigroup's subprime exposure exceeded $50 billion but that "the company's disclosures materially understated that exposure." Compl. in No. 10-cv-01277, ¶1. Citigroup paid $75 million to settle those charges. A.22 ¶40.

Citigroup's fraud also led to multiple private civil suits. A.23 ¶41. In *In re Citigroup Inc. Bond Litigation*, 723 F. Supp. 2d 568 (S.D.N.Y. 2010), the court found that bondholders had adequately pled false or misleading statements in violation of the Securities Act. *Id.* at 590. And in *In re Citigroup Inc. Securities Litigation*, 753 F. Supp. 2d 206 (S.D.N.Y. 2010), the court found that stockholders had adequately pled scienter. *Id.* at 240-41.

C. The Williamses Decide Not To Sell Their Stock in Reliance on Citigroup's False Statements

By 2006, the Williamses' 17.6 million Citigroup shares represented approximately 60% of their net worth. A.61 ¶190. Their financial advisors recommended that they sell the stock to diversify their holdings. *Id.* The Williamses took concrete steps to prepare for the sale. After consulting with tax attorneys, they created trusts to minimize gift taxes and transferred some of the stock to those entities. A.61-62 ¶¶190-193. Mr. Williams also reduced his borrowings against his shares so they could be sold freely. A.64 ¶199.

The Williamses closely monitored Citigroup's performance as they considered the timing of the sale. They "regularly reviewed public filings, listened to conference calls, monitored the media and had direct communications with senior Citigroup officers." A.59 ¶184. "Williams' Financial Advisors had direct private meetings with senior Citigroup officers and relayed their discussions to Williams." A.61 ¶188. "Williams also had periodic discussions with former . . . colleagues who were now Citigroup senior executives about the Company's financial health, and even had at least one discussion with [CEO Charles] Prince . . . ." *Id.* None of those communications disclosed Citigroup's true subprime exposure. *Id.*

In April 2007, Mr. Williams's advisors concluded that it was "a good time for Williams to sell." A.65 ¶¶201-202. Mr. Williams decided to liquidate his entire 17.6 million share position. A.55 ¶170. He sold the first million shares at $55 per share on May 17, 2007. A.65, 70 ¶¶203, 212.

As markets began experiencing turmoil from the subprime crisis, Citigroup's stock price dipped. A.56 ¶174. Mr. Williams temporarily delayed his sales. *Id.* "Based on Citigroup's statements, Williams had every reason to believe that the Company was being unfairly lumped in with . . . other companies, and once the market understood and took into account the different – and far superior – risk posture of Citigroup, its shares would recover and he could complete his planned sale as intended." A.56-57 ¶175. Had the Company disclosed the truth at the time, Mr. Williams would have "sold all of his shares in May 2007 at $55 per share and diversified into safer investments." A.25 ¶48. But Citigroup did not.

Over the next two years, Citigroup's "massive exposure to 'toxic' subprime collateralized debt obligation ('CDO') assets . . . , along with other undisclosed credit market risk, ultimately caused the firm's stock to drop from nearly $60 to just $2 per share." A.14-15 ¶7. Mr. Williams repeatedly considered liquidating his holdings over that period, but each time Citigroup deceived him into retaining the shares. A.71-80 ¶¶214-241. Finally, after the federal government bailed out the bank in late 2008, the truth emerged. A.80-81 ¶¶242, 246. Mr. Williams sold his remaining shares at $3.09 on March 18, 2009, suffering more than $800 million in losses. A.55-56, 82 ¶¶172, 249-250.

II. PROCEDURAL HISTORY

A. The District Court's Decision

Plaintiffs filed suit against Citigroup and its officers in the U.S. District Court for the Southern District of New York, alleging fraud and negligent misrepresentation under Florida law. A.12; A.16 ¶12. Citigroup moved to dismiss, arguing that the claims were derivative.

The district court rejected that argument. Quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004), the court looked to two questions: "'(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'" *AHW Inv. P'ship v. Citigroup Inc.*, 980 F. Supp. 2d 510, 516 (S.D.N.Y. 2013).

As to the first question, the district court concluded that the Williamses had "alleged injuries resulting from their unique reliance [on Citigroup's misrepresentations] that is 'independent of any alleged injury to' Citigroup." 980 F. Supp. 2d at 517. As to the second, Citigroup "d[id] not even contest that any remedy will go directly to plaintiffs, not to Citigroup." *Id.* "To put it simply, plaintiffs, not

Citigroup, are the victims of Citigroup and the officer defendants' alleged deception, and therefore plaintiffs are the ones with standing to sue." *Id.*

The district court therefore concluded that the claims were direct, not derivative. 980 F. Supp. 2d at 516. On the merits, however, it held that the Williamses had not sufficiently alleged an out-of-pocket loss under New York law and dismissed the suit. *Id.* at 525-26.

B. The Second Circuit's Certification Order

The Williamses appealed the dismissal, and Citigroup cross-appealed the direct/derivative ruling. Citigroup Br. Ex. A at 8. The Second Circuit largely endorsed the district court's analysis. "*Tooley's* two-part test," it held, "suggests that the Williamses may bring their claims directly." *Id.* at 12.

"With regard to 'who suffered the alleged harm,'" the court explained, "it is true that in a general sense both plaintiffs and Citigroup suffered harm when the Company's share price fell over time as the extent of its investment in subprime-related assets came to light." Citigroup Br. Ex. A at 12. "But the harm for which plaintiffs seek recovery is more particularized: It arises from their detrimental reliance on what they cast as defendants' misrepresentations, made through 'personal and direct communications' to them, not merely public announcements." *Id.* That harm "may be said to have been suffered by 'the suing stockholders, individually,' not by 'the corporation.'" *Id.* at 13.

"[A]s to the second *Tooley* question," the court continued, "it seems that the Williamses, not Citigroup, would 'receive the benefit of any recovery.'" Citigroup Br. Ex. A at 13. This was "fundamentally an action for compensatory damages, and if any party were to recover damages for the asserted misrepresentations . . . it would be plaintiffs." *Id.* "It would be a strange outcome indeed for Citigroup to pay itself for losses sustained by certain shareholders arising from alleged misrepresentations made to those shareholders by the Company and its officers." *Id.*

"In sum," the court concluded, "*Tooley* suggests that the Williamses have stated direct claims." Citigroup Br. Ex. A at 14. "If *Tooley* were the only decision of the Delaware courts relevant to this action, we would likely conclude that plaintiffs may bring these claims directly." *Id.* This Court's more recent decisions, however, "g[ave] [the Second Circuit] pause." *Id.* "[T]he two-part *Tooley* test may now have evolved," the court asserted, and later decisions suggested that *Tooley* no longer "accurately represent[ed] Delaware law." *Id.* at 15, 18. The Second Circuit thus certified the question to this Court. *Id.* at 25.

ARGUMENT

I. QUESTION PRESENTED

"Are the claims of a plaintiff against a corporate defendant alleging damages based on the plaintiff's continuing to hold the corporation's stock in reliance on the defendant's misstatements as the stock diminished in value properly brought as derivative or direct claims?" Citigroup Br. Ex. B at 3. The Williamses contend that their claims are direct.

II. STANDARD OF REVIEW

This Court reviews certified questions of law *de novo*. *See Terex Corp. v. S. Track & Pump, Inc.*, 117 A.3d 537, 541 (Del. 2015).

III. MERITS OF ARGUMENT

A. The Williamses' Holder Claims Are Direct Under *Tooley*

This is an action for fraud. The Williamses suffered enormous losses when they relied on Citigroup's misrepresentations about its exposure to subprime risk. Citigroup's defense reduces to the theory that, when a company misleads shareholders like the Williamses – and those shareholders rely to their detriment by holding onto stock they otherwise would have sold – the action for fraud belongs to the company, not the defrauded shareholders. The company, Citigroup asserts, should sue itself for misleading the shareholders. And the company – not the shareholders – should keep the benefit of any recovery.

That theory cannot be reconciled with this Court's decision in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004). *Tooley* announced a straightforward two-part test for determining whether a claim is direct or derivative: "Who suffered the alleged harm – the corporation or the suing stockholder individually – and who would receive the benefit of the recovery or other remedy?" *Id.* at 1035. *Tooley* expressly disavowed earlier cases that had focused on whether the plaintiff suffered a "special injury" – *i.e.*, an injury "'separate and distinct from that suffered by other shareholders.'" *Id.*

Citigroup does not dispute that *Tooley* sets forth the applicable test and does not ask this Court to overrule or modify that decision. This Court has repeatedly reaffirmed *Tooley*'s two-part test as the governing standard. *See, e.g.*, *Culverhouse v. Paulson & Co.*, No. 349, 2015, 2016 WL 304186, at *3 (Del. Jan. 26, 2016). While the Second Circuit thought that *Tooley* might have "evolved," Citigroup makes no such argument. As both the district court and the Second Circuit concluded, the Williamses' claims are direct under *Tooley*.

That conclusion reflects not only precedent but also common sense. It cannot be that, when a corporation defrauds a shareholder, the only remedy is a derivative suit in which the corporation keeps any recovery. That "remedy" is no remedy at all: It would effectively eliminate this category of securities fraud claims altogether. Nothing in *Tooley* supports that result.

1. *The Williamses – Not Citigroup – Suffered the Alleged Harm*

The Williamses' claims are direct under *Tooley*'s first prong. The Williamses, not Citigroup, suffered the alleged harm. Citigroup had an obligation – under both Florida and New York tort law – not to lie to members of the investing public about its subprime exposure. Citigroup breached that duty by making false statements to the Williamses. The Williamses suffered harm when they relied on those fraudulent statements to their detriment and abandoned their plans to sell Citigroup stock – plans that would have allowed the Williamses to avoid nearly a billion dollars of losses. The ***Williamses*** suffered that harm – not Citigroup.

a. *The Harm the Williamses Suffered as Fraud Victims Was Separate from Any Harm to Citigroup*

Citigroup insists that the Williamses' fraud claim is derivative because the harm the Williamses suffered was not "'independent of any injury to the corporation.'" Citigroup Br. 17 (quoting *Tooley*, 845 A.2d at 1038). But this suit does not seek to hold Citigroup's officers liable for harm they caused the company. The Williamses are not complaining that Citigroup's officers caused share values to decline by mismanaging the company. Whether Citigroup's officers breached fiduciary duties to the company is totally irrelevant to the harm the Williamses suffered. The harm at issue is that Citigroup ***defrauded*** the Williamses into taking a detrimental course of action that the Williamses otherwise would have avoided.

Citigroup had a duty not to defraud members of the investing public about its financial condition. Under the laws of either Florida (where the Williamses reside) or New York (where Citigroup is based), Citigroup could not defraud investors into refraining from selling shares, any more than it could defraud them into buying or selling shares. Florida law allows holder claims like these. *See Ward v. Atl. Sec. Bank*, 777 So. 2d 1144, 1146 (Fla. Dist. Ct. App. 2001); *Rogers v. Cisco Sys., Inc.*, 268 F. Supp. 2d 1305, 1314 (N.D. Fla. 2003). So does New York law (although it limits recoverable damages). *See Cont'l Ins. Co. v. Mercadante*, 222 A.D. 181, 186 (N.Y. App. Div. 1927); *Starr Found. v. Am. Int'l Grp., Inc.*, 76 A.D.3d 25, 27-28 (N.Y. App. Div. 2010); *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202, 212-13 (2d Cir. 2000). The harm the Williamses suffered was Citigroup's violation of that tort-law duty. That harm is separate from any injury Citigroup may have suffered from fiduciary breaches by its managers.[1]

Citigroup is thus wrong to suggest that the Williamses cannot "'prevail without showing an injury to the corporation.'" Citigroup Br. 17 (quoting *Tooley*, 845 A.2d at 1039). Citigroup's managers may have acted within the broad con-

[1] Even in the context of fiduciary duty claims, this Court has recognized that a stockholder may bring a direct claim for damages where a director violates his disclosure duties. *See Malone v. Brincat*, 722 A.2d 5, 14 (Del. 1998) (violation of disclosure duty "may result in a derivative claim on behalf of the corporation ***or a cause of action for damages***" (emphasis added)). That reasoning applies *a fortiori* in a case like this, where plaintiffs are asserting, not a breach of fiduciary duty, but garden-variety tort claims for securities fraud.

fines of the business judgment rule when they acquired billions of dollars of speculative real estate assets for the company: Had real estate markets continued to improve, Citigroup's subprime bet may have paid off handsomely. Under the business judgment rule, Citigroup may not have suffered any "injury" in the legal sense. Delaware courts have rejected derivative claims arising out of these same events for that reason. *See In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d 106, 126 (Del. Ch. 2009) (dismissing derivative claims against Citigroup's directors over subprime exposure because "impos[ing] liability on directors for making a 'wrong' business decision would cripple their ability to earn returns for investors by taking business risks").

Whatever assets Citigroup's managers decided to acquire, however, the company could not ***lie to investors*** about them. That is a separate harm that does not depend on any injury to the company. The whole premise of this suit is that Citigroup ***knew*** about its subprime exposure but concealed the truth. The Williamses' status as fraud victims cannot depend on harm to Citigroup when Citigroup was the party that defrauded them. In fact, Citigroup may well have benefited from its lies by keeping its stock price higher (at least temporarily).

Even if Citigroup's managers did harm the company, that would not make the Williamses' claims derivative. "Courts have long recognized that the same set of facts can give rise both to a direct claim and a derivative claim." *Grimes v.*

Donald, 673 A.2d 1207, 1212 (Del. 1996). The harm the Williamses suffered was that Citigroup defrauded them into a detrimental course of action they otherwise would have avoided. Citigroup did not suffer that harm – Citigroup caused it.

b. *The Williamses' Claims Are Not Derivative Merely Because Their Measure of Damages Depends on the Lost Value of the Shares They Refrained from Selling*

Citigroup contends that the Williamses' harm derives from injury to the corporation because of the ***measure of damages*** the Williamses invoke. Citigroup Br. 18. After Citigroup fraudulently induced the Williamses to refrain from selling their stock, the Williamses suffered losses as the value of those stockholdings plummeted – losses they would have avoided if Citigroup had told the truth. Because that decline in share value also reflected a reduction in the value ***of the company***, Citigroup urges, the Williamses' claims are derivative.

That argument misstates the governing standard. Under *Tooley*, what matters is whether the shareholder suffered some harm independent from injury to the corporation. 845 A.2d at 1035. That test does not turn on whether the ***measure of damages*** relates to the company's value in some way. Regardless of how the Williamses measured their damages, the harm they suffered as fraud victims is qualitatively different from any injury Citigroup suffered from its subprime exposure.

The Williamses measured their damages based on the lost value of their shares because, but for Citigroup's fraud, they would have sold those shares and avoided those losses. The Williamses are not claiming lost share value as damages merely because Citigroup's officers made poor management decisions that caused the value of their shares to go down. Those are two qualitatively different types of harm, even if the measure of damages might be the same. Proper disclosures would have prevented the Williamses' losses – but not Citigroup's.

Although all Citigroup shareholders may have suffered a reduction in share value, many did not suffer the same harm as the Williamses. Many shareholders may not have received the same misrepresentations. Many shareholders may not have relied on them – they might have been perfectly content at the time to speculate along with Citigroup that real estate prices would keep rising. Some shareholders, such as the individual defendants here, may have known the representations were false. And many shareholders presumably had no concrete plans to sell.

Consequently, many – if not most – Citigroup shareholders cannot make the same fraud claims that the Williamses make. In *Tooley*, this Court rejected the "special injury" test that turned on whether the plaintiff had suffered an injury "separate and distinct from that suffered by other shareholders." 845 A.2d at 1035. That the Williamses can satisfy even that discredited test only confirms that their claims are direct under *Tooley*'s more capacious standard as well.

c. *Citigroup's Attempt To Distinguish Holder Claims from Purchaser/Seller Claims Confirms That the Williamses' Claims Are Direct*

Citigroup does not deny that, where a company fraudulently induces an investor to ***purchase or sell*** stock, the investor can pursue a direct claim for fraud. But Citigroup asserts that ***holder*** claims are different because the measure of damages is different: According to Citigroup, holders seek damages for reduction in share value whereas purchasers and sellers seek damages for something else: artificial share-price inflation on the date of the transaction. Citigroup Br. 20-22.

The premise of that argument is wrong. Purchasers and sellers, no less than holders, can and routinely do seek damages for the decline in the ***actual value*** of their shares. In particular, courts regularly allow defrauded purchasers to recover a loss in actual share value where there is a materialization of a concealed risk – wholly apart from any artificial inflation on the purchase date.

In *Suez Equity Investors, L.P. v. Toronto-Dominion Bank,* 250 F.3d 87 (2d Cir. 2001), for example, investors purchased shares in reliance on a memorandum that omitted key facts about the founder's history. *Id.* at 94. The Second Circuit stated that the plaintiffs had suffered a "loss at the time of purchase since the value of the securities was less than that represented by defendants." *Id.* at 98. But the court also held that the plaintiffs had "adequately alleged a second, related, loss" – the loss that occurred when the concealed risk of mismanagement materialized and caused “the Group’s final failure.” *Id.* As the court later explained: “[T]he *Suez Equity* plaintiffs did not merely allege a disparity between the price they had paid for the company’s securities and the securities’ ‘true’ value at the time of the purchase. Rather, they specifically asserted a causal connection between the concealed information . . . and the ultimate failure of the venture.” *Emergent Capital Inv. Mgmt., LLC v. Stonepath Grp., Inc.*, 343 F.3d 189, 198 (2d Cir. 2003).

The Second Circuit has repeatedly reaffirmed that defrauded purchasers may recover for lost share value upon the materialization of a concealed risk – not just for artificial inflation. *See, e.g.*, *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 232-33 (2d Cir. 2014) (purchaser may recover ***either*** for a “‘corrective disclosure’” dissipating fraudulent inflation ***or*** for “‘materialization of the risk concealed by the fraudulent statement’”); *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 511 (2d Cir. 2010). Thus, the whole premise of Citigroup’s argument – that purchasers and sellers can bring direct claims only because their damages do not depend on share value – is false.

Far from helping its case, Citigroup’s comparison to purchaser/seller claims confirms that the Williamses’ claims are direct. Purchasers and sellers have long been permitted to claim damages for the loss in share value that occurs when a fraudulently concealed risk materializes. The Williamses’ damages theory – that Citigroup concealed its subprime risk and that the value of their shares went down when that risk materialized – is no different. Citigroup's theory thus would wipe out not only holder claims but a broad swath of purchaser/seller claims as well. That theory cannot be correct.

2. *The Williamses – Not Citigroup – Would Receive the Benefit of Any Recovery*

The Williamses' claims are also direct under *Tooley*'s second prong because only the Williamses "would receive the benefit of the recovery." 845 A.2d at 1035. The complaint seeks "$809,950,000 in compensatory damages . . . ***against Defendants in favor of Plaintiffs***." A.94 (emphasis added). By its terms, this action seeks a remedy that will benefit the Williamses and the Williamses alone.

Compensatory damages, moreover, are the paradigmatic remedy for securities fraud. *See, e.g.*, *Osofsky v. Zipf*, 645 F.2d 107, 109 (2d Cir. 1981). The Williamses thus not only ***would*** receive, but ***should*** receive, any recovery. *See Albert v. Alex Brown Mgmt. Servs., Inc.*, No. Civ. A. 762-N, 2005 WL 2130607, at *13 (Del. Ch. Aug. 26, 2005) (holding that unitholders fraudulently induced to remain invested in partnerships would "receive the benefit of any remedy" under *Tooley*'s second prong because "the court may find it appropriate to grant monetary damages" and "[s]uch damages would be awarded to the unitholders, and not the partnerships"). Indeed, in the district court, Citigroup "d[id] not even contest that any remedy will go directly to plaintiffs, not to Citigroup." 980 F. Supp. 2d at 517.

The Second Circuit thus properly concluded that "the Williamses, not Citigroup, would 'receive the benefit of any recovery.'" Citigroup Br. Ex. A at 13. This is "fundamentally an action for compensatory damages, and if any party were to recover damages for the asserted misrepresentations . . . , it would be plaintiffs." *Id.* "It would be a strange outcome indeed for Citigroup to pay itself for losses sustained by certain shareholders arising from alleged misrepresentations made to those shareholders by the Company and its officers." *Id.*

Citigroup has no real response. It offers a litany of dubious policy objections to holder claims. Citigroup Br. 28-33. But *Tooley*'s second prong is not an open-ended inquiry into whether a plaintiff deserves compensation. Rather, "[t]he second prong of the analysis should logically follow" from the first. *Tooley*, 845 A.2d at 1036. The Williamses suffered the harm when Citigroup defrauded them, so the Williamses rather than Citigroup should receive the recovery. It makes no sense to say that the proper remedy when a corporation defrauds a shareholder is a damages award in favor of the corporation. Yet that is Citigroup's position.

B. This Court's Post-*Tooley* Decisions Confirm That the Williamses' Claims Are Direct

The Second Circuit, while agreeing that *Tooley* supported the Williamses' position, thought this Court's later decisions cut back on *Tooley*'s holding. Citigroup Br. Ex. A at 15, 18. In fact, those decisions confirm that the Williamses' claims are direct.

1. *NAF Holdings Supports the Williamses' Position*

This Court's decision in *NAF Holdings, LLC v. Li & Fung (Trading) Ltd.*, 118 A.3d 175 (Del. 2015), strongly supports the Williamses' position. In that case, NAF Holdings had a contract with Li & Fung for services. *Id.* at 177. NAF Holdings created two subsidiaries to merge with another company in reliance on Li & Fung's promises. *Id.* Li & Fung breached the contract, and the merger fell through. *Id.* The damages fell solely on NAF Holdings's ***subsidiaries***, which stood to benefit from the merger. *Id.* NAF Holdings filed suit for breach of contract, seeking damages "for the reduced value of [its] property, that is, the diminution in ***value of [its] Subsidiaries' stock***." *Id.* (emphasis added).

Even though the plaintiff sought damages for the lost value of its shareholdings, this Court deemed the claim direct. "*Tooley* and its progeny," the Court explained, "do not, and were never intended to, subject commercial contract actions to a derivative suit requirement." 118 A.3d at 179. "That body of case law was intended to deal with a different subject: determining the line between direct actions for ***breach of fiduciary duty*** . . . and derivative actions for ***breach of fiduciary duty*** . . . ." *Id.* (emphasis added). *Tooley*'s requirement that a plaintiff "show that it 'can prevail without showing an injury to the corporation,' " the Court clarified, was not "a general statement requiring all claims, whether based on a ***tort, contract, or statutory cause of action*** . . . , to be brought derivatively whenever the corporation of which the plaintiff is a stockholder suffered the alleged harm." *Id.* at 180 (emphasis added). "[A] more important initial question has to be answered: does the plaintiff seek to bring a claim belonging to her personally or one belonging to the corporation itself?" *Id.* Since NAF Holdings was enforcing its ***own*** rights, it could "press its breach of contract action directly." *Id.* at 181.

The same reasoning applies here. The Williamses are not pursuing claims for breach of fiduciary duty. They are pursuing tort claims for securities fraud. As in *NAF Holdings*, the Court cannot simply ask whether the Williamses could "'prevail without showing an injury to the corporation.'" 118 A.3d at 180. It must first ask whether "the plaintiff seek[s] to bring a claim belonging to her personally or one belonging to the corporation itself." *Id.*; *see also Culverhouse*, 2016 WL 304186, at *3 (determining whether a claim was direct or derivative by identifying the party owed the relevant duty). The Williamses are pursuing their ***own*** tort claim for securities fraud based on Citigroup's misrepresentations ***to them*** in violation of a duty it owed ***to them*** as members of the investing public.

Citigroup asserts that *NAF Holdings* applies only to claims for "breach of a commercial contract." Citigroup Br. 33-34. But this Court distinguished between "actions for ***breach of fiduciary duty***" and actions "based on a ***tort, contract, or statutory cause of action***." 118 A.3d at 179-80 (emphasis added). This tort case – a paradigmatic securities fraud suit – clearly falls on the latter side of that line.

That interpretation does not allow plaintiffs to plead duplicative fraud and fiduciary-duty claims. Citigroup Br. 34. *NAF Holdings* does not categorically exempt fraud claims from *Tooley*. It merely requires the court to ask whether "the plaintiff seek[s] to bring a claim belonging to her personally or one belonging to the corporation itself." 118 A.3d at 180. The Williamses are asserting paradigmatic fraud claims based on lies Citigroup told them and actions they took in reliance on those lies. Those claims belong to the Williamses – not Citigroup.

The Court of Chancery has not read *NAF Holdings* so narrowly as Citigroup proposes. In *In re El Paso Pipeline Partners, L.P. Derivative Litigation*, No. Civ. A. 7141-VCL, 2015 WL 7758609 (Del. Ch. Dec. 2, 2015), the court identified "'a ***tort claim for fraud*** in connection with the purchase or sale of shares'" as a "'[q]uintessential example[ ]'" of a personal claim under *NAF Holdings*. *Id.* at *11 (emphasis added). *NAF Holdings* thus cannot be marginalized as a contract case. It also covers securities fraud claims – precisely what the Williamses allege here.

2. *J.P. Morgan and Feldman Are Not to the Contrary*

Citigroup's reliance on *In re J.P. Morgan Chase & Co. Shareholder Litigation*, 906 A.2d 766 (Del. 2006), is misplaced. That case involved an alleged breach of fiduciary duty, not securities fraud. The plaintiffs accused J.P. Morgan's directors of wasting corporate assets by causing J.P. Morgan to overpay $7 billion for another company, and also accused the directors of breaching their disclosure duties by failing to disclose that corporate waste. *Id.* at 771-72. This Court acknowledged that "a duty of disclosure violation may entitle the injured party to compensatory damages in appropriate circumstances." *Id.* at 772. But the claims there were derivative because the plaintiffs had failed to allege ***any*** individual harm: The only damages they claimed were ***the corporation's*** $7 billion overpayment, and "that $7 billion figure has no logical or reasonable relationship to the harm caused to the shareholders ***individually*** for being deprived of their right to cast an informed vote." *Id.* at 773.

This case is the opposite. The Williamses allege genuine harm distinct from any injury that Citigroup suffered – namely, the hundreds of millions of dollars they lost when Citigroup fraudulently induced them to abandon their share sale plans. That harm is qualitatively different from any injury that Citigroup may have suffered. And the Williamses would have avoided that harm if Citigroup had told the truth – even though Citigroup may still have suffered a loss.

Citigroup likewise finds no support in *Feldman v. Cutaia*, 951 A.2d 727 (Del. 2008). That case did not involve disclosure violations, let alone securities fraud. It was an equity dilution case. *Id.* at 729. As the Court explained, "any dilution in value of the corporation's stock [was] merely the unavoidable result (from an accounting standpoint) of the reduction in the value of the entire corporate entity, of which each share of equity represents an equal fraction." *Id.* at 732.

The Williamses are not claiming equity dilution or any other harm that was an "unavoidable result" of a reduction in corporate value. They sued Citigroup because the company lied to them and caused them to abandon plans to sell their shares. Those securities fraud claims belong to the Williamses, not Citigroup.

C. Decisions of Other Courts Confirm That the Williamses' Claims Are Direct

1. *Chancery Decisions*

In *Albert v. Alex Brown Management Services, Inc.*, No. Civ. A. 762-N, 2005 WL 2130607 (Del. Ch. Aug. 26, 2005), the Court of Chancery held that holders of partnership units could sue directly after managers "failed to disclose the challenges facing the Funds and the meager steps they were taking to meet those challenges." *Id.* at *6. "[H]ad the plaintiffs known the truth, they could have asked for withdrawals" and exited their investments. *Id.* The claims were direct under *Tooley*'s first prong: "Any harm was to the unitholders, who . . . lost their opportunity to request a withdrawal." *Id.* at *12. They were also direct under the second prong: "In order to compensate the unitholders for their alleged harm, the court may find it appropriate to grant monetary damages. Such damages would be awarded to the unitholders, and not the partnerships." *Id.* at *13.

Citigroup claims that *Manzo v. Rite Aid Corp.*, No. Civ. A. 18451-NC, 2002 WL 31926606 (Del. Ch. Dec. 19, 2002), *aff'd mem.*, 825 A.2d 239 (Del. 2003), reached a contrary result. Not so. *Manzo* involved claims for both fraud and breach of fiduciary duty. *Id.* at *3-5. The court dismissed only the fiduciary duty claim as derivative. *Id.* at *5. The court did not suggest that the fraud claim was derivative; it dismissed that claim on unrelated grounds and allowed the plaintiff to replead. *Id.* As this Court made clear in *NAF Holdings*, there is a fundamental difference between fiduciary duty claims and tort claims like the ones the Williamses allege here. 118 A.3d at 180.[2]

2. *Out-of-State Decisions*

Other courts have agreed that holder claims are direct. In *Small v. Fritz Cos.*, 30 Cal. 4th 167 (2003), for example, the California Supreme Court held that holder claims are direct so long as the plaintiff adequately alleges reliance. "Plaintiffs who cannot plead . . . reliance do not stand out from the mass of stockholders"; they can bring "a corporate derivative action" but not "individual . . . actions." *Id.* at 184-85. By contrast, plaintiffs "who actually relied on defendants' misrepresentations" may sue directly. *Id.* at 185.

Other courts applying Delaware law have reached the same conclusion.[3] So

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[2] *Manzo*, moreover, was decided before *Tooley* and relied on the special injury rule that *Tooley* rejected. *See Manzo*, 2002 WL 31926606, at *5 ("To state a direct claim, the shareholder must allege . . . an injury that is different from what is suffered by other shareholders . . . ."); Citigroup Br. Ex. A at 11.

[3] *See In re Harbinger Capital Partners Funds Inv'r Litig.*, No. 12-cv-1244, 2013 WL 5441754, at *9 (S.D.N.Y. Sept. 30, 2013), *vacated in part*, 2013 WL 7121186 (S.D.N.Y. Dec. 16, 2013); *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 401 n.9 (S.D.N.Y. 2010); *In re Parkcentral Global Litig.*, No. 09-cv-0765,

have courts applying the laws of other States.[4] In many cases, standing was not even questioned.[5] By contrast, Citigroup cites no case where a corporation has sued itself for defrauding its shareholders. That history confirms that such claims have traditionally been deemed direct.

Citigroup's authorities are unavailing. Many of the cases involved shareholders who did not rely on any misrepresentations.[6] Others involved claims by shareholders against third parties such as the corporation's lender or auditor.[7]

2010 WL 3119403, at *6 (N.D. Tex. Aug. 5, 2010); *Saltz v. First Frontier, LP*, 782 F. Supp. 2d 61, 79 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012); *Gordon v. Buntrock*, No. 99-CH-18378, 2004 WL 5565141 (Ill. Cir. Ct. Jan. 1, 2004).

[4] *See Robeco-Sage Capital, L.P. v. Citigroup Alt. Invs. LLC*, 2009 N.Y. Slip Op. 31751(U), 2009 WL 2626244 (Sup. Ct. N.Y. Cnty. July 28, 2009); *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, 446 F. Supp. 2d 163, 205 (S.D.N.Y. 2006); *Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt. LLC*, 376 F. Supp. 2d 385, 407-08 (S.D.N.Y. 2005); *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, 53 (Ariz. Ct. App. 2001); *cf. Univ. of Md. v. Peat Marwick Main & Co.*, 923 F.2d 265, 274 (3d Cir. 1991).

[5] *See, e.g.*, *Ward v. Atl. Sec. Bank*, 777 So. 2d 1144 (Fla. Dist. Ct. App. 2001); *Gutman v. Howard Sav. Bank*, 748 F. Supp. 254 (D.N.J. 1990); *David v. Belmont*, 291 Mass. 450 (1935); *Seideman v. Sheboygan Loan & Tr. Co.*, 223 N.W. 430 (Wis. 1929).

[6] *See Schuster v. Gardner*, 25 Cal. Rptr. 3d 468, 475-76 (Cal. Ct. App. 2005); *Crocker v. FDIC*, 826 F.2d 347, 350 n.4 (5th Cir. 1987); *In re Wash. Mut., Inc. Sec., Derivative & ERISA Litig.*, No. 2:08-MD-1919, 2010 WL 2803033, at *3 (W.D. Wash. July 15, 2010); *In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig.*, No. 09 MD 2058, 2013 WL 6504801, at *12 (S.D.N.Y. Dec. 11, 2013); *In re WorldCom, Inc.*, 323 B.R. 844, 855 (Bankr. S.D.N.Y. 2005).

[7] *See Stephenson v. PricewaterhouseCoopers, LLP*, 482 F. App'x 618 (2d Cir. 2012); *Arent v. Distrib. Scis., Inc.*, 975 F.2d 1370, 1372 (8th Cir. 1992); *Broyles v. Cantor Fitzgerald & Co.*, No. 10-864, 2013 WL 1681150, at *3, *8-10 (M.D. La.

Finally, the handful of cases that arguably support Citigroup are unpersuasive. In *Smith v. Waste Management, Inc.*, 407 F.3d 381 (5th Cir. 2005), for example, the court held that securities fraud claims were derivative based on *Manzo*'s holding regarding ***fiduciary duty*** claims. *Id.* at 385. The court ignored the reasons to treat those claims differently – reasons this Court made explicit in *NAF Holdings*.

D. The Court Should Not Distort Shareholder Standing To Accommodate Citigroup's Policy Arguments

The Williamses' fraud claims are direct under ordinary standing principles: Citigroup defrauded the Williamses; the Williamses suffered harm; and the Williamses are entitled to recover. Unable to prevail under those well-accepted principles, Citigroup spills much ink railing against holder claims as a policy matter. But those arguments are irrelevant and beyond the scope of the certified question, which asks only whether holder claims are direct or derivative, not whether they should be allowed at all. Whether to allow holder claims is a question of substantive securities fraud law for each State's courts and legislature to address. This Court should not distort the traditional line between direct and derivative claims just to foreclose a category of securities fraud claims that Citigroup dislikes.

Apr. 17, 2013); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, No. G-02-0299, 2007 WL 789141, at *1 (S.D. Tex. Mar. 12, 2007); *Estate of Browne v. Thompson*, 727 S.E.2d 573, 575 (N.C. Ct. App. 2012).

Many States have chosen to allow holder claims, including both Florida (where the Williamses reside) and New York (where Citigroup is based).[8] States allow holder claims for the same reasons as purchaser/seller claims: They deter fraud and provide compensation to fraud victims. As New York courts explained almost a century ago, "[t]he law should not countenance a standard of business morality which would permit vendors of securities to promote a market by publication of false representations and escape the consequence thereof" merely because "the damage is caused by inducing [the] plaintiff's inaction" rather than a purchase or sale. *Cont'l Ins. Co. v. Mercadante*, 222 A.D. 181, 186 (N.Y. App. Div. 1927).

The *Restatement* endorses holder claims. *See Restatement (Second) of Torts* §525 (1977) (imposing liability on "[o]ne who fraudulently makes a misrepresentation . . . for the purpose of inducing another to act ***or to refrain from action***" (emphasis added)). Many scholars endorse them as well.[9] And the U.S. Supreme

[8] *See, e.g.*, *Small v. Fritz Cos.*, 30 Cal. 4th 167, 171 (2003); *Ward v. Atl. Sec. Bank*, 777 So. 2d 1144, 1146 (Fla. Dist. Ct. App. 2001); *Holmes v. Grubman*, 286 Ga. 636, 641 (2010); *Gordon v. Buntrock*, No. 99-CH-18378, 2004 WL 5565141 (Ill. Cir. Ct. Jan. 1, 2004); *David v. Belmont*, 291 Mass. 450, 453 (1935); *Cont'l Ins. Co. v. Mercadante*, 222 A.D. 181, 186 (N.Y. App. Div. 1927); *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 926-31 (Tex. 2010); *Seideman v. Sheboygan Loan & Tr. Co.*, 223 N.W. 430, 433 (Wis. 1929); *Gutman v. Howard Sav. Bank*, 748 F. Supp. 254, 263-67 (D.N.J. 1990).

[9] *See, e.g.*, Robert W. Taylor, *Re-Evaluating Holder Actions*, 86 Notre Dame L. Rev. 413, 437 (2011); Doug Winnard, *Know When To Hold 'Em, Know When To Fold 'Em*, 104 Nw. U. L. Rev. 671, 695-96 (2010); Lauren A. Demanovich, *Holding Out for a Change*, 92 N.C. L. Rev. 988, 1009-10 (2014).

Court declined to create an implied federal cause of action for holder claims only after citing the "remedies . . . available to nonpurchasers and nonsellers under state law." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 738 n.9 (1975).

As Citigroup points out, some States have struck the policy balance differently. Citigroup Br. 14-15. But that diversity of opinion only confirms the need for restraint. Conflicts among ***substantive*** laws should be addressed how they normally are: through ordinary choice-of-law principles. *See Restatement (Second) of Conflict of Laws* § 148 & cmt. g (1971) (fraud claims typically governed by law of the State where the plaintiff received and relied upon the misrepresentations). This Court should not impose a uniform purchaser/seller requirement on all other States under the guise of shareholder standing rules – much less adopt a rule that would foreclose many purchaser/seller claims as well. *See* pp. 20-22, *supra*.[10]

In any event, Citigroup's policy concerns are unfounded. Its assertion that holder claims permit "double recovery" by both the corporation and its shareholders (Citigroup Br. 29) is incorrect. If a corporate officer engages in misconduct that harms the corporation, the corporation's potential claim against the officer is a corporate asset that – as a matter of basic economics – is compounded into the share price and limits the amount by which the price would otherwise fall.

[10] Citigroup's concern about a "race to the bottom" is groundless. Citigroup Br. 32 n.32. States have allowed holder claims for nearly a century. *See, e.g.*, *Mercadante*, 222 A.D. at 186. Yet Citigroup cites no evidence of the effects it predicts.

See, e.g., *Hayes v. Gross*, 982 F.2d 104, 109 n.4 (3d Cir. 1992) ("Unadjudicated claims held by a corporation are among its assets and may materially affect the true value of the corporation and its stock."). That limitation in turn reduces the amount of damages a defrauded shareholder can recover for the lost value of his shares. Citigroup's "double recovery" argument ignores those economic effects.

Citigroup's complaints about "abusive" holder suits are similarly unfounded. Many of Citigroup's arguments parrot critiques that defendants routinely lodge against ***all*** securities litigation. And while some holder claims may raise distinct issues of reliance, many States have addressed those concerns by imposing heightened standards of pleading and proof, not by prohibiting holder claims outright. *See, e.g.*, *Small*, 30 Cal. 4th at 184-85. As Citigroup acknowledges, moreover, holder claims typically cannot be brought as class actions. Citigroup Br. 31. That alone sharply limits the risk of abuse.

This Court has recognized Delaware's "strong policy in favor of enforcing another state's laws." *J.S. Alberici Constr. Co. v. Mid-W. Conveyor Co.*, 750 A.2d 518, 521 (Del. 2000). Citigroup ignores that policy. It seeks to conscript Delaware's law of shareholder standing to wipe out a category of securities fraud claims that it dislikes, even though many States have recognized those claims for almost a century. This Court should not distort standing principles to pick sides in that ongoing policy debate over substantive securities law.

CONCLUSION

The Court should hold that the Williamses' securities fraud claims are direct rather than derivative under Delaware law.

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