Morrison v. National Australia Bank: Supreme Court Limits Reach of U.S. Securities Law in “Foreign-Cubed” Cases, Overruling Nearly Half a Century of Lower Court Precedent Based on Long-Standing Presumption that U.S. Laws Do Not Apply Abroad Absent

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After years of declining to review the issue of whether U.S. securities law applied extraterritorially to socalled "foreign cubed" securities litigation - involving claims of foreign investors against foreign securities issuers to recover losses arising from purchases made on foreign securities exchanges - the Supreme Court squarely addressed that issue on June 24, 2010 in Morrison v. National Australia Bank. The Court overruled nearly half a century of lower court precedent that had allowed the application of Section 10(b) of the Securities Exchange Act of 1934 (the "1934 Act") to foreign based securities transactions in which domestic conduct or effects was alleged. In a majority opinion authored by Justice Antonin Scalia, the Court rejected the "conduct" or "effects" tests employed by the lower courts in determining whether U.S. securities law applied. Justice Scalia admonished the lower courts for creating, out of whole cloth, the authority to decide such foreign cases and ignoring the long-standing presumption that U.S. laws do not apply extraterritorially absent explicit Congressional authorization. Applying the presumption to the statutory language of Section 10(b), the Court found "nothing to suggest it applies abroad" and therefore adopted a bright-line rule that "[o]nly transactions in securities listed on domestic exchanges, and domestic transactions in other securities are covered by [Section 10(b)]."

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