

Circuit Court Decisions Addressing the Application of *Morrison*

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Ninth Circuit: *Morrison* Does Not Preclude Section 10(b) Claims Concerning Domestic Transactions in Un-sponsored ADRs

On July 17, 2018, the Ninth Circuit found the district court “misapplied” *Morrison v. Nat’l Australia Bank*, 561 U.S. 247 (2010), in holding that Section 10(b) does not reach securities fraud claims involving domestic transactions in unsponsored American Depositary Receipts and Shares (“ADRs”), which are issued with little or no involvement by the foreign issuer.^[1] *Stoyas v. Toshiba Corp.*, 896 F.3d 933 (9th Cir. 2018) (Wardlaw, J.). The Ninth Circuit emphasized that under *Morrison*, courts must “examine the location of the transaction[;] it does not matter that a foreign entity was not engaged in the transaction.” The court stated that the possibility that a foreign issuer “may ultimately be found not liable for causing the loss in value to the ADRs does not mean that the [Exchange] Act is inapplicable to the transactions.”

The Ninth Circuit expressly disagreed with the Second Circuit’s holding in *Parkcentral Global Hub v. Porsche Automobile Holdings*, 763 F.3d 198 (2d Cir. 2014), that “a domestic transaction is necessary but not necessarily sufficient to make § 10(b) applicable.”^[2] The Ninth Circuit found *Parkcentral*’s approach “contrary to Section 10(b) and *Morrison* itself” because it “carves out ‘predominantly foreign’ securities fraud claims from Section 10(b)’s ambit, disregarding Section 10(b)’s text.” The Ninth Circuit further found that “*Parkcentral*’s analysis relies heavily on the foreign location of the allegedly deceptive conduct, which *Morrison* held to be irrelevant to the Exchange Act’s applicability, given Section 10(b)’s exclusive focus on transactions.”

^[1] In *Morrison*, 561 U.S. 247, the Supreme Court held that Section 10(b) applies only to (1) “transactions in securities listed on domestic exchanges,” and (2) “domestic transactions in other securities.”

^[2] Please [click here](#) to read our discussion of the Second Circuit’s decision in *Parkcentral*.

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