

Jurisdictional Defenses under the Exchange Act

A Practical Guidance® Practice Note by Christopher P. Malloy and Shaud G. Tavakoli, Skadden, Arps, Slate, Meagher & Flom LLP



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This practice note discusses jurisdictional defenses to civil securities cases under the Securities Exchange Act of 1934, as amended (Exchange Act). A private right of action exists under several sections of the Exchange Act, including most notably Section 10(b) of the Exchange Act (15 U.S.C. § 78j). Various subject matter and personal jurisdiction defenses apply to such claims. This practice note reviews these defenses, including aspects unique to claims brought under the Exchange Act, and provides practical considerations for defense counsel. Although not technically a jurisdictional defense, this note also addresses *Morrison v. National Australian Bank Ltd.*, 561 U.S. 247, 130 S. Ct. 2869 (2010), relating to the scope of extraterritorial application of the federal securities laws.

Subject matter jurisdiction refers to whether a court has the power to adjudicate a particular claim while personal jurisdiction refers to whether a court has the power to adjudicate the rights of a particular defendant. Courts must confirm their subject matter jurisdiction *sua sponte* even if not raised by a party. In contrast, a defendant generally

must raise any personal jurisdiction defenses by a motion to dismiss or in an answer; otherwise these defenses are waived. Because jurisdictional defenses are potentially dispositive, it is important to determine their applicability at the outset.

For additional information on liability provisions and potential defenses under the federal securities laws, see [Securities Act and Exchange Act Liability Provisions, Section 11 Elements and Defenses under the Securities Act, Section 12\(a\)\(2\) Elements and Defenses under the Securities Act, Control Person Liability, Jurisdictional Defenses under the Securities Act, Reliance in Securities Fraud Actions, Materiality in Securities Fraud Actions, Scienter Defenses in Securities Fraud Actions, Securities Litigation under the Private Securities Litigation Reform Act \(PSLRA\), Special Litigation Committees, U.S. Supreme Court Securities Litigation Decisions, Defense Strategies under the Securities Act, Liability under the Federal Securities Laws for Securities Offerings, U.S. Securities Laws, and Liability for Securities Offerings Checklist](#).

Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, meaning that the plaintiff must identify a constitutional or statutory grant of subject matter jurisdiction for a federal court to adjudicate the claim. See U.S.C. Const. Art. III, § 2.

Basis for Subject Matter Jurisdiction in Exchange Act Cases

Section 27 of the Exchange Act confers exclusive subject matter jurisdiction to the federal district courts “of violations of [the Exchange Act] or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by [the

Exchange Act] or the rules and regulations thereunder.” 15 U.S.C. § 78aa(a). Thus, cases asserting claims under the Exchange Act must be brought in federal court and, if brought in state court, are removable to federal court. See *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 136 S. Ct. 1562, 1575 (2016).

Role of State Law in Exchange Act Cases

Section 27 of the Exchange Act does not, however, preempt state law, so plaintiffs are not precluded from pursuing purely state law remedies (such as common law claims or claims under state blue-sky laws) in state courts. If claims under the Exchange Act are joined with state law claims, the federal district court may have supplemental subject matter jurisdiction over the state law claims as long as the claims are part of the same case or controversy as the claims over which the court has original jurisdiction. See 28 U.S.C. § 1367(a). See also *Stoyas v. Toshiba Corp.*, 896 F.3d 933, 938 (9th Cir. 2018) (holding that the court had “supplemental jurisdiction, because it arises from the same case or controversy as the Exchange Act claims”).

Although Section 27 of the Exchange Act grants the federal courts exclusive jurisdiction to adjudicate claims under the Exchange Act, it does not prohibit parties from releasing Exchange Act claims as part of a settlement of a state court action over which the state court has jurisdiction. In such a case, a state court judgment releasing Exchange Act claims is entitled to preclusive effect under the Full Faith and Credit Clause. See *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873 (1996).

In narrow circumstances, under the well-pleaded complaint and artful pleading doctrines, even where a complaint does not expressly plead a federal claim, a plaintiff may pursue in federal court (or defendants may remove to federal court) a state law claim that presents issues under the Exchange Act. The well-pleaded complaint doctrine provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. See *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). The artful pleading doctrine is “a corollary to the well-pleaded-complaint rule” providing that “a plaintiff may not defeat federal subject matter jurisdiction by ‘artfully pleading’ his complaint as if it arises under state law where the plaintiff’s suit is, in essence, based on federal law.” *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 271 (2d Cir. 2005) (citing *Rivet v. Regions Bank*, 522 U.S. 470, 475–76 (1998)).

These principles were applied, for example, in *NASDAQ OMX Group, Inc. v. UBS, Securities, LLC*, 770 F.3d 1010 (2d Cir. 2014), where the Second Circuit held that the district court correctly applied the well-pleaded complaint doctrine to a pleading alleging only state law claims. The court held that “a

singular duty underlie[d] all four” state law claims—namely, “NASDAQ’s duty to operate a fair and orderly market.” *NASDAQ OMX Group, Inc.*, 770 F.3d at 1021. The court further held that this duty was “sourced in the Exchange Act, amplified by SEC regulations, and implemented through SEC-approved NASDAQ rules.” *Id.* Thus, the Second Circuit concluded that any inquiry into whether the defendant violated this duty—an essential element of the four state law claims—necessarily raised substantial and disputed questions of federal law.

The Supreme Court has held that the jurisdictional test to determine whether a case is “brought to enforce any liability or duty created by” the Exchange Act for purposes of Section 27 is the same as to determine whether a case “arises under” federal law for purposes of federal question jurisdiction. See *Manning*, 136 S. Ct. at 1566.

For additional information on federal question jurisdiction, see [Subject Matter Jurisdiction \(Federal\)](#) and [Federal Question Jurisdiction: Pleading and Challenging Federal Question Jurisdiction \(Federal\)](#).

Subject Matter Jurisdiction Practical Considerations

In determining subject matter jurisdiction, you should consider the following:

- Plaintiffs must expressly plead a basis for subject matter jurisdiction.
- If the complaint alleges claims under the Exchange Act, additional claims may be filed under state law, over which the court may have supplemental jurisdiction.
- Defendants may raise the absence of subject matter jurisdiction at any point in litigation.
- Federal courts have exclusive subject matter jurisdiction over Exchange Act claims. Thus, for cases filed in state court that allege Exchange Act claims, defendants should consider removing the case to federal court.

Personal Jurisdiction

Personal jurisdiction refers to the court’s authority to issue a decision with respect to the parties. A defendant may raise a defense of lack of personal jurisdiction at the pleading stage under Rule 12(b)(2) of the Federal Rules of Civil Procedure. U.S.C. Fed Rules Civ Proc R 12(b)(2).

The Exchange Act provides for nationwide service of process and permits the exercise of personal jurisdiction to the limit of the Fifth Amendment’s Due Process Clause (i.e., that no one shall be “deprived of life, liberty or property without due process of law”). See 15 U.S.C. § 78aa; *SEC v. Unifund Sal*, 910 F.2d 1028, 1033 (2d Cir. 1990). Courts generally

interpret this provision to mean that personal jurisdiction exists—even if the defendant lacks specific contacts with the district where the plaintiff brings the claim—as long as the defendant has sufficient contacts with the United States. See *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 369 (3d Cir. 2002); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2015 U.S. Dist. LEXIS 147561, at *145–46. But see *Allison v. Lomas*, 387 F. Supp. 2d 516, 517–20 (M.D.N.C. 2005) (no specific jurisdiction pursuant to Section 27 in North Carolina federal court over an Ohio accounting firm that audited issuer’s financials where defendant performed all relevant work in Ohio and did not participate in offering or sale of issuer’s securities).

Unlike subject matter jurisdiction, which a court may consider at any time during the proceedings, defendants typically waive personal jurisdiction defenses if they fail to raise them early in the case, either in a motion to dismiss under Rule 12(b)(2) or in the answer. U.S.C. Fed Rules Civ Proc R 12(h)(1). Although it is the defendant’s burden to raise the defense of lack of personal jurisdiction, it is the plaintiff’s burden of establishing personal jurisdiction with respect to each defendant. See *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773, 1783 (2017).

There are two types of personal jurisdiction: general and specific.

General Personal Jurisdiction

General, or all-purpose, jurisdiction allows a court to exercise personal jurisdiction over a defendant with respect to any dispute based on the defendant’s contacts with that state. With respect to corporations, the Supreme Court held that a corporation is subject to general jurisdiction only in a state where it is “at home.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (“[T]he paradigm forum for the exercise of general jurisdiction is the individual’s domicile.”). This means that a corporate defendant is usually subject to general personal jurisdiction only in its (1) place of incorporation and (2) principal place of business. The Court has held, however, that “in an ‘exceptional case,’ a corporate defendant’s operations in another forum ‘may be so substantial and of such a nature as to render the corporation at home in that State.’” *BNSF v. Tyrell*, 137 S. Ct. 1549, 1558 (2017).

Specific Personal Jurisdiction

If general personal jurisdiction does not exist, specific personal jurisdiction may apply. Specific personal jurisdiction refers to personal jurisdiction over a defendant due to the relationship between the claim and the forum. Specific jurisdiction may be exercised only when the defendant has constitutionally sufficient “minimum contacts” with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

For assessing the sufficiency of a foreign defendant’s “contacts with the forum, a court should look at the extent to which the defendant ‘availed himself of the privileges of American law and the extent to which he could reasonably anticipate being involved in litigation in the United States.’” *Pinker*, 92 F.3d 361, 370. “Once minimum contacts have been established, [a court assesses] whether the exercise of personal jurisdiction is consistent with traditional notions of fair play and substantial justice.” *Pinker*, 292 F.3d at 370 (internal quotations omitted). Typically, minimum contacts are satisfied where a foreign individual defendant exercised control over or signed SEC disclosures alleged to have violated the securities laws. See *Das v. Rio Tinto PLC*, 332 F. Supp. 3d 786, 801 (S.D.N.Y. 2018); *In re Braskem S.A. Sec. Litig.*, 246 F. Supp. 3d 731, 770 (no minimum contacts where complaint “does not allege, concretely, that [Defendant] played any role in making, proposing, editing, or approving [company’s] public filings in the United States”).

Personal Jurisdiction Practical Considerations

In determining personal jurisdiction, you should consider the following:

- You must raise personal jurisdiction defenses at the beginning of the case—on a motion to dismiss under Rule 12(b)(2) or in the answer to the complaint.
- A court can have either general or specific personal jurisdiction to hear certain claims.
- In cases involving a foreign issuer, you should determine whether the securities at issue (e.g., American depositary receipts (ADRs)) are sponsored by the company. Courts have held that, by sponsoring ADRs, an issuer has taken affirmative steps purposefully directed at the American investing public sufficient to establish personal jurisdiction. *Pinker*, 292 F.3d at 371.
- To assess whether a court has personal jurisdiction over an individual defendant who resides abroad, you should consider, among other things, whether the individual signed, prepared, approved, or otherwise had authority over the contents of the challenged disclosures.

Extraterritorial Application of the Exchange Act

The Exchange Act generally applies only to domestic transactions. In *Morrison*, the Supreme Court held that whether a plaintiff has pleaded a claim concerning a domestic transaction under the Exchange Act is not, technically, a jurisdictional issue, but instead goes to the merits of the claim.

Pre-Morrison Tests

Prior to the Supreme Court's decision in *Morrison*, many circuits used a conduct test or an effects test to determine whether a transaction was domestic. The conduct test considered whether the wrongful conduct occurred in the U.S. The effects test considered whether the wrongful conduct had a substantial effect in the U.S. or on U.S. citizens. Under either test, a U.S. court could hear a case under the securities laws even if it involved all three of the following:

- A shareholder not based in the United States
- An issuer with no operations or headquarters in the United States
- An issuer whose securities were not traded on an exchange in the United States

Such claims were known as f-cubed claims or claims by foreign investors against foreign issuers to recover losses from transactions on foreign securities exchanges.

Morrison Test

Morrison overruled the conduct test and the effects test and held that plaintiffs could not pursue f-cubed claims consistent with the substantive provisions of the Exchange Act. *Morrison* involved Australian nationals transacting in shares of National Australia Bank, a foreign bank whose ordinary shares were not traded on any exchange in the United States. The Court in *Morrison* explained that a federal statute has no extraterritorial application when Congress does not give an indication that it intended one. Because the Exchange Act provides no indication that Section 10(b) was intended to apply extraterritorially, the Court held that the statute does not apply extraterritorially.

The Court rejected the conduct and effects tests and held that Section 10(b) applied only to (1) "transactions in securities listed on domestic exchanges" and (2) "domestic transactions in other securities." *Morrison*, 561 U.S. at 267. If a complaint does not satisfy either of these two prongs, the plaintiff fails to state a claim and the pleading must be dismissed, regardless of any other factors.

After *Morrison*, lower courts have been left to interpret and apply the *Morrison* test to various securities and factual scenarios.

What Constitutes a Domestic Exchange under Morrison's First Prong?

A question exists regarding what constitutes a domestic exchange under *Morrison's* first prong. In *S.E.C. v. Ficeto*, 839 F. Supp. 2d 1101, 1108 (C.D. Cal. 2011), an early post-*Morrison* case, the U.S. District Court for the Central District of California stated that domestic over-the-counter (OTC) trades would fall within prong one of *Morrison*. More recently,

the Third Circuit became the first appellate court to weigh in on this issue, reaching the opposite result and holding that a "domestic exchange" means one of the 18 national security exchanges and does not include OTC trading. *United States v. Georgiou*, 777 F.3d 125, 134-35 (3d Cir. 2015). But see *United States v. Isaacson*, 752 F.3d 1291, 1299 (11th Cir. 2014) (appearing to credit in dicta government's expert's opinion that over-the-counter bulletin board or the Pink Sheets are "similar to" the NYSE and the NASDAQ, which are both American markets" for purposes of *Morrison*). The Third Circuit noted that "a 'national securities exchange' is explicitly listed in Section 10(b)--to the exclusion of the OTC markets" and that the OTCBB and Pink Sheets are absent on the "list of registered national security exchanges on the SEC Webpage on Exchanges." *Georgiou*, 777 F.3d at 135.

Other courts have followed the Third Circuit's lead, including the Ninth Circuit:

- *In re Poseidon Concepts Sec. Litig.*, 2016 U.S. Dist. LEXIS 68127, at *35 (deeming the Third Circuit's logic "compelling")
- *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2017 U.S. Dist. LEXIS 1109, at *808 (concluding that the specific OTC market at issue is not an "exchange" within the meaning of *Morrison*)
- *In re Petrobras Sec. Litig.*, 150 F. Supp. 3d 337, 339-41 (S.D.N.Y. 2015) (same)
- *Stoyas v. Toshiba Corp.*, 896 F.3d 933, 945-47 (9th Cir. 2018) (abrogating *Ficeto* and holding that an over-the-counter market was not an exchange within the meaning of the Exchange Act)

Meaning of "Domestic Transaction" under Morrison's Second Prong

The Supreme Court also left open to interpretation the meaning of "domestic" under the second prong of *Morrison*. Courts have generally held that a transaction is domestic under *Morrison* if "irrevocable liability" was incurred or title was transferred within the United States. For instance, in *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60 (2d Cir. 2012), the Second Circuit held that the "locus of a securities purchase or sale" is domestic when "the purchaser incurred irrevocable liability within the United States to take and pay for a security, or . . . the seller incurred irrevocable liability within the United States to deliver a security." *Ficeto*, 677 F.3d at 68. The court held, in the alternative, that a domestic transaction would also occur where "title to the shares was transferred within the United States." *Id.* Other courts have likewise adopted this test. See *Stoyas*, 896 F.3d at 949; *Georgiou*, 777 F.3d at 135.

But in *Parkcentral Global HUB Ltd. v. Porsche Auto. Holdings SE*, 763 F.3d 198 (2d Cir. 2014), the Second Circuit held that “in the case of securities not listed on domestic exchanges, a domestic transaction is necessary but not necessarily sufficient . . . to satisfy the standard of *Absolute Activist* for domestic transactions.” *Parkcentral Global HUB Ltd.*, 763 F.3d at 216. The court explained that applying Section 10(b) whenever a suit is predicated on a domestic transaction, “regardless of the foreignness of the facts constituting the defendant’s alleged violation,” would undermine *Morrison*. *Parkcentral Global HUB Ltd.*, 763 F.3d at 215. In *Parkcentral*, the court dismissed on extraterritoriality grounds, despite assuming that the plaintiffs’ “securities-based swap agreements” were executed and performed in the United States. *Parkcentral Global HUB Ltd.*, 763 F.3d at 214–16. The court reasoned that, because the alleged misconduct at the foundation of the plaintiffs’ claims occurred in a foreign country concerning securities in a foreign country traded only on foreign exchanges, foreign elements predominated. *Parkcentral Global HUB Ltd.*, 763 F.3d at 214–16. The Second Circuit applied this standard again in *Cavello Bay Reinsurance Ltd. v. Stein*, 986 F.3d 161 (2d Cir. 2021). There, the court affirmed dismissal of Exchange Act claims under *Morrison* notwithstanding that the transaction arguably took place in the United States because the transaction implicated only the interests of two foreign companies and Bermuda and was structured to avoid U.S. law. *Id.* at 167.

The Ninth Circuit has expressly disagreed with the reasoning in *Parkcentral* and held that a domestic transaction is sufficient to establish domesticity for purposes of *Morrison*. See *Stoyas*, 896 F.3d at 950. In *SEC v. Morrone*, 997 F.3d 52 (1st Cir. 2021), the First Circuit rejected *Parkcentral* as inconsistent with *Morrison* and embraced the Ninth Circuit’s approach in *Stoyas*.

The Supreme Court has yet to resolve this apparent circuit split.

In the following cases, courts have held that transactions in ADRs (i.e., interests in a stock listed on a foreign exchange and used by U.S. investors to invest in non-U.S. issuers) or similar instruments satisfy *Morrison* so long as the securities are listed on a U.S. exchange or the transactions at issue are domestic:

- *Stoyas*, 896 F.3d at 949–50 (reversing denial of motion for leave to amend on *Morrison* grounds where “an amended complaint could almost certainly allege sufficient facts to establish that [plaintiff] purchased its . . . ADRs in a domestic transaction”)
- *United States v. Martoma*, 2013 U.S. Dist. LEXIS 176998, at *9–10 n.2 (S.D.N.Y. Dec. 16, 2013)(collecting post-*Morrison* securities fraud actions that proceeded based on ADRs listed on U.S. exchanges)

Morrison and Class Certification

Even where the lead or named plaintiffs engaged in domestic transactions, extraterritoriality under *Morrison* may arise at the class certification stage if the putative class includes foreign purchasers. In *In re Petrobras Sec. Litig.*, 312 F.R.D. 354, *aff’d in part, vacated in part*, 862 F.3d 250 (2d Cir. 2017), the court, in certifying a class, defined the class as including only shareholders who could show that they acquired their shares in domestic transactions. The Second Circuit vacated the class certification order and remanded to the district court to consider whether “the potential for variation across putative class members—who sold them the relevant securities, how those transactions were effectuated, and what forms of documentation might be offered in support of domesticity—appears to generate a set of individualized inquiries” that could preclude class certification. *In re Petrobras Sec.*, 862 F.3d 250, 273.

Dodd-Frank Conduct and Effects Test

One month after the Supreme Court decided *Morrison*, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). Among other things, Dodd-Frank amended the Exchange Act (and the Securities Act of 1933) to provide that the federal courts have jurisdiction over securities claims brought by the SEC and the U.S. government to the extent a version of the conduct and effects test (i.e., the test employed by several courts of appeals prior to *Morrison*) is satisfied. See 15 U.S.C. § 77v(c); see also 15 U.S.C. § 78aa(b). Dodd-Frank also directed the SEC to conduct a study to consider extending this provision to cover claims brought by private plaintiffs. That study was completed in April 2012 and identified a number of relevant policy considerations, but made no recommendation. See SEC Staff, *Study on the Cross-Border Scope of the Private Right of Action Under Section 10(b) of the Securities Exchange Act of 1934* (2012), available [here](#).

As noted above, the Court in *Morrison* held that the question as to whether a transaction is domestic under the Exchange Act is a merits question, not a jurisdictional one. Because “[t]he Dodd-Frank Act did not make any explicit revisions to the substantive antifraud provisions themselves,” *SEC v. Scoville*, 913 F.3d 1204, 1218 (10th Cir. 2019), there is a question whether the Dodd-Frank jurisdictional provision displaces the *Morrison* standard. See *United States SEC v. A Chi. Convention Ctr., LLC*, 961 F. Supp. 2d 905, 910 (N.D. Ill. 2013) (noting that “[t]he plain language of the Section 929P(b) seems purely jurisdictional—particularly in light of its placement in the jurisdictional section of the Exchange Act—yet the Congressional intent behind that provision supports a conclusion that the provision is substantive”). The First and Tenth Circuits, and district courts in other circuits, have concluded that, through the Dodd-Frank amendments,

Congress did intend to reinstate the conduct and effects test with respect to claims brought by the government.” *Morrone*, 997 F.3d at 60 n.7; *Scoville*, 913 F.3d at 1218; *S.E.C. v. Tourre*, No. 10 CIV. 3229, 2013 U.S. Dist. LEXIS 78297, at *4 n.4 (S.D.N.Y. June 4, 2013) (“[T]he Dodd–Frank Act effectively reversed *Morrison* in the context of SEC enforcement actions.”); *S.E.C. v. Montano*, No. 18-CV-1606, 2020 U.S. Dist. LEXIS 184056, at *11-12 (M.D. Fla. Oct. 5, 2020) (analyzing extraterritoriality arguments under Dodd–Frank conduct and effects test). Even if that is correct, however, the Dodd–Frank amendments do not currently apply to securities claims brought by private plaintiffs.

Extraterritoriality Practical Considerations

In assessing whether a plaintiff has pleaded a claim concerning a domestic transaction under the Exchange Act, you should consider the following:

- In cases involving a foreign issuer, you should determine whether the securities at issue are listed on a domestic exchange or whether the transactions are domestic. If the answer to both questions is “no,” then the case may be subject to dismissal under *Morrison*.
- Even if the transaction is “domestic,” you should consider the facts underlying the alleged claim. If they are sufficiently “foreign,” then there may be an argument in some jurisdictions that *Morrison* is nevertheless not satisfied.
- In the class action context, even where the lead or named plaintiffs engaged in domestic transactions, you should consider whether extraterritoriality defenses under *Morrison* are available at the class certification stage if the putative class includes foreign purchasers.

Practice Tips and Defense Strategies

If you are defending a client in a civil securities case under the Exchange Act, you should analyze the potential applicability of subject matter jurisdiction, personal jurisdiction, and *Morrison* extraterritoriality defenses at the beginning of the case and consider the strategies set forth below.

Subject Matter Jurisdiction

If a claim is brought in state court, consider seeking removal to federal court given that Section 27 of the Exchange Act

confers exclusive subject matter jurisdiction to the federal district courts.

Personal Jurisdiction

Consider the relationship between the defendant and the court or forum in which the court sits and keep in mind the following:

- The nationwide service of process permits the exercise of personal jurisdiction to the limit of the Fifth Amendment’s Due Process Clause. Keep in mind that generally courts interpret this provision to mean that personal jurisdiction exists even if the defendant lacks specific contacts in the forum where the plaintiff brings the claim. Therefore, you may find it difficult to challenge personal jurisdiction in Exchange Act cases.
- If your client does have personal jurisdiction defenses, you must assert them early in the case. You will typically waive any personal jurisdiction defenses if not raised either in a motion to dismiss under Rule 12(b)(2) or in the answer.

Extraterritoriality

For cases involving an international component, analyze the relationship between where the claim arose and the United States in order to assess defense strategies. Consider:

- Whether the security at issue is listed on a foreign exchange or a domestic one (and if domestic, whether that exchange is a “national exchange”)
- In the case of ADRs, whether the securities are sponsored by the issuer
- Where investors are located at the time of sale
- Whether “irrevocable liability” was incurred or title was transferred within the United States
- Whether, at the class certification stage, the *Morrison* test may provide an avenue for narrowing the scope of the class by necessitating individualized inquiries into the defenses available with respect to different groups of class members in cases where any of the following are true:
 - Securities were traded on domestic and foreign exchanges.
 - Both domestic and foreign investors were involved.
 - The sale occurred domestically and abroad.

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Chris Malloy has extensive experience representing public and private companies, financial institutions and individuals in complex commercial disputes, securities class actions and shareholder derivative suits, as well as corporate control disputes and commercial real estate litigation.

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