

Torlys on Corporate and Capital Markets

C&CM 2010-3
March 30, 2010

U.S. Court Limits the Extraterritorial Application of U.S. Securities Laws

By [Andrew J. Beck](#) and [Daniel P. Raglan](#)

On March 26, 2010, the U.S. District Court for the Southern District of New York firmly rejected an attempt by U.S. investors to bring a securities class action lawsuit alleging a Rule 10b-5 violation of the U.S. securities laws against a Dutch public company whose shares were listed only on European exchanges and whose investor disclosures were governed only by the laws of the European Union and its member states.

In *In re European Aeronautic Defence & Space Company Securities Litigation*, the Court observed that where it is confronted with transactions that are predominantly foreign, it must determine whether Congress “wished the resources of United States courts ... to be devoted to them rather than [to] leave the problem to foreign countries” and noted that this is particularly the case where a minimal nexus to the United States could be “a very small tail ... wagging an elephant.”

To determine whether it would hear the case, the Court applied its longstanding “conduct test” and “effects test” in considering whether the wrongful conduct occurred in the United States, and whether it had a substantial effect in the country or upon U.S. citizens. The Court noted that “the only thing American about this case” is the plaintiff, that none of the putative class members were alleged to have acquired their securities on U.S. securities markets, that allegations of “generalized activities in the U.S. such as revenue earned [or] number of full-time workers employed” were not enough to justify the application of U.S. securities laws, and that the European courts were clearly adequate to hear the complaint, especially given the fact that the plaintiffs had already instituted actions there.

This decision is particularly important given that the U.S. Supreme Court is currently hearing argument in what is referred to as an “f-cubed” securities claim – claims made under U.S. securities laws by foreign investors who purchased shares of foreign companies on foreign exchanges (*Morrison v. National Australia Bank Ltd.*). The decision by the New York federal court suggests that the plaintiff investors in the U.S. Supreme Court will face an uphill battle. ■■

To discuss these issues, please contact the authors.

For permission to copy or distribute our publications, contact [Robyn Packard](#), Manager, Publishing.

To contact us, please email info@torlys.com.

Torlys' bulletins can be accessed under Publications on our website at www.torlys.com or through the Torlys iPhone app.

This bulletin is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this bulletin with you, in the context of your particular circumstances.

© 2010 by Torlys LLP.
All rights reserved.