

## U.S. SUPREME COURT DRASTICALLY REDUCES EXTRATERRITORIAL APPLICATION OF U.S. SECURITIES LAWS

Foreign companies will welcome the decision of the United States Supreme Court in *Morrison v. National Australia Bank Ltd*, US, NO. 08-1191 because it substantially narrows their exposure to private causes of action arising under the principal anti-fraud provisions of the U.S. securities laws -- section 10(b) of the Securities Exchange Act of 1934 and Securities Exchange Commission Rule 10b-5. These provisions, which make it unlawful to employ manipulation or deception in connection with the purchase or sale of any security, were long interpreted to apply to transactions in foreign countries involving U.S. conduct or having substantial effect in the U.S. Reversing decades of lower court decisions on the application of Section 10(b) and Rule 10b-5, the Court held that such provisions apply “only in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States.”

The plaintiffs were Australian and other foreign ordinary shareholders of National Australia Bank (“NAB”). The plaintiffs filed a class action lawsuit in the U.S. District Court for the Southern District of New York against NAB, its Florida-based subsidiary and mortgage business, HomeSide Lending, Inc. (“HomeSide”), and certain HomeSide executives. The plaintiffs claimed violations of U.S. securities laws arising from an alleged accounting fraud committed by HomeSide in the U.S., which improperly enhanced financial reports prepared and filed abroad by NAB. NAB’s American Depository Receipts were listed on the New York Stock Exchange but its ordinary shares were not.

*Morrison* will be less welcome to U.S. investors and U.S. class action counsel who will no longer be able to assert claims against non-U.S. issuers based on non-domestic transactions, including so-called “foreign cubed” cases (i.e., cases against non U.S. defendants involving foreign purchasers of non U.S. securities in transactions abroad).



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