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RECENT DEVELOPMENTS IN GLOBAL SECURITIES LITIGATION

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I. INTRODUCTION

As the capital needs of global corporations continue to grow, such companies often tap capital markets on multiple exchanges across the globe. Securities markets have become increasingly interconnected, and alleged securities fraud frequently crosses borders and exchanges. Until recently, the federal courts of the United States have proven to be a friendly home with well-developed laws for these cross-border securities class actions.

As this process developed, however, a threshold legal issue came into focus. Foreign companies regularly argued that the U.S. securities laws are not applicable to securities fraud claims that were brought against *foreign* issuers on behalf of foreign *investors* who purchase securities on foreign *exchanges*. So-called “foreign-cubed” or “f-cubed” cases became commonplace, but not without resistance from the companies charged with wrongdoing under the securities laws.¹

Prior to the Supreme Court’s landmark decision in *Morrison v. National Australia Bank Ltd.*,² the law with regard to f-cubed cases was in flux and not consistent in its application to seemingly similar fact patterns. However, the United States Supreme Court in *Morrison* has announced a new test for pursuing of redress for alleged violations of U.S. securities laws by foreign plaintiffs against foreign companies. While the U.S. traditionally led the world in addressing allegations of securities fraud, the *Morrison* decision has opened a new frontier for global securities litigation and has encouraged, or is in the process of encouraging, many countries around the world to reconsider their own legal structures as they relate not only to securities laws generally, but also to class actions, litigation funding, settlement procedures, and access to the courts by plaintiffs alleging injuries in the global marketplace. Now that investors who have purchased shares on foreign exchanges are no longer welcome in U.S. courts, those same investors may find the remedies available in other countries to be an attractive alternative.

This article will discuss the Morrison decision and focus on the changes now taking place in the global legal landscape to accommodate the types of cases that Morrison now bars from the U.S. courts.

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II. THE SUPREME COURT'S DECISION IN *MORRISON V. NATIONAL AUSTRALIA BANK*

Prior to 2010, U.S. district and circuit courts generally framed the question of whether U.S. securities laws applied to f-cubed cases as one of jurisdiction.³ The U.S. Court of Appeals for the Second Circuit, for four decades, examined two factors when it considered whether it had jurisdiction over securities fraud claims brought by foreign investors: “(1) whether the wrongful conduct occurred in the United States, and (2) whether the wrongful conduct had a substantial effect in the United States or upon United States citizens.”⁴ These factors were known as the “conduct” and “effects” tests.⁵

The Second Circuit regularly held that the conduct and effects tests were satisfied when: “(1) ‘the defendant’s activities in the United States were more than ‘merely preparatory’ to a securities fraud conducted elsewhere’ and (2) the ‘activities or culpable failures to act within the United States ‘directly caused’ the claimed losses.’”⁶ In practice, the test meant that in order to access U.S. courts, foreign investors were required to demonstrate that substantial acts in furtherance of the fraud were committed in the United States.⁷ Similarly, the Fifth and Seventh Circuits adopted an interpretation of the conduct test that closely followed the formulation set forth by the Second Circuit.⁸ Other circuit courts adopted a range of interpretations of the test as well. For example, the DC Circuit Court rigorously applied the test and required that “the domestic conduct [at issue] comprise[d] all the elements . . . necessary to establish a violation of section 10(b) and Rule 10b-5.”⁹ On the other hand, the Third, Eighth, and Ninth Circuits were much less restrictive, requiring only that “at least some activity designed to further a fraudulent scheme occur[ed] within th[e] U.S.”¹⁰

Until the Supreme Court’s June 24, 2010 decision in *Morrison v. Australia Nat’l Bank Ltd.* (“*Morrison*”),¹¹ f-cubed cases proceeded apace by passing muster under the circuit courts’ varying applications of the conduct and effects tests. The Supreme Court’s decision in *Morrison*, however, substantially altered the law.

In *Morrison*, the defendant, National Australia Bank (“NAB”), was a foreign corporation whose ordinary shares were not traded on American exchanges.¹³ Petitioners were Australian citizens who purchased their stock on Australia’s primary securities exchange and brought suit in U.S. District Court on behalf of a putative class of foreign investors alleging violations of § 10(b) of the Exchange Act.¹⁴

NAB had a U.S. subsidiary based in Florida, known as Homeside, that serviced residential mortgages. In NAB’s public filings, it praised Homeside’s performance, and executives of NAB made additional public statements while in the U.S. touting Homeside’s success.¹⁵ NAB eventually announced, however, that it was writing down the value of Homeside’s assets by \$450 million and only two months later made a second announcement of another \$1.75 billion write-down. Prices of NAB’s ordinary shares dropped. Petitioners brought suit alleging that they, and the putative class members, were defrauded after relying on the allegedly misleading statements when making their purchases.¹⁶

At the lower court level, the Second Circuit, applying the conduct and effects tests, concluded that the actions, which took place in the U.S., were too insignificant to allow the plaintiffs’ claims to proceed in U.S. courts.¹⁷ Plaintiffs appealed.

In *Morrison*, the Supreme Court agreed with the Second Circuit’s conclusion but flatly rejected the circuit court’s analysis and its use and application of the conduct and effects tests, addressing what it called the “threshold error” of the Second Circuit in framing the question of the “extraterritorial reach” of § 10(b) as a jurisdictional issue.¹⁸ Instead, the Court viewed the question as a merits issue, which implicated only statutory interpretation, not whether a court had “the power to hear a case.”¹⁹ The Court thus proceeded with a straightforward 12(b)(6) analysis of whether the plaintiffs had stated a claim under the Exchange Act.²⁰

Beginning its analysis, the Court determined that the Exchange Act is silent as to the extraterritorial application of § 10(b) and that a presumption against extraterritorial application, therefore, should apply.²¹ The Court observed that “[w]hen a statute gives no clear indication of an extraterritorial application, it has none.”²² In this context, the Court concluded that § 10(b) should be given “the effect its language suggests, however modest that may be.”²³ The Court next criticized the conduct and effects tests developed by the lower courts as one that improperly extended the statute and caused a “proliferation of vaguely related variations” and, moreover, summarily rejected the test as the result of “judicial-speculation-made-law.”²⁴

The Court also addressed the investors’ argument that § 10(b) should apply because the fraudulent scheme was advanced by actions taken in the U.S. In rejecting this argument, the Court concluded that “the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case.”²⁵

Ultimately, the Court held that the “focus of the Exchange Act is not upon the place where the deception originated, but upon purchases and sales of securities in the United States” and that “section 10(b) does not punish [all] deceptive conduct, but only deceptive conduct ‘in connection with the purchase or sale of any security registered on a national securities exchange’”²⁶

With this language, the Court has created what has quickly become known in the lower courts as a bright-line “transaction test.”²⁷ According to the test, § 10(b) only reaches manipulative or deceptive conduct in the sale of securities if “the purchase or sale is made in the United States, or involves a security listed on a domestic exchange.”²⁸ In applying its newly articulated test to the facts in *NAB*, the Court noted that the securities at issue were not traded on U.S. exchanges and easily concluded, therefore, that none of the transactions could have occurred in the U.S.²⁹ Thus, the transactional test was not satisfied, and the court affirmed dismissal of the case for failure to state a claim.³⁰

III. DISTRICT COURTS APPLY MORRISON STRICTLY AND EXPANSIVELY: MORRISON MEANS WHAT IT SAYS

In quick succession, district courts applying *Morrison*’s transaction test have issued opinions in which they have had no trouble turning away foreign investors’ Exchange Act claims against foreign issuers. Moreover, lower courts applying the test have dismissed not only f-cubed cases, but also cases in which the plaintiffs are *Americans* who have purchased shares of foreign companies on foreign exchanges. In addition, a district court recently applied *Morrison* to limit the reach of the SEC. The following district court opinions demonstrate the difficulties that the *Morrison* test presents for plaintiffs attempting to survive a motion to dismiss for securities fraud claims involving securities purchased on non-U.S. exchanges. In fact, given these opinions, it is hard to imagine a case in which a plaintiff who purchased securities on a foreign exchange could ever survive a motion to dismiss.

A. *Cornwell V. Credit Suisse Group ET AL.*

In *Cornwell v. Credit Suisse Group*,³¹ an opinion issued just a month after the *Morrison* decision, Judge Marrero of the Southern District of New York decisively rejected assertions by plaintiffs that remnants of the conduct and effects tests have survived *Morrison*. The district court held that under the new transaction test articulated by the Supreme Court, § 10(b) of the Exchange Act and Rule 10b-5 do not apply to transactions on foreign exchanges, *regardless of where the plaintiff is located*.³²

In *Cornwell*, lead plaintiffs were American purchasers of Credit Suisse securities on either the Swiss Stock Exchange (“SWX”) or on the NYSE in the form of American Depository Shares (“ADSs”).³³ Though the parties agreed that the action could proceed as to those plaintiffs who purchased on the NYSE, defendants moved for a partial judgment on the pleadings to dismiss plaintiffs who purchased

Credit Suisse shares on the SWX.³⁴ In concluding that American plaintiffs who purchased on the SWX must be dismissed, the district court noted that:

the *Morrison* opinions indicate that the Court considered that under its new [transaction] test §10(b) would not extend to foreign securities trades executed on foreign exchanges even if purchased or sold by American investors, and even if some aspects of the transaction occurred in the United States [because] [i]n dispatching the conduct and effect rule, the *Morrison* Court was fully cognizant that one of the hallmarks of the discarded tests depended on whether ‘the harmed investors were Americans or foreigners.’³⁵

Though plaintiffs argued that that when the purchaser is American, and the investment decision was made or initiated from the U.S., § 10(b) should apply, the district court concluded that *Morrison* left no “back doors, loopholes or wiggle room” and “manifested an intent to weed the [conduct and effects] doctrine at its roots and replace it with a new bright-line transactional rule . . .”³⁶ Thus, any doubt that *Morrison* foreclosed the possibility that investors could access U.S. courts if their purchases were made on foreign exchanges was summarily dispensed with in *Cornwell*. Moreover, other district courts to review the issue have agreed with this analysis.³⁷

B. *In Re Vivendi Universal S.A. Securities Litigation*

In *In re Vivendi Universal, S.A. Sec. Litig.*,³⁸ a certified class included both foreign and American investors who purchased shares of Vivendi, a French corporation, on a foreign stock exchange, as well as foreign and American investors who purchased American Depositary Receipts (“ADRs”) on a U.S. exchange. Prior to the Supreme Court’s announcement of the transaction test, the district court had allowed the *Vivendi* class to proceed with both foreign and domestic purchasers regardless of the location of the exchange on which the securities were purchased.³⁹ It did so after applying the conduct and effects tests and concluding that the conduct plaintiffs alleged to have occurred in New York was “more than merely preparatory to the fraud . . . and directly caused losses to [foreign] investors abroad.”⁴⁰ After the decision in *Morrison* came down, the district court instructed the parties to file additional briefs addressing *Morrison*’s impact on the parties.⁴¹ The parties agreed that *Morrison* had no impact on the claims of ADR purchasers since Vivendi’s ADRs were all listed and traded on the NYSE.⁴² But, as in *Cornwell*, the parties disagreed “over *Morrison*’s impact on the claims of foreign and American purchasers of [Vivendi’s] ordinary shares, transactions that necessarily took place on foreign exchanges.”⁴³

With regard to foreign purchasers, plaintiffs constructed a more creative argument than was advanced in *Cornwell*. They argued that when ordinary shares of a foreign company are listed, but not traded on a domestic exchange as a result of the foreign issuer’s domestic ADR program, such a company should not be subject to the *Morrison* holding.⁴⁴ The district court rejected this argument for two reasons. First, registration of a security with the Securities and Exchange Commission (“SEC”) for purposes of a company’s ADR program cannot be equated with registering a security for trading purposes on a U.S. exchange.⁴⁵ More importantly though, the district court concluded that the result plaintiffs sought could not possibly have been intended by the *Morrison* court because there was “no indication that the Court read Section 10(b) as applying to securities that may be cross-listed on domestic and foreign exchanges but where the purchase and sale does not arise from the domestic listing . . . [that is] for *trading purposes*,” as opposed to just regulatory purposes.⁴⁶ In the district court’s view, the argument plaintiffs asserted would have broadened the reach of § 10(b), not limited it, as was intended by the Court.⁴⁷

Plaintiffs next argued that *Morrison* does not require the dismissal of the claims of American purchasers of Vivendi’s ordinary shares even though the ordinary shares were traded solely on foreign exchanges.⁴⁸ In response, the district court “join[ed] other lower courts that have rejected the argument that a transaction qualifies as a ‘domestic transaction’ under *Morrison* whenever the purchaser or seller

resides in the United States, even if the transaction itself takes place entirely over a foreign exchange.”⁴⁹ The district court further opined that while *Morrison* did not explicitly define the term “domestic transaction,” there could “be little doubt that the phrase was intended to be a reference to the location of the transaction, not to the location of the purchaser”⁵⁰ Thus, the *Vivendi* court refused to allow the claims of both American and foreign purchasers to proceed where the purchases were made on foreign exchanges.

C. *Elliot Assoc. V. Porsche Automobil Holding SE*

In *Elliot Assoc. v. Porsche Automobil Holding SE*,⁵¹ plaintiffs alleged, among other things, that Porsche, its former Chief Executive Officer, and its former Chief Financial Officer violated § 10(b) of the Exchange Act by publicly misrepresenting their intent to take over Volkswagen (“VW”). Plaintiffs were hedge funds, which had alleged that once Porsche announced the extent of their holdings in VW, the price of VW shares rose rapidly, resulting in a massive “short-squeeze,” forcing plaintiffs to cover their short positions at artificially high prices, and causing significant financial losses.⁵² Plaintiffs had allegedly obtained their short positions through security-based swap agreements that referenced VW ordinary shares and would have increased in value if the price of VW shares had declined.⁵³ Plaintiffs alleged that these swap agreements had been consummated in the United States and that they had taken all necessary steps to ensure that the agreements were covered by New York law.⁵⁴

Here, because there was no dispute that VW ordinary shares did not trade on a U.S. exchange, the court analyzed whether plaintiffs’ swap agreements, which merely referenced the value of VW shares traded on foreign exchanges, constituted “domestic transactions” under *Morrison*.⁵⁵ The district court rejected plaintiffs’ argument that these were domestic transactions because to conclude otherwise would have been “inconsistent with the Supreme Court’s intention in [*Morrison*] to curtail the extraterritorial application of § 10(b).”⁵⁶ The district court concluded that a ruling for plaintiffs “would extend extraterritorial application of the Exchange Act’s antifraud provisions to virtually any situation in which one party to a swap agreement is located in the United States.”⁵⁷ Thus, the district court refused to endorse “a rule that would make foreign issuers with little relationship to the U.S. subject to suits here simply because a private party in this country entered into a derivatives contract that reference[d] the foreign issuer’s stock.”⁵⁸ The Court ultimately held that “domestic transaction[s] in other securities” do not include “transactions in foreign-traded securities – or swap agreements that reference them – where only the purchaser is located in the United States.”⁵⁹ Thus, once again, a district court reaffirmed the importance of *Morrison* by placing significant limitations on the application of the U.S. securities laws to non-U.S. transactions and issuers.

D. SECURITIES AND EXCHANGE COMMISSION V. GOLDMAN SACHS & Co.

In *Securities and Exchange Commission v. Goldman Sachs & Co.*,⁶⁰ the SEC brought a civil action against Goldman Sachs & Co. (“Goldman Sachs”) and a Goldman Sachs Vice President, Fabrice Tourre (“Tourre”), for violations of Section 10(b) of the Exchange Act and Section 17(a) of the Securities Act. Prior to the district court’s decision, Goldman Sachs settled the SEC charges for \$550 million.⁶¹ The SEC alleged that Tourre had committed securities fraud by making false and misleading statements in the marketing and sale of synthetic collateralized debt obligations (“CDOs”) to both foreign and U.S.-based entities.⁶² Tourre moved to dismiss under *Morrison* on the basis that the complaint did not allege a securities transaction taking place in the U.S.⁶³

Analyzing *Morrison*, the district court noted that *Morrison* “was largely silent regarding how lower courts should determine whether a purchase or sale is made in the United States.”⁶⁴ Therefore, the court looked to other post-*Morrison* case law that interpreted a “purchase” or “sale” under the Exchange Act to have occurred when the buyer or seller incurs an “irrevocable liability” to pay for or deliver a security.⁶⁵ Applying the “irrevocable liability” standard, the court rejected the SEC’s argument that it could state a claim under 10(b) for Tourre’s “U.S.-based conduct” because the SEC failed to plead “sufficient facts that

allow[ed] the Court to draw the reasonable inference” that the foreign entities incurred irrevocable liability in the United States.⁶⁶ The court, therefore, dismissed the section 10(b) and Rule 10b-5 counts relating to the sale of CDOs to the foreign entities.⁶⁷

Notably, the court also applied the *Morrison* test to the SEC’s claims under Section 17(a) of the Securities Act. Applying the same reasoning as used with the 10(b) claims, the court dismissed the Section 17(a) claims to the extent that they relate[d] to the “sale” of securities outside the U.S.⁶⁸ However, the court recognized that “Section 17(a), unlike Section 10(b), applies not only to the ‘sale’ but also to the ‘offer ... of any securities,’” and the focus of the “offer” under the Securities Act is on the person or entity making the offer.⁶⁹ Because the SEC alleged that Tourre had made the offer “acting in and from New York,” it sufficiently pled a violation of the “offer prong” of Section 17(a).⁷⁰ Therefore, the court denied Tourre’s motion to dismiss related to the “offer” of the CDOs to the foreign entities.⁷¹

The *Goldman* decision demonstrates that courts will apply *Morrison* to limit claims by the SEC and claims under Section 17(a) of the Securities Act. However, with the passage of the Dodd-Frank Act, it is possible that the impact of *Morrison* on SEC suits could be significantly reduced.

IV. Securities Litigation Goes Global

As a result of the *Morrison* decision it seems clear that foreign and American investors are largely foreclosed from accessing American courts to litigate claims against foreign issuers whose shares do not trade on a U.S. exchange. Thus, plaintiff-investors are likely to take the option of asserting a securities claim in a foreign forum far more seriously. Moreover, defendants looking for finality in the settlement of securities disputes may also seek a forum in which all investors who may have been impacted by the alleged harms are able to settle as one class via a binding agreement. Thus, both plaintiffs and defendants are looking to courts in foreign jurisdictions to lead the way in providing the best possible forum to litigate alleged securities frauds. While some foreign countries, notably the Netherlands and Canada, appear ready to accept and litigate multi-national securities fraud claims, other countries have historically resisted implementation of U.S.-style class actions and related contingency fee agreements for plaintiff lawyers and are instead wrestling with how best to reform their legal structures to allow securities actions to proceed. The following section provides an overview of recent legal developments in several select foreign jurisdictions, which, in the wake of *Morrison*, may make foreign forums more appealing to plaintiff-investors than they have been in the past.

A. U.S. CLASS ACTIONS V. THE WORLD

As obstacles like *Morrison* have made it more difficult for plaintiff-investors to access U.S. courts, courts in foreign countries have begun opening their doors to class actions and collective or aggregate litigation. Because the substantive and procedural rules of U.S. class actions are intended facilitate class-based litigation, however, it is generally easier to form a class in the U.S. than in other countries.⁷² Procedural mechanisms vary greatly between U.S. and European-style class action systems. Key differences include: (1) whether the jurisdiction requires class members to “opt-in” or “opt-out” of a class; (2) use of contingency fees; and (3) loser pays or “pay your own way” rules.⁷³

According to one survey, twenty-one countries have adopted some type of class action, and at least six countries have some form of group proceeding in addition to or instead of a class action.⁷⁴ In countries wrestling with how to introduce a legal structure capable of addressing the needs of numerous injured parties, the debate is often centered around how to *avoid* constructing a class system resembling the American model. For example, some European leaders have publicly declared that they do not want to import what they view as a culture of litigation in the U.S.⁷⁵ Nevertheless, a small number of countries have adopted a class structure that approaches the U.S. model, including Australia, Canada, and the Netherlands.⁷⁶ Unsurprisingly, the countries whose class-litigation systems resemble ours have seen

an increase in securities litigation and have resolved, via settlement, complex securities litigation claims involving worldwide classes.

B. NETHERLANDS CLASS ACTIONS

The Netherlands is becoming an increasingly popular venue for pursuing international securities class actions claims because of its procedures for both opt-in class action suits and court-approved, opt-out class-settlements. As discussed further below, courts in the Netherlands have recently used a class settlement procedure, known as WCAM, to create legally binding multi-national settlements of class action suits alleging securities fraud. Therefore, following *Morrison*, the Netherlands may become an ideal forum for both plaintiffs seeking relief on behalf of a worldwide class, and defendants seeking a binding opt-out resolution of claims involving worldwide investors.

1. COLLECTIVE ACTIONS

Class action suits, or “collective actions” in the Netherlands, are governed by Article 3:305a BW of the Dutch Civil Code (*Burgerlijk Wetboek*), which allows collective actions to be filed by a representative organization (or “foundation”) with legal capacity to sue on behalf of a group of injured individuals or entities that have “opted-in” to the foundation.⁷⁷ The foundation, in accordance with its articles of association, files the collective action to protect the specific interests of the group of individuals it seeks to represent.⁷⁸ The interests of these individuals in the foundation must be sufficiently similar so that they can be dealt with in one declaratory action.⁷⁹

Collective actions may only seek declaratory or injunctive relief, *not* money damages.⁸⁰ Generally, collective actions seek a declaratory judgment that the defendant acted wrongfully against the members of the representative organization.⁸¹ Since only declaratory relief is sought, the foundation does not need to establish causation or damages.⁸² Moreover, any judgment in the collective action is only binding between the foundation and the defendants.⁸³ In order to obtain monetary relief, members of the foundation must bring individual suits and establish causation liability and damages.⁸⁴

While the Netherlands’s legal system does not allow contingency fees to fund litigation, lawyers are allowed to enter into arrangements to receive “success fees” if they win.⁸⁵ In addition, the winning party is entitled to recover a certain amount of its costs based on a fixed scale.⁸⁶ Therefore, in collective actions, the foundation, or its members, could be liable to fund the litigation and certain additional costs if its case fails.

2. FORTIS (AGEAS NV/BV) COLLECTIVE ACTION

The collective action recently filed in Utrecht Civil Court against Fortis N.V., currently known as Ageas NV/BV, provides a good example of how collective actions work in the Netherlands.⁸⁷ This collective action was brought by the Stitching Investor Claims Against Fortis foundation (“Stitching foundation”) and sought a declaratory judgment against Fortis for fraud in connection with Fortis’ 2007 rights offering used to raise funds to acquire ABN AMRO.⁸⁸ The Stitching foundation alleges that Fortis and its lead underwriter misled investors regarding the financial health of the bank and its exposure to certain risky investments.⁸⁹ It estimates that investor losses could total tens of billions of Euros as shareholder value in the company fell over €25 billion in a twelve-month period between 2007 and 2008.⁹⁰

The Stitching foundation seeks to represent shareholders who participated in the September 2007 rights offering, purchased shares of Fortis between May 29, 2007 and October 14, 2008, or participated in the June 2008 Accelerated Book-Building Offer.⁹¹ As of January 2011, the foundation was composed of more than 140 institutional investors and over 2,000 individual claimants from Europe, the Middle East, Australia, and the United States.⁹² The foundation claims it is being funded “in general by a consortium of

law firm[s], who are representing and advising large institutional investors” that are presumably members of the foundation.⁹³

The collective action by the Stichting foundation in the Netherlands was filed more than two years after a similar class action suit against Fortis was filed in the U.S. District Court for the Southern District of New York.⁹⁴ The U.S. lawsuit, which alleged securities violations based on nearly identical alleged facts, was dismissed in February 2010 by the district court for lack of subject-matter jurisdiction.⁹⁵ The district court applied the old “conduct and effects” tests based on Second Circuit precedents pre-dating *Morrison*⁹⁶ and held that the plaintiffs did not allege sufficient U.S.-based “conduct” or “effects” to confer jurisdiction.⁹⁷ In addition, the district court denied plaintiffs leave to amend their complaint.⁹⁸

C. SETTLEMENT OF COLLECTIVE ACTIONS UNDER DUTCH LAW

The Act on Collective Settlement of Mass Damages (*Wet collectieve afhandeling massaschade* or “WCAM”) provides a mechanism for a defendant and foundation to enter into a legally binding, “opt-out” settlement agreement that, with court approval, disposes of all claims related to an international group of injured individuals.⁹⁹ As with other collective actions, the foundation or association must, in accordance with its articles of association, represent the interests of a group of individuals that suffered losses from a similar cause. While WCAM settlements could stem from a collective action brought under the Dutch Civil Code, parties may also petition the court to approve a settlement before any suit has been filed.¹⁰⁰

Under WCAM, after parties reach a settlement, they may jointly petition the Amsterdam Court of Appeal to make the settlement legally binding on all potential plaintiffs that do not opt-out of the settlement after receiving proper notice.¹⁰¹ The settling parties must provide adequate notice of the proposed settlement to potential participants.¹⁰² However, there may be significant problems in obtaining enforcement of settlements pursuant to WCAM in other countries of the European Union.¹⁰³

WCAM provides that settlement agreements must contain certain information, including: (1) a description of the class and potential number of persons affected; (2) the compensation that will be awarded to those persons; (3) the eligibility requirements for individuals to receive compensation; and (4) an independent assessment of the compensation to be paid pursuant to the agreement.¹⁰⁴ WCAM also provides that the court shall reject the settlement if the amount of the compensation is not reasonable, considering the extent of the harm suffered, the ease and speed at which the compensation can be obtained, and the possible causes of the damages.¹⁰⁵ In addition, the court may reject the settlement if the number of class members is not sufficient—although courts have not set a minimum threshold.¹⁰⁶ Finally, following notice, WCAM allows for individuals to challenge or object to the settlement before the court’s approval.¹⁰⁷

Following approval of the settlement by the Amsterdam Court of Appeal, WCAM allows for an affected person to “opt-out” of the settlement within three months.¹⁰⁸ The eligible individuals who have not opted-out may collect their settlement payment within the time frames specified in the settlement agreement—up to one year—or risk forfeiting their rights.¹⁰⁹

The parties to the WCAM settlement may also negotiate an attorneys’ fee award to the lawyers representing the foundation.¹¹⁰ In the *Shell Petroleum* settlement, discussed below, the law firms representing the foundation and two Dutch pension funds (on behalf of non-U.S. investors in Shell) reportedly negotiated a fee of \$47 million for their role in negotiating the settlement.¹¹¹

1. SHELL SETTLEMENT

In May 2009, the Amsterdam Court of Appeal approved and declared binding a settlement worth over \$350 million between Shell Petroleum N.V. and various foundations and associations representing

the interests of a group of international investors who suffered losses following disclosure of a reduction in the number of proven oil and gas reserves.¹¹²

While the WCAM settlement was being negotiated, a U.S. class action suit on behalf of both U.S. and non-U.S. investors was simultaneously proceeding in the U.S. District Court for the District of New Jersey.¹¹³ After announcing the WCAM settlement, Shell moved to dismiss the non-U.S. investors from the U.S. class action, and the U.S. lead plaintiffs sought to enjoin the settlement.¹¹⁴ Eventually, the district court dismissed the non-U.S. investors, and Shell separately settled the U.S. class action suit.¹¹⁵ The Shell settlement is significant because it was the first international application of the WCAM procedure as the court took jurisdiction over non-Dutch shareholders.

2. VEDIOR SETTLEMENT

In July 2009, the Amsterdam Court of Appeal approved and declared binding a settlement worth approximately \$5.7 million relating to damage allegedly suffered by investors who sold their Vedior stock prior to a suspension in trading at a time when rumors were spreading that Vedior was about to be acquired.¹¹⁶ The foundation alleged that Vedior violated Dutch securities laws that required it to release certain information earlier.¹¹⁷ The Vedior settlement is significant because it was the first WCAM settlement to include North American investors.¹¹⁸

3. CONVERIUM SETTLEMENT

In November 2010, the Amsterdam Court of Appeal provisionally approved preliminary jurisdiction in an international collective settlement relating to claims that Converium, a Swiss company, understated loss reserves.¹¹⁹ A similar class action had already been settled in the United States, but that settlement excluded all non-US individuals who purchased Converium stock on a non-U.S. exchange.¹²⁰

The Converium settlement is significant because the Amsterdam Court of Appeal approved the settlement despite the fact that none of the defendants and only some of the potential claimants were from the Netherlands. Following the precedent set by Shell and Vedior, the court applied the Brussels I Regulation and the Lugano Convention to find jurisdiction over the claims based on the location of the settlement agreement and domicile of the settling foundation.¹²¹ The Amsterdam Court of Appeal explicitly recognized that, post-*Morrison*, there is a need for a venue for global resolution of international securities class actions.¹²²

The recent use of the WCAM class settlement procedures to create binding, worldwide settlements has drastically increased the importance of the Netherlands regarding international securities class actions. Although the Dutch have taken these important steps in developing their class action structure, significant differences from the U.S. model may continue to be interpreted as barriers to class action lawsuits. For example, as noted above, the Dutch system rejects all forms of contingency fee arrangements as conflicts of interest for class counsel.¹²³ Additionally, in another divergence from the U.S. class action model, the Dutch apply the so-called “loser-pays” rule.¹²⁴ The inability of counsel to be paid through contingency fees and the risks to litigants associated with the loser-pays rule may still serve as significant deterrents to bringing securities class action cases in the Netherlands. However, the Dutch procedure for binding opt-out class settlements and its willingness to exert jurisdiction over a worldwide class may make the Netherlands a forum of choice for parties seeking to resolve global securities class actions.

D. AUSTRALIAN CLASS ACTIONS

In Australia, the primary barrier to the spread of class action litigation has been the absence of a mechanism for sharing class action fees in opt-out class actions, fee shifting, and the resulting risk of being required to fund the costs of a losing lawsuit. Australia has begun to circumvent these problems, however, with the introduction of third-party litigation funding (“TPLF”). TPLF refers to “legal fee payment schemes whereby investment funds agree to cover all or part of the cost of litigation in exchange for a

portion of the potential recovery.”¹²⁵ Australia has taken significant steps to encourage the growth of, and to develop a market for, TPLF.

Historically, Australia and many other countries, including Canada, have had in place a ban on “champerty.”¹²⁶ Champerty is an agreement between the plaintiff and another person, usually an attorney, who agrees to finance and carry the lawsuit in return for a percentage of the recovery.¹²⁷ In many countries, champerty has been illegal because policymakers feared it would encourage litigation.¹²⁸ In recent years, however, Australian legislatures have begun to adopt a more relaxed policy regarding TPLF by loosening champerty restrictions.¹²⁹

Similarly, Australian courts have begun to endorse TPLF. Though the practice of third-party litigation funding was initially challenged by defendants who suddenly faced well-funded plaintiffs, TPLF has been upheld despite these challenges.¹³⁰ Australian courts to address the issue have concluded that a party who funds a case has a legitimate commercial interest in the outcome.¹³¹ In fact, the Australian High Court has allowed third-party funders to actively search for and recruit plaintiffs, conduct representative proceedings, choose attorneys, and make decisions to settle with defendants.¹³² These recent decisions have buttressed the legislative reforms regarding champerty, making third-party funders in Australia commonplace in securities, antitrust, and consumer class actions.¹³³ Additionally, these decisions have facilitated the development of TPLF as an industry in Australia. Several companies, such as IMF Australia Ltd., Litigation Lending Services Ltd., and LCM Litigation Fund Pty. Ltd, have formed to service the business of professional litigation funding.¹³⁴ Moreover, some of these companies have begun funding international litigation. For example, Litigation Lending Services Ltd. was involved in funding a case that led to the first decision on the issue of litigation funding in New Zealand.¹³⁵

The allowance of third-party funding has made Australia a potentially fertile ground for plaintiffs to bring securities fraud class actions and will no doubt facilitate the spread of global securities actions by broadening plaintiffs’ access to Australian courts. However, despite the strong growth of the number of securities class actions filed over the past three years, Australia has not yet begun to rival the United States, partly because the Australian economy is significantly smaller than the U.S. economy.¹³⁶

Interestingly though, the presence of TPLF has had the practical effect of turning an opt-out jurisdiction into an opt-in jurisdiction, as funders require each class member to be a party to the litigation funding contract.¹³⁷ This could potentially lead to smaller classes with larger settlement payouts per plaintiff. Additionally, settlements in Australian securities cases are likely to be large in part because the likelihood of wrongdoing may be higher. Given that TPLF businesses will only earn profits if they are able to extract healthy settlements or win cases outright, they have a vested interest in picking only those cases that appear on their face to have a fairly good prospect of success.¹³⁸ Indeed, Australia appears poised to invite global securities class action cases in a post-*Morrison* world, but only time will tell.

E. CANADIAN CLASS ACTIONS

Over the last twenty years, the number and scope of class actions in Canada has rapidly expanded, driven, in part, by the introduction in Ontario of the first class action statute—the Class Proceedings Act of 1992.¹³⁹ By 2007, seven of Canada’s thirteen provinces had passed legislation to establish a legal structure for class action cases.¹⁴⁰ Moreover, Canada’s Supreme Court has sanctioned the class action approach in those jurisdictions in which comprehensive class action legislation does not exist.¹⁴¹

In combination with the changes to class action law, amendments to provincial securities acts have prompted an increase in the filing of securities class actions. As of 2008, four provinces have introduced civil liability for continuous disclosure violations, as well as a right of action for investors harmed by misrepresentations or failure to disclose negative facts about a company’s performance.¹⁴² Notably, unlike § 10(b) of the Exchange Act in the United States, these amendments do not require plaintiffs to

prove actual reliance on the alleged misrepresentations or omissions.¹⁴³ Thus, at least in this respect, Canadian courts appear to be more plaintiff-friendly than American courts.¹⁴⁴

As a result of the confluence of the revisions to securities laws and the introduction of U.S.-style class actions, Canada has seen a marked increase in the number of securities class actions filed. In 2008, a record nine securities actions were filed.¹⁴⁵ While the number of Canadian filings pales in comparison to the 255 actions filed in the U.S. in the same year, it still represents an 80% increase over the previous maximum and a 125% increase over the prior year.¹⁴⁶ In March 2011, a Canadian court in the *Manulife* case¹⁴⁷ also ruled that litigation funding, as seen in Australia, is also permissible in Canada. Given these recent developments, Canada may eventually become a viable alternate forum to the United States for the litigation of some global securities class action claims.

However, certain structural impediments remain. For example, the Canadian market is nowhere near the size of the U.S. market; there are only one quarter the number of issuers in the U.S., and thus, there are fewer litigation targets.¹⁴⁸ Moreover, the targets that do exist are smaller companies, which, as far as plaintiffs are concerned, may make for less attractive targets.¹⁴⁹ Despite these potential issues, recent cases have signaled that Canadian courts, particularly in Ontario, are open for the business of global securities litigation.

1. IMAX

The *IMAX* class action¹⁵⁰ is the first cross-border or global securities class action to be certified under the Ontario Securities Act.¹⁵¹ The case was brought in the Superior Court of Ontario, Canada against IMAX Corporation (“IMAX”) and certain officers for alleged false and misleading statements in IMAX’s 2005 Form 10-K, and other public company statements.¹⁵² Plaintiffs alleged that IMAX knowingly overstated revenues and used improper revenue recognition in violation of GAAP, causing IMAX securities to trade at inflated prices. In December 2009, pursuant to the requirements of the Ontario Securities Act, the Superior Court granted plaintiffs leave to bring the case and certified a global class consisting of both Canadian and U.S. investors.¹⁵³ In so certifying the class, the court specifically rejected the defendants’ arguments that the class could not include the 80% to 85% of IMAX shareholders who resided in the U.S. or who were not Canadian.¹⁵⁴ In February 2011, IMAX was denied leave to appeal the December 2009 decision and plaintiffs were allowed to proceed with a global class.¹⁵⁵ By affirming the use of a global class, the Ontario Superior Court thus provided litigants across the globe with another venue for pursuing large securities fraud claims. The *IMAX* class action is currently proceeding in the Ontario Superior Court.

A related class action is also proceeding simultaneously in the United States District Court for the Southern District of New York.¹⁵⁶ Interestingly, in the Canadian action, the court has allowed plaintiffs to conduct a limited amount of discovery during the earliest stages of the case—a decision upheld on appeal.¹⁵⁷ Some commentators have noted that this outcome contradicts the discovery stay required by the U.S. Private Securities Litigation Reform Act (“PSLRA”), which may enable plaintiffs’ classes composed of both U.S. and Canadian investors to perform an end-run around the PSRLA by filing suit in Canada.¹⁵⁸

2. CANADIAN LAW AND TPLF

The *Manulife* class action solidified Canada, like Australia, as a country in which securities class actions funded by third parties are welcome. *Manulife* was filed in the Superior Court of Ontario and asserted that Manulife Financial Corporation made misrepresentations regarding its risk-management practices in public disclosure documents.¹⁵⁹ Because Canada operates under a “loser pays” regime of litigation funding, plaintiffs had entered a litigation funding agreement with a private corporation, which defendants challenged.¹⁶⁰ In March 2011, the Ontario Superior Court approved the funding arrangement

between the plaintiffs and third party Claims Funding International (“CFI”), an Irish corporation.¹⁶¹ Justice Strathy, who authored the opinion, based his ruling in part on the practical obstacles imposed on plaintiffs in a “loser pays” system.¹⁶² The court observed that no plaintiff would accept the role of class representative knowing he would be responsible for financing the litigation in the case of a loss but only receive a modest payout from a win.¹⁶³ Justice Strathy also noted that litigation funding promotes statutory goals by “providing access to justice” for plaintiffs.¹⁶⁴ The funding arrangement provided that CFI will indemnify plaintiffs against any adverse costs award made against the plaintiffs in return for a commission of seven percent on any settlement or judgment. The arrangement also provides for a cap on the commission of \$5 million if the case is resolved at the pretrial stage and \$10 million if resolved thereafter.¹⁶⁵

Additionally, though the *Manulife* defendants argued that the funding arrangement had violated the Ontario statute barring “champertous” agreements, the court found it relevant that the funding arrangement left control of the litigation to the plaintiffs and that the commission paid was reasonable.¹⁶⁶ Some commentators have observed that Justice Strathy’s references to the advantages these agreements have in the class action context could prove persuasive to judges in other Canadian jurisdictions and could also encourage potential plaintiffs and litigation funders to enter into similar agreements.¹⁶⁷ Thus, the *Manulife* decision is significant because it, in combination with other recent Canadian reforms, could lead to an increase in the number of global securities class actions filed in Canada.

F. GERMANY

In Germany, the primary legal authority for securities fraud class actions is the Kapitalanleger-Musterverfahrensgesetz, more commonly referred to as the Capital Investor’s Model Proceeding Act or “KapMuG.”¹⁶⁸ As its name suggests, the KapMuG adheres to a model case format under which common elements of claims are litigated first and the ruling on such common elements binds all petitioners.¹⁶⁹ Under the KapMuG framework, a plaintiff may only pursue a model proceeding to determine common elements of a claim if at least nine similar petitions are made within a four-month notice period.¹⁷⁰ In the event that the model case proceeds, all individual proceedings are suspended pending the model case’s results, and the individual elements of each claim are subsequently litigated individually.¹⁷¹ Unlike U.S. class actions, the German system is “opt-in,” meaning that only those parties who initiate or join the model case are considered to have raised the claim.¹⁷² In addition, only those parties who join are bound by the model case’s results.¹⁷³

Regarding costs, the German system adheres to the “loser pays” rule, stipulating that the losing party must pay the costs of the litigation, including “court costs[,] the other party’s legal fees . . . and the other party’s expenses.”¹⁷⁴ The KapMuG provides that “costs common to all claims involved in the [model case] . . . are divided up among the separate proceedings brought by each claimant in a manner that is proportionate to the amount of the individual claim.”¹⁷⁵ As a result of this structure, the practice of TPLF has also taken hold in securities fraud class actions in Germany.¹⁷⁶

Though numerous recent class action filings under KapMuG have garnered international attention, Germany’s *Deutsche Telekom AG* case has undeniably been the nation’s most notorious securities fraud class action for over a decade.¹⁷⁷ Involving upwards of 17,000 defrauded shareholders, 2,770 claims filed, and 900 lawyers, the claim alleges that shareholders were “duped into buying shares . . . by misleading or missing prospectus information ahead of a share issue in 2000.”¹⁷⁸ Though American shareholders have already settled with Deutsche Telekom in the U.S. for \$120 million, defrauded German shareholders continue to pursue their €80 million claim, over 10 years after the alleged fraudulent acts took place.¹⁷⁹ Indeed, the *Deutsche Telekom* case is truly the first test of the KapMuG’s model proceeding system.¹⁸⁰ In the meantime, the KapMuG, originally set for expiration in November 2010, has been extended until October 31, 2012, and faces numerous potential reforms in the interim.¹⁸¹

As in Australia and Canada, TPLF promises to pry open the door to securities class actions in Germany by facilitating the full participation of allegedly injured plaintiffs.

G. FRANCE

Because class actions do not currently exist under French law, the primary measure of collective redress in France is the “action en représentation conjointe,” or common representation action.¹⁸² Within the specific context of securities fraud violations, the law imbues investor defense associations with the responsibility of pursuing claims on behalf of groups of defrauded investors.¹⁸³ In particular, Article L. 452-2 of the Monetary and Financial Code establishes an opt-in framework,¹⁸⁴ stipulating that if “in their capacity as investors, several . . . persons have suffered individual damage having a common origin through the actions of the same person . . . [a properly declared investor defense association] may, if it has been instructed by at least two of the investors concerned, sue for damages . . . on behalf of those investors.”¹⁸⁵ Only when an association has an “explicit purpose . . . [of] the defence [sic] of investors in transferable securities or financial products,” however, can it qualify as a properly declared association.¹⁸⁶

The framework for paying costs and third-party funding under the French collective action system is similarly wrought with caveats. While third-party litigation funding “is not forbidden *per se*[,] . . . [the law provides that] French lawyers can only be paid by their clients.”¹⁸⁷ As such, third-party litigation funding in France typically occurs in the form of a contract between the third party and the plaintiff that governs the funding, provided that the funder “does not directly pay the lawyers’ fees.”¹⁸⁸ As far as costs, France utilizes a modified “loser pays” rule, under which “[c]ourt costs as well as costs of translation of documents and factual witnesses’ costs . . . *shall be borne by the losing party*” while the court, at its discretion, “may order the [losing] party . . . to pay partly or totally the lawyer’s fees of his opponent.”¹⁸⁹

On its face, France does not seem particularly welcoming to global securities class actions. Yet, it is critical to note that the collective action system in France faces enormous potential for transformation. Indeed, while France continues to reject the American-style class action approach to collective redress, legislation creating a class action system continues to be a topic of national discussion and debate.¹⁹⁰ Most recently, a Senate working group published a 2010 report on class actions, the content of which will likely “be the basis for [yet] another upcoming [class actions] bill, as specified by Sen. Béteille, one of the two co-chairmen of the working-group.”¹⁹¹

H. ENGLAND

Though there is currently no class action system in England either, collective actions for securities fraud violations there take the form of group litigation orders (“GLOs”).¹⁹² The GLO system creates an “opt-in” framework through which numerous individual claims are “managed collectively,” so long as they address “common or related issues of fact or law.”¹⁹³ That is, while each case remains an individual action, so-called “lead actions” produce “findings of law and fact that may, in practice, allow the parties to compromise or simplify resolution of the remainder of the litigation.”¹⁹⁴ Similar to the “loser pays” rules of Germany and France, England also adheres to a “costs shifting” rule, under which the losing party generally pays its opponent’s legal costs and court fees, subject to the court’s discretion.¹⁹⁵ Additionally, while third-party litigation funding is also available via funding agreements, courts are free to deem such agreements “champertous”—or, objectionable—and therefore unenforceable if the funder controls the proceedings, if the agreed recovery rate is not fair, or if the agreement does not facilitate access to justice.¹⁹⁶ Indeed, though GLOs are available to collective groups of defrauded shareholders, English courts approach GLOs with very high standards, and GLOs are therefore rather uncommon. In fact, among the 74 GLOs currently pending in the system, “[l]ess than 10 . . . have been commenced in each of the last 5 years.”¹⁹⁷

V. AMERICAN LAWYERS MOVING ABROAD

One of the surest indicators that securities litigation is becoming more accepted and expected in countries other than the U.S. is the participation of American plaintiffs' lawyers in international securities cases. U.S.-based plaintiffs' lawyers are positioning themselves to take advantage of the legal developments outlined above.

For example, a senior partner with Milberg LLP, one of the most well-known firms focused on the representation of plaintiffs in securities class actions in the U.S., will join the Toronto, Canada-based law firm of Kim Orr Barristers PC at least part time.¹⁹⁸ A partner at Grant & Eisenhofer, another firm specializing in plaintiffs' side securities litigation, sees the recent global developments as indicative of a "new paradigm for pursuing shareholder claims globally" and has observed that the Netherlands is generally the most favorable venue for investors to pursue securities claims against European issuers.¹⁹⁹ Prominent plaintiffs' class action firms Cohen Milstein and Quinn Emanuel Urquhart & Sullivan LLP have opened offices in London, and commentators have viewed this as a good market indicator that the era of global securities litigation is upon us.²⁰⁰

Moreover, at least one foreign court has specifically endorsed the involvement of U.S. counsel in an advisory role to local lawyers in securities fraud cases.²⁰¹ In 2009, the Ontario, Canada Superior Court allowed Milberg attorneys to openly assist Kim Orr in a securities suit against the mining company Timminco Limited.²⁰²

VI. CONCLUSION

As post-*Morrison* plaintiffs, and their attorneys now look for forums in which they can seek redress, countries all over the world are looking to reform their class action structures, and some have already opened their courtroom doors to broad class action jurisdiction. Those actions, coupled with the rise of private, moneyed, third-party litigation funders, have set the stage for a potentially rapid and truly global expansion of securities litigation. New class action legislation, like the legislation that has been discussed in France in recent years, is likely to further enhance the opportunity for the filing of global securities class actions. Investors, unable to sue in the United States, are likely to continue to lobby for judicial and legislative reforms of the nature outlined herein in their home countries.

Some commentators have expressed the belief that the impact of the *Morrison* decision may be short-lived because Congress has moved to study the effects of the decision and has shown signs of its willingness to overrule *Morrison* by amending federal securities laws. Specifically, the Dodd-Frank Reform Act authorized the SEC to conduct a study on whether the Exchange Act should be amended to allow private parties to bring extraterritorial claims. The SEC will report on the results of its study and make its recommendations to the Senate Banking Committee and the House Financial Services Committee in January 2012.²⁰³ Given that 2012 is an election year, it is unclear which party will control Congress and, regardless of control, whether either party will be eager to enact legislative reforms to overrule *Morrison*. Though the environment surrounding global securities litigation appears to be very unsettled, the framework to pursue global securities litigation class actions in some foreign countries is already in place. Given this fact, it is hard to imagine that aggrieved investors and their attorneys will not move to take advantage of the law in foreign forums, regardless of whether Congress moves to address *Morrison*.

1. *Morrison v. Nat'l Australia Bank, Ltd.*, 547 F.3d 167, 172 (2d Cir. 2008); *In re Vivendi Universal, S.A. Sec. Litig.*, No. 02 Civ. 05571 (RJH) (HBP), 2011 WL 590915 (S.D.N.Y. Feb. 17, 2011); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469 (S.D.N.Y. 2010); *In re NovaGold Resources Inc. Sec. Litig.*, 629 F. Supp. 2d 272, 305 (S.D.N.Y. 2009); *In re Elan Corp. Sec. Litig.*, No. 1:08-cv-08761-AKH, 2009 WL 1321167, at *2 (S.D.N.Y. May 11, 2009).

2. 130 S. Ct. 2869 (2010).

3. *Morrison*, 547 F.3d 167, 170 (2d Cir. 2008); *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 985 (2d Cir. 1975); *Cont'l Grain (Austl.) Pty. Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409, 410 (8th Cir. 1979); *In re CP Ships Ltd. Sec. Litig.*, 578 F.3d 1306, 1313 (11th Cir. 2009); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469 (S.D.N.Y. 2010); *In re Vivendi Universal, S.A. Sec. Litig.*, 381 F. Supp. 2d 158, 169-70 (S.D.N.Y. 2003).
4. *S.E.C. v. Berger*, 322 F.3d 187, 192 (2d Cir. 2003); see also *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261-62 (2d Cir. 1989); *Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041, 1045 (2d Cir. 1983); *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1016 (2d Cir. 1975); *Schoenbaum v. Firstbrook*, 405 F.2d 200, 206 (2d Cir. 1968).
5. *Berger*, 322 F.3d at 193.
6. *Id.*
7. *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869, 2881 (2010).
8. *Robinson v. TCI/U.S. West Commc'ns Inc.*, 117 F.3d 900, 905 (5th Cir. 1997); *Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 666-667 (7th Cir. 1998).
9. See *Zoelsch v. Arthur Andersen & Co.*, 824 F.2d 27, 31 (D.C. Cir. 1987).
10. *SEC v. Kasser*, 548 F.2d 109, 114 (3d Cir. 1977); see also *Cont'l Grain (Austl.) Pty. Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409, 421 (8th Cir. 1979) (asserting jurisdiction over Exchange Act claims when the domestic conduct was "in furtherance of a fraudulent scheme and was significant with respect to its accomplishment."); *Grunenthal GmbH v. Hotz*, 712 F.2d 421, 425 (9th Cir. 1983) (adopting the Eighth Circuit's requirement).
11. 130 S. Ct. 2869 (2010).
12. *In re Vivendi Universal, S.A. Sec. Litig.*, No. 02 Civ. 05571 (RJH) (HBP), 2011 WL 590915 (S.D.N.Y. Feb. 17, 2011); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469 (S.D.N.Y. 2010).
13. *Morrison*, 130 S. Ct. at 2875.
14. *Id.* at 2876.
15. *Id.* at 2875.
16. *Id.* at 2875-76.
17. See *Morrison v. Nat'l Australia Bank Ltd.*, 547 F.3d 167, 176 (2d Cir. 2008).
18. *Morrison*, 130 S. Ct. at 2876-77.
19. *Id.* at 2877.
20. *Id.*
21. *Id.* at 2881.
22. *Id.* at 2878.
23. *Id.* at 2886.
24. *Id.* at 2880-81.
25. *Id.* at 2884.
26. *Id.* (internal citations omitted).
27. *Id.* at 2886; see also *In re Vivendi Universal, S.A. Sec. Litig.*, No. 02 Civ. 05571 (RJH) (HBP), 2011 WL 590915 (S.D.N.Y. Feb. 17, 2011); *Cornwell v. Credit Suisse Group*, 729 F. Supp. 2d 620 (S.D.N.Y. 2010).
28. *Morrison*, 130 S. Ct. at 2886.
29. *Id.* at 2888.
30. *Id.*
31. See generally 729 F. Supp. 2d 620 (S.D.N.Y. 2010).
32. *Id.* at 622-23.
33. *Id.* at 621.
34. *Id.* at 621-22.
35. *Id.* at 625-26.
36. *Id.* at 623-24.
37. *In re Vivendi Universal, S.A. Sec. Litig.*, No. 02 Civ. 05571 (RJH) (HBP), 2011 WL 590915 (S.D.N.Y. Feb. 17, 2011) (narrowing the plaintiff class to exclude those who purchased Vivendi common stock from non-U.S. exchanges); *In re Royal Bank of Scotland Group PLC Sec. Litig.*, No. 09 Civ. 300 (DAB), 2011 WL 167749 (S.D.N.Y. Jan. 11, 2011) (dismissing claims of purchasers of RBS shares on a non-U.S. exchange); *Elliott Assoc. v. Porsche Automobil Holding SE*, 759 F. Supp. 2d 469 (S.D.N.Y. 2010) (dismissing claims of fraud in the purchase of security swap agreements despite the fact that the swaps did

not trade on any exchanges and all of the steps to the swap agreement transactions were conducted in the United States); *Plumbers' Union Local No. 12 Pension Fund v. Swiss Reinsurance Co.*, 753 F. Supp. 2d 166 (S.D.N.Y. 2010) (rejecting a claim involving the purchase of securities on a Swiss stock exchange from a U.S. location); *In re Société Générale Sec. Litig.*, No. 08 Civ. 2495 (RMB), 2010 WL 3910286 (S.D.N.Y. Sept. 29, 2010) (finding no cause of action for U.S. purchasers of non-U.S. issued securities on the Euronext Paris stock exchange despite purchasing them while in the United States); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469 (S.D.N.Y. 2010) (dismissing claim where plaintiffs purchased non-U.S. issued shares on the Euronext exchange that were also available for purchase as ADRs on a U.S. exchange); *Terra Sec. Asa Konkursbo v. Citigroup, Inc.*, 740 F. Supp. 2d 441 (S.D.N.Y. 2010) (rejecting claim where plaintiff had purchased a Norwegian securities firm's fund-linked notes that had been arranged by a U.S. bank for sale to U.S. investors); *Sgalambo v. McKenzie*, 739 F. Supp. 2d 453 (S.D.N.Y. 2010) (dismissing claim where plaintiff purchased Canadian issued shares on Toronto Stock Exchange despite registration of the non-U.S. issuer with the SEC and on the NYSE); *Cornwell v. Credit Suisse Group*, 729 F. Supp. 2d 620 (S.D.N.Y. 2010) (finding no cause of action for U.S.-based purchasers of Swiss issued shares traded on the Swiss Stock Exchange).

38. No. 02 Civ. 05571 (RJH) (HBP), 2011 WL 590915 (S.D.N.Y. Feb. 17, 2011).

39. *Id.* at *1.

40. *Id.* (internal citation omitted).

41. *Id.* at *4.

42. *Id.* at *7.

43. *Id.*

44. *Id.*

45. *Id.* at *8.

46. *Id.* at *9 (emphasis added).

47. *Id.*

48. *Id.*

49. *Id.* at *10 (citing *Cornwell v. Credit Suisse Group*, 729 F. Supp. 2d 620, 627 (S.D.N.Y. 2010); *Harry Stackhouse v. Toyota Motor Co.*, No. 10 Civ. 0922 (DSF), 2010 WL 3377409, at *1 (C.D. Cal. July 16, 2010); *In re Royal Bank of Scotland Group PLC Sec. Litig.*, No. 09 Civ. 300 (DAB), 2011 WL 167749, at *7-8 (S.D.N.Y. Jan. 11, 2011)).

50. *In re Vivendi, S.A. Sec. Litig.*, 2011 WL at *10.

51. 759 F. Supp. 2d 469, 470 (S.D.N.Y. 2010).

52. *Id.* at 471-73.

53. *Id.* at 470.

54. *Id.* at 471.

55. *Id.* at 474-75.

56. *Id.* at 474.

57. *Id.*

58. *Id.* at 476.

59. *Id.*

60. No. 10 Civ. 3229 (BSJ) (MHD), 2011 WL 2305988 (S.D.N.Y. June 10, 2011).

61. *Id.* at *1.

62. *Id.*

63. *Id.*

64. *Id.* at *8 (internal quotations omitted).

65. *Id.* (citing *Plumbers' Union Local No. 12 Pension Fund v. Swiss Reinsurance Co.*, 753 F. Supp. 2d. 166, 177 (S.D.N.Y. 2010)).

66. *Id.* at *10-*11 (internal citations omitted). The district court noted that Tourre submitted trade confirmations relating to the foreign entities in an effort to show that the purchases were foreign transactions. However, because the SEC failed to plead sufficient facts, the court made no finding regarding the weight these confirmations should receive in the *Morrison analysis*. *Id.*

67. *Id.* at *10.

68. *Id.* at *14.

69. *Id.* at *15.

70. *Id.*
71. *Id.* The court allowed all Section 10(b) and Section 17(a) claims to proceed against Toure relating to the offer and sale to the U.S.-based entity without any discussion of the *Morrison* factors. *See generally id.*
72. Elizabeth Cosenza, *Paradise Lost: § 10(b) After Morrison v. National Australia Bank*, 11 CHI. J. INT'L. L. 343, 370 (2011).
73. *Id.*
74. Deborah R. Hensler, *The Future of Mass Litigation: Global Class Actions and Third-Party Litigation Funding*, 79 GEO. WASH. L. REV. 306, 307 (2011).
75. *See* Gregory L. Fowler, Marc Shelley & Silvia Kim, *Emerging Trends in International Litigation: Class Actions, Litigation Funding and Punitive Damages*, 3 Nos. 2 DISP. RESOL. INT'L. 101, 106-07 (2009).
76. Hensler, *supra* note 67.
77. Burgerlijk Wetboek [BW] art. 3:305a (1).
78. BW art. 3:305a (1).
79. M.-J. van der Heijden, *Class Actions*, 14.3 ELECTRONIC J. COMP. L., Dec. 2010, at 6.
80. Hensler, *supra* note 67, at 312.
81. BW art. 3:305a(3).
82. M.-J. van der Heijden, *supra* note 72, at 6.
83. *Id.*
84. *Id.* at 6-7.
85. Hensler, *supra* note 67, at 311-312.
86. M.-J. van der Heijden, *supra* note 72, at 63; Hensler, *supra* note 67, at 312.
87. Press Release, PRE Newswire, International Investors Join Forces in Support of Lawsuit Against Fortis Over Massive Misrepresentation Ahead of Bank's Collapse in 2008 (Jan. 10, 2011) (on file with author).
88. *Id.*
89. The collective action also alleged claims against Merrill Lynch International as the lead underwriter of the offering.
90. Press Release, PRE Newswire, International Investors Join Forces in Support of Lawsuit Against Fortis Over Massive Misrepresentation Ahead of Bank's Collapse in 2008 (Jan. 10, 2011) (on file with author).
91. *Participate: Who Should Participate?*, STITCHING INVESTOR CLAIMS AGAINST FORTIS, <http://investorclaimssagainstfortis.com/participate.php> (last visited June 23, 2011).
92. Press Release, PRE Newswire, International Investors Join Forces in Support of Lawsuit Against Fortis Over Massive Misrepresentation Ahead of Bank's Collapse in 2008 (Jan. 10, 2011) (on file with author).
93. *Frequently Asked Questions and Answers*, investorclaimssagainstfortis.com, http://investorclaimssagainstfortis.com/frequently_question.php (last visited June 23, 2011).
94. *See Copeland v. Fortis et al.*, 685 F. Supp. 2d 498 (S.D.N.Y. 2010).
95. *Id.* at 506.
96. *Id.* at 501.
97. *Id.* at 503.
98. *Id.* at 507.
99. BW art. 7:907. The WCAM Act is not limited to securities claims. In fact, it was originally designed to address the numerous tort cases relating to the DES drug.
100. Hensler, *supra* note 67, at 312; *see also* BW art. 3:305a(2) (requiring that the foundation, before filing a collective action, first attempt to reach a settlement with the defendants regarding the claims of its members).
101. BW art. 7:907; M.-J. van der Heijden, *supra* note 72, at 10.
102. Hensler, *supra* note 67, at 311.
103. *See* Council Regulation 44/2001, art. 58, 2000 O.J. (L 012) (EC). The Dutch settlement procedure is for an opt-out class action structure. Most EU countries have an opt-in class structure and thus may find the Dutch procedure to raise strong public policy concerns, bringing into question the enforceability of such Dutch settlements in EU countries.
104. BW art. 7:907.
105. BW art. 7:907.

106. M.-J. van der Heijden, *supra* note 72, at 8.
107. Hensler, *supra* note 67, at 311; M.-J. van der Heijden, *supra* note 72, at 12.
108. BW art. 7:908(2); Hensler, *supra* note 67, at 311.
109. BW art. 7:907(6).
110. Hensler, *supra* note 67, at 311.
111. Hensler, *supra* note 67, at 318.
112. *Legal Alert—Shell: Landmark Decision Regarding International Collective Settlement of Mass Claims*, DE BRAUW BLACKSTONE WESTBROEK (June 2010), <http://www.debrauw.com/News/LegalAlerts/Pages/LegalAlertShellJune2009.aspx>.
113. Hensler, *supra* note 67, at 315-316.
114. *Id.* at 316.
115. *Id.*
116. *Id.* At 313; Gerechtshof Amsterdam [Court of Appeals of Amsterdam], Oct. 6, 2008, Hof's-Amsterdam 15 juli 2009, JOR 2009, 325 m.nt. Scholten en Van Achterberg (In de zaak van Randstand Holding, N.V.) (Petition for a declaration of binding force of a settlement agreement pursuant to BW art. 7:907).
117. Gerechtshof Amsterdam [Amsterdam Court of Appeal] Oct. 6, 2008, Hof's-Amsterdam 15 juli 2009, JOR 2009, 325 m.nt. Scholten en Van Achterberg, ¶ 3.5 (In de zaak van Randstand Holding, N.V.) (Petition for a declaration of binding force of a settlement agreement pursuant to BW art. 7:907).
118. Hensler, *supra* note 67, at 319.
119. Martin George, *Jurisdiction of the Amsterdam Court of Appeal in the Converium Settlement Case*, CONFLICT OF LAWS. NET (Dec. 4, 2010), <http://conflictoflaws.net/2010/jurisdiction-of-the-amsterdam-court-of-appeal-in-the-converium-settlement-case/>.
120. Gerechtshof Amsterdam [Amsterdam Court of Appeal] Oct. 1, 2010, BO3908, Gerechtshof Amsterdam , 200.070.039/01 (¶ 1.8)) (Amended Petition to have two collective settlement agreements declared binding pursuant to BW art. 7:907).
121. George, *supra* note 102.
122. Press Release , NautaDutilh.com, Interim Ruling by Amsterdam Court of Appeal on International Jurisdiction in Collective Settlement Cases (Nov. 18, 2010) (on file with author).
123. Hensler, *supra* note 67, at 311-12.
124. LaCroix, *supra* note 154.
125. Teena-Ann V. Sankoorikal, Megha Jonnalagadda & Kristine Van Hamersveld, *Third Party Financiers In Complex Litigation: Issues to Consider With Third Party Litigation Funding*, PRAC. L. INS., 351, 353 (2010).
126. Maya Steinitz, *Whose Claim Is This Anyway?*, 95 MINN. L. REV. 1268, 1279 (2011).
127. *Id.* at 1271.
128. *Id.* at 1290.
129. *Id.* at 1279.
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
134. Marco de Morpurgo, *A Comparative Legal and Economic Approach to Third-Party Litigation Funding*, 19 CARDOZO J. INT'L. & COMP. L. 343, 261 (2011).
135. *Id.* at 362.
136. Greg Houston, Svetlana Starykh, Astrid Dahl & Shane Anderson, *Trends in Australian Securities Class Actions: 1 January 1993-31 December 2009*, NERA ECONOMIC CONSULTING (May 2010), http://www.nera.com/nera-files/PUB_Recent_Trends_Australia_0510.pdf.
137. Hensler, *supra* note 67, at 312.
138. Houston, Staryk, Dahl & Shane, *supra* note 128.
139. Todd J. Burke, *Canadian Class Actions and Federal Judgments*, 17 OCT. BUS. L. TODAY 49, 49 (2007); Class Proceedings Act, S.O. 1992, c. 6 (Can.).
140. *Id.*

141. *Id.*
142. Mark L. Berenblut, Bradley A. Heys & Svetlana Starykh, *Trends in Canadian Securities Class Actions: 1997-2008 Canada Strikes its Own Course—Class Action Filings on the Rise*, NERA ECONOMIC CONSULTING (Jan. 2009), http://nera.com/nera-files/PUB_Recent_Trends_Canada_0111.pdf.
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. See *infra* at 151.
148. *Id.*
149. *Id.*
150. *Silver v. IMAX Corp. et al.*, No. CV-06-3257-00, ¶ 16 (2009).
151. *Id.*
152. *Id.* at ¶ 15(m).
153. *Id.* at ¶¶ 22-25.
154. Kevin LaCroix, *In Landmark Rulings, Ontario Court Allows IMAX Securities Suit to Proceed, Certifies Class*, THE D&O DIARY (Dec. 15, 2009), <http://www.dandodiary.com/2009/12/articles/securities-litigation/in-landmark-rulings-ontario-court-allows-imax-securities-suit-to-proceed-certifies-class/>.
155. *Silver & Cohen.*, CV-06-3257-00 at ¶ 14 (Decision on Motion for Leave to Appeal to the Divisional Court). The certification of class actions in Canada requires the following: (1) a cause of action stated in the pleadings; (2) an identifiable class consisting of more than two people; (3) claims that raise issues common to the class members; (4) the class procedure is preferable to resolve the common issues; and (5) there is a representative plaintiff who will adequately represent the other class members. Burke, *supra* note 131.
156. See *In re Imax Securities Litig.*, 587 F. Supp. 2d 471 (S.D.N.Y. 2008).
157. Berenblut, Heys & Starykh, *supra* note 125.
158. *Id.*; 15 U.S.C. § 78u-4(b)(3)(B).
159. Dugal v. Manulife Financial Corporation, No. CV-09-383998-00CP, 2011 ONSC 1785, ¶ 3 (2011).
160. *Id.* at ¶¶ 4-7.
161. *Id.* at ¶ 4.
162. Kevin LaCroix, *A Closer Look at Litigation Funding and the “Loser Pays” Model*, THE D&O DIARY (Apr. 20, 2011), <http://www.dandodiary.com/tags/litigation-funding/>; Dugal, 2011 ONSC at ¶¶ 26-32.
163. Dugal, 2011 ONSC at ¶ 28.
164. *Id.* at ¶ 33(a). See also LaCroix, *supra* note 154.
165. *Id.* at ¶ 6.
166. *Id.* at ¶ 33.
167. LaCroix, *supra* note 154.
168. Stefano M. Grace, *Strengthening Investor Confidence in Europe: U.S.-Style Securities Class Actions and the Acquis Communautaire*, 15 J. TRANSNAT'L L. & POL'Y 281, 298 (2006) (citing Kapitalanleger-Musterverfahrensgesetz [Capit Investor's Model Proceeding Act], BRDrucks 15/5093 (July 8, 2005)).
169. *Id.* at 298.
170. *Id.* at 299.
171. *Id.*
172. *Id.*
173. Ina Brock & Stefan Re kitt, *The International Comparative Legal Guide to: Class & Group Actions 2011: A practical cross-border insight into class and group actions work*, GLOBAL LEGAL GROUP, 93 (2011), <http://www.iclg.co.uk/khadmin/Publications/pdf/3977.pdf>.
174. *Id.* at 97.
175. *Id.*

176. Marco de Morpurgo, *A Comparative Legal and Economic Approach to Third-Party Litigation Funding*, 19 CARDOZO J. INT'L & COMP. L. 343, 365-66 (2011).
177. Nils-Viktor Sorge, *A Historic Deutsche Telekom Case*, BLOOMBERG BUSINESSWEEK, Apr. 7, 2008, http://www.businessweek.com/globalbiz/content/apr2008/gb2008047_523822.htm.
178. *Id.*
179. *Id.*
180. *Id.*
181. Brock & Rekitt, *supra* note 173, at 93.
182. Dominique de Combes de Nayves & Benoît Javaux, *The International Comparative Legal Guide to: Class & Group Actions 2011: A practical cross-border insight into class and group actions work*, GLOBAL LEGAL GROUP, 83 (2011), <http://www.iclg.co.uk/khadmin/Publications/pdf/3976.pdf>.
183. CODE MONÉTAIRE ET FINANCIER [C.M.F.] arts. L. 452-1 & L. 452-2 (Fr.) *available at* <http://195.83.177.9/code/liste.phtml?lang=uk&c=25&r=899>.
184. Letter from Catherine Bergeal, La Directrice des Affaires Juridiques, France, to Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission (Feb. 17, 2011), *available at* <http://www.sec.gov/comments/4-617/4617-29.pdf>
185. CODE MONÉTAIRE ET FINANCIER [C.M.F.] art. L. 452-2 (Fr.), *available at* <http://195.83.177.9/code/liste.phtml?lang=uk&c=25&r=899>.
186. CODE MONÉTAIRE ET FINANCIER [C.M.F.] art. L. 452-1 (Fr.), *available at* <http://195.83.177.9/code/liste.phtml?lang=uk&c=25&r=899>.
187. Morpurgo, *supra* note 176, at 399 (citing Nayves & Javaux, *supra* note 182, at 89).
188. *Id.* at 399 (citing Nayves & Javaux, *supra* note 182, at 89).
189. Nayves & Javaux, *supra* note 182, at 88 (quoting CODE DE PROCÉDURE CIVILE [C.P.C.] art. 696 (Fr.) and citing CODE DE PROCÉDURE CIVILE [C.P.C.] art 700 (Fr.)).
190. *Id.* at 83 (referring to a class actions bill rejected by the French Senate in 2010).
191. *Id.*
192. Alison Brown & Ian Dodds Smith, *The International Comparative Legal Guide to: Class & Group Actions 2011: A practical cross-border insight into class and group actions work*, GLOBAL LEGAL GROUP, 60 (2011), <http://www.iclg.co.uk/khadmin/Publications/pdf/3973.pdf>.
193. *Id.* at 60-61.
194. *Id.* at 60.
195. *Id.* at 64.
196. *Id.* at 66.
197. *Id.* at 61.
198. Sandra Rubin, *Top U.S. Class-Action Lawyer Coming to Canada*, Globe and Mail (May 10, 2011), <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/top-us-class-action-lawyer-coming-to-canada/article2017397/>
199. *International Investors Join Forces in Support of Lawsuit Against Fortis Over Massive Misrepresentation Ahead of Bank's Collapse in 2008*, PR Newswire (Jan. 10, 2011), <http://www.prnewswire.com/news-releases/international-investors-join-forces-in-support-of-lawsuit-against-fortis-over-massive-misrepresentation-ahead-of-banks-collapse-in-2008-113195084.html>
200. Richard A. Nagareda, *Aggregate Litigation Across the Atlantic and the Future of American Exceptionalism*, 62 Vand. L. Rev. 1, 5 (2009).
201. Julie Triedman, *Ruling Defends Role for U.S. Firms in Canadian Class Actions*, (Oct. 30, 2009), http://www.law.com/jsp/tal/digestTAL.jsp?id=1202435075643&Ruling_Defends_Role_for_US_Firms_in_Canadian_Class_Actions&slreturn=1&hblogin=1
202. *Id.*
203. *Id.*



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