

Morrison and Class Certification: The Second Circuit Petrobras Decision

July 11, 2017 | Client Update

On July 7, 2017, the United States Court of Appeals for the Second Circuit vacated parts of the District Court's class certification order in *In re Petrobras Securities Litigation* ("*Petrobras*"), holding that the District Court failed to address whether the need to establish the "domestic" nature of each class member's purchase of Petrobras securities—as required under *Morrison v. National Australia Bank Ltd.*,—defeated the Rule 23 requirement that class issues "predominate" over issues unique to each class member.

The Second Circuit's decision opens a new chapter in *Morrison* jurisprudence, extending the impact of the presumption of extraterritoriality to Rule 23's predominance requirement. Purported class actions arising out of the purchase of securities in the over-the-counter market or otherwise off-exchange now must grapple at the class certification stage with whether proof of "domesticity," in the language of the Second Circuit, is not sufficiently common for putative class members to satisfy Rule 23's predominance requirement.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Michael S. Flynn

+1 212 450 4766
michael.flynn@davispolk.com

Antonio J. Perez-Marques

+1 212 450 4559
antonio.perez@davispolk.com

Edmund Polubinski

+1 212 450 4695
edmund.polubinski@davispolk.com

Lawrence Portnoy

+1 212 450 4874
lawrence.portnoy@davispolk.com

Neal Potischman

+1 650 752 2021
neal.potischman@davispolk.com

James P. Rouhandeh

+1 212 450 4835
rouhandeh@davispolk.com

Daniel J. Schwartz

+1 212 450 4581
daniel.schwartz@davispolk.com

Amelia T.R. Starr

+1 212 450 4516
amelia.starr@davispolk.com

James H.R. Windels

+1 212 450 4978
james.windels@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[Read the full update](#)