

VW Ruling – Morrison Not A Bar To Securities Claims Involving ADRs

January 5, 2017 | Client Update

On January 4, the U.S. Federal District Court for the Northern District of California issued a decision in a case brought by shareholders against Volkswagen arising out of the well-publicized diesel emissions controversy. The *VW* opinion is significant because it is the first to consider thoroughly how the Supreme Court's 2010 *Morrison v. National Australia Bank Ltd.* opinion should be applied in the context of private federal securities claims under the antifraud provisions of the Securities Exchange Act of 1934 with respect to the purchase of American Depositary Receipts ("ADRs") in the over-the-counter ("OTC") market in the United States, where the ADR program is "sponsored," or contractually authorized, by the issuer of the underlying securities, in this case VW.

The court determined that the *Morrison* presumption against extraterritoriality does not preclude private claims brought under the antifraud provisions of the Exchange Act (*i.e.*, Section 10(b)) arising out of the purchase in the U.S. OTC market of VW-sponsored ADRs. Given the prevalence of ADR programs, the *VW* opinion is an important milestone in the post-*Morrison* battle regarding how expansive the presumption of extraterritoriality will be in limiting private federal securities litigation against foreign issuers.

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