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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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MORRISON ET AL. *v.* NATIONAL AUSTRALIA BANK LTD. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 08–1191. Argued March 29, 2010—Decided June 24, 2010

In 1998, respondent National Australia Bank (National), a foreign bank whose "ordinary shares" are not traded on any exchange in this country, purchased respondent HomeSide Lending, a company headquartered in Florida that was in the business of servicing mortgages—seeing to collection of the monthly payments, etc. In 2001, National had to write down the value of HomeSide's assets, causing National's share prices to fall. Petitioners, Australians who purchased National's shares before the write-downs, sued respondents—National, HomeSide, and officers of both companies—in Federal District Court for violation of §§10(b) and 20(a) of the Securities and Exchange Act of 1934 and SEC Rule 10b–5. They claimed that HomeSide and its officers had manipulated financial models to make the company's mortgage-servicing rights appear more valuable than they really were; and that National and its chief executive officer were aware of this deception. Respondents moved to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6). The District Court granted the former motion, finding no jurisdiction because the domestic acts were, at most, a link in a securities fraud that concluded abroad. The Second Circuit affirmed.

Held:

1. The Second Circuit erred in considering §10(b)'s extraterritorial reach to raise a question of subject-matter jurisdiction, thus allowing dismissal under Rule 12(b)(1). What conduct §10(b) reaches is a merits question, while subject-matter jurisdiction "refers to a tribunal's power to hear a case." *Union Pacific R. Co.* v. *Brotherhood of Locomotive Engineers and Trainmen Gen. Comm. of Adjustment, Central*

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Region, 558 U. S. ___, ___ (internal quotation marks omitted). The District Court had jurisdiction under 15 U. S. C. §78aa to adjudicate the §10(b) question. However, it is unnecessary to remand in view of that error because the same analysis justifies dismissal under Rule 12(b)(6). Pp. 4–5.

2. Section 10(b) does not provide a cause of action to foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges. Pp. 5–24.

(a) It is a "longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' " *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 248 *(Aramco).* When a statute gives no clear indication of an extraterritorial application, it has none. Nonetheless, the Second Circuit believed the Exchange Act's silence about §10(b)'s extraterritorial application permitted the court to "discern" whether Congress would have wanted the statute to apply. This disregard of the presumption against extraterritoriality has occurred over many decades in many courts of appeals and has produced a collection of tests for divining congressional intent that are complex in formulation and unpredictable in application. The results demonstrate the wisdom of the presumption against extraterritoriality. Rather than guess anew in each case, this Court applies the presumption in all cases, preserving a stable background against which Congress can legislate with predictable effects. Pp. 5–12.

(b) Because Rule 10b–5 was promulgated under §10(b), it "does not extend beyond conduct encompassed by §10(b)'s prohibition." *United States* v. *O'Hagan*, 521 U. S. 642, 651. Thus, if §10(b) is not extraterritorial, neither is Rule 10b–5. On its face, §10(b) contains nothing to suggest that it applies abroad. Contrary to the argument of petitioners and the Solicitor General, a general reference to foreign commerce in the definition of "interstate commerce," see 15 U. S. C. §78c(a)(17), does not defeat the presumption against extraterritoriality, *Aramco, supra,* at 251. Nor does a fleeting reference, in §78b(2)'s description of the Exchange Act's purposes, to the dissemination and quotation abroad of prices of domestically traded securities. Nor does Exchange Act §30(b), which says that the Act does not apply "to any person insofar as he transacts a business in securities without the jurisdiction of the United States," unless he does so in violation of regulations promulgated by the SEC "to prevent . . . evasion of [the Act]." This would be an odd way of indicating that the Act always has extraterritorial application; the Commission's enabling regulations preventing "evasion" seem directed at actions abroad that might conceal a domestic violation. The argument of petitioners and the Solicitor

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General also fails to account for §30(a), which explicitly provides for a specific extraterritorial application. That provision would be quite superfluous if the rest of the Exchange Act already applied to transactions on foreign exchanges—and its limitation of that application to securities of domestic issuers would be inoperative. There being no affirmative indication in the Exchange Act that §10(b) applies extraterritorially, it does not. Pp. 12–16.

(c) The domestic activity in this case—Florida is where HomeSide and its executives engaged in the alleged deceptive conduct and where some misleading public statements were made—does not mean petitioners only seek domestic application of the Act. It is a rare case of prohibited extraterritorial application that lacks *all* contact with United States territory. In *Aramco*, for example, where the plaintiff had been hired in Houston and was an American citizen, see 499 U. S., at 247, this Court concluded that the "focus" of congressional concern in Title VII of the Civil Rights Act of 1964 was neither that territorial event nor that relationship, but domestic employment. Applying that analysis here: The Exchange Act's focus is not on the place where the deception originated, but on purchases and sales of securities in the United States. Section 10(b) applies only to transactions in securities listed on domestic exchanges and domestic transactions in other securities. The primacy of the domestic exchange is suggested by the Exchange Act's prologue, see 48 Stat. 881, and by the fact that the Act's registration requirements apply only to securities listed on national securities exchanges, §78*l*(a). This focus is also strongly confirmed by §30(a) and (b). Moreover, the Court rejects the notion that the Exchange Act reaches conduct in this country affecting exchanges or transactions abroad for the same reason that *Aramco* rejected overseas application of Title VII: The probability of incompatibility with other countries' laws is so obvious that if Congress intended such foreign application "it would have addressed the subject of conflicts with foreign laws and procedures." 499 U. S., at 256. Neither the Government nor petitioners provide any textual support for their proposed alternative test, which would find a violation where the fraud involves significant and material conduct in the United States. Pp. 17–24.

547 F. 3d 167, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. BREYER, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed an opinion concurring in the judgment, in which GINSBURG, J., joined. SOTOMAYOR, J., took no part in the consideration or decision of the case.