

MEMORANDUM

TO: File No. 4-617

FROM: John W. Avery
Assistant General Counsel
Office of the General Counsel

DATE: May 3, 2011

RE: Attendance at American Law Institute Conference on the
Extraterritorial Application of Federal Securities Law

On the above date, John Avery, Eric Pan, and other staff involved in the Study on Extraterritorial Private Rights of Action attended a Conference on the Extraterritorial Application of Federal Securities Law, sponsored by the American Law Institute, as described in the agenda attached hereto. A videotape of the conference is posted at: <http://www.ali.org/index.cfm?fuseaction=meetings.videos&video=1>.

The American Law Institute
Conference on the Extraterritorial Application of Federal Securities Law
The Washington Club
15 Dupont Circle, N.W.
Washington, D.C 20036
3 May 2011

Moderator: Professor Howell E. Jackson

10:00 AM Coffee and Registration.

10:30 AM Welcome by Lance Liebman, Director of ALI

Topics for Morning Session

What was the holding of *Morrison v. National Australian Bank Ltd.*?

How are the courts applying (and how should they apply) *Morrison*'s transactional test to Rule 10b-5 cases involving, among others:

- Foreign Issuers With Substantial Operations in the United States
- Foreign Private Issuers with Rule 12g-3-2(b) Exemptions
- ADR Programs, Sponsored or Un-sponsored
- Rule 144A Transactions
- Swaps and other Derivative Transactions
- U.S. Issuers Raising Capital Overseas

For purposes of *Morrison*'s transactional test, what is the relevance of the physical location of a trading market or the location where a transaction is cleared and settled?

How well equipped is the federal judiciary to apply *Morrison*'s transactional test and should judicial resources and competencies factor into any change in legal standards in this area?

What are the implications of the *Morrison* decision for the competitiveness of U.S. financial markets?

To what extent does *Morrison*'s transactional test compromise the interests of investors and to what extent is there empirical evidence of this effect?

How do considerations of comity factor into the *Morrison* transactional test or any amendment thereto?

With respect to private securities litigation under Rule 10b-5, what alternative approaches would be superior to the *Morrison* transactional test?

1:00 PM Lunch

Topics for First Afternoon Session

What are the implications, if any, of the *Morrison* decision for the extra-territorial application of federal securities laws, including:

- Regulation S under the Securities Exchange Act
- Registration Requirements for Foreign Broker-Dealers Under the 1934 Act
- Application of the 1934 Act to Foreign Trading Screens
- U.S. Oversight of Foreign Attorneys and Accountants
- SEC Enforcement Authority Under Section 929P of the Dodd-Frank Act

To what extent could SEC rulemaking or other agency actions clarify the extraterritorial application of federal securities laws after *Morrison*?

3:00 Coffee Break

Topics for Second Afternoon Session

Coordination and Cooperation with Foreign Regulatory Officials After *Morrison* and the Dodd Frank Act, including:

- Oversight of OTC Derivatives
- Credit Rating Agencies
- Hedge Fund Registration
- The Volker Rule

4:30 PM Concluding Discussion: Next Steps