

Breaking News: the End of Morrison?

The very next day after the US Supreme Court released its decision in *Morrison*, the US Congress passed a bill which pretty much overrules the Supreme Court decision.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (at 1330) provides:

b) EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.—(1) UNDER THE SECURITIES ACT OF 1933.— Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection: “(c) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 17(a) involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

If this provision was to enter into force, it would overrule to a large extent *Morrison*. The reason why is that the issue in *Morrison* never was whether Congress had the power to regulate foreign activities, or whether US Courts had jurisdiction over disputes which were not strongly connected to the United States. The issue was merely to interpret what the US Congress meant when it passed the *Securities Act* 1933 and did not provide clearly for the extraterritorial reach of the *Act*. If this *Act* was to be passed, Congress would eventually say what it meant, and such statement would obviously control.

Qualifications

I understand that the American legislative process is not yet complete, and that it is still necessary that President Obama signs the new Act, which has not yet been done.

Also, it is unclear that the new act actually provides for a private cause of action. It could be therefore, that *Morrison* is only partially overruled: see the first comment of the Act by Julian Ku over at *Opinionjuris*.