

Corporate & Financial Weekly Digest

July 15, 2011 by [Steven Shiffman](#)

Rule 10b-5 Applies to Transfers of Foreign Securities That Close in the U.S.

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The U.S. Court of Appeals for the Eleventh Circuit recently vacated a district court's dismissal of a complaint for lack of subject matter jurisdiction, finding that the district court erred in holding that Section 10(b) and Rule 10b-5 did not apply to a sale of shares in a foreign corporation that closed in the United States.

Plaintiff Quail Cruises Ship Management Ltd. brought a claim for securities fraud against Agencia de Viagens CVC Tur Limitada (CVC), alleging that CVC orchestrated a series of misrepresentations in order to induce Quail to purchase the M/V Pacific, a boat once featured in The Love Boat television series. The acquisition was effected through the transfer of shares of Templeton International Inc., whose principal asset was the M/V Pacific. Because the Templeton stock was not listed on a United States exchange, pursuant to the Supreme Court's decision in *Morrison v. Nat'l Australia Bank Ltd.*, Section 10(b) would only reach the transaction if the sale occurred here.

Applying *Morrison*, the Eleventh Circuit held that the sale occurred in the United States because the complaint alleged that the transaction closed here. In particular, the complaint alleged that "the acquisition of the Templeton stock closed in Miami, Florida, on June 10, 2008, by means of the parties submitting the stock transfer documents by express courier into this District." In so holding, the court noted that the purchase and sale agreements specifically contemplated that the transfer of shares would not be complete until this closing occurred. (*Quail Cruises Ship Management Ltd. V. Agencia de Viagens CVC Tur Limitada*, Nos. 10-14129, 10-14253, 2011 WL 2654004 (11th Cir. July 8, 2011))

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