Problems With the “Morrison Test”

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Conducts and effects

transactional: “§ 10 reaches the use of a manipulative or deceptive device or contrivance only in connection with the purchase or sale of any securities listed on an American exchange, and the purchase or sale of any securities in the United States.”

narrow reading (contract executed in the U.S.):
absurd

broad reading:
similar uncertainties

Dodd-Frank Act
revised effect test: the illegal conduct created direct, substantial and reasonably foreseeable consequences in the United States

- borrowed from antitrust
- reduce the uncertainties of the conduct test (SEC and DOJ can still take actions)
- does not expand jurisdiction too much
  - class certification (superiority requirement)
  - reliance (fraud-on-the-global market)
  - forum non conveniens
- similar to Regulation 44/2001 of the EU