No. _____

IN THE
# Supreme Court of the United States

BINANCE and CHANGPENG ZHAO

*Petitioners*,

— v.—

JD ANDERSON, CORY HARDIN, ERIC LEE, BRETT MESSIEH, DAVID MUHAMMAD, RANJITH THIAGARAJAN, CHASE WILLIAMS, and TOKEN FUND I LLC individually and on behalf of all others similarly situated,

*Respondents*.

**On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit**

## PETITION FOR A WRIT OF CERTIORARI


**/s/ Herbert S. Washer**
CAHILL GORDON & REINDEL LLP
HERBERT S. WASHER
*Counsel of Record*
SAMSON A. ENZER
LANDIS C. BEST
MILES C. WILEY
32 OLD SLIP
NEW YORK, NY 10005
(212) 701-3000
hwasher@cahill.com

GIBSON DUNN & CRUTCHER LLP
MATT GREGORY
1700 M Street, NW
Washington, DC 20036

*Counsel for Petitioner Binance Holdings Limited*

QUINN EMANUEL URQUHART & SULLIVAN LLP
CHRISTOPHER G. MICHEL
EMILY C. KAPUR
CHRISTOPHER D. KERCHER
AVI PERRY
1300 I Street, NW, Suite 900
Washington, DC 20005

*Counsel for Petitioner Changpeng Zhao*

## QUESTION PRESENTED

In *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 267 (2010), this Court rejected the Second Circuit's multifactor "conduct and effects" test for determining the international reach of U.S. securities laws and instead held that those laws apply only to "transactions in securities listed on domestic exchanges, and domestic transactions in other securities." Crucial to the Court's holding were: (1) the presumption against extraterritoriality; and (2) the need for courts to apply bright-line rules in determining whether U.S. law applies to international transactions.

In the decision below, the Second Circuit analyzed whether alleged transactions on a foreign website were domestic using a multifactor test including (but not limited to) whether: (1) the lawsuit implicates the "comity concerns that animated *Morrison*"; (2) the investors interacted with the foreign website from internet connections in the U.S.; and (3) third-party computer servers hosting the foreign website were alleged to be located in the U.S. In applying this test, the Second Circuit reasoned that irrevocable liability can attach to a transaction at multiple times and places, including in multiple countries.

This case presents the question whether the Second Circuit's multifactor test is consistent with *Morrison* or is instead an improper revival of the "conduct and effects" test that this Court rejected as inconsistent with the presumption against extraterritoriality.

## PARTIES TO THE PROCEEDING

Petitioners (defendants-appellees below) are Binance Holdings Limited ("BHL") and Changpeng Zhao ("Defendants").[1]

Respondents (plaintiffs-appellants below) are Chase Williams, JD Anderson, Cory Hardin, Eric Lee, Brett Messieh, David Muhammad, Ranjith Thiagarajan, and Token Fund I LLC, individually and on behalf of all others similarly situated ("Plaintiffs").

---

[1] Plaintiffs' complaint purported to assert claims against "Binance," an entity which is alleged to be a defendant but does not exist. Throughout this litigation, the parties have understood Plaintiffs' references to "Binance" to mean BHL.

Yi He and Roger Wang were named as defendants in the Second Amended Class Action Complaint, but Plaintiffs voluntarily dismissed them from the action on April 6, 2021. *See* Stipulation and Order Regarding Voluntary Dismissal of Defendants He and Wang, No. 20 Civ. 2803 (S.D.N.Y. Apr. 6, 2021), ECF No. 63.

## CORPORATE DISCLOSURE STATEMENT

Petitioner BHL discloses that its parent corporation is Binance (Services) Holdings Limited, and that no publicly held corporation owns 10% or more of its stock.[2]

[2] BHL inadvertently provided an outdated Corporate Disclosure Statement in Petitioners' Application for Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, No. 23A1155 (June 21, 2024), which is corrected herewith.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

- *Anderson* v. *Binance*, No. 20 Civ. 2803 (S.D.N.Y. Mar. 31, 2022).
- *Williams* v. *Binance*, No. 22-972 (2d Cir. Mar. 8, 2024).

Pursuant to this Court's Rule 14.1(b)(iii), no other proceedings in state or federal trial or appellate courts directly relate to this case.

## TABLE OF CONTENTS

**Page**

**APPENDIX TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

**Cases** **Page(s)**

**Statutes**



**Other Authorities**

## PETITION FOR A WRIT OF CERTIORARI

Petitioners BHL and Zhao respectfully apply for a writ of certiorari to review the decision of the Second Circuit in this case.

— ♦ —

## OPINIONS BELOW

The Second Circuit's opinion (Pet. App'x 1a-30a) is reported at 96 F.4th 129. The Second Circuit's order denying rehearing *en banc* (Pet. App'x 44a-45a) is not reported. The district court's opinion (Pet. App'x 31a-43a) is also unreported but is available at 2022 WL 976824.

— ♦ —

## JURISDICTION

On March 8, 2024, the Second Circuit reversed the district court's dismissal order and remanded the case for further proceedings. Pet. App'x 30a. Defendants timely filed a petition for rehearing *en banc* on March 22, 2024, which was denied on April 26, 2024. Pet. App'x 45a. On June 25, 2024, Justice Sotomayor extended the time for filing a petition for a writ of certiorari to and including September 23, 2024. *See* No. 23A1155 (June 25, 2024). This Court has jurisdiction under 28 U.S.C. § 1254(1).

— ♦ —

## STATUTORY PROVISIONS INVOLVED

This case implicates Sections 5, 12(a)(1), and 15 of the Securities Act of 1933 (15 U.S.C. §§ 77e, 77l(a)(1), 77o) and Sections 5, 15(a)(1), 20 and 29(b) of the Exchange Act of 1934 (15 U.S.C. §§ 78e, 78o(a)(1), 78t,

and 78cc(b)). These provisions are reproduced at Pet. App'x 46a-58a.

— ♦ —

## INTRODUCTION

"United States law governs domestically but does not rule the world." *Abitron Austria GmbH* v. *Hetronic Int'l, Inc.*, 600 U.S. 412, 428 (2023) (quoting *Microsoft Corp.* v. *AT & T Corp.*, 550 U.S. 437, 454 (2007)). In the context of private securities litigation, this Court has admonished courts—and the Second Circuit in particular—to apply bright-line rules and be wary of allowing U.S. courts to become "the Shangri-La of class action litigation for lawyers representing those allegedly cheated in foreign securities markets." *Morrison* v. *Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 270 (2010).

Specifically, this Court in *Morrison* overruled Second Circuit precedent that erroneously applied the U.S. securities laws if some conduct regarding a transaction occurred in the U.S. or had effects within the U.S. The Court criticized the Second Circuit's judge-made conduct and effects test as "unpredictable," "inconsistent," and unmoored from the statutes' text. *Id.* at 260–61. Recognizing the need for clear guidance to U.S. and global market participants regarding which laws govern their securities transactions, the Court held that U.S. securities laws apply only to securities listed on domestic U.S. exchanges, or to domestic transactions in other securities. *Id.* at 267. "Rather than guess anew in each case" whether the securities laws should apply to a new set of facts, the presumption against extraterritoriality "appl[ies] in all cases, preserving a

stable background against which Congress can legislate with predictable effects." *Id.* at 261.

In direct conflict with *Morrison*, however, the Second Circuit rejected bright lines and, applying a multifactor test, decided that Plaintiffs may proceed with their putative class action against the foreign company that operates Binance.com, the largest digital-asset exchange in the world, and individual foreign corporate officials. The ruling is based primarily on the court's policy-based conclusion that this lawsuit does not "squarely implicate the comity concerns that animated *Morrison*." Pet. App'x 17a. As a practical matter, the Second Circuit's decision resurrects the discarded conduct and effects test, extending the U.S. securities laws to Plaintiffs' foreign transactions for policy reasons. Under the bright-line rule required by *Morrison,* the Second Circuit should have focused exclusively on the location that buy and sell orders matched—and irrevocable liability attached—for the transactions on the Binance.com platform.

Throughout its opinion, the Second Circuit expressed concern over Plaintiffs' allegations that BHL disclaimed *any* physical location—within or without the U.S.—which in the court's view prevented BHL from being subject to *any* country's securities regulation regime. *See, e.g.*, Pet. App'x 17a ("Binance notoriously denies the applicability of any other country's securities regulation regime, and no other sovereign appears to believe that Binance's exchange is within its jurisdiction."). But this is exactly the type of judicial policy-making, unmoored from the text of the securities laws, that *Morrison* prohibits. Neither *Morrison* nor anything in the relevant statutes

suggests that Congress authorized courts to apply U.S. law wherever they perceive an international regulatory void that needs filling, judicially designating the United States as the global regulator of last resort.

This threshold error in the Second Circuit's approach led to the application of a gestalt multifactor test that led the court astray in three key ways.

*First*, the Second Circuit focused on the U.S. residences from which Plaintiffs accessed Binance.com through the internet, agreed to the website's Terms of Use, and made purchase orders and payments. Rather than focusing on the location of the transaction, as this Court's cases require, the Second Circuit trained its analysis on pre-transaction conduct in the United States. *Morrison* demands a predictable test focused on where a transaction becomes irrevocable—which, for an exchange, is when and where a buyer is matched with a seller.

*Second*, when the Second Circuit *did* look for allegations regarding the location where the exchange matched buy and sell orders, it did not find any in Plaintiffs' complaint. That should have been the end of the matter. Instead, construing Plaintiffs' pleadings broadly based on the court's policy concerns, the court drew an "inference" that matching plausibly occurred in the United States. This inference rested solely on Plaintiffs' conclusory allegations "upon information and belief" that a third party that hosts the Binance.com website and stores "a significant portion" of BHL's data does so on servers located in California. That leap of logic is too thin a reed on which to sustain a putative class action against a foreign company and its foreign corporate officials.

*Third*, the court adopted the counterintuitive position that irrevocable liability—the moment at which a buyer and seller are committed to a transaction—can attach at multiple times and places for a single transaction. The result is an unpredictable test that allows the application of U.S. law to turn on an amorphous balancing approach that fails to provide the clear lines demanded by this Court's cases.

This petition provides the Court with an opportunity to reclaim the boundaries demanded by *Morrison*, bring clarity to a persistent area of confusion in the lower courts, and address a question of global significance for financial markets: whether (and if so, when) U.S. securities laws extend to foreign trading platforms such as Binance.com.

For these reasons and those that follow, this Court should grant certiorari.

— ♦ —

## STATEMENT OF THE CASE

### I. Legal Background

In *Morrison*, the Court addressed whether the application of the federal securities laws "could be premised upon either some effect on American securities markets or investors [] or significant conduct in the United States." 561 U.S. at 257. The Court invoked the presumption against extraterritoriality to overrule the Second Circuit's conduct and effects test in favor of a clear rule: U.S. securities laws can apply only to "[i] securities listed on domestic exchanges, and [ii] domestic transactions in other securities." *Id.* at 267. Thus, for securities that do not trade on U.S. securities exchanges, the "exclusive focus" for determining whether the

securities laws apply is whether the challenged transactions involved "domestic purchases and sales." *Id*. at 268. The Court emphasized that, in construing the securities laws, it is the function of courts "to give the statute the effect its language suggests, however modest that may be; not to extend it to admirable purposes it might be used to achieve." *Id.* at 270.

Crucial to the Court's holding were principles of separation of powers, international comity, and the need to avoid "[t]he probability of incompatibility with the applicable laws of other countries." *Morrison*, 561 U.S. at 269; *see also EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (the presumption against extraterritoriality "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord"). The Court explained that the presumption against extraterritoriality bars the extension of U.S. law to foreign conduct "regardless of whether there is a risk of conflict between the American statute and a foreign law." *Morrison*, 561 U.S. at 255. The Court further explained that not just any allegation of domesticity will suffice to render a transaction "domestic"—the "presumption against extraterritoriality would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case." *Morrison*, 561 U.S. at 266.

Two Terms ago, in *Abitron*, this Court again rejected the notion that a statute applies domestically simply because "effects are likely to occur in the United States." 600 U.S. at 426. To hold otherwise would render the presumption against extraterritoriality a "muzzled Chihuahua." *Id.*

In the wake of *Morrison*, the federal courts of appeals have uniformly held that to allege a domestic securities transaction, a plaintiff must "allege facts indicating that irrevocable liability was incurred or that title was transferred within the United States." *Absolute Activist Value Master Fund Ltd.* v. *Ficeto*, 677 F.3d 60, 62 (2d Cir. 2012); *see also SEC* v. *Morrone*, 997 F.3d 52, 59–60 (1st Cir. 2021) (adopting the irrevocable liability test); *United States* v. *Georgiou*, 777 F.3d 125, 135–37 (3d Cir. 2015) (same); *Stoyas* v. *Toshiba*, 896 F.3d 933, 949 (9th Cir. 2018) (same).

Irrevocable liability attaches when the parties "'becom[e] bound to effectuate the transaction' or 'enter[] into a binding contract to purchase or sell securities.'" *Miami Grp.* v. *Vivendi S.A.* (*In re Vivendi, S.A. Sec. Litig.*), 838 F.3d 223, 265 (2d Cir. 2016) (citing *Absolute Activist*, 677 F.3d at 67); *see also Stoyas*, 896 F.3d at 949 (analyzing "where purchasers incurred the liability to take and pay for securities, and where sellers incurred the liability to deliver securities"); *Quail Cruises Ship Mgmt. Ltd.* v. *Agencia de Viagens CVC Tur Limitada*, 645 F.3d 1307, 1310 (11th Cir. 2011) (analyzing whether "the closing *actually* occurred in the United States" and where "the transaction [wa]s consummated" (citing *Closing*, *Black's Law Dictionary* (9th ed. 2009)). In other words, irrevocable liability attaches "when the parties to the transaction are committed to one another," or when, "in the classic contractual sense, there was a meeting of the minds of the parties." *Absolute Activist*, 677 F.3d at 68 (quoting *Radiation Dynamics, Inc.* v. *Goldmuntz*, 464 F.2d 876, 891 (2d Cir. 1972)); *Georgiou*, 777 F.3d at 136.

## II. Factual Background

Plaintiffs' claims arise from alleged purchases of digital assets on Binance.com, a foreign online digital-asset exchange platform where users can trade digital assets. The exchange works by maintaining an order book that matches buy orders with sell orders for each trading pair, and then executing trades when the prices align. *See Understanding Order Book and Market Depth*, Binance.com (July 25, 2021), https://tinyurl.com/3sj77rz7. Users of Binance.com can place either "market" or "limit" orders. When a user places a market order, it is immediately matched with the best available price from existing limit orders, whereas limit orders are added to the order book until they can be fulfilled at the specified price or better. *See What are Market Order and Limit Order, and How to Place Them*, Binance.com (July 8, 2021), https://tinyurl.com/5y8jskuf (last updated June 28, 2024).

Defendant BHL is a Cayman Islands limited liability company that is part of a wider group of entities that operates the Binance.com exchange, which is licensed in many foreign jurisdictions. *Licenses, Registrations, and Other Legal Matters*, Binance.com https://link.edgepilot.com/s/2d1aab7e/WVfkAUfN6EqAHf9H3D_t1w?u=https://tinyurl.com/2s9hfprx (last accessed Sept. 20, 2024). Similar to other large multinational companies, the Binance family of companies operates worldwide and exists in many countries through different legal entities. Defendant Zhao is a foreign national who founded BHL and served as BHL's CEO during the relevant period.

Plaintiffs allege that they bought digital cryptocurrency tokens on Binance.com while residing in the United States. They purport to represent a

putative class of internet users who also bought tokens on Binance.com. As relevant here, Plaintiffs claim that BHL violated Section 12(a)(1) of the Securities Act by selling the tokens to them as unregistered "securities," and various state Blue Sky securities laws via the same conduct.[3] Plaintiffs also assert that BHL violated Section 29(b) of the Exchange Act by entering into contracts with Plaintiffs to sell digital tokens while operating as an unregistered exchange and broker-dealer. They similarly claim that BHL violated various state Blue Sky securities laws via the same conduct. As to Zhao, Plaintiffs claim that he is liable as a control person under Section 15 of the Securities Act, Section 20 of the Exchange Act, and various state laws.

Plaintiffs allege that BHL contracts with Amazon Web Services ("AWS"), one of the world's leading cloud-computing companies, to host the Binance.com website; that certain of AWS's servers and data centers are in California; and that "[u]pon information and belief," AWS servers in California host the Binance.com website and BHL data. The Complaint does not allege, however, that those California servers or data centers are used to match buy and sell orders for transactions on Binance.com, nor do Plaintiffs allege that such matching occurs on any servers, data centers, or other infrastructure in the U.S.

---

[3] For purposes of its motion to dismiss Plaintiffs' Second Amended Class Action Complaint, No. 20 Civ. 2803 (S.D.N.Y. Feb. 16, 2021), ECF No. 59, BHL did not challenge Plaintiffs' allegations that the crypto trades at issue were "securities" transactions. For purposes of resolving the *Morrison* issues in this case, the Court need not weigh in on that debate.

### III. The Decisions Below

The district court granted Defendants' motion to dismiss.[4] Applying *Morrison*, the district court held that Plaintiffs' claims are an impermissible attempt to extend the securities laws beyond U.S. borders. Specifically, the district court held that Plaintiffs failed to allege either that BHL ran a "domestic exchange," or facts sufficient to plausibly allege that Plaintiffs' purchases of digital assets on Binance.com were "domestic transactions." Pet. App'x 39a–40a.

The Second Circuit reversed in relevant part. According to the Second Circuit, Plaintiffs plausibly alleged "domestic transactions" under *Morrison* and facts sufficient to satisfy the irrevocable liability test in two ways. For both, the court indicated that its holding turned in large part on its belief that this case does not implicate the comity concerns that undergird *Morrison* and the presumption against extraterritoriality.

First, the court held that Plaintiffs' allegation that third-party servers hosted Binance.com plausibly alleged that "the transactions at issue were matched, and therefore became irrevocable, on [computer] servers located in the United States." Pet. App'x 17a.

That holding turned on an analysis of policy rationales and the Second Circuit's interpretation of how the "concerns that animated *Morrison*" applied to Plaintiffs' allegations. Pet. App'x 17a. For example, the court noted Plaintiffs' (incorrect) allegations that "Binance has not registered in any country, purports

---

[4] The district court exercised jurisdiction pursuant to 28 U.S.C. § 1331.

to have no physical or official location whatsoever, and the authorities in Malta, where its nominal headquarters are located, disclaim responsibility for regulating Binance." Pet. App'x 16a. The outcome "might be different," the court said, if a website is "foreign-registered" in another jurisdiction, or if the website is subject to another "country's securities regulation regime." Pet. App'x 16a–17a. In that case, otherwise identical transactions might *not* be domestic because "that situation would squarely implicate [] comity concerns." Pet. App'x 17a.

Second, the court held that "[b]ecause Binance disclaims having any location," Plaintiffs plausibly alleged that irrevocable liability attached not only when transactions were matched, but also "when they entered into the Terms of Use with Binance, placed their purchase orders, and sent payments from" their U.S. states of residence. Pet. App'x 17a. Specifically, the Second Circuit concluded that BHL's reservation of the right in the website's Terms of Use to reject order cancelations supported an inference "that Plaintiffs could not revoke" a transaction "once they placed a trade on Binance" from their home states in the U.S. Pet. App'x 19a. The court again relied on its belief that "the sovereignty and comity concerns that at least partially motivate the careful policing of the line between foreign and domestic transactions" in cases like *Morrison* "are less present in a case like this." Pet. App'x 20a.

— ♦ —

## REASONS FOR GRANTING THE PETITION

In the decade and a half since *Morrison*, global financial markets have increasingly moved online and become borderless even as lower courts have struggled

to identify clear lines for determining when a transaction is "domestic" and therefore subject to U.S. securities laws. The decision below will deepen existing confusion on a question of exceptional importance: how (and whether) U.S. securities laws apply to online transactions involving foreign defendants and U.S. internet users. This petition provides the Court with an opportunity to address this question and ensure that *Morrison* is applied faithfully in a manner that prevents U.S. securities laws from improperly traveling anywhere a U.S. plaintiff can go on the worldwide web.

The Court should grant the petition for the following reasons. *First*, the Second Circuit's ruling conflicts with *Morrison* and turns the presumption against extraterritoriality on its head. The Second Circuit's policy-focused reasoning is, in essence, a return to its prior conduct and effects test, which this Court emphatically rejected in *Morrison*. And this case is just the latest example of lower courts struggling to apply *Morrison* in a consistent and clear manner in an area of the law that cries out for bright lines. The Second Circuit's case-by-case, policy-focused analysis will deprive foreign companies and individuals of the certainty that *Morrison* demands—the application of U.S. law to overseas marketplaces should not hinge on whether a court thinks a particular case sufficiently implicates "comity concerns."

*Second*, the proper application of *Morrison* is a matter of critical importance to all financial markets, including traditional financial markets and the rapidly growing decentralized digital-asset markets. The decision below is particularly problematic in light of the prominence of the Second Circuit in private

securities litigation and class-action plaintiffs' ability to choose their forum in suing foreign defendants.

## I. The Second Circuit's Decision Is Inconsistent With *Morrison* And Its Progeny

The Second Circuit replaced the bright-line test required by *Morrison* with a hodge-podge of factors in its analysis including the following: (1) whether and to what extent comity concerns are implicated by the particular suit; (2) the residency of investors and pre-transaction conduct; and (3) the location of servers used in hosting the website on which the transaction is conducted. This gestalt analysis leads to unpredictable results and is a return to the discarded conduct and effects test. Indeed, in a sign that its analysis had gone astray, the Second Circuit adopted the puzzling position that under its test irrevocable liability for a single online transaction might occur at multiple times and in multiple places.

### A. The Second Circuit Erred In Focusing On The Purported Absence Of Foreign Regulation Or Comity Concerns

In the decision below, the Second Circuit focused throughout on Plaintiffs' allegations that the Binance.com platform has no physical location in any geographic jurisdiction, and no oversight from any country's regulatory authority. Pet. App'x 11a ("[T]his task is particularly difficult when a transaction takes place over an exchange that claims to have no physical location in any geographic jurisdiction and not be subject to the oversight of any country's regulatory authority."); *id.* at 16a ("While it may not always be appropriate to determine where matching occurred solely based on the location of the servers the exchange

runs on, it is appropriate to do so here given that Binance has not registered in any country, purports to have no physical or official location whatsoever, and the authorities in Malta, where its nominal headquarters are located, disclaim responsibility for regulating Binance."); *id.* at 18a ("[B]ecause the Binance exchange disclaims having any physical location, we have particular reason to consider other factors that our cases have found relevant to the irrevocable liability analysis."); *id.* at 18a ("[W]e have reason here to consider where Plaintiffs' trades originated given that Binance expressly disclaims having any physical location, foreign or otherwise."). Based upon what it described as such "notorious[]" factors (Pet. App'x 17a), the court downplayed the comity concerns at the root of *Morrison*. The Second Circuit's policy-based reasoning is inconsistent with *Morrison* and the domestic securities laws as written.

Courts are supposed to apply a neutral test that focuses on the location of *transactions* (*Morrison*, 600 U.S. at 267), and whether they "occurred in United States territory" (*Abitron,* 600 U.S. at 418). If the transactions occurred in the U.S., then they are domestic. If not, it is for other countries to decide how—and whether—to regulate the transactions, not for federal courts to ponder whether "any other country's securities regulation regime" might sufficiently protect investors. Pet. App'x 17a; *see Abitron*, 600 U.S. at 425 (U.S. law does not apply "when conduct regarding the violations" occurred abroad).

Moreover, and contrary to the Second Circuit's reasoning, its holding in this case *does* implicate the comity concerns that underlie *Morrison* and other

decisions from this Court. Initially, a foreign jurisdiction's decision of whether to regulate transactions itself triggers comity considerations. Moreover, foreign regulators are active in this burgeoning area. *See infra* 28–29. If foreign platforms (or even websites generally) must register with U.S. regulators simply because U.S.-based plaintiffs might access the platform electronically from their homes (*see infra* 23–24), the resulting conflict with international laws would be significant. Thus, "Congress, not the Judiciary, must decide whether to expand the scope of liability" to include foreign conduct and defendants. *Jesner* v. *Arab Bank, PLC*, 584 U.S. 241, 268, (2018). That is because the Judiciary is particularly ill-equipped to "navigat[e] foreign policy disputes belong[ing] to the political branches." *Abitron*, 600 U.S. at 427. *See also infra* 28–29 (noting international regulatory efforts concerning digital assets).

This case illustrates the point. The Second Circuit thought that BHL exists nowhere; in truth, BHL is organized in the Cayman Islands. The Second Circuit thought that Binance.com eschews foreign regulation; in truth, the platform is registered in more than a dozen jurisdictions around the globe. *Licenses, Registrations, and Other Legal Matters*, Binance.com https://link.edgepilot.com/s/f535d4d1/9Kqu2wh51k2HVR0jFVCbyQ?u=https://www.binance.com/en/legal/licenses (last accessed Sept. 20, 2024).

Federal courts have little expertise in this realm, which is why they apply a presumption against extraterritoriality. Yet under the Second Circuit's rule, *Morrison*'s application turns on a court's case-by-case determination of whether a foreign regulator has

asserted jurisdiction over the defendant, whether the lawsuit creates comity concerns, and whether application of U.S. securities laws is consistent with congressional intent. That sort of judicial policymaking is exactly what *Morrison* was meant to prevent.

### B. The Second Circuit Improperly Considered The U.S. Residency Of Plaintiffs And Other Ancillary Transaction Factors

The Second Circuit looked to Plaintiffs' U.S. places of residence—where they allegedly entered orders, made payments, and entered into Binance's Terms of Use after accessing Binance.com on the internet—to determine that their transactions were plausibly domestic. Pet. App'x 19a. But that reasoning allows plaintiffs to unilaterally subject foreign exchanges to U.S. securities laws simply by accessing the internet from the United States.

Under *Morrison*, other courts of appeals have recognized that the location of a transaction does not hinge on where trader-plaintiffs use their computers and other electronic equipment to place or sell orders. *See Stoyas*, 896 F.3d at 949 (9th Cir. 2018) (allegations that securities were purchased and sold from the United States were insufficient); *see also Georgiou*, 777 F.3d at 136 n.14 (3d Cir. 2015) ("heavy marketing in the United States, *a party's residency or citizenship*, and the fact that the deception may have originated in the United States [are] insufficient" under *Morrison*).

The location of a single party's residence or trading machinery is not determinative of where two parties become committed to transact with one another. Just as the location of the fraudulent statements in *Morrison* was not the proper focus of the securities

statute at issue there, so too the residency of the plaintiff (and the place where preliminary or antecedent steps regarding the transaction took place) is not the proper focus of the statutes at issue here. This rule makes sense and is consistent with *Morrison* because the location of a plaintiff-trader is not within the control of a foreign defendant and therefore has little to do with whether the defendant's conduct occurred in the United States. The presumption against extraterritoriality would indeed be a "craven watchdog" if a plaintiff-trader's computer and internet connection from the U.S. were enough to overcome it. *Morrison*, 561 U.S. at 266.

This is particularly true in the context of transactions on an online exchange, where the mere submission of a buy order by a plaintiff cannot create irrevocable liability between the buyer and an unknown, unmatched seller. At that point in time, no "meeting of the minds" between the parties has occurred and therefore neither has the transaction. *Absolute Activist*, 677 F.3d at 68.[5]

---

[5] In fact, for the past decade Second Circuit precedent has itself held that these types of steps were insufficient to create irrevocable liability. *Absolute Activist*, 677 F.3d at 62, 69, 70 (holding that "[a] purchaser's citizenship or residency does not affect where a transaction occurs" and that allegations that securities purchases were made by U.S. residents and "brokered through a U.S. broker-dealer" were insufficient to establish that irrevocable liability was incurred in the U.S.); *City of Pontiac Policeman's and Foreman's Ret. Sys.* v. *UBS AG*, 752 F.3d 173, 181 (2d Cir. 2014) (holding that a U.S. entity's placement of "a buy order in the United States that was then executed on a foreign exchange, standing alone," is insufficient to establish that irrevocable liability was incurred in the U.S.). The present case's departure from these older holdings in favor of a defendant-by-

The Second Circuit found differently in this case, in large part because it read Binance's Terms of Use as containing a provision that reserved for BHL the right to reject users' requests to cancel their orders before matching. Pet. App'x 19a. But the entry into agreements such as terms of use between an *exchange* and its users does not create irrevocable liability between *buyers and sellers*, and therefore is irrelevant to where (or when) a transaction occurs.

Nor does the submission of payment from the U.S. affect when or where irrevocable liability between the buyer and seller attaches. Irrevocable liability requires a *mutual* commitment, not just a unilateral act by one party. A buyer sending money to an exchange does not irrevocably commit the seller to anything and therefore does not constitute the time or place of an irrevocable transaction. Many other such subsequent and antecedent steps to the formation of a contract could be identified in various types of transactions; none constitutes a "meeting of the minds." In contrast, the matching of buy and sell orders is the point of irrevocable liability for an exchange such as Binance.com.

Going forward in the Second Circuit, however, the domestic location of a plaintiff's residence, computer, and internet connection can render a foreign defendant who makes its services available on the internet subject to U.S. law due to unilateral acts taken in the United States. Any plaintiff-trader who lives in the U.S. (or can travel to the U.S.) and has

---

defendant analysis of policy arguments for the application of U.S. securities laws will create even greater uncertainty for market participants and lower courts.

access to the internet can pull a foreign defendant into a "domestic transaction" as a hook to initiate a putative class action in a federal district court. Given the ubiquity of location-masking virtual private networks ("VPNs"), even a website that tries to block U.S. users may be unable to avoid the application of U.S. law under the Second Circuit's holding.

This Court should review the Second Circuit's decision to extend the U.S. securities laws to reach transactions on foreign exchanges that involve "conduct" or have "effects" in the U.S. that are due only to traders residing in the U.S. and engaging in transaction-related conduct (such as placing orders) from the U.S. This is particularly critical given that so much of global trading now occurs via internet-based transactions.

### C. The Second Circuit's Server Ruling Is Premised On An Overly Generous View Of The Pleading Standard That Will Undermine *Morrison*

As another factor, the Second Circuit also held that Plaintiffs plausibly alleged that BHL used servers located in the U.S. for matching buy and sell orders, and that therefore Plaintiffs' transactions were plausibly domestic. As an initial matter, Petitioners agree that the place of matching buy/sell orders is the location where buyers and sellers incur irrevocable liability and thus, of the transaction. On an exchange, the matching of orders is where the "meeting of the minds" takes place. *See Absolute Activist*, 677 F.3d at 68. However, the Second Circuit's policy considerations (*supra* Section I.A) infected its review of Plaintiffs' pleadings, leading it to credit threadbare allegations regarding the location of BHL's website

and data-hosting servers to support an inference (nowhere pleaded) that BHL's *matching* servers were located in the United States—allegations that the Second Circuit acknowledged might be insufficient in a case raising different policy concerns.

Under the Second Circuit's rule, a plaintiff can survive a motion to dismiss simply by alleging "on information and belief" that a foreign website relies on third-party servers that are based in the United States and that no foreign securities regulator asserts jurisdiction over the defendant. This rule substantially weakens the protection that *Morrison* offers to foreign defendants engaged in foreign transactions by dragging them into discovery in U.S. courts without requiring concrete allegations at the pleading stage suggesting that the relevant transactions actually occurred in the United States or that the defendant was otherwise subject to U.S. securities law.

Indeed, in this case Plaintiffs made *no* allegations about the location of servers on which matching takes place or about matching at all. The Second Circuit nonetheless inferred that matching occurred in the United States because Plaintiffs alleged that "Binance is hosted on computer servers and data centers provided by [nonparty] Amazon Web Services," and that "[u]pon information and belief, a significant portion, if not all, of the AWS servers and Availability Zones that host Binance are located in California" and "upon information and belief, most or all of Binance's digital data is stored on servers located in Santa Clara, California."

The Second Circuit's server ruling is erroneous for another reason: it focused not on *BHL*'s alleged

conduct, but on that of an unrelated third party, AWS. Whether an application of U.S. law is domestic turns on where the "conduct regarding the violations" occurred, which appropriately focuses the inquiry on whether the *defendant* broke the law in the United States. *Abitron*, 600 U.S. at 425; *see also Nestle USA, Inc.* v. *Doe*, 593 U.S. 628, 633 (2021); *RJR Nabisco* v. *European Cmty.*, 579 U.S. 325, 337 (2016) ("[I]f the conduct relevant to the [statute's] focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory."). The Second Circuit erred by focusing on the conduct of AWS and the happenstance of where AWS allegedly placed its servers as somehow resulting in BHL violating the securities laws in the United States. In light of the comity concerns that this Court highlighted in *Morrison* and the presumption against extraterritoriality, Plaintiffs should be required to do more to subject foreign defendants to discovery in U.S. courts.

As noted, Petitioners agree that for an online exchange such as Binance.com, irrevocable liability attaches—and transactions occur—at the location where buy and sell orders are matched. That conclusion comports with the "clear test" that this Court laid out in *Morrison*. 561 U.S. at 269. But that test loses its efficacy if slight allegations can bring foreign defendants into U.S. courts, and lower courts incorporate policy considerations, including an unpredictable analysis of "comity concerns," into the question whether the facts in a complaint plausibly allege a domestic transaction. This Court's review is necessary to ensure that courts apply a clear test that avoids allowing U.S. plaintiffs to drag foreign

defendants into U.S. courts without tangible allegations that demonstrate a domestic transaction.

### D. The Second Circuit Improperly Ruled That Irrevocable Liability Attached At Multiple Times And Places

The Second Circuit's misplaced consideration of policy and pre-transaction conduct also manifested itself in the court's ruling that there could be multiple attachment points for a single transaction. Specifically, the court held that "Plaintiffs' allegations allow for the inference that irrevocable liability attached at multiple points in the transaction—first when they submitted their purchase offers to Binance, and later when Binance matched their offers with seller counterparties." Pet. App'x 18a.

In other words, the rule in the Second Circuit is that a single domestic securities transaction can occur at multiple times and places (including in foreign countries), based on a facts-and-circumstances test, with a heavy dose of policy considerations added to the mix. Pet. App'x 12a (citing *FHFA* v. *Nomura Holding Am., Inc.*, 873 F.3d 85, 156 (2d Cir. 2017), and *Myun-Uk Choi* v. *Tower Rsch. Cap. LLC*, 890 F.3d 60, 68 (2d Cir. 2018)). This is a far cry "from the measure of certainty that the presumption against extraterritoriality is designed to provide." *Abitron*, 600 U.S. at 425.

Irrevocable liability marks the point at which two parties become committed to a transaction and can no longer unilaterally withdraw. Logically, this commitment cannot occur more than once between the same parties in the same transaction. Once the buyer and seller have reached a "meeting of the minds" and become "committed to one another," they are

irrevocably bound. There cannot be a different or later point at which they become "more" bound or committed a second time. *See, e.g.*, *Cheyenne-Arapaho Tribes* v. *United States*, 671 F.2d 1305, 1309 (Fed. Cir. 1982) ("It is well settled that a binding contract is created at the time the parties reach a final agreement through offer and acceptance rather than later when the agreement is formally executed by both sides." (citing *United States* v. *Purcell Envelope Co.*, 249 U.S. 313, 319 (1919)). *See also Black's Law Dictionary* (12th ed. 2024) (defining "irrevocable" as "[u]nalterable; committed beyond recall"). The Second Circuit's embrace of such a strained understanding of irrevocable liability is a sign that its extraterritoriality analysis went astray.

The Second Circuit's reasoning is also inconsistent with decisions in the First and Third Circuits which recite one point at which irrevocable liability attaches. *See Morrone*, 997 F.3d at 60 (1st Cir. 2021) (irrevocable liability attached when seller became irrevocably liable to issue shares); *Georgiou*, 777 F.3d at 135–36 (3d Cir. 2015) (the moment when seller or buyer commits to the transaction is the moment at issue). To hold instead that irrevocable liability attaches at multiple times and places, and based in large part on conduct within a plaintiff's unilateral control, is logically flawed and will deprive foreign businesses of much-needed certainty.

Worse, the Second Circuit's reasoning will push U.S. law into places where, under *Morrison*, it plainly does not belong. Consider a German stock exchange with a website that allows investors to buy and sell shares online. Under the decision below, the exchange might become subject to U.S. law based on any number of

purported U.S. connections. For example, it might be subject to U.S. laws simply because an American investor submitted a buy order, made payments, or engaged in other transaction steps from New York, even if the investor's order was indisputably received and matched with a seller in Frankfurt.

In short, the Second Circuit's rule that irrevocable liability can attach at multiple times and places in connection with the same transaction breathes new life into the discredited conduct and effects test and places lower courts and foreign defendants in the exact position that this Court decried in *Morrison*. *Morrison* rejected gestalt tests of irrevocable liability under which, if enough antecedent or subsequent transaction steps occur in the U.S., the U.S. securities laws apply even if a transaction was consummated abroad.

## II. The Second Circuit's Decision Adds To Lower-Court Confusion Over *Morrison*

The Second Circuit's decision is only the latest demonstrating a lack of clarity and uniformity in lower courts' application of *Morrison*. *But see Morrison*, 561 U.S. at 269 (there must be a "clear test" for determining when a transaction is domestic).

For instance, as discussed above, the Second Circuit's determination that irrevocable liability can attach in multiple times and places is in tension with the First and Third Circuits. *Supra* 23. The circuits have also been split for over six years over a related issue: whether incurring irrevocable liability in the U.S. is, in and of itself, sufficient for determining domesticity under *Morrison*. The First and Ninth Circuits view the condition as sufficient: so long as irrevocable liability occurs in the U.S., those courts consider transactions to be domestic and *Morrison*

satisfied. *See Stoyas*, 896 F.3d at 949–50; *Morrone*, 997 F.3d at 59–60.

The Second Circuit takes a different view. Even where irrevocable liability may have attached in the U.S., the Second Circuit has recognized that the domestic securities laws should not reach transactions that are "predominantly foreign." *Parkcentral Glob. HUB Ltd.* v. *Porsche Auto. Holdings SE*, 763 F.3d 198, 215–16 (2d Cir. 2014) (holding that a domestic securities transaction is "not alone sufficient to state a properly domestic claim under the statute"). Rather, where the claims "are so predominantly foreign as to be impermissibly extraterritorial" and likely to "place [U.S. securities laws] in conflict with the regulatory laws of other nations," plaintiffs cannot bring a securities claim even if it relates to a domestic transaction. *Id.*

In addition, the Second Circuit's improper focus on BHL's alleged lack of regulatory oversight has already begun to influence other courts. Citing *Williams,* a district court recently hinged its irrevocable liability analysis on whether the defendants "ha[d] . . . run away from the authority of all jurisdictions." *See Basic* v. *BProtocol Found.,* 2024 WL 4113751, at *9 (W.D. Tex. July 31, 2024), *R. & R. adopted*, 2024 WL 4113024 (W.D. Tex. Sept. 6, 2024). The court concluded that the transactions at issue *were* extraterritorial because "*Morrison*'s comity concerns, which were not an issue in [*Williams*], are an issue here" since the defendants had identifiable ties to foreign countries. *Id.*

Granting the instant petition will allow the Court to address lower courts' general confusion concerning how to apply *Morrison* and ensure: (1) a uniform, clear test that applies to the question whether a particular

application of the securities laws is impermissibly extraterritorial; and (2) that the test sufficiently prevents U.S. securities laws from interfering with foreign markets. This is particularly important given the ever-growing volume of cross-border securities transactions consummated over internet-connected computer servers.

## III. The Proper Application Of *Morrison* Is A Matter Of Global Importance

The Second Circuit's decision introduces conflicts with *Morrison* and other circuit courts and threatens to disturb the clarity on which the multi-trillion-dollar global trading markets depend.

Recent innovations in technology have empowered investors to participate in foreign financial markets with greater ease and efficiency. Where such opportunities were once reserved for those able to travel abroad, work with international investment firms, or establish offshore entities, the internet has helped afford the same access to investors with fewer resources. With remarkable ease, an investor in Japan can now trade on exchanges in Europe with the click of a mouse. This interconnectivity and ease of access has increased not only the size of the market for trades but also the number of Americans who trade on foreign exchanges.

The decision below is especially concerning given the Second Circuit's prominent status as a leader in the development of the securities laws and popular destination for putative securities class actions. *See Morrison*, 561 U.S. at 260 (noting that D.C. Circuit deferred to Second Circuit in adopting erroneous conduct and effects test "because of [the Second Circuit's] 'preeminence in the field of securities law'")

(quoting *Zoelsch* v. *Arthur Anderson & Co.*, 824 F.2d 27, 32 (D.C. Cir. 1987)); *id.* at 276 (Stevens, J., concurring) (describing Second Circuit as the "'Mother Court' of securities law"') (quoting *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 762 (1975) (Blackmun, J., dissenting)); *see also* Karen Patton Seymour, *Securities and Financial Regulation in the Second Circuit*, 85 FORDHAM L. REV. 225, 225 (2016) ("[T]he Second Circuit has been the leading interpreter of U.S. securities laws and arguably the most influential court in the area of securities regulation in the world.").

Moreover, in the context of digital assets specifically, the decision below threatens to interfere with an important new global market. Publicly traded crypto assets have reached a collective market capitalization of more than $3 trillion.[6] Increased regulatory and private litigation activity have accompanied this astounding growth in capital. For example, the SEC initiated 87 crypto-related enforcement actions between 2014-2021 but brought 31 in 2023 alone. *See* Records of Crypto Assets and Cyber Enforcement Actions, SEC, https://sec.gov/spotlight/cybersecurity-enforcement-actions (last updated Sept. 6, 2024). Similarly, in the private litigation arena, more digital-asset-related class actions were filed in 2022 than in any year prior, and 17 such actions have been filed since 2022. Securities Class Action Trend Cases, CORNERSTONE RSCH., https://tinyurl.com/2br57x7p (last accessed Sept. 20, 2024). The frequency of such

---

[6] Subcomm. on Digital Assets & Blockchain Technology, Decentralized Finance, CFTC (Jan. 8, 2024), https://www.cftc.gov/media/10106/TAC_DeFiReport010824/download.

class actions has also nearly doubled over the last decade, with 40 digital-asset-related class actions filed between 2022 and the first half of 2024, compared to 48 filed between 2016 and 2021. *See id.*; *Securities Class Action Filings (SCAC), 2023 Year in Review*, CORNERSTONE RSCH. 9 (2023), https://tinyurl.com/4sknufre; *see also* Current Trends in Securities Class Action Filings, STANFORD SEC. CLASS ACTION CLEARINGHOUSE, available at https://securities.stanford.edu/current-trends.html (last accessed Sept. 20, 2024). The upshot is that digital-asset companies are facing more suits and the plaintiffs' bar is targeting digital-asset exchanges with more frequency. The decision below will be a green light to drag foreign defendants into the mix, raising all of the concerns this Court has raised in *Morrison* and other cases applying the presumption against extraterritoriality.

This Court's intervention is particularly important given the evolving global regulatory framework for digital assets. Foreign regulators are working to establish their own regulatory structures for this new industry. *See, e.g.*, *Qatar Financial Centre Issues QFC Digital Assets Framework 2024*, QATAR FIN. CTR. (Sept. 1, 2024), https://tinyurl.com/2te2wexb; *MAS Expands Scope of Regulated Payment Services[] Introduces User Protection Requirements for Digital Payment Token Service Providers*, MONETARY AUTH. OF SING. (Apr. 2, 2024), https://tinyurl.com/ycxe8xf9; Financial Services and Markets Act 2023, c. 29 (UK), https://tinyurl.com/45naa5k4; Regulation 2023/1114 of the European Parliament and of the Council on markets in crypto-assets, 2023 O.J. (L 150) (EU), https://tinyurl.com/4f3zh8x6; Ontario Sec. Comm., Notice and Request for Comment on Proposed

Amendments to 81-102 on Investment Funds Pertaining to Crypto Assets (Jan. 18, 2024), https://tinyurl.com/ywj9y3du.

Under the decision below, private securities class actions in the U.S. will interfere with these international regulatory efforts by subjecting foreign exchanges to U.S. securities laws and massive potential damages awards in U.S. courts. The Court should step in now to restore the boundaries and avoid unwarranted intrusion of U.S. law into nascent foreign regulatory efforts in this important new marketplace.

## IV. This Case Is A Strong Vehicle For This Court's Review

This is an appropriate case to address the questions presented surrounding *Morrison*'s application in the context of cross-border securities transactions.

This petition is presented at the motion to dismiss stage. The record is therefore limited to Plaintiffs' allegations. Moreover, the extraterritoriality issue is outcome-determinative. If Plaintiffs' claims are impermissibly extraterritorial, then the federal claims in Plaintiffs' complaint should have been dismissed, as the district court originally concluded.

## CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

**/s/ Herbert S. Washer**
HERBERT S. WASHER
*Counsel of Record*
SAMSON A. ENZER
LANDIS C. BEST
MILES C. WILEY
CAHILL GORDON & REINDEL LLP
32 OLD SLIP
NEW YORK, NY 10005
(212) 701-3000
hwasher@cahill.com

MATT GREGORY
GIBSON DUNN & CRUTCHER LLP
1700 M Street, NW
Washington, DC 20036
(202) 887-3635
mgregory@gibsondunn.com

*Counsel for Petitioner*
*Binance Holdings Limited*

CHRISTOPHER G. MICHEL
EMILY C. KAPUR
CHRISTOPHER D. KERCHER
AVI PERRY
QUINN EMANUEL URQUHART &
SULLIVAN LLP
1300 I. Street NW, Suite 900
Washington, DC 20005
(202) 538-8330
aviperry@quinnemanuel.com

*Counsel for Petitioner*
*Changpeng Zhao*

September 23, 2024

# APPENDIX

## APPENDIX TABLE OF CONTENTS

**Page**

Appendix A

**United States Court of Appeals**
**for the Second Circuit**

---

August Term 2022

Argued: April 12, 2023
Decided: March 8, 2024

No. 22-972

---

CHASE WILLIAMS, individually and on behalf of all others similarly situated,

*Plaintiff-Appellant,*

JD ANDERSON, COREY HARDIN, ERIC LEE, individually and on behalf of all others similarly situated, BRETT MESSIEH, DAVID MUHAMMAD, RANJITH THIAGARAJAN, TOKEN FUND I LLC,

*Lead-Plaintiffs-Appellants,*

—v.—

BINANCE, CHANGPENG ZHAO,

*Defendants-Appellees,*

YI HE, ROGER WANG,

*Defendants.*

---

On Appeal from the United States District Court
for the Southern District of New York
No. 20-cv-2803, Andrew L. Carter, *Judge*.

---

Before: LEVAL, CHIN, and NATHAN, *Circuit Judge*s.

Plaintiffs-Appellants used Defendants-Appellees' website, Binance.com, to purchase a type of crypto-asset called "tokens." They allege that by selling these tokens without registration, Binance violated Section 12(a)(1) of the Securities Act of 1933, 15 U.S.C. § 77l(a)(1), and the "Blue Sky" securities laws of various states. Plaintiffs also seek recission of contracts they entered into with Binance under Section 29(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78cc(b). The district court dismissed Plaintiffs' claims as impermissible extraterritorial applications of these statutes and also dismissed their federal claims as untimely. We conclude that Plaintiffs have adequately alleged that their transactions on the Binance exchange were domestic transactions and that therefore the application of federal and state securities laws here was not impermissibly extraterritorial. We further conclude that Plaintiffs' federal claims did not accrue until after they made the relevant purchases, and therefore their claims arising from purchases made during the year before filing suit are timely. Accordingly, we **REVERSE** and **REMAND** as to the claims challenged on appeal.

---

JORDAN GOLDSTEIN (David Coon, *on the brief*), Selendy Gay Elsberg PLLC, New York, NY, *for Plaintiffs-Appellants*.

JAMES P. ROUHANDEH (Daniel J. Schwartz, Marie Killmond, *on the brief*), Davis Polk & Wardwell LLP, New York, NY, *for Defendants-Appellees*.

---

NATHAN, *Circuit Judge*:

Plaintiffs-Appellants, purchasers of crypto-assets on an international electronic exchange called Binance, appeal the dismissal of this putative class action against Defendants-Appellees Binance and its chief executive officer Changpeng Zhao. Plaintiffs seek damages arising from Binance's alleged violation of Section 12(a)(1) of the Securities Act of 1933 (Securities Act), 15 U.S.C. § 77l(a)(1), which they claim occurred when Binance unlawfully promoted, offered, and sold billions of dollars' worth of crypto-assets called "tokens," which were not registered as securities. Plaintiffs also seek recission of contracts they entered into with Binance under Section 29(b) of the Securities and Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78cc(b), on the basis that Binance allegedly contracted to sell securities without being registered as a securities exchange or broker-dealer. Lastly, Plaintiffs raise claims under "Blue Sky" laws, which are state statutes designed to protect the public from securities fraud.

The district court concluded that (1) Plaintiffs' claims constitute an impermissible extraterritorial application of securities law under *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), and (2) Plaintiffs' federal claims are also untimely under the applicable statutes of limitations. On appeal, Plaintiffs argue that they have plausibly alleged that the transactions at issue are subject to domestic securities laws and that their federal claims involving purchases made during the year before filing suit are timely.[1] We agree. First, we conclude

---

[1] Plaintiffs do not appeal the district court's dismissal of their claims concerning tokens BNT, SNT, KNC, LEND, and CVC. Nor do they appeal the district court's decision as to the timeliness of their federal claims concerning tokens ELF, FUN, ICX, OMG, and QSP. Accordingly, such claims are not before us.

that Plaintiffs have plausibly alleged that the transactions at issue are domestic transactions subject to domestic securities laws because the parties became bound to the transactions in the United States, and therefore irrevocable liability attached in the United States. Second, we conclude that these claims accrued at the time Plaintiffs purchased or committed to purchase the tokens, and thus Plaintiffs' claims arising from transactions in tokens during the year before filing the complaint are timely. Accordingly, we **REVERSE** and **REMAND** for further proceedings as to the claims challenged on appeal.

## BACKGROUND

### I. Facts

The following facts are taken from Plaintiffs' allegations in their operative complaint and documents that it incorporates. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152–53 (2d Cir. 2002). Binance is an online platform where a variety of crypto-assets can be purchased and sold. It represents itself as the largest such exchange in the world. By July 2017, Binance had been founded in China and had launched its digital asset exchange. Within less than a year, it moved its titular headquarters first to Japan and then to Malta, seeking more favorable regulatory environments. Nonetheless, Binance rejects having any physical headquarters in any geographic jurisdiction. In February 2020, in response to Maltese regulators denying that Binance was a "Malta-based cryptocurrency company," Binance founder and CEO, co-defendant Changpeng Zhao stated:

> Binance.com is not headquartered or operated in Malta . . . There are misconceptions some people have on how the world must work . . . you must have offices, HQ, etc. But there is a new world with blockchain now . . . Binance.com has always operated in a decentralized manner as we reach out to our users across more than 180 nations worldwide.

App'x at 171–72 ¶¶ 27–28. One of those nations is the United States, where Binance now has a substantial presence, with servers, employees, and customers throughout the country. Binance never registered as a securities exchange or a broker-dealer of securities in the United States.

Plaintiffs bring claims on behalf of themselves and a class of similarly situated investors who used Binance to purchase crypto-assets known as "tokens" from seven categories: EOS, TRX, ELF, FUN, ICX, OMG, and QSP (collectively, the Tokens).[2] Each named plaintiff purchased one or more of the Tokens on Binance, placing orders on the electronic platform from their state or territory of residence: Texas, Nevada, New York, Florida, California, and Puerto Rico.

As with most crypto-assets, ownership of the Tokens is tracked on a blockchain, a decentralized ledger that records each transaction. Just as banks settle and clear transactions moving between traditional currency accounts, blockchains track transactions in crypto-assets. A critical difference is

---

[2] Plaintiffs initially brought claims regarding twelve tokens, but on appeal they challenge only the district court's dismissal of their claims regarding these seven tokens.

that blockchains typically operate through a decentralized process: every computer running on a given blockchain independently tracks and clears transactions to validate the crypto-asset's ownership. Blockchains therefore allow for increased security, because the decentralized nature of a blockchain means that any data recorded on the ledger cannot be altered.

Plaintiffs allege that the Tokens are a type of crypto-asset called "security tokens." Binance does not dispute—at least for the purposes of this appeal—that the tokens at issue are properly classified as "securities" as the term is used in the relevant federal and state securities laws. "Security tokens," as described by Plaintiffs in the complaint, are tokens issued to raise capital for the issuer and provide the token holder with some form of future interest in the issuer's project to create the platform and software required for its use. That future interest could increase in value if the token's creators are successful in their endeavor. But unlike traditional securities, security tokens do not give the token holder ownership or a creditor interest in any corporate entity.

Security tokens also differ from other types of crypto-assets. Unlike Bitcoin and Ethereum, security tokens are not designed to facilitate transactions or serve as a long-term store of value, but rather to raise capital for an enterprise without granting the holder ownership in any corporate entity. And unlike "utility tokens," security tokens do not grant the holder use and access to a particular service or product offered by the issuer. Security tokens are therefore distinct from other classes of crypto-assets that have some present tangible use beyond their potential to appreciate.

The Tokens at issue here are "ERC-20 tokens," meaning they were all designed on the Ethereum blockchain with a programming language called the ERC-20 protocol. Between 2017 and 2018, many ERC-20 tokens were created and sold by third party issuers in initial coin offerings (ICOs), which collectively raised nearly $20 billion. Typically, each ICO was accompanied by a "whitepaper," which included both advertising and a technical blueprint for the proposed project associated with the token. Plaintiffs allege that these whitepapers did not include the warnings that SEC registration statements would have included, and that registration statements for the Tokens were never filed with the SEC. After their ICOs, each of the Tokens was listed on Binance for secondary-market trading. Investors could buy the tokens through the Binance platform using other crypto-assets or traditional currencies.

Plaintiffs allege that they each purchased Tokens on Binance pursuant to its Terms of Use, and that they paid Binance fees for the use of its exchange. They allege that all of their activities to transact on Binance were undertaken from each of their U.S. state or territory of residence. When users register with Binance, they are required to accept Binance's Terms of Use upon registration. Once users set up accounts, they can place buy orders to purchase tokens on the Binance platform, which are then matched with sell orders to complete a transaction. Plaintiffs allege that their trade orders were matched on, and their account data was stored on, servers hosting the Binance platform—the vast majority of which were located in the United States. The Terms of Use in effect during the class period did not require Plaintiffs to place any particular trade order. But the

Terms dictated that once a trade order was placed, Binance had the right to reject a user's request to cancel it. Moreover, pursuant to the Terms, once matching occurred, the order could not be cancelled at all.

Plaintiffs allege that Binance directly targeted the U.S. market with advertising and customer support specifically aimed at U.S. users. Although Binance ostensibly cut off access to its platform for U.S. users in September 2019, Plaintiffs allege that it simultaneously advised U.S.-based purchasers how to circumvent its own restrictions using virtual private networks (VPNs), after which several of the Plaintiffs continued trading on Binance from the United States. According to Plaintiffs, in 2019, Zhao tweeted that the use of VPNs is "a necessity, not optional" in order to trade tokens on Binance. App'x at 184 ¶ 82.

Eventually, Plaintiffs' experience trading Tokens on Binance turned sour. They allege that "the vast majority" of Tokens they purchased on Binance "turned out to be empty promises," "all of the Tokens are now trading at a tiny fraction of their 2017–2018 highs," and "investors were left holding the bag when these tokens crashed." App'x at 164 ¶ 6.

## II. The Proceedings Below

Plaintiffs initiated this action on April 3, 2020, seeking recission or damages, interest, and attorney's fees in compensation for Defendants' alleged violations of federal and state securities laws. Plaintiffs filed the operative complaint on December 15, 2020. The 327-page complaint asserts 154 causes of action under the Securities Act, the Exchange Act, and the Blue Sky statutes of 49 different states, the District of Columbia, and Puerto Rico.

Defendants filed a motion to dismiss or, in the alternative, to compel arbitration. On March 31, 2022, the district court granted the motion to dismiss. *See Anderson v. Binance*, No. 20-cv-2803, 2022 WL 976824 (S.D.N.Y. Mar. 31, 2022). The district court held that all of Plaintiffs' claims, including those brought under state Blue Sky securities laws, were impermissibly extraterritorial. *Id.* at *4–5. The district court also concluded that Plaintiffs' federal claims under Section 12(a)(1) of the Securities Act and Section 29(b) of the Exchange Act were untimely. *Id.* at *2–4. Additionally, the district court dismissed claims brought under the Blue Sky laws of states where none of the named class members resided, concluding there was "an insufficient nexus between the allegations and those jurisdictions." *Id.* at *4. Plaintiffs timely appealed each basis for dismissal, except the district court's determination that equitable doctrines did not delay accrual of Plaintiffs' federal claims arising from transactions outside of the one-year period before the lawsuit was filed.

## DISCUSSION

We hold that each of the district court's bases for dismissing Plaintiffs' claims that are before us on appeal was erroneous. First, Plaintiffs have adequately alleged that their claims involved domestic transactions because they became irrevocable within the United States and are therefore subject to our securities laws. Second, Plaintiffs' federal claims are timely insofar as they relate to transactions that occurred during the year before they filed suit because their federal claims all require a completed transaction and therefore could not have accrued before the transactions were made. Finally, we vacate as premature the district court's

conclusion that there was an insufficient nexus between the named Plaintiffs' claims and the states whose laws govern the claims of putative absent class members.

## I. Extraterritoriality

At the outset, the parties dispute whether the domestic securities laws apply to the claims at issue or whether applying domestic law would be impermissibly extraterritorial. "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." *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (internal quotation marks omitted). Therefore, "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Id.* In *Morrison*, the Supreme Court invoked the presumption against extraterritoriality to interpret the Exchange Act as applying only to "[1] securities listed on domestic exchanges, and [2] domestic transactions in other securities." *Id.* at 267. The Court reached this conclusion as a matter of statutory interpretation, and by considering international comity and the need to avoid "[t]he probability of incompatibility with the applicable laws of other countries." *Id.* at 269. Although *Morrison* involved the Exchange Act, we have applied a similar framework to Securities Act claims as well as claims under state Blue Sky laws. *See Univs. Superannuation Scheme Ltd. v. Petróleo Brasileiro S.A. Petrobras* (*In re Petrobras Sec.*), 862 F.3d 250, 259 (2d Cir. 2017) (Securities Act); *Fed. Hous. Fin. Agency v. Nomura Holding Am., Inc.*, 873 F.3d 85, 156–58 (2d Cir. 2017) (state Blue Sky laws).

Binance contends that neither *Morrison* category applies because the securities at issue here are not listed on domestic exchanges and the transactions are not domestic. Therefore, according to Binance, Plaintiffs seek to impermissibly apply the relevant statutes extraterritorially. We disagree and conclude that Plaintiffs plausibly alleged that the transactions at issue were "domestic transactions in other securities" under *Morrison*.

In light of *Morrison*, we have explained that "to sufficiently allege the existence of a 'domestic transaction in other securities,' plaintiffs must allege facts indicating that irrevocable liability was incurred or that title was transferred within the United States." *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 62 (2d Cir. 2012). Irrevocable liability attaches when parties "becom[e] bound to effectuate the transaction or enter[] into a binding contract to purchase or sell securities." *Miami Grp. v. Vivendi S.A.* (*In re Vivendi, S.A. Sec. Litig.*), 838 F.3d 223, 265 (2d Cir. 2016) (internal quotation marks omitted). In other words, irrevocable liability attaches "when the parties to the transaction are committed to one another," or when "in the classic contractual sense, there was a meeting of the minds of the parties." *Absolute Activist*, 677 F.3d at 68 (quoting *Radiation Dynamics, Inc. v. Goldmuntz*, 464 F.2d 876, 891 (2d Cir. 1972)).

To determine whether a transaction is domestic, courts must therefore consider both when and where the transaction became irrevocable. But this is not always a simple task. Indeed, this task is particularly difficult when a transaction takes place over an exchange that claims to have no physical location in any geographic jurisdiction and not be subject to the oversight of any country's regulatory authority. We

have recognized, however, that irrevocable liability may attach in "more than one location," *Fed. Hous. Fin. Agency*, 873 F.3d at 156, and at more than one time, *see Myun-Uk Choi v. Tower Rsch. Cap. LLC*, 890 F.3d 60, 68 (2d Cir. 2018), because there is always more than one side to any given transaction.

Here, we find that Plaintiffs plausibly alleged facts showing that two transactional steps giving rise to an inference of irrevocable liability occurred in the United States. First, the transactions at issue were matched, and therefore became irrevocable, on servers located in the United States. Second, Plaintiffs transacted on Binance from the United States, and pursuant to Binance's Terms of Use, their buy orders became irrevocable when they were sent.

### A. Matching

We begin with the matching of Plaintiffs' buy offers with sellers on servers hosting Binance's platform. In the absence of an official locus of the Binance exchange, we conclude it is appropriate to locate the matching of transactions where Binance has its servers. We therefore hold that irrevocable liability was incurred in the United States because Plaintiffs plausibly alleged facts allowing the inference that the transactions at issue were matched on U.S.-based servers.

We have previously considered the application of *Morrison* in the context of securities traded over an electronic intermediary exchange, like the securities at issue in this litigation. In *Myun-Uk Choi v. Tower Research Capital LLC*, the plaintiffs executed trades in Korea Exchange futures contracts, which were "listed and traded on CME Globex, an electronic [Chicago Mercantile Exchange (CME)] platform

located in Aurora, Illinois." 890 F.3d at 63 (internal quotation marks omitted). We held that the plaintiffs plausibly alleged that those transactions were domestic because the plaintiffs incurred irrevocable liability when their trade offers were matched with offers from counterparties on the Illinois-based platform. *Id.* at 67.[2] The defendants there argued that irrevocable liability did not attach until trades were cleared and settled on the Korea Exchange in South Korea, the morning after buy and sell orders were "matched" on CME Globex. *Id.* at 67–68. But we explained that "[t]his view evinces a fundamental misunderstanding of Plaintiffs' allegations *and exchange trading generally*." *Id.* at 68 (emphasis added). We said that while "liability might ultimately attach between the buyer/seller and the [Korea Exchange] upon clearing, that does not mean liability does not *also* attach between the buyer and seller at matching prior to clearing." *Id.* We explained that

> [t]his is analogous to the traditional practice, prior to the advent of remote algorithmic high-speed trading, in which buyers and sellers of commodities futures would reach an agreement on the floor of the exchange and then subsequently submit their trade to a clearinghouse for clearing and settling. Just as the meeting of the minds previously occurred on the exchange floor, Plaintiffs plausibly allege that there is a similar meeting of the minds when the minds of the

---

[2] *Choi* involved claims under the Commodity Exchange Act but applied the same framework for evaluating the exterritorial reach of domestic securities laws under *Morrison* at issue here. *Choi*, 890 F.3d at 66–67; *see also Loginovskaya v. Batratchenko*, 764 F.3d 266, 271–74 (2d Cir. 2014).

> [Korea Exchange] night market parties meet on CME Globex.

*Id.* (cleaned up).

Here, as in *Choi*, Plaintiffs allege that they purchased and sold securities over an electronic exchange, though here these transactions were subsequently recorded on the Ethereum blockchain, which has no centralized location. Consistent with our reasoning in *Choi*, the parties here agree that at least one time at which irrevocable liability attaches is at the time when transactions are "matched." *See* Reply Br. at 5; Appellees' Br. at 4, 32; *see also Choi*, 890 F.3d at 67 ("[I]n the classic contractual sense, parties incur irrevocable liability on . . . trades at the moment of matching." (cleaned up)).

But *where* did that matching take place? In *Choi* there was no dispute that trades were matched "on CME Globex" and that CME Globex was located in Illinois. 890 F.3d at 63. This appeal presents a more difficult case than *Choi* because the parties dispute *where* matching occurs when it takes place on Binance, an online exchange that purports to have no physical location.

We conclude that, at this early stage of the litigation, Plaintiffs have plausibly alleged that matching occurred in the United States. The complaint alleges that online crypto-asset exchanges such as Binance serve a similar function as "traditional exchanges in that they provide a convenient marketplace to match buyers and sellers of virtual currencies," such as the Tokens purchased by Plaintiffs. App'x at 175 ¶ 46. Defendants agree that "the complaint's allegations and the documents it incorporates by reference establish that matching occurred on the Binance exchange." Appellees' Br. at

33. But Defendants contend, since Plaintiffs acknowledge that Binance is decentralized, that the Binance exchange was "concededly . . . not in the United States." *Id.*; *see also id.* at 35 (arguing that "matching and irrevocable liability occurred abroad on the Binance platform, . . . [which] is not in the United States."). At oral argument, Binance's counsel repeated this argument but also conceded that the location of Binance's servers may be relevant to determining where matching occurs on the Binance platform. Oral Arg. at 26:00–37:40. We reject Binance's argument that Plaintiffs pled themselves out of court by noting Binance's intentional efforts to evade the jurisdiction of regulators. Binance operates by "match[ing] buyers and sellers of virtual currencies." App'x at 175 ¶ 46. Even if the Binance exchange lacks a physical location, the answer to where that matching occurs cannot be "nowhere."

Rather, we conclude that the complaint plausibly alleges that matching occurred on "the infrastructure Binance relies on to operate its exchange." App'x at 253 ¶ 327. According to Plaintiffs' allegations, much of that infrastructure "is located in the United States." *Id.* Specifically, Plaintiffs allege that "Binance is hosted on computer servers and data centers provided by Amazon Web Services (AWS), a cloud computing company that is located in the United States"; "a significant portion, if not all, of the AWS servers and [associated data centers and support services] that host Binance are located in California"; and "[u]pon information and belief, most or all of Binance's digital data is stored on servers located in Santa Clara County, California." App'x at 170–71 ¶ 24.

Moreover, Plaintiffs allege that the fact that their purchase orders were submitted from locations in the

United States renders it more plausible that the trades at issue were matched over Binance's servers located in the United States, as opposed to Binance's servers located elsewhere. At this stage, Plaintiffs need merely plead "a plausible claim for relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Construing Plaintiffs' allegations regarding the servers in the light most favorable to them, we conclude that they have alleged facts that make it plausible that their trade orders were matched in the United States.

To be sure, our cases involving exchange-mediated securities trades, such as *Choi*, have looked to the official location of the exchange on which matching occurred to determine the situs of irrevocable liability. In cases involving traditional exchanges, there is often no dispute over where the exchange is located, and therefore where matching takes place. This is particularly so when the exchange is registered in a certain country and therefore has intentionally subjected itself to that sovereign's jurisdiction. While it may not always be appropriate to determine where matching occurred solely based on the location of the servers the exchange runs on, it is appropriate to do so here given that Binance has not registered in any country, purports to have no physical or official location whatsoever, and the authorities in Malta, where its nominal headquarters are located, disclaim responsibility for regulating Binance.

Our conclusion might be different were we faced with plaintiffs seeking to apply United States securities laws based on the happenstance that a transaction was initially processed through servers located in the United States despite all parties to the transaction understanding that they were conducting

business on a foreign-registered exchange. The application of federal securities laws in that situation would squarely implicate the comity concerns that animated *Morrison*. *See* 561 U.S. at 269. But since Binance notoriously denies the applicability of any other country's securities regulation regime, and no other sovereign appears to believe that Binance's exchange is within its jurisdiction, the application of United States securities law here does not risk "incompatibility with the applicable laws of other countries" and is consistent with the test articulated in *Morrison* and with the principles underlying *Morrison*. *Id*. We therefore hold that under these circumstances, the location of the servers on which trades are matched by Binance is deemed to be a location of the transaction. Accordingly, Plaintiffs have adequately alleged domestic transactions based on their allegations that matching occurred on Binance's servers located in the United States.

### B. Plaintiffs' Submission of Trades and Payments on Binance

We agree that Plaintiffs plausibly alleged that the transactions at issue are domestic for a second, interrelated reason. Because Binance disclaims having any location, Plaintiffs have plausibly alleged that irrevocable liability attached when they entered into the Terms of Use with Binance, placed their purchase orders, and sent payments from the United States.

As discussed above, in *Choi*, we noted that irrevocable liability may attach between different parties and intermediaries in a securities transaction at more than one transactional step. *See* 890 F.3d at 67–68. Just as in *Choi*, where irrevocable liability

attached first between the parties on the Illinois-based night market and then later "between the buyer/seller and the [Korea Exchange] upon clearing," here Plaintiffs' allegations allow for the inference that irrevocable liability attached at multiple points in the transaction—first when they submitted their purchase offers to Binance, and later when Binance matched their offers with seller counterparties. *Id.* at 68.

Here, because the Binance exchange disclaims having any physical location, we have particular reason to consider other factors that our cases have found relevant to the irrevocable liability analysis. In *City of Pontiac Policemen's & Firemen's Retirement Systems v. UBS AG*, we explained that "in the context of transactions not on a foreign exchange," our cases look to "facts concerning the formation of the contracts, *the placement of purchase orders*, the passing of title, or the exchange of money" to determine when and where an investor becomes irrevocably bound to complete a transaction. 752 F.3d 173, 181 n.33 (2d Cir. 2014) (quoting *Absolute Activist*, 677 F.3d at 69–70 (cleaned up)). While we have placed more emphasis on these factors when dealing with transactions that did not occur on an official exchange, we have reason here to consider where Plaintiffs' trades originated given that Binance expressly disclaims having any physical location, foreign or otherwise. In *Giunta v. Dingman*, we found that irrevocable liability occurred in New York because that was where the parties met in person, where one party received telephone calls from the other while they were negotiating a securities contract, where they sent the terms of the agreement, and where funds were transferred from. 893 F.3d 73, 76-77, 79-80 (2d Cir. 2018). Similarly, in *Federal*

*Housing Financial Agency*, we held that evidence that employees of Fannie Mae and Freddie Mac worked in the District of Columbia and Virginia, and therefore received emailed offer materials there, supported the inference that irrevocable liability attached in those places. 873 F.3d at 156–58; *see also, e.g.*, *United States v. Vilar*, 729 F.3d 62, 76–78 (2d Cir. 2013) (looking to location where party executed documents necessary to make investment and location from where money was sent).

Applying a similar analysis to the allegations here, irrevocable liability was incurred when Plaintiffs entered into the Terms of Use with Binance, placed their trade orders, and sent payments, all of which they claim occurred from their home states within the United States. When Plaintiffs sent buy orders and payments on the Binance platform, they irrevocably "committed to the investment[s] while in" their states of residence. *Vilar*, 729 F.3d at 77. "[A]s a practical matter, [Plaintiffs were] contractually obligated" to complete the transactions after committing to them on the Binance exchange and "could not, on [their] own accord, revoke." *Giunta*, 893 F.3d at 81. The inference that Plaintiffs could not revoke once they placed a trade on Binance is also supported by allegations regarding Binance's Terms of Use, in which Binance "reserves the right to reject any cancellation reques[t] related to" a submitted trade order. App'x at 605.

True, in *City of Pontiac*, we held that the "mere placement of a buy order in the United States for the purchase of foreign securities on a foreign exchange" was not, "standing alone," sufficient to allege that a purchaser incurred irrevocable liability in the United States. 752 F.3d at 181. But here, Binance's Terms of Use, which remove the trader's ability to unilaterally

revoke the trade prior to execution, plus the additional actions Plaintiffs took, including making domestic payments, provide more. Moreover, as explained above, *City of Pontiac* concerned trades executed over a foreign Swiss exchange, whereas here the relevant exchange disclaims any location, foreign or otherwise. So, as noted above, the sovereignty and comity concerns that at least partially motivate the careful policing of the line between foreign and domestic transactions in cases like *City of Pontiac* and *Morrison* are less present in a case like this.[3]

Accordingly, we hold that at this stage in the litigation, Plaintiffs have plausibly alleged that they engaged in domestic transactions in unlisted securities.[4]

## II. Timeliness

The parties also dispute whether the district court correctly held that Plaintiffs' federal claims under Section 12(a)(1) of the Securities Act and Section 29(b) of the Exchange Act were untimely. As a preliminary matter, Plaintiffs do not press an argument for equitable tolling on appeal, and they acknowledge that their claims relating to most of the Tokens are untimely. However, a subset of Plaintiffs argue that they have timely federal claims because

---

[3] We do not mean to imply that in such circumstances, irrevocability can attach in only one country. It is entirely possible that such a transaction might fall under the laws of more than one jurisdiction, especially as the result of the efforts of the exchange, or of participants, to have the transaction be subject to no country's legislative jurisdiction.

[4] In light of this conclusion, we need not and do not reach Plaintiffs' alternative arguments for concluding that their claims concern domestic transactions.

they made purchases of two of the Tokens, EOS and TRX, within the year before filing their original complaint on April 3, 2020.[5] We hold that Plaintiffs' claims under each of the federal statutes did not accrue until they could have filed suit, which was only after they made their purchases. Therefore, we reverse the dismissal of Plaintiffs' claims arising from purchases made during the year before they filed this lawsuit.

### A. Section 12(a) Claims

A claim under Section 12(a)(1) of the Securities Act for solicitation of an unregistered security must be brought "within one year after the violation upon which it is based." 15 U.S.C. § 77m (Section 13). A half-century ago, we held that Section 13's one-year statute of limitations does not begin to run on an illegal offer until the plaintiff acquires the security. *See Diskin v. Lomasney & Co.*, 452 F.2d 871, 875–76 (2d Cir. 1971). In *Diskin*, Judge Friendly explained that "although § 13 dates" the running of the statute of limitations "from the 'violation' in cases of claims under § 12[(a)](1), it would be unreasonable to read § 13 as starting the short period for an action at a date before the action could have been brought." *Id.*; *see also Wigand v. Flo-Tek, Inc.*, 609 F.2d 1028, 1033 n.5 (2d Cir. 1979) (holding, based on *Diskin*, that "the limitations period . . . begins to run only after the sale" of a security following an illegal solicitation in Section 12(a)(2) actions). *Diskin* is binding law. Applied here, that means Plaintiffs have timely claims against Binance under Section 12(a)(1) for its solicitation of their purchase of EOS and TRX.

---

[5] Specifically, these plaintiffs are Hardin, Muhammad, Thiagarajan, Token Fund I LLC, and Williams.

Defendants fail to distinguish or discredit *Diskin*. First, they argue *Diskin* only controls in cases where a single entity both solicited and sold securities as part of a single transaction. However, Binance promoted, intermediated, and earned money from the transactions of the Tokens. The mere fact that Binance was not a direct counter-party to the transactions is an insufficient distinction, particularly given *Diskin*'s statement that "Congress quite obviously meant to allow rescission or damages in the case of illegal offers as well as of illegal sales." *Diskin*, 452 F.2d at 876. *Diskin*'s interpretation of Section 13 was driven by a concern with avoiding the "extreme case[]" of "a running of the statute of limitations before the claim had even arisen," which is exactly what would result from adopting Defendants' theory here. *Id.*

Next, Defendants argue that *Diskin*'s interpretation of Section 13 is incorrect as a textual matter. They point out that Section 13 starts the running of the one-year limitations period from "the *violation*," not from a "purchase or sale," and that there are only two ways to violate Section 12: (1) "pass[ing] title, or other interest in the security, to the buyer for value," or (2) "successfully solicit[ing] the purchase" of the security. *Pinter v. Dahl*, 486 U.S. 622, 642, 647 (1988). Based on these premises, Defendants assert that the last "violations" Plaintiffs allege relating to EOS or TRX date back to November 2018 and February 2019, respectively, when Binance republished third-party reports about each token. Since both of these dates were more than a year before April 2020, when Plaintiffs filed suit, Binance claims that under the plain text of the statute, the statute of limitations ran before Plaintiffs sued.

This line of reasoning was equally available when *Diskin* was decided, but as described above, Judge Friendly rejected such a wooden interpretation of Section 13. Instead, he interpreted it in such a way as to effectuate Congress's purpose of protecting all investors who fall victim to illegal solicitations and bring suit within a year of doing so, not just those who happen to make their purchases within a year of the defendant's unlawful acts. We are not free to upset our respected predecessor's conclusion or ignore *Diskin*. *See Adams v. Zarnel* (*In re Zarnel*), 619 F.3d 156, 168 (2d Cir. 2010) ("This panel is bound by the decisions of prior panels until such time as they are overruled either by an en banc panel of our Court or by the Supreme Court." (internal quotation marks omitted)).

Furthermore, *Diskin* makes sense of the fact that Section 13 contains both a statute of limitations and a statute of repose. The latter protects defendants and provides that no action can "be brought to enforce a liability created under section [11 or 12(a)(1)] more than three years after the security was bona fide offered to the public." 15 U.S.C § 77m. As opposed to statutes of repose, "[s]tatutes of limitations are designed to encourage plaintiffs to pursue diligent prosecution of known claims." *Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497, 504 (2017) (internal quotation marks omitted). Thus, "limitations periods begin to run when the cause of action accrues—that is, *when the plaintiff can file suit and obtain relief*." *Id.* at 504–05 (internal quotation marks omitted) (emphasis added). And "a prospective buyer has no recourse against a person who touts unregistered securities to him if he does not purchase the securities." *Pinter*, 486 U.S. at 644. It would make little sense to begin the running of Section 12's

statute of limitations before a plaintiff made the purchase allowing her to sue.

On the other hand, a statute of repose "begins to run from the defendant's violation." *City of Pontiac Gen. Emps.' Ret. Sys. v. MBIA, Inc. (MBIA)*, 637 F.3d 169, 176 (2d Cir. 2011). "[S]tatutes of repose are enacted to give more explicit and certain protection to defendants," and thus run from "the date of the last culpable act or omission of the defendant." *Cal. Pub.*, 582 U.S. at 505. Defendants' reading of Section 13 would transform its statute of limitations into a duplicative, and shorter, statute of repose capable of running before any purchase has been made and thus before any claim has accrued. We rejected such a reading fifty years ago and do so again today. We therefore conclude, based on precedent and statutory context, that Plaintiffs' claims as to EOS and TRX purchases made after April 3, 2019 are timely.[6]

### B. Section 29(b) Claims

For similar reasons, we reverse the district court's dismissal of Plaintiffs' claims for recission of the EOS and TRX purchases made after April 3, 2019 under Section 29(b) of the Exchange Act. Section 29(b) states that "[e]very contract made in violation of any provision of this chapter . . . the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision

---

[6] We therefore do not resolve whether, by continuing to offer TRX and EOS on its website right up until the complaint was filed, Binance engaged in an ongoing violation of the Securities Act. *See Wilson v. Saintine Expl. & Drilling Corp.*, 872 F.2d 1124, 1126 (2d Cir. 1989) (holding that "the ministerial act of mailing" offer materials at the seller's direction did not constitute solicitation).

of this chapter . . . shall be void . . . ." 15 U.S.C. § 78cc(b). Plaintiffs alleged that their contracts with Binance are voidable under Section 29(b) because Binance violated Section 5 of the Exchange Act by operating as an unregistered exchange, 15 U.S.C. § 78e, and Section 15(a)(1) of the Exchange Act by operating as an unregistered broker-dealer, 15 U.S.C. § 78o(a)(1). Unlike Section 12(a), this provision does not contain an express cause of action tied to a statute of limitations but the parties agree that claims for recission under Section 29(b) expire one year after they accrue. Their dispute is over when accrual occurs. We conclude that, as with Section 12(a), Plaintiffs' claims accrued, if at all, only after they made or committed to making their purchases.

As a threshold matter, we assume without deciding that Binance is correct that the relevant contract to be rescinded is Binance's Terms of Use and that Plaintiffs did not adequately allege that they entered into new, implied contracts every time Plaintiffs conducted a transaction on Binance's platform.

With that assumption in mind, we conclude that Section 29(b)'s express limitations period governs these claims. *See* 15 U.S.C. § 78cc(b). That provision states an action must be "brought within one year after the discovery that such sale or purchase involves such violation." *Id.*

"[W]here, as here, the claim asserted is one implied under a statute that also contains an express cause of action with its own time limitation, a court should look first to the statute of origin to ascertain the proper limitations period." *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 359 (1991) (superseded by statute on other grounds). Section 29(b)'s express statute of limitations for

fraud-based claims is therefore the appropriate one because it "focuses on the analogous relationship, involves the same policy concerns, and provides for a similar restitutionary remedy." *Kahn v. Kohlberg, Kravis, Roberts & Co. (KKR)*, 970 F.2d 1030, 1038 (2d Cir. 1992). Under this statute of limitations, Plaintiffs' claims as to purchases of EOS and TRX made after April 3, 2019 would be timely because it is impossible to discover that a "sale or purchase involves [a] violation" of the Exchange Act before that sale or purchase has occurred. *See* 15 U.S.C. § 78cc(b).

Defendants mistakenly rely on *KKR* to argue that the limitations period for Plaintiffs' recission claims runs from the formation of the allegedly violative contract. *KKR* held that the claim at issue there—for recission of an agreement under the Investment Advisers Act—accrued at the time of contract formation and that "subsequent payments on a completed sales transaction[] affect the amount of damages but do not constitute separate wrongs." 970 F.2d at 1040. But that does not resolve this case because the contract at issue in *KKR* contemplated a long-term relationship in which "a certain amount of [plaintiffs'] capital" was committed from the get-go "to investments chosen by KKR." *Id*. Therefore, that contract constituted a "completed sales transaction," which in and of itself violated the Investment Advisers Act. *Id*.

That is meaningfully different from the situation we face because, by agreeing to Binance's Terms of Use, Plaintiffs did not effectuate a "completed sales transaction." Though the Terms of Use prevented Plaintiffs from unilaterally revoking a trade once it was made, they did not commit Plaintiffs to making any trades at all on Binance's platform; the Terms

simply outlined the governing rules if Plaintiffs did choose to trade. Plaintiffs were not "committed to pay [an] amount under the contract," and indeed they "retained the right" to stop trading on Binance "at any time." *Id.* Therefore, *KKR* does not require that the statute of limitations run from the time Plaintiffs agreed to the Terms of Use but before they committed to or completed any transactions.[7]

In any event, even if Defendants were correct that the statute of limitations expires a year after a "reasonably diligent plaintiff would have discovered the facts constituting the [alleged] violation," Appellees' Br. at 48 (quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 637 (2010)), Plaintiffs' claims arising from purchases made during the year before filing are still timely because the "violation" at issue requires a violative transaction. Just as we concluded with respect to their Section 12(a) claims above, Plaintiffs' Section 29(b) claims could not have accrued, and therefore the statute of limitations could not have begun to run, absent a specific transaction. *See MBIA*, 637 F.3d at 175–76.

That is because a Section 29(b) claim must be predicated on an underlying violation of the Exchange Act. *See* 15 U.S.C. § 78cc(b) (providing a contract is void where "the performance of [it] involves the violation of" the Exchange Act or regulations

---

[7] Defendants do not argue that Plaintiffs' claims accrued when the first transaction took place pursuant to the Terms of Use and that subsequent transactions affect only damages but do not restart the statute of limitations. Instead, Defendants argue that Plaintiffs' Section 29(b) claim accrued "when the allegedly illegal contract [was] signed" regardless of whether or when transactions were made pursuant to it. Appellees' Br. at 54. That is the argument we consider and reject.

promulgated under its authority); *see also Boguslavsky v. Kaplan*, 159 F.3d 715, 722 (2d Cir. 1998). And the two alleged violations of the Exchange Act underlying Plaintiffs' recission claims both require transactions. Plaintiffs allege Binance violated Section 5 of the Exchange Act by operating as an unregistered exchange and Section 15(a)(1) of the Exchange Act by operating as an unregistered broker or dealer of securities. *See* 15 U.S.C. § 78e (Section 5, titled "Transactions on unregistered exchanges"); 15 U.S.C. § 78o(a)(1) (Section 15(a)(1), sub-titled "Registration of all persons utilizing exchange facilities to effect transactions"). Both of these provisions clearly contemplate a transaction. Further, district courts in this circuit have long recognized that to make out a violation under Section 29(b), "plaintiffs must show that . . . the contract involved a prohibited transaction." *Pompano-Windy City Partners, Ltd. v. Bear Stearns & Co.*, 794 F. Supp. 1265, 1288 (S.D.N.Y. 1992) (internal quotation marks omitted); *EMA Fin., LLC v. Vystar Corp.*, No. 19-cv-1545, 2021 WL 1177801, at *2 (S.D.N.Y. Mar. 29, 2021) (same).

As discussed above, the Terms of Use did not commit Plaintiffs to making a violative transaction. Since Plaintiffs' Section 29(b) claims require a transaction, the claims could not have accrued until a transaction occurred.[8] To conclude otherwise would

[8] To be clear, we express no view as to whether Plaintiffs successfully stated a claim under Section 29(b) where the contract they are seeking to rescind does not commit the parties to complete a transaction. In the district court, Defendants moved to dismiss Plaintiffs' Section 29(b) claim arguing that it failed as a matter of law because Plaintiffs did not allege that the Terms of Use committed the parties to a violative transaction. However, the district court did not reach that argument and Defendants have not raised it as an alternative

be inconsistent with the caselaw discussed above, which demarcates the difference—in the securities context at least—between a statute of repose and a statute of limitations. Plaintiffs could not have known the facts "required to adequately plead . . . and survive a motion to dismiss" without knowing what, if any, violative transactions constituted the alleged underlying violation of the Exchange Act. *MBIA*, 637 F.3d at 175 (citing *Merck*, 599 U.S. at 648– 49). We therefore conclude that Plaintiffs' claims under Section 29(b) as to EOS and TRX purchases made during the year before filing suit are also timely.

## III. Dismissal of Absent Class Member Claims

Finally, in addition to dismissing the federal and state claims of the named Plaintiffs as untimely and impermissibly extraterritorial, the district court dismissed the claims asserted on behalf of absent class members under the Blue Sky statutes of states other than California, Florida, Nevada, Puerto Rico, and Texas, where the named Plaintiffs are from. The district court held there was "an insufficient nexus between the allegations and those [other] jurisdictions" from which no named Plaintiffs hailed. *Anderson*, 2022 WL 976824, at *4. Dismissal at this stage on this basis was improper. "[A]s long as the named plaintiffs have standing to sue the named defendants, any concern about whether it is proper for a class to include out-of-state, nonparty class members with claims subject to different state laws is a question of predominance under Rule 23(b)(3)" to be

---

basis for affirmance. Therefore, for the purpose of this opinion, we have assumed that a plaintiff can state a claim for recission of a contract based on violative transactions that are made pursuant to, but not required by, the contract.

decided after the motion to dismiss stage. *Langan v. Johnson & Johnson Consumer Cos.*, 897 F.3d 88, 93 (2d Cir. 2018). We therefore vacate the dismissal of the absent class member claims.

## CONCLUSION

Accordingly, we **REVERSE** and **REMAND** for proceedings consistent with this Opinion as to the claims challenged on appeal.

Appendix B

**[STAMP]**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#: _____
DATE FILED: 3/31/22

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

---

**1:20-cv-2803 (ALC)**
**OPINION & ORDER**

---

**JD ANDERSON ET AL.,**
**Plaintiffs,**

**—against—**

**BINANCE ET AL.,**
**Defendants.**

---

**ANDREW L. CARTER, JR., United States District Judge:**

Before the Court is Defendants' motion to dismiss Plaintiffs' putative class action. ECF No. 58. For the reasons that follow, Defendants' motion to dismiss is granted.

## BACKGROUND

The following facts are taken from allegations contained in Plaintiffs' Second Amended Class Action Complaint ("SAC") and are presumed to be true for purposes of resolving Defendants' motion to dismiss. *See Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 237 (2d Cir. 2007).

Plaintiffs are investors who bought certain digital tokens—EOS, QSP, KNC, TRX, FUN, ICX, OMG, LEND, and ELF—on Defendant Binance, a digital exchange.[1] Digital tokens may operate as "utility tokens," which permit the holder of the token to participate in projects associated with the token, or as "security tokens," which function similarly to a traditional security and are classified as securities under federal and state law. Accordingly, issuers of security tokens must file registration statements with the U.S. Securities and Exchange Commission ("SEC") and a platform where security tokens are traded must register with the SEC as an exchange.

Plaintiffs allege that, beginning on July 1, 2017, Defendants promoted, offered, and sold in the United States the above-referenced digital tokens through Binance. Issuers would sell tokens to investors in an initial coin offering ("ICO"), listing the token on Binance. Binance would then promote the sale of the tokens. Issuers compensated Binance for listing their tokens and Binance received a percentage of each trade.

---

[1] Binance's headquarters are located in Malta. Defendant Changpeng Zhao is the Chief Executive Officer of Binance and resides in Taiwan.

According to Plaintiffs, Binance's representations did not make clear to investors upon purchase that the tokens were securities. Investors were only apprised of the tokens' status as securities on April 3, 2019, when the SEC issued a report, "The Framework for 'Investment Contract' Analysis of Digital Assets" ("Framework"), which categorized the tokens as securities under Section 2 of the Securities Act of 1933 ("Securities Act") and Section 3 of the Securities Exchange Act of 1934 ("Exchange Act").

## PROCEDURAL HISTORY

Plaintiffs initiated this Action on April 3, 2020. ECF No. 1. On August 26, 2020, the Court appointed lead plaintiffs and designated co-lead counsel. ECF No. 40. On September 11, 2020, Plaintiffs filed an Amended Class Action Complaint. ECF No. 43. On December 15, 2020, Plaintiffs filed a Second Amended Class Action Complaint. ECF No. 55. The complaint contains 327 pages and includes 154 causes of action, five of which allege violations of federal laws. Plaintiffs allege that, in violation of the Securities Act, the Exchange Act and state Blue Sky protections, Defendants did not register Binance as an exchange or a broker dealer and Binance did not file a registration statement for the securities it sold. Thus, investors were not afforded the protections of securities laws and were not made aware of the risks of their investments.

On February 16, 2021, Defendants filed the instant motion to dismiss. ECF No. 58. After Defendants filed their motion to dismiss, Plaintiffs voluntarily dismissed individual defendants Yi He and Roger Wang. ECF No. 63. Plaintiffs filed their opposition on April 19, 2021. ECF No. 64. In their opposition,

Plaintiffs abandoned their claims related to the BNT, CVC, and SNT tokens. *Id.* at 3 n.3. On June 3, 2021, Defendants filed their reply in support of their motion to dismiss. ECF No. 66.

## STANDARD OF REVIEW

When resolving a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court should "draw all reasonable inferences in [the plaintiff's] favor, assume all well-pleaded factual allegations to be true, and determine whether they plausibly give rise to an entitlement to relief." *Faber v. Metro. Life Ins. Co.*, 648 F.3d 98, 104 (2d Cir. 2011) (internal quotation marks and citations omitted). Thus, "[t]o survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, the court need not credit "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). The Court's function on a motion to dismiss is "not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient." *Goldman v. Belden*, 754 F.2d 1059, 1067 (2d Cir. 1985). Additionally, "[a]lthough the statute of limitations is ordinarily an affirmative defense that must be raised in the answer, a statute of limitations defense may be decided on a Rule 12(b)(6) motion if the defense appears on the face of the complaint." *Thea v. Kleinhandler*, 807 F.3d 492, 501 (2d Cir. 2015) (internal quotation marks and citations omitted).

## DISCUSSION

Plaintiffs bring federal claims against Defendants pursuant to Section 12(a)(1) of the Securities Act and Section 29(b) of the Exchange Act. Second Am. Compl., ECF No. 55 ¶¶ 362–404; 15 U.S.C. §§ 77*l*(a)(1), 78cc. Plaintiffs also bring state Blue Sky claims under 28 U.S.C. § 1367(a) and 28 U.S.C. § 1332. As discussed below, Plaintiffs' claims are dismissed because the relevant securities laws do not apply extraterritorially and because they are barred by the statute of limitations.

### I. Statute of Limitations

#### a. Securities Act Claims

Claims brought under Section 12(a)(1) of the Securities Act must be brought "within one year after the violation upon which it is based." 15 U.S.C. § 77m. The parties agree that seven of the nine tokens at issue—QSP, KNC, FUN, ICX, OMG, LEND, and ELF—were last purchased in 2018, more than a year before this action was brought. Plaintiffs argue that the Court should apply the equitable doctrines of injury evading discovery or the fraud-based discovery rule and accordingly hold that the limitations period was not triggered until April 3, 2019, when the Framework was published. Pls.' Br., ECF No. 64 at 19. Until the Framework was issued, Plaintiffs argue, investors did not have the requisite information to determine whether the tokens were securities or whether Defendants' statements about the tokens' status were fraudulent. *Id.*

Plaintiffs' arguments fail. As Plaintiff acknowledges, Section 12(a)(1) does not include a statutory discovery rule. *Id.* The Supreme Court has

warned against adopting an "expansive approach to the discovery rule," and applying an "[a]textual judicial supplementation [which] is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision." *Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019). Section 12(a)(1) explicitly states that the limitations period runs upon the occurrence of the violation, not the discovery of the violation, and "[i]t is not [the courts'] role to second-guess Congress' decision to include a 'violation occurs' provision, rather than a discovery provision." *Id*. Indeed, Courts in this District have dismissed as untimely similar claims brought by Plaintiffs' counsel, rejecting the plaintiffs' argument for applying a discovery rule. *See In re Bibox Grp. Holdings Ltd. Sec. Litig.*, 534 F. Supp. 3d 326, 338–39 (S.D.N.Y. 2021); *see also Holsworth v. BProtocol Found.*, No. 20-cv-2810 (AKH), 2021 WL 706549, at *3 (S.D.N.Y. Feb. 22, 2021).

The claims related to the sales of the two tokens—EOS and TRX—which Plaintiffs allege were bought within one year of initiating this case are also time barred. Under Section 12(a)(1), Plaintiffs may only bring claims against a defendant who is a statutory seller, which is defined as a defendant who "(1) passed title or other interest in a security to a buyer for value, or (2) successfully solicit[ed] the purchase." *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 359 (2d Cir. 2010) (quoting *Pinter v. Dahl,* 486 U.S. 622, 642, 647 (1988)). Plaintiffs contend that Defendants are statutory sellers because they are "entities and individuals that solicited the sale of

securities." Pls.' Br. at 2.[2] Defendants' latest act of solicitation with respect to these two tokens is Binance's republication of investor reports in November 2018 and February 2019, more than a year before Plaintiffs initiated this Action. SAC ¶¶ 100(d), (l). The statute of limitations runs for one year "after the violation upon which it was based," and the violation alleged for the Section 12(a)(1) claim is solicitation, which occurred earlier than one year of filing. 15 U.S.C. § 77(m) Thus, the claims related to EOS and TRX are also untimely.

**b. Exchange Act**

Section 29(b) has a one-year statute of limitations, however, unlike Section 12(A)(1), the statute of limitations has a discovery rule by which the limitations periods only begins to run within one year after the "discovery that [the] sale or purchase involves [a] violation." 15 U.S.C. § 78cc. *See also Alpha Cap. Anstalt v. Oxysure Sys., Inc.*, 216 F. Supp. 3d 403, 408 (S.D.N.Y. 2016) ("[The] one-year statute of limitations for any implied cause of action under Section 29(b) of the Exchange Act. . . . runs from the time when an individual could have, through the exercise of reasonable diligence, discovered the fraud at issue." (internal quotation marks and citations omitted)).

---

[2] Plaintiffs briefly argue as an alternative that Defendants are also statutory sellers because they passed title to Plaintiffs; their opposition brief states that Binance users "must first transfer the desired crypto-assets to Binance's control by executing a transaction on the Ethereum blockchain." Pls.' Br. at 10 (citing SAC ¶ 58). However, the cited paragraph does not support this assertion.

Under Section 29(b),"[e]very contract made in violation of any provision of this chapter" and "every contract (including any contract for listing a security on an exchange) . . . the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter . . . shall be void." 15 U.S.C. § 78cc. Plaintiffs must "show that (1) the contract involved a prohibited transaction, [and] (2) [the plaintiffs are] in contractual privity with the defendant." *Pompano-Windy City Partners, Ltd. v. Bear Stearns & Co., Inc.*, 794 F. Supp. 1265, 1288 (S.D.N.Y. 1992) (internal quotation marks and citations omitted). Plaintiffs' Section 29(b) claims are based on allegations that Binance formed illegal contracts and that those contracts were illegal due to Binance's operation as an unregistered exchange. However, Plaintiffs do not allege that they were unaware the exchange was not registered; in fact, the complaint alleges that Plaintiffs knew that Binance was unregistered. *See, e.g.*, SAC ¶ 330 ("It is well known that VPNs are necessary for U.S. purchasers to access unregistered crypto-asset exchanges, like Binance."). Thus, the Section 29(b) claims are untimely as Plaintiffs knew of the violation, that the exchange was not registered, earlier than one year prior to filing.

Plaintiffs argue that they only could have discovered that the tokens were securities on April 3, 2019, when the Framework was published. However, "[u]nder a discovery rule, the claim accrues when the plaintiff learns of the critical facts that he has been hurt and who has inflicted the injury." *In re Bibox*, 534 F.Supp.3d at 339 (quoting *Rotella v. Wood*, 528 U.S. 549, 556 (2000)). The Framework did not reveal new facts, and therefore, it does not delay the accrual of the Section 29(b) claims. As Judge Cote wrote:

> Here, the plaintiff does not allege that he only learned on April 3, 2019 of "critical facts" regarding [the tokens]. Rather, he claims that he did not learn of his potential legal rights under § [29 (b)] until the SEC released the Framework on April 3, 2019. Ignorance of legal rights does not delay the accrual of a claim under a discovery rule. In any event, the Framework is merely a non-binding agency interpretation of the longstanding [*S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946)] test and did not create new rights.

*Id.*; *see also id.* at 341 ("The plaintiff did not learn of any 'critical facts' regarding his injury when the SEC issued the Framework on April 3, 2019 . . . but rather learned only of the SEC's nonbinding interpretation of *Howey*."). The issuance of the Framework does not toll the accrual of Plaintiffs' claims.

**II. Extraterritoriality**

The federal securities laws apply to those "transactions in securities listed on domestic exchanges, and domestic transactions in other securities." *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 267 (2010) (discussing Exchange Act); *see also id.* at 268 ("The same focus on domestic transactions is evident in the Securities Act of 1933."); *In re Smart Techs., Inc. S'holder Litig.*, 295 F.R.D. 50, 55–56 (S.D.N.Y. 2013) ("*Morrison*'s prohibition on extraterritoriality applies to Securities Act claims."). An exchange is considered "domestic" if it registers as a "national securities exchange." *See Morrison*, 561 U.S. at 266–67. An exchange need only register if a "facility of [the] exchange [is] within or

subject to the jurisdiction of the United States." 15 U.S.C. § 78e. Binance does not meet these criteria.

First, although Plaintiffs allege that much of Binance's infrastructure is based in the U.S., they only identify as U.S.-based infrastructure Amazon Web Services computer servers, which host Binance, and the Ethereum blockchain computers, which facilitate certain transactions on Binance. Such third-party servers and third parties' choices of location are insufficient to deem Binance a national securities exchange. *See, e.g.*, *Sonterra Capital Master Fund v. Credit Suisse Grp. AG*, 277 F. Supp. 3d 521, 582 (S.D.N.Y. 2017) (stating in the RICO context that, "being routed through computer servers into New York .... do[es] not ... render plaintiffs' RICO claims domestic in nature"); *see also Holsworth*, 2021 WL 706549, at *3. Plaintiffs provide no caselaw to support the claim that Binance's other alleged U.S. contacts—inclusion of English language on the Binance website, several employees located in California, and job postings in the U.S.—are sufficient to constitute a domestic exchange.

Additionally, the transactions themselves, as alleged, cannot qualify as domestic. A transaction is domestic if "irrevocable liability is incurred or title passes within the United States." *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 66, 67 (2d Cir. 2012). Plaintiffs must allege more than stating that Plaintiffs bought tokens while located in the U.S and that title "passed in whole or in part over servers located in California that host Binance's website." SAC ¶¶ 17, 19, 20, 22; *see City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 187 (2d Cir. 2014) (trade not considered domestic on the basis that the purchaser "places a

buy order in the United States for the purchase of foreign securities on a foreign exchange").

Plaintiffs' Blue Sky claims also fail for the same reason. Plaintiffs bring claims under the Blue Sky laws of the following five jurisdictions where the named plaintiffs allegedly placed their trades over Binance: California, Florida, Nevada, Puerto Rico, and Texas.[3] Although the Second Amended Complaint asserts claims under the Blue Sky laws of 49 U.S. jurisdictions, Plaintiffs allegedly made their trades only from those states listed above. Therefore, claims asserted under other states' Blue Sky statutes are dismissed as there is an insufficient nexus between the allegations and those jurisdictions. *See Fed. Hous. Fin. Agency for Fed. Nat'l Mortg. Ass'n v. Nomura Holding Am., Inc.*, 873 F.3d 85, 156 (2d Cir. 2017) (Blue Sky laws "only regulate[] transactions occurring within the regulating States" (internal quotation marks and citations omitted)); *see also In re Bibox*, 534 F. Supp. 3d at 334 ("Where, as here, a named class action plaintiff brings state law claims that may not be brought by the named plaintiff, but may be brought by putative class members, courts typically address only the state law claims of the named plaintiff at the motion to dismiss stage and do not address the standing and merits arguments with respect to the additional state law claims . . . .").

Second, the claims brought under California, Florida, Nevada, Puerto Rico, and Texas are also dismissed on account of the extraterritorial nature of the transactions at issue. Courts often analyze Blue Sky laws in relation to their federal counterparts.

---

[3] The complaint also alleges that trades were placed from New York, however the Complaint does not bring any claims under New York law.

*See, e.g., Nat'l Credit Union Admin. Bd. v. Morgan Stanley & Co.*, No. 13-cv-6705 (DLC), 2014 WL 241739, at *12–13 (S.D.N.Y. Jan. 22, 2014) (citing Texas cases holding that Texas courts look toward federal court decisions when interpreting the Texas Securities Act because of the similarities between Texas and federal securities laws); *Rushing v. Wells Fargo Bank, N.A.*, 752 F. Supp. 2d 1254, 1260 (M.D. Fla. 2010) (stating that "Florida courts look to [federal securities] laws when interpreting [Florida Blue Sky laws]"); *SDM Holdings, Inc. v. UBS Fin. Servs., Inc. of Puerto Rico*, No. 12-cv-1663, 2016 WL 9461324, at *6 (D.P.R. Mar. 1, 2016) (noting that a Puerto Rico Blue Sky claim is "for all practical purposes a verbatim repetition of [an Exchange Act] claim" (internal quotations and citations omitted)), *report and recommendation adopted sub nom. Roman v. UBS Fin. Servs., Inc. of Puerto Rico*, No. 12-cv-1663, 2016 WL 9460664 (D.P.R. Sept. 30, 2016); *Konopasek v. Ten Assocs., LLC.*, No. 18-CV-00272, 2018 WL 6177249, at *5 (C.D. Cal. Oct. 22, 2018) (applying definitions from federal securities law in dismissing California Blue Sky claims). Thus, as the federal claims fail due to extraterritoriality, the state claims are also dismissed because the relevant laws do not apply extraterritorially.

## CONCLUSION

For the reasons above, Defendants' motion to dismiss is GRANTED and the Second Amended Complaint is DISMISSED. The parties' requests for oral argument are DENIED. The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 58, 68, 69.

**SO ORDERED.**

**Dated: March 31, 2022**
**New York, New York**

**/s/ Andrew L. Carter, Jr.**
**ANDREW L. CARTER, JR.**
**United States District Judge**

Appendix C

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

---

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of April, two thousand twenty-four.

---

**ORDER**

Docket No: 22-972

---

Chase Williams, individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

JD Anderson, Corey Hardin, Eric Lee, individually and on behalf of all others similarly situated, Brett Messieh, David Muhammad, Ranjith Thiagarajan, Token Fund I LLC,

Lead-Plaintiffs-Appellants,

—v.—

Binance, Changpeng Zhao,

Defendants-Appellees.

Yi He, Roger Wang,

Defendants.

---

Appellees, Binance and Changpeng Zhao, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe, Clerk

[SEAL]

Appendix D

# STATUTORY PROVISIONS INVOLVED

---

**15 U.S.C. § 77e - Prohibitions relating to interstate commerce and the mails**

**(a) Sale or delivery after sale of unregistered securities**

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

> (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or
>
> (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

**(b) Necessity of prospectus meeting requirements of section 77j of this title**

It shall be unlawful for any person, directly or indirectly—

> (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit

any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

**(c) Necessity of filing registration statement**

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

**(d) Limitation**

Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively

defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

**(e) Security-based swaps**

Notwithstanding the provisions of section 77c or 77d of this title, unless a registration statement meeting the requirements of section 77j(a) of this title is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of title 7.

**15 U.S.C. § 77l - Civil liabilities arising in connection with prospectuses and communications**

**(a) In general**

Any person who—

> (1) offers or sells a security in violation of section 77e of this title, or
>
> (2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such

security, or for damages if he no longer owns the security.

**(b) Loss causation**

In an action described in subsection (a)(2), if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.

## 15 U.S.C. § 77o - Liability of controlling persons

### (a) Controlling persons

Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77l of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

### (b) Prosecution of persons who aid and abet violations

For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 77t of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

**15 U.S.C. § 78e - Transactions on unregistered exchanges**

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as national securities exchange under section 78f of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

**15 U.S.C. §78o - Registration and regulation of brokers and dealers**

**(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions**

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

* * *

**15 U.S.C. § 78t - Liability of controlling persons and persons who aid and abet violations**

**(a) Joint and several liability; good faith defense**

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable (including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title), unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

**(b) Unlawful activity through or by means of any other person**

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this chapter or any rule or regulation thereunder through or by means of any other person.

**(c) Hindering, delaying, or obstructing the making or filing of any document, report, or information**

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under this chapter or any rule or regulation thereunder without just cause to hinder, delay, or

obstruct the making or filing of any such document, report, or information.

**(d) Liability for trading in securities while in possession of material nonpublic information**

Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provisions of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege or security-based swap agreement with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.

**(e) Prosecution of persons who aid and abet violations**

For purposes of any action brought by the Commission under paragraph (1) or (3) of section 78u(d) of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

**(f) Limitation on Commission authority**

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

## 15 U.S.C. § 78cc - Validity of contracts

### (a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void.

### (b) Contract provisions in violation of chapter

Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation: Provided, (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title, and (B) that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker

or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) or (2) of subsection (c) of section 78o of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation. The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.

**(c) Validity of loans, extensions of credit, and creation of liens; actual knowledge of violation**

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.