SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Inquiry of LETITIA JAMES, Attorney General of the State of New York, Petitioner, *—against—* iFINEX INC., BFXNA Inc., BFXWW INC., TETHER HOLDINGS LIMITED, TETHER OPERATIONS LIMITED, TETHER LIMITED, TETHER INTERNATIONAL LIMITED, Respondents.	Index No.: 450545/2019 Part 3 Justice Cohen Motion Seq.: 003

RESPONDENTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS

MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
(212) 309-6000

STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, New York 10036
(212) 506-3900

Counsel for Respondents

July 22, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

Respondents iFinex Inc., BFXNA Inc., and BFXWW Inc. (collectively, "Bitfinex") and Tether Holdings Limited, Tether Operations Limited, Tether Limited and Tether International Limited (collectively, "Tether") moved to dismiss this special proceeding because the Court lacks personal and subject matter jurisdiction, and because Gen. Bus. L. § 354 does not apply outside New York.

After Respondents filed their motion, the Court authorized jurisdictional discovery so that the Office of the Attorney General ("OAG") could try to justify maintaining this proceeding. With the benefit of that discovery, it should now be clear that OAG cannot do so. Dismissal is mandated based on certain basic facts that OAG's opposition cannot refute, namely:

- that OAG failed to serve Respondents in the manner required by statute;
- that Respondents long barred U.S. persons from their platforms, and so have not purposefully availed themselves of doing business in New York;
- that tether is neither a security nor a commodity under the Martin Act; and
- that Gen. Bus. L. § 354 does not apply extraterritorially.

Pervading OAG's opposition papers are two overarching errors.

The first is OAG's argument that the Court cannot evaluate any jurisdictional issues until OAG files a Martin Act lawsuit, revealing what conduct is at issue (for personal jurisdiction) and what types of virtual currencies or other products are at issue (for subject matter jurisdiction). This argument overlooks that the prerequisite to a § 354 proceeding is that OAG already "has determined to commence an action under" the Martin Act. *See* Gen. Bus. L. § 354. Thus, the scope of the claims should be known. Indeed, everyone knows what OAG is claiming (and that the claims relate to tethers, not other products) because OAG obtained injunctive relief premised on its claims provisionally having merit. OAG should not be allowed to have it both ways, by

invoking the Court's powers to obtain substantive relief today (onerous discovery and an injunction) while deferring the jurisdictional issues that are foundational to the Court's authority to award that relief.

The second is to characterize Respondents' application as an effort to block OAG from conducting any investigation to learn the facts at hand. This point likewise overlooks that OAG should already have developed its claims. More fundamentally, Respondents' motion is focused on the particular § 354 proceeding OAG decided to file and the § 354 Order OAG is trying to enforce. It is those matters that Respondents believe are improper. Respondents do not dispute that OAG may continue its investigation via other appropriate methods.

Beyond these pervasive errors, OAG's legal arguments are wrong, and should be rejected.

First, OAG argues that Respondents' motion is procedurally improper because it was both brought too late (after Respondents' emergency motion to vacate) and too soon (before a full blown Martin Act case). But under the CPLR, jurisdictional arguments are preserved so long as they are included, as here, in a timely CPLR 3211 motion. The Court cannot defer jurisdictional questions that are a fundamental prerequisite to any judicial proceeding.

Second, OAG tries to justify its service failure by claiming that it complied with the service method set forth in the § 354 Order, which OAG drafted, but the First Department rejected this precise argument in *Abrams v. Lurie*, 176 A.D.2d 474 (1st Dep't 1991).

Third, for purposes of personal jurisdiction, OAG cannot show Respondents engaged in any business activity purposefully directed at New York. OAG tries to confuse matters by referring to isolated instances where Respondents' foreign customers have shareholders or other

personnel in New York. But in those circumstances, Respondents' counterparties — the ones with which Respondents actually transacted business — are the foreign entities.

Fourth, OAG effectively concedes that tethers do not qualify as securities or commodities under the Martin Act. The Court therefore lacks subject matter jurisdiction.

Finally, there is a presumption in New York law against applying statutes extraterritorially, and OAG offers nothing to rebut that presumption with respect to § 354.

Accordingly, and notwithstanding OAG's hollow contention that Respondents are somehow "hindering" OAG from investigating an action they have already determined to bring, the Court should dismiss this proceeding.

DISCUSSION

I. THE MOTION IS PROCEDURALLY PROPER

A. Respondents' Challenge Is Not Premature

As Respondents demonstrated in their opening brief (Doc. 79, at 6-7), this motion to dismiss is timely and proper. OAG, however, argues that the Respondents may not challenge jurisdiction in a § 354 proceeding until a complaint is filed (Doc. 110, at 8-10), but cites no case adopting that position. That lack of authority is not surprising because personal jurisdiction concerns the "power, or reach, of a court over a party, so as to enforce judicial decrees." *Keane v. Kamin*, 94 N.Y.2d 263, 265 (1999). No judicial proceeding can persist without it.

The First Department has held that § 354 proceedings are "closely analogous to both a subpoena and a temporary restraining order," *Abrams*, 176 A.D.2d at 476 (1991) — both contexts requiring personal jurisdiction. *Amelius v. Grand Imperial LLC*, 57 Misc. 3d 835, 849 (N.Y. Sup. Ct. Sept. 11, 2017) (court is "powerless to enforce [a] subpoena" absent personal jurisdiction); CPLR 6313, Practice Commentaries, C6313:2 (TRO must be served in a manner "so that jurisdiction over the defendant will be acquired").

In *Matter of La Belle Creole Int'l., S. A. v. Attorney General*, 10 N.Y.2d 192, 199 (1961), cited by OAG (Doc. 110, at 9-10), the Court of Appeals concluded that a Panamanian liquor company had sufficient contacts with New York to enforce an OAG subpoena because the company took liquor "orders in systematic and continuing fashion through an agent with an established and permanent place of business in this State." *Id*. at 198. The Court of Appeals clearly did not believe (as OAG asserts here) that jurisdiction could be ignored for discovery-related proceedings. The extensive New York contacts recited in *La Belle* are exactly what is missing in this case. (Doc. 79, at 9-13.)

B. The CPLR Authorizes Respondents to Move to Dismiss a § 354 Proceeding

OAG next argues, citing no authority, that the Court may not "dismiss" this proceeding, because § 354 proceedings do not "lend themselves" to motions to dismiss. (Doc. 110, at 10-11.) The Appellate Division has held to the contrary, however: "procedures for special proceedings . . . permit[] a motion to dismiss in lieu of an answer." *Matter of Slisz v. Beyer*, 92 A.D.3d 1238, 1241 (4th Dep't 2012).[1]

In *Abrams*, OAG tried and failed with a similar argument, claiming there that a § 354 proceeding was not "not governed by the CPLR because [it] . . . merely directs appearances for depositions and the production of documents." 176 A.D.2d at 475. The First Department rejected that position because by statute the CPLR applies "to 'all actions' brought under the Martin Act." *Id*. at 475-76 (citation omitted). The CPLR includes the mechanism used here for moving to dismiss for lack of jurisdiction, CPLR 3211(a)(8).

[1] Contrary to OAG's suggestion, the *Beyer* court's reference to the words "in lieu of an answer" does not detract from the court's finding that a motion to dismiss in a special proceeding, such as this one, is proper under CPLR 103(b).

II. THIS COURT LACKS PERSONAL JURISDICTION OVER BITFINEX AND TETHER

A. Service Was Defective

OAG does not dispute that it failed to serve the § 354 Order as the statute provides, by "delivering to and leaving . . . a certified copy [with the person named]." N.Y. Gen. Bus. L. § 355. OAG tries to brush aside the statute's command with a series of meritless arguments.

First, OAG argues that it complied with the *ex parte* Order that Justice James signed and that OAG had drafted, allowing for service *on counsel* by mail. (Doc. 110, at 22; Doc. 25, at 5.) But Justice James (who likely did not consider the issue, given the *ex parte* setting) lacked authority to countermand the statute.

Abrams is controlling.[2] 176 A.D.2d 474. There, OAG obtained an *ex parte* § 354 order purporting to authorize service "by registered mail and overnight express mail," but the First Department vacated the order because "no reasonable construction" of the statute allowed for service by mail. *Id*. at 474. OAG relegates *Abrams* to a footnote, arguing that it is distinguishable because it concerned "service on a natural person." (Doc. 110, at 22 n.12.) But *Abrams's* holding had nothing to do with whether the respondent was a company or a person; *Abrams* holds the statute must be followed, which did not occur here.

Second, OAG argues that Respondents waived their service challenge because they first moved to vacate OAG's *ex parte* preliminary injunction on other grounds. (Doc. 110, at 20-21.) But CPLR 3211(a)(8) provides that waiver occurs when a party "has either made a CPLR

[2] The two cases OAG cites are easily distinguishable. In *Invar Int'l v Zorlu Enerji Elektrik Uretim Anonim Sirketi*, 2010 WL 6983306, at *5 (N.Y. Sup. Ct., July 23, 2010), the court authorized email service of a complaint under CPLR 311(b). CPLR 311(b) is inapplicable here because there are specified service requirements for a § 354 order. N.Y. Gen. Bus. L. § 355. Moreover, OAG has not attempted to show that "prescribed methods of service could not be made" as required under CPLR 311(b). The court in *Alibaba Group Holding Limited v. Alibabacoin Foundation*, 2018 WL 5118638, at *3 n.1 (S.D.N.Y. Oct. 22, 2018), applied Federal Rule of Civil Procedure 4(f)(3), which is likewise inapplicable here.

3211(a) motion without objecting to jurisdiction or served an answer that omits the jurisdictional objection. **Only then should there be a finding of waiver of jurisdictional objections**." CPLR 320, Practice Commentaries, § C320:4 (emphasis added). When a party includes its jurisdictional challenge in its motion to dismiss, there is no waiver, and it does not matter "what [it] may have done prior to making that motion." *Coleman Capital Corp. v. Trans Urban Const. Co.*, 53 Misc. 2d 70, 72 (N.Y. Civ. Ct. 1967); *see also, e.g.*, *Gliklad v. Cherney*, 97 A.D.3d 401, 402 (1st Dep't 2012) (summary judgment motion was not a waiver "given that defendant had previously raised the jurisdictional defense"). The Appellate Division held in *Matter of Town of Clarkstown v. Howe*, 206 A.D.2d 377, 377 (2d Dep't 1994) that an "appearance in opposition to the petitioner's application for a preliminary injunction" — effectively what occurred here — does "not constitute a waiver of his jurisdictional objection."[3]

OAG's position is especially unreasonable because the Respondents' motion to vacate was brought on an emergency basis by Order to Show Cause only three business days after OAG obtained the *ex parte* injunction, and expressly stated Respondents were preserving their jurisdictional objections. (Doc. 52, at 17.) Waiver "means the intentional relinquishment of a known right," *Matter of Meachem v. New York Cent. R.R. Co.*, 8 N.Y.2d 293, 299 (1960), and Respondents' reservation is inconsistent with having intentionally relinquished anything. *TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 153 A.D.3d 140, 153 (1st Dep't 2017) (no waiver of objection to arbitrator where party stated on the record it was reserving its rights). OAG also faults the Respondents for reserving their jurisdictional objections without specifically

[3] Federal law has substantially similar waiver rules, *see* Fed. R. Civ. P. 12(h), and the federal case law is the same: parties that timely challenge jurisdiction in a motion to dismiss do not "waive[] their right[s] . . . simply because they argued or presented evidence regarding the preliminary injunction." *Melt Franchising, LLC v. PMI Enterprises, Inc.*, 2008 WL 4414638, at *2 (C.D. Cal. Sept. 25, 2008).

referring to a service issue (Doc. 110, at 20 n.10), but one "particular jurisdictional objection is improper service of process." CPLR 320, Practice Commentaries, § C320:3. Thus, Respondents' reservation encompassed the service problem.[4]

B. OAG Has Failed to Show Respondents Engaged in Purposeful Activity Towards New York Having Any Nexus to OAG's Claims

As detailed in the moving papers, there is no basis for general personal jurisdiction over Respondents because they are not "at home" in New York, and no basis for specific personal jurisdiction because Respondents have since the end of 2017 — well before the relevant allegations — prohibited U.S. persons from using their platforms. (Doc. 78, at ¶¶ 8-12.) Specific personal jurisdiction requires activity by which a litigant has purposefully availed itself of the benefits of the forum, and Respondents' ban on U.S. customers — purposeful *avoidance* — is the polar opposite of that. (*Id*.)

OAG does not dispute that the Court lacks general personal jurisdiction. (Doc. 110, at 11-14.) For purposes of specific personal jurisdiction, OAG has tried to suggest that New Yorkers are using Respondents' platforms despite the ban (*id*. at 4-5, 13-14), but each example involves overseas customers that qualify as Eligible Contract Participants (ECPs). (Hoegner Reply Aff. ¶¶ 4; 9-13.) While certain ECPs have had shareholders or other personnel in New York, OAG cannot pierce the corporate veil and pretend that those individuals are Respondents' customers. They are not; the customer in each instance is the foreign ECP. *Duravest, Inc. v.*

[4] The cases OAG cites (Doc. 110, at 20) are also easily distinguishable. The court in *Addesso v. Shemtob*, 70 N.Y.2d 689, 690 (1987), applied the rule in CPLR 3211(e) that jurisdictional objections are waived if they are omitted from a CPLR 3211 motion to dismiss on other grounds, and also not raised in a "responsive pleading." CPLR 3211(e). Here, Respondents have not previously moved to dismiss and have not filed any "responsive pleading." CPLR 3011 (defining pleadings). In the other two cases, a party waived arguments about service *for purposes of an appeal* by not raising those arguments with the trial court. *Hodges v. Beattie*, 68 A.D.3d 1597, 1598 (3d Dep't 2009); *Enright v. Vasile*, 238 A.D.2d 543, 543 (2d Dep't 1997).

Viscardi, A.G., 581 F. Supp. 2d 628, 636 n.6 (S.D.N.Y. 2008) (refusing to use the residence of corporate officers as grounds for jurisdiction over the corporation).

OAG accuses Respondents of using ECPs as a "work-around" to do business with New Yorkers (Doc. 110, at 5), but the email OAG cites shows Respondents being scrupulous in confirming that a UK customer lacked any New York connection. (Doc. 88.) Contrary to OAG's portrayal, the prohibition on U.S. Persons is a real policy, intended to avoid the type of regulation OAG is trying to foist upon Respondents here. (Hoegner Reply Aff. ¶ 9.)[5]

A separate problem with OAG's arguments is that OAG has failed to connect any New York activity to the Martin Act claim at issue. OAG tries to argue, without citing any authority, that it need not make this connection until its civil complaint is filed. (Doc. 110, at 12 n.4.) OAG once again has overlooked that a § 354 proceeding is allowed only *after* OAG has already determined to sue under the Martin Act, and overlooks that it has already obtained injunctive relief on the premise that its Martin Act claims have merit (at least provisionally). (Doc. 76, at 11-12.) It is those allegations that are relevant for personal jurisdiction. *Cf. Gucci America, Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014) (specific jurisdiction for purposes of nonparty subpoena should focus on "the connection between the nonparty's contacts with the forum and the discovery order at issue").

[5] Even if the Court found OAG's isolated examples to be relevant, OAG has not explained how any of the customers were affected by OAG's allegations. Further, contrary to OAG's suggestion that courts "consistently" so find (Doc. 110, at 13), isolated examples of New York customers do not amount to the necessary "substantial relationship" between the claims and the forum. *Johnson v. Ward*, 4 N.Y.3d 516, 519 (2005); *see, e.g.*, *Presidential Realty Corp. v. Michael Square W., Ltd.*, 44 N.Y.2d 672, 674 (1978) (signing of contract in dispute in New York was "not sufficient to confer jurisdiction" because the material negotiations occurred elsewhere); *Cutting Edge Enterprises, Inc. v. Nat'l Ass'n of Attorneys Gen.*, 481 F. Supp. 2d 241, 248 (S.D.N.Y. 2007) (no jurisdiction where forum nexus is "too tenuous").

The nature of the claims for this § 354 proceeding is clear. The Court summarized the claims as Respondents having engaged in transactions that "undermine[d] representations regarding tether upon which investors and traders rely." (Doc. 76, at 12.) OAG alleges that in late 2018, Bitfinex was having difficulty withdrawing funds it had placed with a payment processor, Crypto Capital, and, to remedy the problem, borrowed money from Tether in March 2019 via a transaction that was allegedly inconsistent with Respondents' public statements about tethers being "backed" by traditional currency. (Doc. 1 ¶¶ 62-85.)

Those allegations do not arise from any New York activity by Respondents. After broad jurisdictional discovery, OAG has not shown that any aspect of the Crypto Capital relationship or the loan transaction — the basis for the § 354 Order — touched on New York in any way. OAG has failed to identify a single New York customer who was misled or even considered representations about tether's backing, nor any New Yorker harmed.

Instead, OAG offers a grab bag of miscellaneous and unrelated New York contacts, ignoring the required nexus "between the forum and the underlying controversy." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). "When there is no such connection, specific jurisdiction is lacking **regardless of the extent of a defendant's unconnected activities in the State**." *Id*. (emphasis added).

The "unconnected" New York contacts that OAG points to include the following:

- OAG states that that Respondents held accounts at New York banks (Doc. 110, at 13), but the accounts were closed months before any relevant events. (Hoegner Reply Aff. ¶¶ 21-23.)
- OAG points out that Respondents hired a New York-based public relations firm (Doc. 110, at 14), but that engagement has nothing to do with OAG's claims. (Hoegner Reply Aff. ¶ 25.) While OAG vaguely claims that the firm made a "representation to the market regarding the cash-backing of tethers" (Doc. 110, at 14), no such representation to New Yorkers is identified.

- OAG states that Bitfinex serviced New York customers in 2017 and earlier, but those dealings have nothing to do with the claims here, which arose no earlier than late 2018. (Hoegner Aff. ¶¶ 6-15.)

(*See also* Hoegner Reply Aff. ¶¶ 16-34 (addressing other alleged New York activity).)

As to the last point, OAG stated that New York customers were allowed on the Bitfinex platform "[d]uring the time period relevant to the OAG's investigation" (Doc. 110, at 13), but this proceeding involves *a particular § 354 Order* based on specific allegations. This case is not synonymous with OAG's overall investigation, and OAG cannot support jurisdiction for this particular case by vaguely referring to an "investigation" having an unknown scope.

OAG next argues that, regardless of the ban on U.S. customers, New Yorkers today can trade tethers via other trading platforms. (Doc. 110, at 14.) As Respondents pointed out in their moving papers, however, the fact that a respondent or defendant "knows or reasonably should know that its products" would end up in the forum state does not constitute the necessary *purposeful* availment. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011) (discussed in Doc. 79, at 10-11). OAG's papers ignore *McIntyre*.

Finally, OAG claims it can support personal jurisdiction based on unspecified evidence that it is only willing to reveal *in camera*. (Doc. 110, at 6 & n.3.) But "reliance upon *ex parte* evidence to decide the merits of a dispute" is appropriate "only in the most extraordinary circumstances," *United States v. Quest Diagnostics Inc.*, 734 F.3d 154, 160 n.9 (2d Cir. 2013) (citation omitted), such as where there are "acute national security concerns." *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986). OAG barely even tries to justify this procedure, stating only in a conclusory form that it needs to "protect aspects of the OAG's ongoing investigation." (Doc. 110, at 6.) The one case OAG cites, *Sussman v. N.Y. State Organized Crime Task Force*, 39 N.Y.2d 227 (1976), merely noted "in passing" that "there may be

instances, perhaps few in number" where *in camera* evidence would be necessary as part of organized crime investigations. *Id*. at 233. OAG cites no applicable case.

III. THIS COURT LACKS SUBJECT MATTER JURISDICTION UNDER THE MARTIN ACT

This proceeding should be dismissed for lack of subject matter jurisdiction because tethers do not qualify as securities or commodities under the Martin Act. (Doc. 79, at 13-15.) OAG does not attempt to rebut this point. (Doc. 110, at 15-17.)

OAG argues instead that the issue is premature, "because the OAG has not alleged a Martin Act violation yet." (*Id*. at 15.) This is backwards. Subject matter jurisdiction is a threshold requirement for any proceeding. Indeed, in an analogous context of enforcing agency subpoenas, the "enforcing court [must] assure itself that the subject matter of the investigation is within the statutory jurisdiction of the subpoena-issuing agency." *Federal Election Comm'n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 396 (D.C. Cir. 1981) (quashing subpoena where the issuing agency "lacked subject matter jurisdiction over allegations" at hand); *see also United States v. Morton Salt Co*., 338 U.S. 632, 652 (1950) (courts enforcing subpoenas must verify that "the inquiry is within the authority of the agency").

The primary case OAG relies upon, in fact, confirms this essential requirement, notwithstanding OAG's selective quoting from that case. In *Gardner v. Lefkowitz*, 97 Misc. 2d 806 (N.Y. Sup. Ct. 1978), OAG issued a subpoena to a diamond firm as part of a Martin Act investigation. The court held that "a precondition for the issuance" of an OAG subpoena was "**subject matter jurisdiction** on which the issuance can rest." *Id*. at 810 (emphasis added). The diamond firm argued that diamond sales were not securities transactions under the Martin Act, but the court disagreed, finding subject matter jurisdiction because, *inter alia*, the diamonds were "promoted as an investment and a safeguard against inflation" and were "consistently described"

as investments. *Id*. at 814. That the court undertook this inquiry shows that subject matter jurisdiction cannot be deferred, as OAG suggests.

OAG next argues that its claims *do* fall within the ambit of the Martin Act because its "investigation concerns the operation of the Bitfinex trading venue," which OAG believes to include trading in products that are commodities. (Doc. 110, at 16.) No evidence is offered for this point, but regardless, the subject matter jurisdiction inquiry should be based on the claims underlying this § 354 proceeding and supporting the injunctive relief that continues to burden Respondents — not OAG's nebulous "investigation." The claims at issue concern only tether.

For the same reasons, the Court should reject OAG's argument for subject matter jurisdiction based on Respondents' recent initial exchange offering. (Doc. 110, at 16.) The offering took place *after* this proceeding commenced (Hoegner Reply Aff. ¶ 30), and so none of the discovery requests at issue in the § 354 Order have anything to do with it.

IV. THE MARTIN ACT CANNOT COMPEL BITFINEX AND TETHER TO PRODUCE DOCUMENTS OUTSIDE OF THE UNITED STATES

Respondents' moving papers explained why § 354 does not have extraterritorial reach (Doc. 79, at 15-16), and OAG, citing no case holding otherwise, has responded with a series of arguments that are all incorrect.

First, OAG argues that Respondents have waived this objection by accepting service of the November 2018 subpoenas. (Doc. 110, at 17.) Not so. As OAG acknowledges, the subpoenas are separate from this § 354 proceeding, which arose months later. (*Id*. at 17 n.6.) OAG cannot point to anything Respondents said or did to accede to any other investigative measures.

Second, OAG argues that extraterritoriality arguments cannot be used to terminate "OAG's investigation itself." (Doc. 110, at 17-19.) But Respondents are not asking the Court to

end OAG's investigation. Respondents are asking only that the Court refuse to enforce a particular § 354 Order; OAG may continue to investigate with the tools available, just not in an improper manner.

Third, OAG faults Respondents for referring to federal cases, but ignores that Respondents also cited the Court of Appeals' recognition of the "established presumption . . . against the extraterritorial operation of New York law." *Global Reins. Corp.-U.S. Branch v Equitas Ltd.*, 18 N.Y.3d 722, 735 (2012). OAG offers no reason to believe that the presumption would be implemented any differently under federal or state law.[6]

Finally, OAG argues that extraterritoriality issues should await "a future complaint" so that the Court can analyze the claims OAG decides to bring. (Doc. 110, at 19.) But this argument again seeks to have it both ways: OAG wants judicial relief today in the form of discovery and injunction, but cannot be bothered to show that there is a statutory basis for that relief. The Court should reject OAG's flawed arguments.

[6] Contrary to OAG's suggestion that *Morrison v. Natl. Austl. Bank Ltd.*, 561 U.S. 247 (2010), somehow undermines Respondents' extraterritoriality position, the Court's analysis and application of the presumption against extraterritoriality in the context of the federal securities laws actually supports Respondents' arguments.

CONCLUSION

For the reasons stated above, and those in Respondents' moving papers, the Court should dismiss this proceeding.

Dated: New York, New York
July 22, 2019

Respectfully submitted,

STEPTOE & JOHNSON LLP

By: */s/ Jason Weinstein*
Jason Weinstein
Charles Michael
1114 Avenue of the Americas
New York, New York 10036
(212) 506-3900
jweinstein@steptoe.com
cmichael@steptoe.com

MORGAN, LEWIS & BOCKIUS LLP

By: */s/ David I. Miller*
David I. Miller
Zoe Phillips
101 Park Avenue
New York, New York 10178
(212) 309-6000
david.miller@morganlewis.com
zoe.phillips@morganlewis.com

Counsel for Respondents

RULE 17 CERTIFICATION

I am the attorney who is filing this document. I hereby certify that this document, exclusive of the caption, table of contents, table of authorities, and signature block contains **4,172** words as counted by the word-processing system used to prepare the document.

/s/ Zoe Phillips
Zoe Phillips