June, 2025

Borderless Tokens, Boundless Jurisdiction

SEC v. Balina and the Expanding Extraterritorial Reach of U.S. Securities Law in Global Crypto Markets

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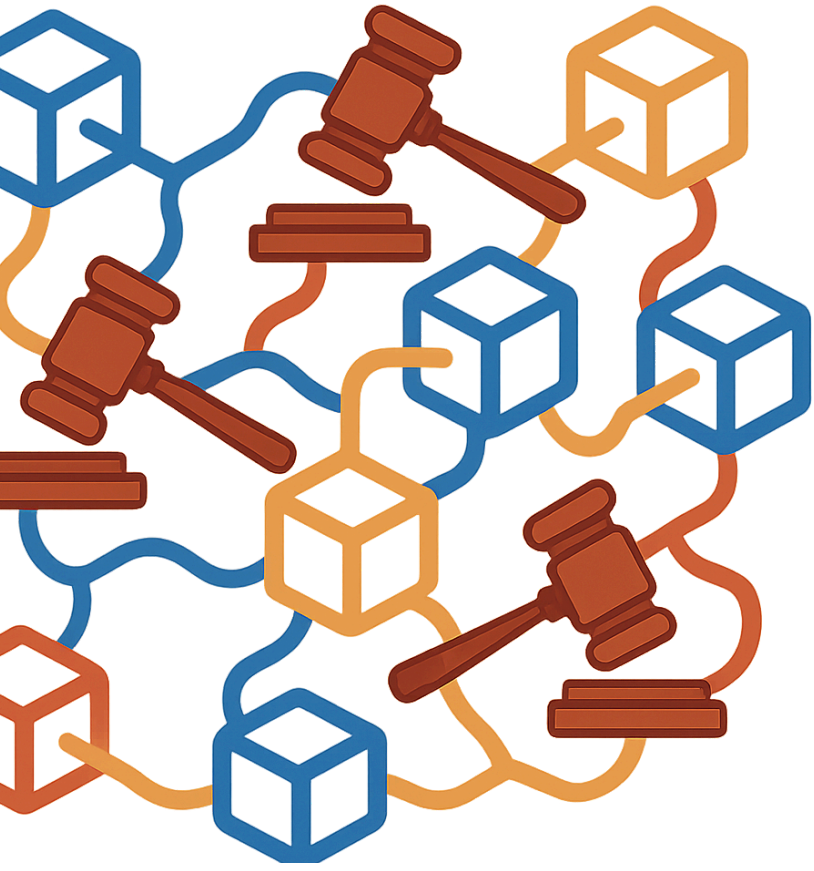

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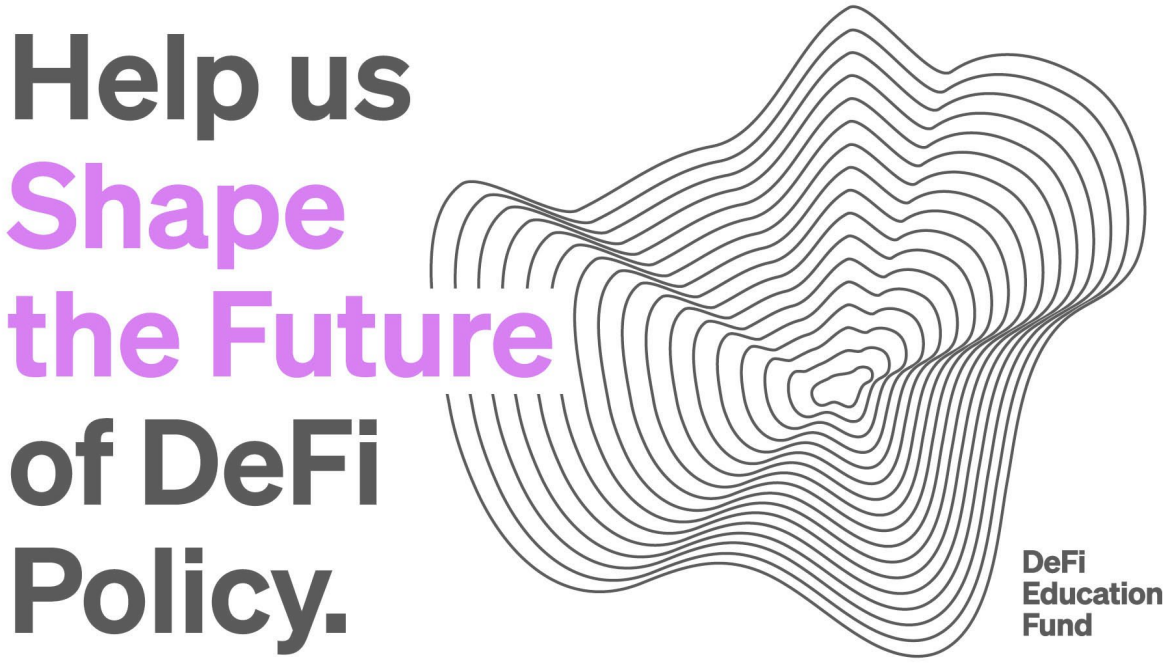
About the DeFi Education Fund

The DeFi Education Fund is a nonpartisan research and advocacy group working to explain the benefits of DeFi, achieve regulatory clarity for the future of the global digital economy, and help realize the transformative potential of DeFi for everyone.

We exist because DeFi has immense potential for human prosperity, but that can only be realized with buy-in from governments and appropriate policy. We work to help realize DeFi's promise by educating regulators and policymakers and advocating for smart approaches.



Acknowledgements

Thank you to our DeFi Education Fund colleagues, who were instrumental in the development of this paper. And to the DeFi community for supporting our efforts in advocating for sensible policy that will safeguard and nourish innovation for a better tomorrow.

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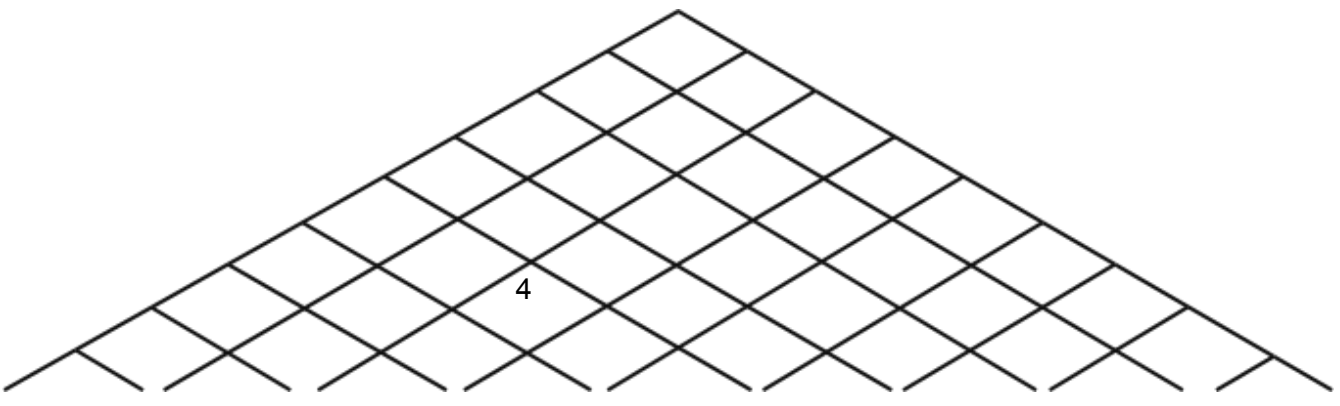

Introduction

Since at least 2019, U.S. courts have increasingly pushed an expansive interpretation of U.S. jurisdiction to regulate cryptocurrency ("crypto") and decentralized finance ("DeFi") transactions taking place predominantly beyond the nation's borders.[1] This growing extraterritorial reach stems in part from the courts' stance that any hint of U.S. involvement, be it a social media platform hosted in the United States or a single American investor, can suffice to trigger application of U.S. securities laws.[2] This approach likely lacks the precise statutory and jurisprudential grounding the Supreme Court requires when U.S. law is invoked to police global commerce. Indeed, the presumption against extraterritoriality counsels that Congress ordinarily legislates only with respect to domestic concerns.[3] Courts should, therefore, be wary of allowing federal agencies like the Securities and Exchange Commission ("SEC") to stretch statutes without clear congressional authorization to do so.

In the case of crypto transactions and blockchain technology, where the lines of jurisdiction are inherently blurred by borderless, decentralized networks,[4] the SEC's expansive posture threatens to undermine a global ecosystem of DeFi innovation by entangling foreign actors in compliance obligations that they have no reason to anticipate.[5] In tandem, the uncertain legal landscape imposes considerable costs on U.S.-based entrepreneurs and

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[1] *See Williams v. Binance*, 96 F.4th 129, 136-140 (2d Cir. 2024); *Telegram Update*, No. 19-cv-9439, 2020 WL 1547383 (S.D.N.Y. 2020); *In re Block.one*, Securities Act Release, Release No. 10714 (September 30, 2019); *see also* Jake Chervinsky & Daniel Barabander, *A Practical Guide to Geofencing*, Variant (Sept. 30, 2024), https://variant.fund/articles/practical-guide-to-geofencing/ ("[C]ourts applying Morrison to offers and sales of digital assets have been readily inclined to extend the securities laws beyond U.S. borders.").

[2] *See SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024); Frank Emmert, *The Long Arm of the SEC in the Regulation of Digital Currencies*, 33 Indiana Int'l & Com. L. Rev. 1, 27-28 (2023).

[3] *Morrison v. National v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010).

[4] Georg Lorenz, *Regulating Decentralized Financial Technology: A Qualitative Study on the Challenges of Regulating DeFi with a Focus on Embedded Supervision*, Stan. J. Blockchain L. & Policy (June 28, 2024), https://stanford-jblp.pubpub.org/pub/regulating-defi/release/1.

[5] *See* Emmert, *supra* note 2, at 36-37.

investors.[6] The SEC's enforcement action against Ian Balina exemplifies these concerns, illuminating how a controversial enforcement strategy can ensnare DeFi participants with only tangential ties to U.S. markets. The Balina case raises timely questions about the limits and prudence of U.S. extraterritorial regulation of DeFi and crypto.

For background, the SEC alleged that Balina violated U.S. securities laws by offering, selling, and promoting tokens issued by Sparkster, Ltd., a Cayman Islands-based company.[7] Although Sparkster raised funds globally,[8] the SEC insisted Balina's activities fell under U.S. law because he purportedly promoted the tokens on U.S.-based social media platforms, and had included a handful of U.S. residents in his private investment pool.[9] Balina contended, among other arguments, that because he was abroad during the relevant period and Sparkster was incorporated overseas, no domestic transaction took place.[10] Moreover, he argued that judicial precedent, especially the Supreme Court's presumption against extraterritorial application of U.S. statutes, supports his position that U.S. securities laws do not govern his activities.[11]

Although the SEC voluntarily dismissed its enforcement action against Balina before the Fifth Circuit could weigh in[12], the district court's ruling and the jurisdictional theory it embraced remain, as the dismissal does not erase the precedent's practical influence; the underlying reasoning still could invite the SEC or private litigants to assert U.S. securities laws if a faint domestic connection were to exist. This paper therefore analyzes *Balina* with the dismissal as a key consideration, arguing that the case continues to exemplify the dangers of an unchecked, extraterritorial application of U.S. securities regulation.

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[6] Carol R. Goforth, *SEC v. Telegram: A Global Message*, 52 Univ. Memphis L. Rev. 199, 245-46 (2022) (discussing how the SEC's aggressive enforcement efforts encourage crypto businesses to avoid presence in the U.S. and diminish the availability of funding, stifling innovation).
[7] Complaint at 1-2, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. Sept. 19, 2022).
[8] *Id.* at 12-13.
[9] *Id.* at 10-13.
[10] Defendant Ian Balina's Motion for Summary Judgment at 7-10, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).
[11] *Id.*
[12] Stipulation of Dismissal and Releases by U.S. Securities and Exchange Commission at 1, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).

This paper explains why the SEC's jurisdictional claim in *Balina* was misguided, and demonstrates how rigidly applying U.S. securities laws to largely foreign transactions ultimately ignores controlling Supreme Court precedent and unfairly deters global participation in emerging technologies. By dissecting the facts of the *Balina* case, examining the relevant legal framework, and showing how the SEC's extraterritorial arguments are inconsistent with case law, this paper aims to demonstrate that Balina's conduct falls outside the scope of U.S. securities laws. The outcome in *Balina* underscores the broader concerns of overregulation in the crypto industry, where a blunt extension of U.S. legal standards can curtail innovation.

SEC v. Balina

On September 19, 2022, the SEC filed an enforcement action against Ian Balina, a cryptocurrency investor and influencer, in connection with the Initial Coin Offering ("ICO") of the Sparkster, Ltd. "SPRK" token.[13] In its complaint, the SEC claimed Balina's involvement in the ICO violated (i) Section 5(a) of the Securities Act, which makes it unlawful to sell unregistered securities; (ii) Section 5(c) of the Securities Act, which makes it unlawful to offer unregistered securities for sale; and (iii) Section 17(b) of the Securities Act, which makes it unlawful to promote a security for payment without disclosing such payment.[14,15]

The SEC described the "Sparkster pool" as a Telegram-based, self-directed, smart contract syndicate that Balina created after signing his own Simple Agreement for Future Tokens ("SAFT") with Sparkster.[16] By posting a whitelist link in his Telegram group, Balina invited followers to deposit Ethereum ("ETH") into a pooling smart contract that routed their funds to him and, once Sparkster released SPRK tokens, automatically redistributed SPRK and the 30

[13] Complaint at 1, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).
[14] *Id.* at 20-21; Securities Act of 1933 § 5(a), 15 U.S.C. § 77e(a) (2018); Securities Act of 1933 § 5(c), 15 U.S.C. § 77e(c) (2018); Securities Act of 1933 § 17(b), 15 U.S.C. § 77q(b) (2018).
[15] For the purposes of this paper, only the Section 5(a) and 5(c) claims are discussed.
[16] *See* Complaint at 15-17, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).

percent bonus he had negotiated, to each contributor pro rata via the ETH addresses provided.[17] The link to the investment pool contained a form that members of the investing pool had to fill out providing their personal information, a description of the investment pool, and a disclaimer claiming that Balina's company was responsible for the investment pool.[18] The SEC claimed that Balina vetted and removed participants, updated them on Know Your Customer ("KYC") issues, and announced when he was sending funds to Sparkster.[19] Consequently, the SEC claimed that Balina controlled the offering, and the investors were irrevocably committed to the transaction in the U.S. because Ethereum validation nodes are most densely clustered in the U.S.[20]

Under the 5(a) claim, the SEC specifically alleged that "in setting up, communicating the particulars of, and conducting the distribution to his investing pool" Balina sold unregistered securities through the use of interstate communication or commerce.[21] According to the complaint, the SPRK tokens were investment contract securities because buyers pooled their ETH with an expectation of profits from Sparkster's managerial efforts and Balina's promised bonus allocation.[22] The SEC also claimed that Balina structured the pool "with a view to distributing the tokens in his own offering."[23] When Sparkster released the tokens, the pool's smart contract delivered SPRK back to the pool contributors, consummating a sale of securities for value.[24] Since neither Sparkster nor Balina filed a registration statement covering this downstream distribution, and no exemption applied, the SEC claimed that Balina violated Section 5(a).[25]

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[17] *See id.*
[18] *Id.* at 15.
[19] *See id.*
[20] *Id.* at 16.
[21] *Id.* at 17.
[22] *Id.* at 16-19.
[23] *Id.* at 6.
[24] *Id.* at 16.
[25] *Id.* at 16-17.

Under the Section 5(c) claim, the SEC alleged that Balina set up and promoted an "investing pool" where individuals could contribute ETH and share in Balina's allocation of SPRK tokens he was to receive, pursuant to a SAFT he previously signed with Sparkster.[26] Balina allegedly promoted the SPRK token through a variety of "U.S. social media networks" and marketed his investment pool through Telegram.[27] Notably, four of the "Sparkster Investment Pool" participants listed their country as the United States and nine of the IP addresses were located in the United States.[28] The SEC claimed that completion of the form and transmission of ETH created binding commitments before any registration statement existed, rendering the communications interstate offers to sell.[29] Additionally, the SEC claimed that Balina had already contracted for the resale of SPRK tokens at the moment he paid Sparkster, underscoring that Balina's offering preceded and was separate from Sparkster's own presale.[30]

In his Motion for Summary Judgment, Balina argued that the SEC's enforcement action constituted an impermissible extraterritorial application of U.S. securities law to his conduct because the alleged promotion and transactions occurred outside the United States.[31] Balina claimed that under the domestic transactions test in *Morrison v. National Australia Bank*, the SEC lacked jurisdiction because no "domestic transaction" occurred.[32] In support of this argument, Balina explained that (i) Sparkster is incorporated in the Cayman Islands; (ii) Sparkster's offering of SPRK tokens occurred in the United Kingdom; (iii) the smart contract platform used to create the investor pool, PrimaBlock,[33] is incorporated in Estonia; (iiii) all of

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[26] *Id.* at 15.
[27] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *17-18 (W.D. Tex. May 22, 2024).
[28] *Id.* at 18.
[29] Complaint at 15-17, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).
[30] *See id.* at 6.
[31] Defendant Ian Balina's Motion for Summary Judgment at 2, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).
[32] *Id.* at 7.
[33] Primablock is an Ethereum smart contract SaaS that handles the accounting and remittance work for the ICO pooling and investing process. Rolando Mathias, *How I Designed a Blockchain App that Reached 200K Users in 6 Months*, Medium (Aug. 24, 2018), https://medium.com/free-code-camp/how-i-designed-a-blockchain-app-that-scaled-to-200k-users-in-6-months-f5c09ed6a786.

Balina's purported promotion of SPRK tokens and his investment pool occurred abroad; and (iiiii) the purported sales of the SPRK tokens occurred while Balina was abroad.[34] Additionally, Balina argued that even if a domestic transaction occurred, under *Parkcentral Global HUB Ltd. v. Porsche Auto. Holdings SE*, such domestic transactions were "so predominantly foreign as to be impermissibly extraterritorial."[35]

The Western District of Texas, however, disagreed with Balina and held that his "broader challenge to domesticity" failed, and Sections 5(a), 5(c), and (17)(b) of the Securities Act applied to Balina's conduct as a matter of law.[36] A month after the Western District of Texas denied Balina's Motion for Summary Judgment, Balina sought an interlocutory appeal on the issue of extraterritoriality, claiming, in part, that there is a Circuit split concerning the applicable test to determine extraterritoriality.[37] The Western District of Texas granted Balina's Motion for Certificate of Appealability on August 16, 2024, and sent the interlocutory appeal to the Fifth Circuit.[38] On May 1, 2025, before the Fifth Circuit rendered a decision, the SEC dismissed its action against Balina with prejudice,[39] stating: "The Commission's decision to exercise its discretion and dismiss this pending enforcement action rests on its judgment that the dismissal will facilitate the Commission's ongoing efforts to reform and renew its regulatory approach to the crypto industry, not on any assessment of the merits of the claims alleged in the action."[40]

Analysis

[34] Defendant Ian Balina's Motion for Summary Judgment at 7-8, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).
[35] *Id.* at 8-9.
[36] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *22 (W.D. Tex. May 22, 2024).
[37] Order Granting Defendant's Motion to Certify an Interlocutory Appeal at 3, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. Sept. May 22, 2024).
[38] *Id.* at 1.
[39] Stipulation of Dismissal and Releases by U.S. Securities and Exchange Commission at 1, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. May 22, 2024).
[40] U.S. Sec. & Exch. Comm'n, SEC Announces Dismissal of Civil Enforcement Action Against Ian Balina (May 2, 2025), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26302.

As explained below, the *Balina* case continues to have implications for the regulation of digital assets in the U.S. because (i) the district court misapplied *Morrison's* domestic transactions test; (ii) the district court should have adopted the *Parkcentral* framework in its analysis of domesticity; (iii) Section 5(c) did not apply to Balina's conduct; and (iiii) the district court's policy-based argument was misguided.

A. The Court in Balina Misapplied Morrison to the Section 5(a) claim.

The district court's interpretation of the presumption against extraterritoriality and domestic transactions test laid out in *Morrison* resulted in a ruling that improperly extended U.S. securities laws to foreign digital asset transactions.

In *Morrison*, the Supreme Court described the presumption against the extraterritorial application of U.S. statutes.[41] Writing for the majority, Justice Scalia explained:

> 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.'" This principle represents a canon of construction, or a presumption about a statute's meaning, rather than a limit upon Congress's power to legislate. It rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign, matters. Thus, "unless there is the affirmative intention of the Congress clearly expressed" to give a statute extraterritorial effect, "we must presume it is primarily concerned with domestic conditions." The canon or presumption applies regardless of whether there is a risk of conflict between the American statute and a foreign law. When a statute gives no clear indication of an extraterritorial application, it has none.[42]

The Supreme Court's upholding of the presumption against extraterritoriality in *Morrison* rejected the previous "conduct and effects" test used by various courts of appeals seeking primarily to regulate fraudulent schemes abroad for decades prior.[43] Notably, the

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[41] *Morrison v. National v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010).
[42] *Id.*
[43] *See id.* at 257 (explaining how the Second Circuit previously created a conduct and effects test where the application of the Exchange Act "could be premised upon either some effect on American securities markets or investors (*Schoenbaum*) or significant conduct in the United States (*Leasco*). It later formalized these two applications into (1) an 'effects test,' 'whether the wrongful conduct had a substantial effect in the United States or upon United States citizens,' and (2) a 'conduct test,' 'whether the wrongful conduct occurred in the United States.'").

core of the presumption against extraterritoriality is that it is a "canon of construction," meaning courts "apply the presumption in all cases, preserving a stable background against which Congress can legislate with predictable effects."[44]

In applying the presumption of extraterritoriality to securities transactions, the *Morrison* Court created the "domestic transactions" test, which states that Section 10(b) claims under the Securities Exchange Act only apply to (i) transactions in securities listed on U.S. exchanges, and (ii) domestic transactions in other securities.[45] While *Morrison* established the domestic transactions test in connection with an Exchange Act claim, courts have generally held that the holding in *Morrison* also applies to claims made under the Securities Act.[46] Thus, under *Morrison,* the "exclusive focus" for determining whether U.S. securities laws apply to non-U.S. exchange traded securities is whether the transactions constitute "domestic purchases and sales."[47]

Following *Morrison*, federal courts have adhered to the "irrevocable liability" standard announced in *Absolute Activist Value Master Fund Ltd. v. Ficeto* in determining whether a given securities transaction is domestic.[48] Under *Absolute Activist*, "transactions involving securities that are not traded on a domestic exchange are domestic if irrevocable liability is incurred or title passes within the United States."[49]

In nearly every case where a domestic transaction is found to have occurred, both the seller and the buyer took an action to manifest their intent to enter into a

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[44] *Id.* at 261.
[45] *Id.* at 267-268.
[46] *See In re Smart Techs., Inc.*, 295 F.R.D. 50, 55-56 (S.D.N.Y. 2013) ("Courts in this District uniformly concur that Morrison's prohibition on extraterritoriality applies to Securities Act claims.").
[47] *Morrison*, 561 U.S. at 268.
[48] *See Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 67 (2d Cir. 2012); *SEC v. Morrone*, 997 F.3d 52, 59–60 (1st Cir. 2021); *United States v. Georgiou*, 777 F.3d 125, 135–37 (3d Cir. 2015); *Stoyas v. Toshiba*, 896 F.3d 933, 948–49 (9th Cir. 2018).
[49] *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 67 (2d Cir. 2012).

domestic transaction.[50] In *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, the court held that the placement of a purchase order from within the United States, without more, is not sufficient to render a transaction domestic.[51] After all, a contract is a bilateral agreement, requiring a "meeting of the minds" between a buyer and seller.[52] Consequently, both contracting parties must take sufficient steps to objectively manifest their intent to enter a domestic transaction for the parties to become irrevocably bound to enter into a domestic transaction.[53]

Applying these legal principles to *Balina*, where the transactions at issue involved a series of on-chain and off-chain transactions in ETH and SPRK tokens,[54] *Morrison* and its progeny demand the extraterritoriality inquiry focuses solely on the location of the *transactions* in determining where irrevocable liability was incurred.[55]

In *Balina*, the facts indicate the existence of domestic purchasers, but not domestic transactions.[56] Sparkster is a Cayman Islands entity headquartered in London, England.[57] Balina made the decision to participate in Sparkster's SPRK ICO at a "World Tour" event in Amsterdam.[58] Balina negotiated and signed the SAFT outside the United States and it is governed by the laws of the Cayman Islands.[59] Balina then promoted his private investment pool for the SPRK ICO using Telegram from outside the United States.[60] Potential pool participants then filled out a Google Form containing a warning

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[50] Brief for Appellant Ian Balina at 26, *Balina v. SEC*, No. 24-50726 (5th Cir. 2025) (citing *Giunta v. Dingman*, 893 F.3d 73, 76–77 (2d Cir. 2018); *Myun–Uk Choi v. Tower Research Capital LLC*, 890 F.3d 60, 63 (2d Cir. 2018); *United States v. Vilar*, 729 F.3d 62, 77 (2d Cir. 2013)).
[51] *Id.* at 27; *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 181 n.33 (2d Cir. 2014).
[52] *Id.* (quoting *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 68 (2d Cir. 2012)).
[53] *Id.* (citing *Absolute Activist*, 677 F.3d at 68).
[54] *Id.* at 39-40.
[55] *Morrison*, 561 U.S. at 267 (holding that U.S. securities laws apply "only [to] transactions in securities listed on domestic exchanges, and domestic transactions in other securities.").
[56] *Id.*
[57] *Id.* at 27-28.
[58] *Id.* at 28.
[59] *Id.*
[60] *Id.*

that SPRK tokens "may not be appropriate for, or offere[d] to, investors residing in the United States."[61] Despite this warning, a number of individuals decided to proceed with purchasing SPRK tokens through Balina's investment pool from within the United States.[62] Those participants then deposited ETH into a PrimaBlock smart contract and those funds were refundable until Balina notified pool participants that the funds had been sent to Sparkster from outside the United States.[63]

Applying the holding in *Absolute Activist*, there was only a supposed objective "meeting of the minds" between Balina and the pool participants when pool participants were no longer able to withdraw their ETH from the PrimaBlock smart contract.[64] This was also the moment that irrevocable liability was incurred.[65] Once Balina initiated the transfer of the ETH in the investment pool, the ETH was sent to Sparkster and then SPRK tokens were transferred to the PrimaBlock smart contract, which automatically distributed the SPRK tokens pro rata to the wallet addresses provided by pool members.[66] Balina and the pool participants *intentionally* directed their conduct through PrimaBlock (an Estonian company) and only became irrevocably bound upon the transfers initiated by Balina and matched by Sparkster (a Cayman Islands company) outside the United States.[67] Consequently, the transactions at issue in *Balina* indicate that the matching of buyer and seller occurred outside the United States.[68] The sole fact that some pool participants placed their purchase orders from within the United States does not render the transactions in *Balina* as domestic.[69]

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[61] *Id.*
[62] *Id.*
[63] *See id.*
[64] *Id.* at 28-29.
[65] *Id.* at 29.
[66] *Id.*
[67] *Id.*
[68] *Id.* (citing *Choi*, 890 F.3d at 67).
[69] *Id.* at 31-32 (citing *City of Pontiac*, 752 F.3d at 181 n.33).

As discussed above, under *Morrison,* the *Balina* decision on the Section 5(a) claims should have turned solely on the location of the transactions at issue.[70] Despite this, the court in *Balina* failed to properly analyze the facts surrounding the investment pool transactions, and instead, focused its analysis of the location of some United States purchasers and policy considerations.[71] Further, the district court in *Balina* held that the transactions were domestic based on the proposition that "even if Balina and the relevant companies are technically located outside the United States, many of the 'buyers' in Balina's pool were in the United States when they opted-in to the Sparkster pool."[72]

The district court reasoned that, under *Absolute Activist*, a transaction may be deemed domestic if "the purchaser incurred irrevocable liability within the United States to take and pay for a security," and therefore, "a domestic transaction occurs when either the seller or the buyer is present in the United States."[73] *Absolute Activist* plainly rejects this reasoning, however. "While it may be more likely for domestic transactions to involve parties residing in the United States, '[a] purchaser's citizenship or residency does not affect where a transaction occurs; a foreign resident can make a purchase within the United States, and a United States resident can make a purchase outside the United States.'"[74] Consequently, the incidental location of these U.S.-based purchasers is not

[70] *See* Brief for Appellant Ian Balina at 39-40, Balina v. SEC, No. 24-50726 (5th Cir. 2025); Morrison, 561 U.S. at 267 (holding that U.S. securities laws apply "only [to] transactions in securities listed on domestic exchanges, and domestic transactions in other securities.").
[71] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *7-8 (W.D. Tex. May 22, 2024).
[72] Brief for Appellant Ian Balina at 32, *Balina v. SEC*, No. 24-50726 (5th Cir. 2025); *SEC v. Balina*, No. 1:22-CV-00950-DAE at *7 (W.D. Texas May 22, 2024).
[73] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *7 (W.D. Tex. May 22, 2024); *Absolute Activist*, 677 F.3d at 68.
[74] *Absolute Activist*, 677 F.3d at 69 (quoting *Plumbers' Union Local No. 12 Pension Fund v. Swiss Reinsurance Co.*, 753 F.Supp.2d 166, 178 (S.D.N.Y. 2010)).

only the only factor weighing towards a finding of domesticity, but is also clearly insufficient to render the transactions domestic under *Morrison*.[75]

B. The Court Should Have Adopted the Parkcentral Framework.

The district court in *Balina* also erred in not applying the Second Circuit's *Parkcentral* framework in *Balina*. Notably, in the district court's judgment on Balina's motion for an interlocutory appeal, the district court stated: "It may be argued that the Circuits, including the Fifth Circuit, have not settled on a legal definition of extraterritoriality."[76] Accordingly, the district court should have looked to other jurisdictions for guidance. Balina argued in his Motion for Summary Judgment that even if the district court were to find that a domestic transaction occurred, under the framework established in *Parkcentral Global HUB Ltd. v. Porsche Automobile Holdings SE*, the district court should nevertheless show judicial restraint and refrain from applying U.S. securities laws to the facts set out in *Balina*.[77] The district court refused, however, citing that the First and Ninth Circuits found *Parkcentral* to be inconsistent with *Morrison*.[78] With no further exposition, the district court held that it "w[ould] not rely on *Parkcentral* here."[79]

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[75] See *Basic v. BProtocol Foundation*, 2024 WL 4113751, at *8-9 (W.D. Tex. July 31, 2024) (holding that plaintiffs' claim that they entered into a domestic investment contract when they clicked "accept" on a computer screen from within the U.S. would render every online transaction as a domestic transaction); *see also Arco Cap. Corps. Ltd. v. Deutsche Bank AG*, 949 F. Supp. 2d 532, 541 (S.D.N.Y. 2013) (holding that the U.S.-based location of employees involved in transactions at issue was "irrelevant as to whether Arco's purchase of its Notes was a domestic transaction as contemplated by Morrison's transactional approach.").

[76] Order Granting Defendant's Motion to Certify an Interlocutory Appeal at 5, *SEC v. Balina*, No. 1:22-CV-00950-DAE (W.D. Tex. Sept. May 22, 2024).

[77] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *21 (W.D. Tex. May 22, 2024).

[78] *Id.* at *21-22; *see also SEC v. Morrone*, 997 F.3d 52, 60 (1st Cir. 2021) ("[W]e reject *Parkcentral* as inconsistent with *Morrison*."); *Stoyas v. Toshiba Corp.*, 896 F.3d 933, 950 (9th Cir. 2018) ("[T]he principal reason we should not follow the *Parkcentral* decision is because it is contrary to Section 10(b) and *Morrison* itself."); *In re Volkswagen AG Sec. Litig.*, 2023 WL 2505539, at *10-11 (E.D. Va. Mar. 14, 2023) (rejecting *Parkcentral* as inconsistent with *Morrison*).

[79] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *21-22 (W.D. Tex. May 22, 2024).

In *Parkcentral*, the court held that "a rule making the statute applicable whenever the plaintiff's suit is predicated on a domestic transaction, regardless of the foreignness of the facts constituting the defendant's alleged violation, would seriously undermine *Morrison's* insistence that § 10(b) has no extraterritorial application."[80] Consequently, the Second Circuit held that a "domestic transaction is necessary but not necessarily sufficient to make § 10(b) applicable," and thus a court may dismiss claims as extraterritorial when they are "so predominantly foreign as to be impermissibly extraterritorial."[81]

The Second Circuit's holding in *Parkcentral* is rooted in a strict reading of *Morrison*.[82] Specifically, the Second Circuit explained that *Morrison* stated that it is "only transactions in securities listed on domestic exchanges, and domestic transactions in other securities, to which § 10(b) applies," not that "an application of § 10(b) will be deemed domestic whenever such a transaction is present."[83] Such a rule "would require courts to apply the statute to wholly foreign activity clearly subject to regulation by foreign authorities solely because a plaintiff in the United States made a domestic transaction, even if the foreign defendants were completely unaware of it."[84]

Parkcentral is anchored in judicial restraint. The Second Circuit cautioned that stretching *Morrison* to cover "conduct that occurred in a foreign country, concerning securities in a foreign company, traded entirely on foreign exchanges" would embroil U.S. courts in conflicts Congress never addressed.[85] This concern is magnified in the context of digital asset transactions, where trades span countless jurisdictions, are

[80] *Parkcentral Global HUB Ltd. v. Porsche Automobile Holdings SE*, 763 F.3d 198, 215 (2d Cir. 2014).
[81] *Id.* at 216; *SEC v. Balina*, No. 1:22-CV-00950-DAE at *21-22 (W.D. Tex. May 22, 2024).
[82] *See Parkcentral Global HUB Ltd. v. Porsche Automobile Holdings SE*, 763 F.3d 198, 215 (2d Cir. 2014).
[83] *Id.*
[84] *Id.*
[85] *Id.*

pseudonymous, and can occur without issuer control.[86] Further, applying U.S. securities law whenever a U.S.-based investor happens to click "buy" would subject truly foreign activity to U.S. regulation solely because a U.S. resident clicked a mouse.[87]

The facts in *Balina* illustrate this problem. Sparkster is incorporated in the Cayman Islands, Balina's private investment pool was organized abroad, and the Google Form for entry explicitly stated that the SPRK ICO was not appropriate for U.S. investors.[88] Virtually every operative act, including the matching of ETH contributions to SPRK distributions, Balina's promotional efforts, and PrimaBlock's investment pool services, occurred overseas.[89] Imposing U.S. securities law upon the "predominantly foreign" set of facts surrounding the transactions at issue in *Balina* would create the very clash of sovereign interests *Morrison* sought to prevent.[90]

Although the First and Ninth Circuits have questioned the validity of *Parkcentral*, their interpretations simply ignore the Supreme Court's mandate in *Morrison*. *Morrison* made clear that domesticity is a gateway, not a guarantee.[91] A rule that any domestic purchase triggers U.S. jurisdiction is not only inconsistent with *Morrison*, but would nullify the comity concerns that underpinned *Morrison* and turn the SEC into the "world's cryptocurrency regulator."[92]

C. Section 5(c) Does Not Apply to Balina's Conduct Because He Did Not Offer SPRK Tokens in Connection with a Domestic Sale.

The district court misapplied Section 5(c) to Balina's conduct by collapsing the distinction between domestic and foreign transactions and by relying on a novel

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[86] Georg Lorenz, *Regulating Decentralized Financial Technology: A Qualitative Study on the Challenges of Regulating DeFi with a Focus on Embedded Supervision*, Stan. J. Blockchain L. & Policy (June 28, 2024), https://stanford-jblp.pubpub.org/pub/regulating-defi/release/1.
[87] Brief for Appellant Ian Balina at 35-36, *Balina v. SEC*, No. 24-50726 (5th Cir. 2025).
[88] *Id.* at 27-28.
[89] *Id.* at 27-30.
[90] *Parkcentral*, 763 F.3d at 216.
[91] *See Morrison*, 561 U.S. at 267.
[92] *See Parkcentral*, 763 F.3d at 216; *Morrison*, 561 U.S. at 267; Brief for Appellant Ian Balina at 35-36, *Balina v. SEC*, No. 24-50726 (5th Cir. 2025).

"targeting theory" to extend U.S. securities law to a foreign transaction. Examining the statute's text, purpose, and *Morrison's* transactional test shows that Section 5(c) reaches only offers connected to a domestic purchase or sale, and that did not occur here.

To determine whether domestic conduct occurred, a court must examine the congressional intent of a statute, looking to the "object of the [statute's] solicitude, which can include the conduct it seeks to regulate, as well as the parties and interests it seeks to protect or vindicate."[93] The object of the Securities Act's solicitute focuses on the regulation of securities transactions and the protection of the buying public.[94] This is clear from the stated purpose of the Securities Act to "provide full and fair disclosure of the character of securities *sold* in interstate and foreign commerce and through the mails, and to prevent frauds in the *sale* thereof."[95] Since the Securities Act clearly emphasizes securities *transactions* and securities *sold*, it logically follows that *Morrison's* domestic transaction test would apply.

Against that backdrop, the district court erred in refusing to apply *Morrison's* domestic transaction test to the SEC's Section 5(c) claim, mistakenly treating Balina's conduct as a U.S. offering merely because he used American social media platforms and attracted a handful of U.S. participants. Specifically, the district court in *Balina* held that *Morrison's* transactional test "focused on *sales* of securities, rather than offers and promotions," and because the Supreme Court has stated that the "analysis applies at the level of the particular provision," the district court was not cabined "to only find SEC's jurisdiction when there is a purchase or sale made in the United States or a security listed on the domestic exchange."[96] Simply put, the district court refused to apply

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[93] *Abitron*, 600 U.S. at 418.
[94] *See* Preamble to Securities Act of 1933.
[95] *Id.* (emphasis added).
[96] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *15 (W.D. Tex. May 22, 2024) (citing *Abitron Austria GmbH v. Hetronic International, Inc.*, 600 U.S. 412, 419, n.3 (2023)).

Morrison's domestic transactions test because Section 5(c) regulates offers, not sales.[97] Following this interpretation, the district court held that the Securities Act applied to the alleged offers at issue in *Balina* "due to Balina's use of United States social media platforms, along with the larger share of United States pool investors compared to other known countries."[98]

As discussed above, under *Morrison,* the digital asset transactions at issue in *Balina* were extraterritorial because irrevocable liability was incurred abroad.[99] Consequently, the only "offer" any U.S.-based investor received in *Balina* was an offer to engage in an extraterritorial transaction.[100] Just because U.S.-based investors choose to engage in a foreign transaction (after being duly warned), does not mean that U.S. securities laws should follow. "United States law governs domestically, but does not rule the world."[101] Additionally, since "[A] party's residency or citizenship is irrelevant to the location of a given transaction," this choice of U.S.-based investors alone does not give the SEC authority to pursue any offering from any country around the world.[102]

Unable to meet *Morrison's* mandate, the district court still concluded that Section 5(c) applied to Balina's conduct because he allegedly "targeted United States investors."[103] Accordingly, the district court's primary inquiry was whether "the SEC can conclusively establish that Balina targeted United States investors."[104] While the district court should have opted to apply *Morrison's* domestic transactions test instead of the described "targeting theory", Balina's conduct nevertheless did not target U.S. investors under the district court's standard.

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[97] *Id.*
[98] *Id.* at 19.
[99] *See infra* p. 9-11.
[100] Brief for Appellant Ian Balina at 44, *Balina v. SEC*, No. 24-50726 (5th Cir. 2025).
[101] *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)).
[102] *See Absolute Activist*, 677 F.3d at 70.
[103] *SEC v. Balina*, No. 1:22-CV-00950-DAE at *19 (W.D. Tex. May 22, 2024).
[104] *Id.* at 17.

In order to determine whether Balina purposefully targeted U.S. investors, the district court should have inquired whether he "attempt[ed] or offer[ed] to dispose of, or solicit[ed] ... an offer to buy" SPRK tokens in the United States,[105] or specifically promoted SPRK tokens with a view toward their being purchased by U.S. residents.[106] Balina never made a single statement suggesting that the SPRK ICO was appropriate for U.S. investors, never encouraged U.S. investors to join his private investment pool, and never knowingly communicated with U.S. residents.[107] Despite this, the district court ruled Balina's offers as domestic because (i) Balina posted about the SPRK ICO on U.S.-based social media platforms; and (ii) around nine of the 68 PrimaBlock investment pool participants were located in the U.S.[108]

The district court's basis for its ruling sets a dangerous precedent. Under the district court's reasoning, the SEC could haul any foreign defendant into a U.S. court any time a discussion of a security on a U.S. social media platform is construed as an offer, or a single U.S. investor participates in a foreign offering.[109] This nearly limitless jurisdiction afforded to the SEC under Section 5(c) is exactly the expansive view of jurisdiction that the Supreme Court warned of in *Abitron* and *Morrison*.[110] "[T]he presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever some domestic activity is involved in the case."[111] Further, this interpretation allows U.S. securities laws to regulate foreign conduct merely

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[105] Brief for Appellant Ian Balina at 44, *Balina v. SEC*, No. 24-50726 (5th Cir. 2025) (quoting 15 U.S.C. § 77b(a)(3)).
[106] *Id.* (citing *SEC v. Goldman Sachs & Co.*, 790 F. Supp. 2d 147, 165 (S.D.N.Y. 2011); *SEC v. Ripple Labs, Inc.*, 2022 WL 762966 at *12 (S.D.N.Y. 2022); 17 C.F.R. § 230.901 (construing Section 5(c) to apply only to "offers ... that occur within the United States.")).
[107] *Id.* at 48.
[108] *Id.*
[109] *See id.* at 49, 51.
[110] *See id.*; *Abitron*, 600 U.S. at 425 ("As a result, almost any claim involving exclusively foreign conduct could be repackaged as a 'domestic application.'" "This is far from the measure of certainty that the presumption against extraterritoriality is designed to provide."); *Morrison*, 561 U.S. at 266.
[111] *Morrison*, 561 U.S. at 266.

because a defendant uses global internet platforms. Accordingly, under either the correct *Morrison* framework or the court's own standard, Section 5(c) has no domestic hook and cannot reach Balina's conduct.

D. The District Court's Policy-Based Argument is Misguided

The district court reasoned that Balina's challenges to domesticity failed because to rule otherwise would be inconsistent with public policy.[112] Specifically, the district court expressed concern that defendants could "evade United States securities regulation" by "temporarily leaving the United States" to promote crypto investments to U.S. investors.[113]

The district court's holding taking into account public policy concerns directly conflicts with *Morrison's* mandate to limit the application of U.S. securities laws to U.S.-based transactions.[114] Courts cannot disregard *Morrison's* clear rules based on policy preferences. In *Balina*, the SEC's burden was to prove a domestic securities transaction occurred, not to shift standards in response to concerns over regulatory gaps. The district court disregarded this burden, opting instead to review the "economic reality" of Balina's conduct. Courts have previously rejected economic reality arguments like the one the district court applied here.[115] In *Stoyas v. Toshiba Corp.*, for example, the court ruled that a foreign issuer's alleged deception affecting U.S. investors was insufficient to justify extraterritorial jurisdiction.[116] Consequently, the district court's reasoning would improperly expand SEC jurisdiction beyond what *Morrison* allows.

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[112] *See SEC v. Balina*, No. 1:22-CV-00950-DAE at *22 (W.D. Tex. May 22, 2024).
[113] *Id.*
[114] *See Morrison*, 561 U.S. at 266.
[115] *See Stoyas v. Toshiba Corp.*, 896 F.3d 933, 944 (9th Cir. 2018).
[116] *Id.* ("Deceptive domestic conduct or the presence of other, non-transactional domestic activity cannot substitute for *Morrison 's* requirement of a security's presence on a domestic exchange or of a security's domestic transaction. As the Court reasoned, 'it is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States.'').

The district court's policy concerns and holding are a classic example of legislating from the bench. The SEC was required to prove jurisdiction through clear statutory language and under *Morrison's* framework, not policy concerns.[117] Indeed, courts cannot rewrite laws to compensate for perceived regulatory gaps.[118] In *Microsoft Corp. v. AT&T Corp.*, the Court admitted that the state of patent law at the time may have been inadequate to address the realities of software distribution, but still engaged in the necessary judicial restraint.[119] The district court in *Balina* faced the same conundrum in applying securities laws created nearly 100 years ago to DeFi and crypto, but chose to fill the regulatory gap anyway.[120] While courts in the securities law context may validly reference public policy concerns in a statute's "interstitial" spaces like when resolving genuine textual ambiguity,[121] where Congress has supplied clear text, crafted a detailed regulatory scheme, or where binding precedent (like *Morrison*) lays down a bright-line rule, policy arguments cannot displace statutory limits.[122] Accordingly, the district court erroneously expanded the SEC's jurisdiction by "forecasting Congress' likely disposition."

Conclusion

[117] *See Morrison*, 561 U.S. at 257 (explaining that the conduct and effects test previously used by courts had erroneously replaced the presumption against extraterritoriality with "the inquiry whether it would be reasonable (and hence what Congress would have wanted) to apply the statute to a given situation.").
[118] *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 440 (2007) ("If patent law is to be adjusted better to account for the realities of software distribution, the alteration should be made after focused legislative consideration, not by the Judiciary forecasting Congress' likely disposition.").
[119] *Id.*
[120] *See SEC v. Balina*, No. 1:22-CV-00950-DAE at *22 (W.D. Tex. May 22, 2024).
[121] *See, e.g.*, *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) (adopting a materiality standard that balances disclosure policy against corporate-secrecy concerns).
[122] *See* Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994) (refusing to imply aiding-and-abetting liability despite deterrence policy because "[p]olicy considerations cannot override our interpretation of the text and structure of the Act, except to the extent that they may help to show that adherence to the text and structure would lead to a result 'so bizarre' that Congress could not have intended it.").

The district court in *Balina* erred in finding U.S. securities laws applied to Balina's overwhelmingly foreign conduct. Although the SEC voluntarily dismissed its action against Balina, the district court's holding in *Balina* is only the most recent unsettling decision in a line of crypto cases where courts have chosen to return to the "conduct and effects" test explicitly rejected by *Morrison*.[123] This concerning trend undermines *Morrison*, and has resulted in courts assessing domesticity solely based on the location of purchasers.[124] In fact, "[b]y now, a single U.S. resident who manages to buy cryptocurrency in circumvention of the rules set by the issuer is enough to justify extraterritorial application of U.S. law[.]"[125] The SEC's mission to protect American investors does not give it the power to be the "global regulator of digital money" in this fashion.[126]

Beyond the erroneous interpretations of law in *Balina*, the case highlights several overarching issues with the SEC's increasingly global jurisdiction. Extending U.S. securities regulation into the inherently global DeFi ecosystem has created tension with nations seeking to craft their own digital asset regulations, uncertainty for DeFi participants, and restricted the flow of capital across borders.[127]

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[123] *See Williams v. Binance*, 96 F.4th 129, 139 (2d Cir. 2024) (holding that the plaintiffs "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."); *SEC v. Binance*, 2024 WL 3225974, at *36 (D.D.C. June 28, 2024) (adopting the Second Circuit's analysis in Williams); *Telegram Update*, No. 19-cv-9439, 2020 WL 1547383 (S.D.N.Y. 2020) (holding that the "security" at issue included the "expectation and intention that the Initial Purchasers would distribute Grams into a secondary public market" including U.S. investors).
[124] *See id.*
[125] Frank Emmert, *The Long Arm of the SEC in the Regulation of Digital Currencies*, 33 Indiana Int'l & Com. L. Rev. 1, 28 (2023); *see also* Jake Chervinsky & Daniel Barabander, *A Practical Guide to Geofencing*, Variant (Sept. 30, 2024), https://variant.fund/articles/practical-guide-to-geofencing/ ("Many U.S. regulatory frameworks may technically apply if a company has a single customer or user based in the country. Some may apply if the company itself is based in the United States, even if none of its customers or users are. Some regulatory frameworks give "extraterritorial" jurisdiction to federal agencies, allowing them to enforce U.S. law even if the company and all of its customers and users are abroad.").
[126] *Id.* at 36.
[127] Carol R. Goforth, *SEC v. Telegram: A Global Message*, 52 Univ. Memphis L. Rev. 199, 232-35 (2022).

To avert this overreach, future courts should reaffirm *Morrison's* domestic transactions test as both the starting point and the outer limit of the Securities Act's geographic reach. When irrevocable liability is incurred abroad (as occurred in *Balina*), the court's analysis must end in dismissal. Additionally, adopting the *Parkcentral* framework is essential to ensure that even when a transaction clears *Morrison's* gateway, courts will still decline to apply U.S. securities laws when the operative facts are "so predominantly foreign" that doing so would result in the sovereignty tensions the presumption against extraterritoriality is designed to avoid.

This doctrinal discipline and judicial restraint could help to encourage predictability for the global DeFi ecosystem. Entrepreneurs and investors could structure ICOs with confidence in clearer, territorially-bound jurisdictions governing their conduct. Foreign regulators would be free to develop novel frameworks without fearing U.S. law will displace their policy choices whenever a U.S. IP address appears on a transaction log.

Ultimately the future of DeFi hinges on legal certainty as much as technological ingenuity. While the SEC's voluntary dismissal in *Balina* represents a step in the right direction, the door is still left open for courts to return to the same flawed and dangerous interpretation of extraterritoriality. By respecting *Morrison* and its progeny, embracing *Parkcentral*, and cabining U.S. securities laws to truly domestic activity, courts can protect U.S. investors while allowing DeFi innovation to flourish. *Balina* threatened to do the opposite: turning U.S. securities laws into a dragnet that chills progress on a global scale, and places the courts, rather than Congress, at the helm of crypto regulation.