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CAUGHT IN TRAFFIC:
THE SCOPE OF THE SEC'S EXTRATERRITORIAL AUTHORITY

In Traffic Monsoon, the district court confronted the question whether the federal securities laws applied to sales of unregistered securities to foreign purchasers. The author discusses the case, focusing on the tests for extraterritorial reach of the securities laws in the Dodd-Frank Act and in the Supreme Court's Morrison decision.

By Sarah L. Cave *

A recent decision in *S.E.C. v. Traffic Monsoon, LLC* addressed the question of the SEC's enforcement authority against a securities fraud in which the majority of the victims are foreign.¹ In this case, which is currently on appeal to the Tenth Circuit, the SEC contends that Charles Scoville, Traffic Monsoon's founder, was not operating an advertising business but rather an international Ponzi scheme through which he offered and sold over \$200 million in unregistered securities to investors, the vast majority of whom were located abroad. The SEC obtained a temporary restraining order ("TRO") enjoining the scheme, an asset freeze, and an order appointing a receiver for the frozen assets. After a hearing, the Utah federal district court found that the SEC had the authority to reach the entire scheme, foreign and domestic, entered a preliminary injunction, and denied Scoville's request to terminate the receivership. Recognizing, however, the novelty of the controlling legal issues presented, the district court certified its order for interlocutory appeal to the Tenth Circuit.

¹ 245 F. Supp. 3d 1275 (D. Utah 2017).

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FACTUAL BACKGROUND

Scoville formed Traffic Monsoon as a Utah limited liability company whose stated business was as a "revenue-sharing advertising company."² Through its website, Traffic Monsoon sold products designed to deliver traffic, in the form of clicks or visits, to its customers' websites to make them appear more popular. To purchase services from Traffic Monsoon, an individual created an account and became a member of the Traffic Monsoon website. Traffic Monsoon's most popular product was the Banner AdPack, which, for \$50, bundled 1000 visits and 20 clicks to the member's banner ad and permitted the member to share in Traffic Monsoon's revenues by receiving credits up to a maximum of \$55 per AdPack. Of the AdPack purchasers, 99% qualified for some level of revenue sharing. Members who referred new individuals to Traffic Monsoon's website could also receive up to a 10% commission on the products that new members purchased. Approximately 90% of the AdPack

² *Id.* at 1279.

IN THIS ISSUE

• RECENT STAFF GUIDANCE ON THE CUSTODY RULE UNDER THE INVESTMENT ADVISERS ACT OF 1940, Page 37