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Section 27 of the Securities Exchange Act of 1934 (the “Act”) provides that federal courts “shall have exclusive jurisdiction” over “violations of [the Act] or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by [the Act] or the rules and regulations thereunder.” 15 U.S.C. § 78aa(a). But the lower courts have disagreed as to whether Section 27 *creates* federal jurisdiction or merely precludes state-court actions that rest on alleged violations of the Act or regulations issued under the Act.

Today, the Supreme Court granted certiorari in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, No. 14-1132, to resolve that division of authority.

In this case, the defendants removed to federal court a suit asserting state-law causes of action based on alleged violations of the SEC’s Regulation SHO, which governs “short sales.” The district court refused to remand the suit to state court, ruling that Section 27 established federal jurisdiction over the claims. The Third Circuit agreed that the claims fell under Section 27 but held that Section 27 could not provide jurisdiction because it does not itself create jurisdiction. The Third Circuit based its reasoning on a Supreme Court decision interpreting similar “exclusive jurisdiction” language in Section 22 of the Natural Gas Act. See *Pan Am. Petroleum Corp. v. Sup. Ct. of Delaware for New Castle Cty.*, 366 U.S. 656 (1961). In *Pan American*, the Court stated that “[e]xclusive jurisdiction’ is given to the federal courts but it is ‘exclusive’ only for suits that may be brought in the federal courts. Exclusiveness is a consequence of having jurisdiction, not the generator of jurisdiction because of which state courts are excluded.” *Id.* The defendants contend that *Pan American* does not govern *Manning* because in *Pan American* the Natural Gas Act was the basis for a defense, not a cause of action.

Among the other courts of appeals, the Second Circuit has agreed with the Third Circuit that Section 27 does not confer jurisdiction. The Fifth and Ninth Circuits have held that Section 27 does confer jurisdiction.

The Supreme Court’s decision should be of interest to the wide range of public companies, market professionals, and others regulated by the federal securities laws.

Absent extensions, amicus briefs in support of the petitioners will be due on August 21, 2015, and amicus briefs in support of the respondents will be due on September 21, 2015. Any questions about the case should be directed to [Josh Yount](#) (+1 312 701 8423) in our Chicago office.