Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. *v.* MANNING ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–1132. Argued December 1, 2015—Decided May 16, 2016

Respondent Greg Manning held over two million shares of stock in Escala Group, Inc. He claims that he lost most of his investment when the share price plummeted after petitioners, Merrill Lynch and other financial institutions (collectively, Merrill Lynch), devalued Escala through "naked short sales" of its stock. Unlike a typical short sale, where a person borrows stock from a broker, sells it to a buyer on the open market, and later purchases the same number of shares to return to the broker, the seller in a "naked" short sale does not borrow the stock he puts on the market, and so never delivers the promised shares to the buyer. This practice, which can injure shareholders by driving down a stock's price, is regulated by the Securities and Exchange Commission's Regulation SHO, which prohibits short-sellers from intentionally failing to deliver securities, thereby curbing market manipulation.

Manning and other former Escala shareholders (collectively, Manning) filed suit in New Jersey state court, alleging that Merrill Lynch's actions violated New Jersey law. Though Manning chose not to bring any claims under federal securities laws or rules, his complaint referred explicitly to Regulation SHO, cataloguing past accusations against Merrill Lynch for flouting its requirements and suggesting that the transactions at issue had again violated the regulation. Merrill Lynch removed the case to Federal District Court, asserting federal jurisdiction on two grounds. First, it invoked the general federal question statute, 28 U. S. C. §1331, which grants district courts jurisdiction of "all civil actions arising under" federal law. It also invoked §27 the Securities Exchange Act of 1934 (Exchange Act), which grants federal district courts exclusive jurisdiction "of all suits in eq-

uity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder." 15 U. S. C. §78aa(a). Manning moved to remand the case to state court, arguing that neither statute gave the federal court authority to adjudicate his state-law claims. The District Court denied his motion, but the Third Circuit reversed. The court first decided that §1331 did not confer jurisdiction, because Manning's claims all arose under state law and did not necessarily raise any federal issues. Nor was the District Court the appropriate forum under §27 of the Exchange Act, which, the court held, covers only those cases that would satisfy §1331's "arising under" test for general federal jurisdiction.

*Held*: The jurisdictional test established by §27 is the same as §1331's test for deciding if a case "arises under" a federal law. Pp. 4–18.

(a) Section 27's text more readily supports this meaning than it does the parties' two alternatives. Merrill Lynch argues that §27's plain language requires an expansive rule: Any suit that either explicitly or implicitly asserts a breach of an Exchange Act duty is "brought to enforce" that duty even if the plaintiff seeks relief solely under state law. Under the natural reading of that text, however, §27 confers federal jurisdiction when an action is commenced in order to give effect to an Exchange Act requirement. The "brought to enforce" language thus stops short of embracing any complaint that happens to mention a duty established by the Exchange Act. Meanwhile, Manning's far more restrictive interpretation—that a suit is "brought to enforce" only if it is brought directly under that statute—veers too far in the opposite direction. Instead, §27's language is best read to capture both suits brought under the Exchange Act and the rare suit in which a state-law claim rises and falls on the plaintiff's ability to prove the violation of a federal duty. An existing jurisdictional test well captures both of these classes of suits "brought to enforce" such a duty: 28 U. S. C. §1331's provision of federal jurisdiction of all civil actions "arising under" federal law. Federal jurisdiction most often attaches when federal law creates the cause of action asserted, but it may also attach when the state-law claim "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance" of federal and state power. *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 314. Pp. 5–10.

(b) This Court's precedents interpreting the term "brought to enforce" have likewise interpreted §27's jurisdictional grant as coextensive with the Court's construction of §1331's "arising under" standard. See *Pan American*, 366 U. S. 656; *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367. Pp. 10–14.

Syllabus

(c) Construing §27, consistent with both text and precedent, to cover suits that arise under the Exchange Act serves the goals the Court has consistently underscored in interpreting jurisdictional statutes. It gives due deference to the important role of state courts. And it promotes "administrative simplicity[, which] is a major virtue in a jurisdictional statute." *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94. Both judges and litigants are familiar with the "arising under" standard and how it works, and that test generally provides ready answers to jurisdictional questions. Pp. 14–18.

772 F. 3d 158, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SOTOMAYOR, J., joined.

# SUPREME COURT OF THE UNITED STATES

No. 14–1132

MERRILL LYNCH, PIERCE, FENNER & SMITH INC., ET AL., PETITIONERS *v.* GREG MANNING, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May 16, 2016]

JUSTICE KAGAN delivered the opinion of the Court.

Section 27 of the Securities Exchange Act of 1934 (Exchange Act), 48 Stat. 992, as amended, 15 U. S. C. §78a, *et seq.*, grants federal district courts exclusive jurisdiction "of all suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder." §78aa(a). We hold today that the jurisdictional test established by that provision is the same as the one used to decide if a case "arises under" a federal law. See 28 U. S. C. §1331.

## I

Respondent Greg Manning held more than two million shares of stock in Escala Group, Inc., a company traded on the NASDAQ. Between 2006 and 2007, Escala's share price plummeted and Manning lost most of his investment. Manning blames petitioners, Merrill Lynch and several other financial institutions (collectively, Merrill Lynch), for devaluing Escala during that period through "naked short sales" of its stock.

A typical short sale of a security is one made by a borrower, rather than an owner, of stock. In such a transac-

tion, a person borrows stock from a broker, sells it to a buyer on the open market, and later purchases the same number of shares to return to the broker. The short seller's hope is that the stock price will decline between the time he sells the borrowed shares and the time he buys replacements to pay back his loan. If that happens, the seller gets to pocket the difference (minus associated transaction costs).

In a "naked" short sale, by contrast, the seller has not borrowed (or otherwise obtained) the stock he puts on the market, and so never delivers the promised shares to the buyer. See *"Naked" Short Selling Antifraud Rule*, Securities Exchange Commission (SEC) Release No. 34–58774, 73 Fed. Reg. 61667 (2008). That practice (beyond its effect on individual purchasers) can serve "as a tool to drive down a company's stock price"—which, of course, injures shareholders like Manning. *Id.,* at 61670. The SEC regulates such short sales at the federal level: The Commission's Regulation SHO, issued under the Exchange Act, prohibits short sellers from intentionally failing to deliver securities and thereby curbs market manipulation. See 17 CFR §§242.203–242.204 (2015).

In this lawsuit, Manning (joined by six other former Escala shareholders) alleges that Merrill Lynch facilitated and engaged in naked short sales of Escala stock, in violation of New Jersey law. His complaint asserts that Merrill Lynch participated in "short sales at times when [it] neither possessed, nor had any intention of obtaining[,] sufficient stock" to deliver to buyers. App. to Pet. for Cert. 57a, Amended Complaint ¶39. That conduct, Manning charges, contravened provisions of the New Jersey Racketeer Influenced and Corrupt Organizations Act (RICO), New Jersey Criminal Code, and New Jersey Uniform Securities Law; it also, he adds, ran afoul of the New Jersey common law of negligence, unjust enrichment, and interference with contractual relations. See *id.*, at 82a–101a, ¶¶88–

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