THE NEW SECURITIES REALITY

Martin A. Armstrong
Former Chairman of Princeton Economics International, Ltd.

SUPREME COURT OF THE UNITED STATES

MORRISON ET AL. *v.* NATIONAL AUSTRALIA BANK LTD. ET AL.

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

No. 08–1191. Argued March 29, 2010—Decided June 24, 2010

Syllabus

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A C K N O W L E D G E M E N T S

I would like to thank all the former employees, associates, sources, and contacts for their ongoing support and efforts to contribute to the writings I have been able to continue through their great efforts. I would also like to thank those who have looked after not just myself, but my family, and shown them support and kindness.

The purpose of these reports is to broden the understanding that is so vital to our personal survival. Government cannot save us, and will only assist the very economic disaster we face. This is a Sovereign Debt Crisis that threatens our core survival. There is no plan to ever pay off debts. The majority of debt increase is paying interest perpetually to roll over without any long-term plan. What you see in Greece and in the States, we have run out of other people's money. The socialists keep pointing to the rich. But to fund the deficits, we need to borrow now from foreign lands. We ran out of money domestically and to support the current system like Greece, we need foreign capital. But all governments are facing the same crisis and we are on the verge of another widespread government default. Adam Smith warned in his Wealth of Nations that in 1776, no government paid off their debt and had always defaulted. We will have no choice either.

There is no hope that politicians will save us, for they only form committees to investigate after the shit-hits-the-fan. They will NOT risk their career for a future problem that may hit on someone else's watch. There was a politician and a average man standing on top of the Sears' Tower when a gust of wind blew them off. The average man being a realistic-pessimist, immediately sees he is about to die and begins praying. The politicians, the ultimate optimist, can be heard saying "Well so far so good!" as he passes the 4th floor.

At Princeton Economics, our mission was simply to gather global data and to bring that together to create the world's largest and most comprehensive computer system and model that would monitor the world capital flows. By creating that model, all the fallacies of market and economic theories were revealed. The world is far more dynamic and every change even in a distant land can alter the course of the global economy. Just as has been shown with the turmoil in Greece, a CONTAGION takes place and now capital begins to look around at all countries. We can no more comprehend the future but looking only at domestic issues today than we can do so in every other area, such as disease and the spread of flu.

We live in a NEW DYNAMIC GLOBAL ECONOMY where capital rushes around fleeing political changes and taxes just as it is attracted by prosperity. All the people who migrated to the United States in the 19th and 20th Centuries, came for the same reasons as those still coming from Mexico - jobs and prosperity. In the 19th Century, America was said to have so much wealth, its streets were paved in gold. We must now look to both the past and the entire world to understand where we now are today,

Armstrong Economics™

Supernatural sideroads

Troubled times 2012

Martin A. Armstrong
former Chairman of Princeton Economics International, Ltd.

The Great Plaza at Tikal

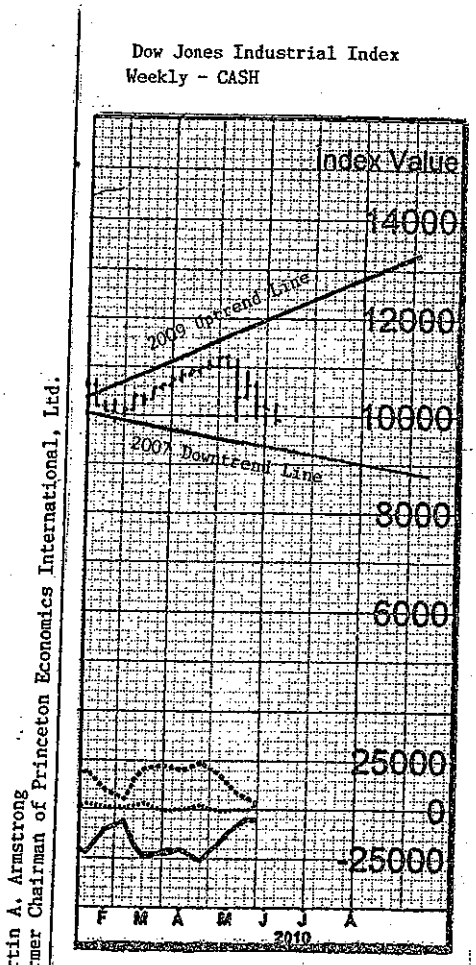
The Mayan End of the World December 21st, 2012

THE TRUTH BEHIND THE MAYAN CALENDAR & 2012

A Special Report has been underway to test the validity of this Mayan 2012 forecast that has sparked books and TV shows. This is an objective authority on the subject, not hype. This report will expose BOTH the falsity as well as the TRUTH behind this coming date for the end of the Mayan Calendar on December 21st, 2012. What lies at the core of the Mayan Calendar is one of the most remarkable and profound cyclical studies conducted historically. We may in fact be headed into the high for this **Global Warming** trend. It is also curious that 2012 will be the next target for the reversal of the poles on the earth whereas the last such event took place on earth 780,000 years ago. The poles flip regularly every 11 years on the sun and 2012 is the next target there as well. Some scientists have contributed data regarding the shifts in the poles going back 160 million years. This also allows us to back test the Mayan cycle of 5,126 years or so in conjunction with the Precession of the Equinox that has its only cycle of 25,800. While this may not be predicting the End of the World, it is predicting a change in trend. Sign up for notice of this report's publication.

Armstrong Economics 阿姆斯特朗 经济

Special Update Report



The Dow Jones Industrials (CASH) is showing that the big TURNING-POINT will be August. Thereafter, it appears that the opposite trend should unfold into Oct/Nov. The primary support lies at 9400 level and a monthly closing beneath 9675 will warn that the downtrend would become severe, but not new lows.

There are two primary resolutions. There is the crowd that is calling for the Dow to collapse and a Great Depression as was the 1930s. We must understand that all of the world defaulted on their debts with few exceptions (Britain called for a suspension of debt payments) France was the last nation to cling to the gold standard even after the US devalued the dollar under Roosevelt. The dollar rose because it was GOLD. Once Roosevelt confiscated gold, he introduced inflation and that sent stocks up between 1932 and 1937.

Therefore, if the Depression were to repeat, the Doomsday Boys got it wrong! Capital flight was to the dollar because it was GOLD! That's it! Therefore, it is GOLD, not the dollar, that would soar in price!

In the book I am rushing to get done, I go over also forgotten Depressions of the 1340s and the Financial Crisis of 1557 to 1647. This was the period of a series of sovereign debt defaults from Spain and France. In fact, it was so bad, France could not borrow a dime in 1574.

Short-term, there is a potential for the Dow to make a low in early June and then rally into August with the traditional drop in the Sept/Oct time frame. However, making new lows beyond the week of June 14th, will warn of a August low. A key week appears to be the week of August 2nd.

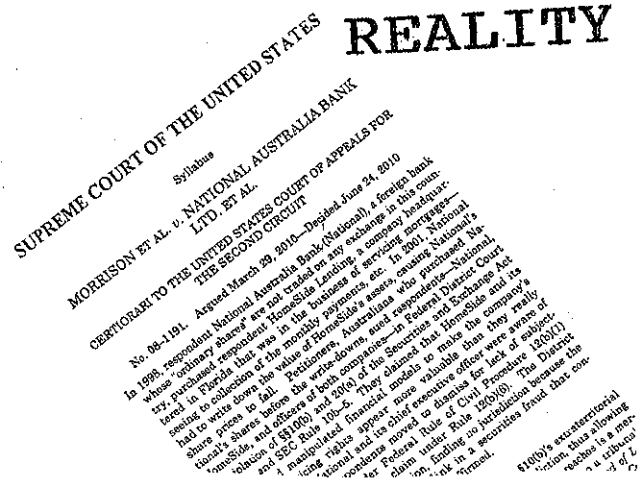
SPECIAL UPDATE REPORTS BY EMAIL

Because of the dramatic increase in volatility, a SPECIAL UPDATE REPORT has been created on a specific market outlook. As we head into the economic storm of **Sovereign Debt Crisis** that is brewing around the world, it is going to be critical to be able to address key events on a more timely basis. Everyone is invited to sign up for thie FREE service at:

ArmstrongEconomics.COM

This will cover the world markets and economies. Please sign up as soon as possible. The event horizon is coming in rapidly. We need to stay vigilant to survive the years ahead for government will only form committees **AFTER-THE-FACT** to investigate why something happened. They will NEVER take steps to prevent an obvious economic crisis. We are on our own. The best course of survival is to stay INFORMED and to understand the nature of what is taking place since no one should ever follow anyone blindly. This is all about educating what is the new reality.

THE NEW SECURITIES REALITY



SUPREME COURT OF THE UNITED STATES

Syllabus

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By: Martin A. Armstrong

Former Chairman of Princeton Economics International, Ltd. and the Foundation For the Study of Cycles

REGULATION OF THE FINANCIAL SECURITIES INDUSTRY has been a joke for a long time, and now it is becoming hysterical. For those who want to be in the ruling class elite, you would think that there should be some school to learn how to write legislation. Unfortunately, regulation is always just AD HOC, which it is why it always descends into a Byzantine system where nothing works and the problem just gets far worse until the object of regulation, collapses. Three major events have taken place, one of which, the press seems to have kept rather quiet. We have the settlement of Goldman Sachs for $550 million ensuring that the public will never know anything material and that closes the door on Goldman Sachs. The new Securities Regulation passed with plenty of wiggle-room that will solve nothing, and set the stage for the next disaster, and third, the Supreme Court has just overruled the entire run of securities law of the Second Circuit (New York) as being unconstitutional going back to 1968 (which includes my own case). As we face the next leg of this economic crisis into mid 2011, this is the backdrop against which the future will be measured. This is how we create the next crisis from every new solution.

The Senate passed the Obama Securities Act with a vote of 60 to 39. It will solve nothing, nor would it have prevented the 2007 economic downturn. The bill is plagued by nearly two years of lobbying. This is just only a show. Paul Volcker who has been the champion behind eliminating proprietary trading (**Volcker Rule**), left so many holes, we should call it the Obama Swiss Cheese act for Investment Bankers. This will make great sound-bites for the elections how Republicans defended Wall Street and the "rich" against the "poor" but there is no real substance to that argument at all. All they had to do is restore Glass-Steagal, breakup the hybrid brokers/banks/insurance conglomerates and that would have solved the problem.

The problem with Congress is it is dominated by lawyers. The profession is one that creates and demands a completely and totally different way of thinking from the normal person. When President Bill Clinton was being deposed, he asked to clarify a question presented to him: **What is the definition of is**? That made headlines and caused much laughter among the average people. They saw that as obstruction and a joke. It matched what many had simply then called him **"Slick Willy."**

Trying to explain trading is hard for there is a sense of "feel" or instinct that many a good trader grasps, but it is very hard to put it into words. It is like being a artist. One can give the definition of how to put paint on the brush and how to apply it to the canvas. But unless you have a feel (talent) to draw and paint what you see, it is very hard to relay that to someone who can't even write neatly no less draw.

Trading is the same where there is a sense of something that is surpassing de-scriprion. A good trader can smell the blood within a series of price quotes gaining a sense where the next one will be. When we talk about law, now we are into the art of wordsmithing. The definition of a simple word such as "is" can turn a document on its head. A person reading a statute lacking the grasp of understanding the background behind law as a whole, will fail to understand the true meaning of the words used. For example, when a statute states **"may"** this might as well not have been passed for it gets everyone excited, but it does nothing. The use of the word **"may"** renders everything in the statute as **NON-BINDING**, meaning it is purely now a **"descretion"** and not a law. To make statutes binding, they have to use the word **"must"** to remove the descretion of a judge. So we can have headlines about Congress passing some new act, but if it contains **"may"** and not **"must"** in the language, forget it. It is not a right nor binding. At the very least, where a legislation is comprehensive, then any section or part that includes the word **"may"** becomes a loophole for judges.

The whole problem with the **Volcker Rule** is not the principle, but the fact the idea is just piled on top of legislation that began in 1934. There is never a clean slate, just regulation piled on top of old regulations making lawyers necessary since the average person is kept in the dark.

On July 11th, 2010, Gretchen Morgenson of the New York Times wrote **"Bypassing a Federal Roadblock"** that appeared on the front page of the Sunday Business section. What Gretchen reported was that those seeking to sue the banks are turning to states because they can't get a fair trial in federal court given the way they wordsmith the statutes. Where the NY Federal Court protects the NY banks at all costs, lawyers have begun to figure out that they can bring suits in the states where their laws are far more simple.

At least since 1968, the Second Circuit has been the main leader in securities law because that is where the New York Stock Exchange is and the NY Investment Bankers. The Supreme Court has just overruled the entire case law that they have developed as unconstitutional. This has been the approach that has one way or another protected the NY Investment Bankers and has been used to destroy any competition.

The Second Circuit embarked upon a dangerous path where they prosecuted anyone in foreign lands under the pretense that any actions overseas might effect American investors. They took the position that even though acts took place outside the USA, it was "necessary to protect American Investors" to assume jurisdiction over the whole world. Morrison v National Australia Bank, Ltd, 561 US - (2010) id/at Slip 7. The Second Circuit took the approach of overriding Congress and eliminating the foundation of Democracy where it is the PEOPLE who make laws by Congress, not the Executive nor Judges. The Second Circuit established a novel authority claiming they would divinate "'if Congress had thought about the point' it would have wanted §10(b) [The Securities Act] to apply." Id./Slip at 7.

The Supreme Court cited a 1987 case where Judge Bork had criticized the Second Circuit in New York writing "diving what Congress would have wished if it had addressed the problem, a nore natural inquiry might be what jurisdiction Congress in fact thought about and conferred." Id/Slip at 10-11. Thus, Justice Scalia writing for a **unanimous** court wrote:

> The results of judicial-speculation-made-law-diving what Congress would have wanted if it had thought of the situation before the court-demonstrate the wisdom of the presumption against estraterritoriality. /Slip/at 12

The **Morrison** decision has proven that my own case was unconstitutional and has been a fraud upon the people, my family, and over 200 employees. While my lawyers are going nuts over the injustice inflicted upon the whole firm **Princeton Economics International**, it is still a hard road to force the lower courts to obey the Supreme Court, who made it now perfectly clear:

> "Section 10(b) reaches the use of a manipulative or deceptive device or contrivance only in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States."

We neither dealt in American securities, nor was there any purchase or sale in the US since all took place through a broker-dealer in Tokyo. Republic's own staff were caught illegally trading in our accounts, but to try to escape liability, they ran to the SEC and told them I **CONSPIRED** with their own staff to hide the losses they created on us from the Japanese who did not own any such accounts NOR did they profit from any trading in the United States that was proprietary. But we threatened to sue the bank if it did not return the funds, and they ran to the SEC flipping the transactions upside down. Only when the government realized that it was Republic who lied, then and only then did they agree to pay $606 million in return for ABSOLUTE IMMUNITY from personal prosecution. The government refused to admit they were stupid to have listened to Republic, or they agreed to try to cover-up their actions. Either way, they refuse to ever drop any charges which would have been admitting what had happened. Now the Supreme Court has made it clear, there never was any such right to charge myself or seize the company. My bet, they still will not admit to any mistake showing the USA is not trustworthy.

Now we have the latest securities law that just lays on top of everything else. We are getting deeper and deeper into a mud hole from which there will be no escape. The new legislation will make everything much worse. It only creates an overlay that obfuscates the law to start with when it is far from being applicable because courts are more interested in creating interpretations that support the NY Investment bankers in any event. The bill expands the number of companies subject to oversight and it now regulates derivatives that will hurt the average futures trader and small industry players who need to hedge. It then creates a consumer protection regulator that is not necessary since after wiping out the housing market, they won't be back again for 52 yrs. It leaves far more to be figured out by the regulators who are on the take anyway. All they have to do is offer a job to the person regulating their firm as took place in the oil industry, and all bets are off. Even Madoff was taped explaining how regulators are stupid and easy to fool. These are the very people who are now told to flesh out rules?

The bill illustrates the chaos in sheer American law for it has now handed **DISCRETION to 10 REGULATORY AGENCIES** to write what will be actually the law. So now the lobbying will really take place behind closed doors.

The whole reason why there are hedge funds is because of competing agencies like the SEC and CFTC where you can not have both stocks and futures in the same fund. If you obey the SEC, you go to jail under the CFTC. I warned Congress about that in 1985 when the largest offshore fund was $100 million. I warned unless the CFTC was merged into the SEC, funds would be driven offshore. Today it is in the many trillions of dollars. The CFTC has been given more power over derivatives and they can be counted on for screwing that up royally.

The Democrats are pounding their chest claiming this will reduce the odds of a future crisis. But they know nothing about the subject as evidenced by what they have just done. They are trying to dance between the raindrops and in the end, today's bold solution will be the very cause of the next crisis.

This bill has absolutely nothing to do with the causes of the 2007 Crisis. It is going to set the stage for the next total meltdown and that is coming from government not the housing market.

The SEC case against Goldman shows the fact that they just wanted to file something to exonerate them for the crisis. Now that they picked an isolated deal, the average person will see that as settling everything from the crisis so Goldman will not be ever bothered again on this matter overall. The allegations were weak, and the deal is more of a cover-up to hide real events.

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.

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Held:

1. The Second Circuit erred in considering §10(b)'s extraterritorial reach to raise a question of subject-matter jurisdiction, thus allowing dismissal under Rule 12(b)(1). What conduct §10(b) reaches is a merits question, while subject-matter jurisdiction "refers to a tribunal's power to hear a case." *Union Pacific R. Co.* v. *Brotherhood of Locomotive Engineers and Trainmen Gen. Comm. of Adjustment, Central*

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Region, 558 U. S. ___, ___ (internal quotation marks omitted). The District Court had jurisdiction under 15 U. S. C. §78aa to adjudicate the §10(b) question. However, it is unnecessary to remand in view of that error because the same analysis justifies dismissal under Rule 12(b)(6). Pp. 4–5.

2. Section 10(b) does not provide a cause of action to foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges. Pp. 5–24.

(a) 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.'" *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 248 *(Aramco)*. When a statute gives no clear indication of an extraterritorial application, it has none. Nonetheless, the Second Circuit believed the Exchange Act's silence about §10(b)'s extraterritorial application permitted the court to "discern" whether Congress would have wanted the statute to apply. This disregard of the presumption against extraterritoriality has occurred over many decades in many courts of appeals and has produced a collection of tests for divining congressional intent that are complex in formulation and unpredictable in application. The results demonstrate the wisdom of the presumption against extraterritoriality. Rather than guess anew in each case, this Court applies the presumption in all cases, preserving a stable background against which Congress can legislate with predictable effects. Pp. 5–12.

(b) Because Rule 10b–5 was promulgated under §10(b), it "does not extend beyond conduct encompassed by §10(b)'s prohibition." *United States* v. *O'Hagan*, 521 U. S. 642, 651. Thus, if §10(b) is not extraterritorial, neither is Rule 10b–5. On its face, §10(b) contains nothing to suggest that it applies abroad. Contrary to the argument of petitioners and the Solicitor General, a general reference to foreign commerce in the definition of "interstate commerce," see 15 U. S. C. §78c(a)(17), does not defeat the presumption against extraterritoriality, *Aramco*, *supra*, at 251. Nor does a fleeting reference, in §78b(2)'s description of the Exchange Act's purposes, to the dissemination and quotation abroad of prices of domestically traded securities. Nor does Exchange Act §30(b), which says that the Act does not apply "to any person insofar as he transacts a business in securities without the jurisdiction of the United States," unless he does so in violation of regulations promulgated by the SEC "to prevent . . . evasion of [the Act]." This would be an odd way of indicating that the Act always has extraterritorial application; the Commission's enabling regulations preventing "evasion" seem directed at actions abroad that might conceal a domestic violation. The argument of petitioners and the Solicitor

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General also fails to account for §30(a), which explicitly provides for a specific extraterritorial application. That provision would be quite superfluous if the rest of the Exchange Act already applied to transactions on foreign exchanges—and its limitation of that application to securities of domestic issuers would be inoperative. There being no affirmative indication in the Exchange Act that §10(b) applies extraterritorially, it does not. Pp. 12–16.

(c) The domestic activity in this case—Florida is where HomeSide and its executives engaged in the alleged deceptive conduct and where some misleading public statements were made—does not mean petitioners only seek domestic application of the Act. It is a rare case of prohibited extraterritorial application that lacks *all* contact with United States territory. In *Aramco*, for example, where the plaintiff had been hired in Houston and was an American citizen, see 499 U. S., at 247, this Court concluded that the "focus" of congressional concern in Title VII of the Civil Rights Act of 1964 was neither that territorial event nor that relationship, but domestic employment. Applying that analysis here: The Exchange Act's focus is not on the place where the deception originated, but on purchases and sales of securities in the United States. Section 10(b) applies only to transactions in securities listed on domestic exchanges and domestic transactions in other securities. The primacy of the domestic exchange is suggested by the Exchange Act's prologue, see 48 Stat. 881, and by the fact that the Act's registration requirements apply only to securities listed on national securities exchanges, §78*l*(a). This focus is also strongly confirmed by §30(a) and (b). Moreover, the Court rejects the notion that the Exchange Act reaches conduct in this country affecting exchanges or transactions abroad for the same reason that *Aramco* rejected overseas application of Title VII: The probability of incompatibility with other countries' laws is so obvious that if Congress intended such foreign application "it would have addressed the subject of conflicts with foreign laws and procedures." 499 U. S., at 256. Neither the Government nor petitioners provide any textual support for their proposed alternative test, which would find a violation where the fraud involves significant and material conduct in the United States. Pp. 17–24.

547 F. 3d 167, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. BREYER, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed an opinion concurring in the judgment, in which GINSBURG, J., joined. SOTOMAYOR, J., took no part in the consideration or decision of the case.