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## The Scope of Purchase and Sale Under Rule 10b-5: Northland Capital Corp. v. Silver, 735 F.2d 1421 (D.C. Cir. 1984)

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## THE SCOPE OF PURCHASE AND SALE UNDER RULE 10b-5

*Northland Capital Corp. v. Silver*, 735 F.2d 1421 (D.C. Cir. 1984)

In *Northland Capital Corp. v. Silver*,<sup>1</sup> the United States Court of Appeals for the District of Columbia Circuit narrowly interpreted the federal securities laws, employing strict tenets of contract law to define purchase and sale under rule 10b-5.<sup>2</sup>

Northland Capital Corporation ("Northland"), as part of a consortium of investors, agreed to transfer capital to Watkins Corporation ("Watkins") in exchange for interest and securities.<sup>3</sup> Prior to closing, Northland deposited funds in Watkins' bank account.<sup>4</sup> At the closing, Watkins proposed to use the financing in a manner to which Northland had not previously agreed.<sup>5</sup> In addition, Northland suspected fraudulently prepared financial statements.<sup>6</sup> The transaction failed to close.<sup>7</sup> Nevertheless, Watkins delivered the securities to Northland.<sup>8</sup> When Northland sought the return of its funds, Watkins was insolvent.<sup>9</sup>

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1. 735 F.2d 1421 (D.C. Cir. 1984).

2. Rule 10b-5 is limited to certain fraudulent activities undertaken "in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5 (1985).

3. 735 F.2d at 1423-24. Watkins engaged A. David Silver & Co., a venture capital firm, to raise capital to construct new franchise locations. *Id.* at 1423. Mr. Silver sent a memorandum describing the investment and Watkins' financial position to numerous investment companies, including Allied Capital Corporation ("Allied") and Northland. *Id.* Allied persuaded Northland and several other firms to participate in the transaction. *Id.* In consideration for their capital contributions, the investing companies were to receive stock warrants and interest on their investment. *Id.* at 1423-24.

4. Originally, Northland agreed to deposit its share of the funds into an escrow account in accordance with Allied's instructions. *Id.* at 1424. After failing to receive instructions from Allied, Northland contacted Watkins. *Id.* Watkins instructed Northland to transfer the funds directly to Watkins' bank. *Id.* Northland complied, assuming the money was to be held in escrow until closing, but the money ended up in Watkins' general corporate account. *Id.*

5. Northland contemplated an agreement restricting Watkins' use of the financing to construct new restaurant franchise locations. *Id.* at 1423. Watkins proposed, however, to use 50% of the funds received for working capital and 50% for construction of additional franchise locations. *Id.* at 1424.

6. Allied expressed concern that an opinion letter purportedly prepared by Watkins' attorney bore indications of a forgery. *Id.* Northland also expressed concern that the board of directors for Watkins had failed to approve properly the contemplated transaction. *Id.*

7. *Id.*

8. The question whether the warrants issued by Watkins constituted securities for purposes of rule 10b-5 was not addressed by the court. *Id.* at 1430. For a discussion of what types of instruments constitute securities for purposes of rule 10b-5, see Jacobs, *The Meaning of "Security" Under Rule 10b-5*, 29 N.Y.L. SCH. L. REV. 211, 331-33 (1984).

9. Pursuant to Northland's request, Watkins agreed to return the funds. 735 F.2d at 1425.

Northland brought suit<sup>10</sup> under section 10(b) of the Securities Exchange Act of 1934 ("1934 Act")<sup>11</sup> to recover the funds. The district court granted summary judgment against Northland, concluding that Northland was not a purchaser of securities.<sup>12</sup> On appeal, the District of Columbia Circuit affirmed and *held*: Despite the physical exchange of securities for money, a transaction is not a purchase and sale of securities under rule 10b-5 when the parties fail to assent to the essential terms of their agreement.<sup>13</sup>

Congress passed the Securities Act of 1933 ("1933 Act")<sup>14</sup> and the 1934 Act in response to investor fraud that permeated the securities markets in the 1920s.<sup>15</sup> In section 10(b)<sup>16</sup> of the 1934 Act, Congress delegated authority to the Securities and Exchange Commission ("SEC") to prescribe rules to prohibit deceptive practices.<sup>17</sup>

Although Congress failed to provide an express private cause of action for violations of section 10(b), the courts quickly implied a private cause of action.<sup>18</sup> In *Birnbaum v. Newport Steel Corp.*,<sup>19</sup> however, the Second

One month later, Watkins filed a voluntary petition in bankruptcy, having failed to return the funds to Northland. *Id.*

10. *Northland Capital Corp. v. Silver*, [1983 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 99,150, at 95,547 (D.D.C. March 30, 1983).

11. 15 U.S.C. §§ 78a-kk (1982).

12. 735 F.2d at 1422.

13. *Id.*

14. 15 U.S.C. §§ 77a-aa (1982).

15. *See* S. REP. NO. 1455, 73rd Cong., 2d Sess. 81 (1934) (discussing intent and scope of securities laws); H.R. REP. NO. 1383, 73rd Cong., 2d Sess. 2, 6 (1934) (same); *see also* SEC v. Capital Gains Bureau, 375 U.S. 180, 186-87 (1963) (fundamental purpose of federal securities laws is the adoption of a full disclosure philosophy).

16. 15 U.S.C. § 78j (1982).

17. Congress realized that it could not foresee and thereby legislate against all possible fraudulent securities practices. Congress thus provided the SEC with the authority to enact rules and regulations as necessary. *See* H.R. REP. NO. 1383, 73rd Cong., 2d Sess. 6-7 (1934). Pursuant to its rulemaking authority, the SEC promulgated rule 10b-5.

18. In *Kardon v. National Gypsum Co.*, 69 F. Supp. 512 (E.D. Pa. 1946), a Pennsylvania district court held that an implied private cause of action existed under § 10(b) and rule 10b-5. In reaching its decision, the court cited § 286 of the Restatement of Torts as authority for the proposition that a statutory violation may serve as the basis of an action for damages by one for whom the act was enacted to protect, absent legislative intent to withhold the right. *Id.* at 513. Finding that no such intent was apparent for § 10(b), the court concluded that a private right of action existed. *Id.*

The Supreme Court acquiesced in this widely accepted implied private right of action in 1971. *Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6, 13 n.9 (1971) ("[i]t is now well established that a private right of action is implied under § 10(b)").

19. 193 F.2d 461 (2d Cir.), *cert. denied*, 343 U.S. 956 (1952).

Circuit sharply restricted this implied right.<sup>20</sup> In *Birnbaum*, the plaintiff shareholders brought a derivative suit, alleging violations of section 10(b) and rule 10b-5.<sup>21</sup> The court dismissed the plaintiffs' suit, holding that only plaintiffs who purchase or sell securities may maintain an action under section 10(b) and rule 10b-5.<sup>22</sup>

Although many courts adopted the *Birnbaum* doctrine,<sup>23</sup> courts and commentators expressed concern that the doctrine might unjustly deny injured parties recourse to federal court.<sup>24</sup> Accordingly, lower courts developed exceptions to the strict purchaser-seller requirement.<sup>25</sup>

In *Blue Chip Stamps v. Manor Drug Stores*,<sup>26</sup> the Supreme Court con-

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20. *Birnbaum* and its effect upon later cases is discussed in detail in Note, *Birnbaum: Revisited and Triumphant—Blue Chip Stamps v. Manor Drug Stores*, 25 DE PAUL L. REV. 132 (1975).

21. Defendant, the president of the company, rejected a merger offer from another company that would have been very profitable to the shareholders. *Birnbaum*, 193 F.2d at 462. Instead, the defendant sold his individual shares to another company at a substantial premium. *Id.* Plaintiffs contended that defendant's fraudulent activity violated rule 10b-5. *Id.*

22. Judge Augustus Hand's opinion for the court examined the SEC's intent in promulgating rule 10b-5. Hand reasoned that the SEC did not intend to protect all investors from fraud, only those who purchased or sold securities. 193 F.2d at 463. Hand argued that Congress directed § 10(b) solely at misrepresentation associated with the purchase or sale of securities rather than at fraudulent corporate mismanagement. *Id.* at 464. The *Birnbaum* court's holding is commonly referred to as the "*Birnbaum* doctrine" or the "purchaser-seller requirement."

23. See, e.g., *Smallwood v. Pearl Brewing Co.*, 489 F.2d 579 (5th Cir. 1974); *Landy v. Federal Deposit Ins. Corp.*, 486 F.2d 139 (3d Cir. 1973), *cert. denied*, 416 U.S. 960 (1974). *But see* *Eason v. General Motors Acceptance Corp.*, 490 F.2d 654 (7th Cir. 1973), *cert. denied*, 416 U.S. 960 (1974) (rejecting the *Birnbaum* doctrine).

24. See Lowenfels, *The Demise of the Birnbaum Doctrine: A New Era for Rule 10b-5*, 54 VA. L. REV. 268, 275-77 (1968) (the *Birnbaum* doctrine appears incompatible with the broad spectrum of private rights created under the federal securities laws); Ruder, *Current Developments in the Federal Law of Corporate Fiduciary Relations—Standing to Sue Under Rule 10b-5*, 26 BUS. LAW. 1289 (1971) (the *Birnbaum* doctrine creates an inconsistent pattern of relief and causes confusion among the courts); Note, *The Purchaser-Seller Limitation to SEC Rule 10b-5*, 53 CORNELL L. REV. 684, 697-99 (1968) (the doctrine arbitrarily bars potential plaintiffs from relief).

25. The decisions may be divided logically into two separate categories: (1) decisions in which the court granted standing even though the plaintiff was not a purchaser or seller of securities, and (2) decisions in which the court broadly interpreted "purchaser" and "seller" to include parties involved in nontraditional purchases and sales.

For a listing of cases in the first category, see *Blue Chip Stamps v. Manor Drug Stores*, 492 F.2d 136 (9th Cir.) (potential purchasers of stock of a newly formed corporation granted standing when an antitrust consent decree required the newly formed corporation to offer its stock to them), *rev'd*, 421 U.S. 723 (1975). For a listing of cases in the second category, see *Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6 (1971) (personal representative of purchaser or seller).

In 1971, the Supreme Court in *Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6 (1971), echoed the liberal second approach, stating that § 10(b) must be read flexibly rather than restrictively. *Id.* at 12-13. Although the purchaser-seller requirement was not an issue on appeal, the Court cited authority opposed to the rule. *Id.* at 14 n.10.

26. 421 U.S. 723 (1975). Pursuant to an antitrust consent decree, *Blue Chip Stamps* distributed

fronted the issue of the purchaser-seller requirement. In reaching its decision to uphold the *Birnbaum* doctrine,<sup>27</sup> the Court examined the legislative and administrative history of section 10(b) and rule 10b-5, finding inconclusive support for the *Birnbaum* doctrine.<sup>28</sup> Although recognizing that the doctrine might preclude meritorious claims,<sup>29</sup> the Court concluded that the doctrine would prevent strike suits and would eliminate the need to inquire into plaintiffs' subjective decisions to invest or sell.<sup>30</sup> Additionally, the Court concluded that the language of the 1934 Act mandated the adoption of the *Birnbaum* doctrine.<sup>31</sup>

Congress expressly defined the terms "purchase" and "sale" in the 1934 Act.<sup>32</sup> The Court in *Blue Chip Stamps*, however, failed to provide

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a prospectus offering shares of common stock to retail users who were not stockholders in the company. *Id.* at 726. Manor Drug Stores filed a class action on behalf of all former users, alleging that Blue Chip Stamps distributed an overly pessimistic prospectus, thereby inducing class members not to purchase the stock. *Id.*

27. For a general discussion of *Blue Chip Stamps* and its effect upon the purchaser-seller requirement, see Note, *supra* note 20, at 154-59.

28. 421 U.S. at 733. See also 1 A. BROMBERG, SECURITIES LAW: FRAUD § 2.2 (Supp. 1970) (the House and Senate Committee Reports provide little help in determining legislative intent); Whittaker, *The Birnbaum Doctrine: An Assessment*, 23 ALA. L. REV. 543, 584 (1971) (the history of § 10(b) is inconclusive).

29. 421 U.S. at 738. See *supra* note 24 and accompanying text.

30. 421 U.S. at 739-43. The Court found that absent a purchase or sale requirement, the danger of vexatious litigation existed. *Id.* First, the evidence of a plaintiff's injury in a rule 10b-5 claim is often subjective. *Id.* Second, the outcome of the trial may hinge on unreliable oral testimony. *Id.* The Court feared that these factors might lead to speculative recovery. *Id.* In addition, the subjective nature of a rule 10b-5 claim makes summary judgment difficult to achieve, thereby forcing defendants to settle unworthy claims in order to escape time-consuming discovery. *Id.* For criticism of the Supreme Court's policy arguments in *Blue Chip Stamps*, see Note, *supra* note 20, at 142-45 (criticizing the Court's policy argument as being the weakest link in the argument in support of the purchaser-seller requirement).

31. 421 U.S. at 733 n.5 (noting that "the wording of § 10(b), making fraud in connection with purchase or sale of security a violation of the Act, is surely badly strained when construed to provide a cause of action, not to purchasers or sellers of securities, but to the world at large" (emphasis in original)).

32. The 1934 Act provides that "[t]he terms 'buy' and 'purchase' each include any contract to buy, purchase, or otherwise acquire." 15 U.S.C. § 78(c)(13) (1982). Additionally, the 1934 Act provides that "[t]he terms 'sale' and 'sell' each include any contract to sell or otherwise dispose of." 15 U.S.C. § 78(c)(14) (1982).

Notably, Congress adopted an apparently broader definition of "sale" in the 1933 Act: "[t]he term 'sale' or 'sell' shall include every contract of sale or disposition of a security or interest in a security, for value." 15 U.S.C. § 77b(3) (1982). In *Lawrence v. SEC*, 398 F.2d 276, 280 (1st Cir. 1968), the court noted that with respect to the 1934 Act definition of "sale," there is "no reason to believe that Congress intended, one year after passage of the [1933 Act], to dilute the concept of sale in the [1934 Act]."

guidelines for interpreting these statutory definitions.<sup>33</sup>

Faced with diverse factual situations, many courts construed the statutory definitions of “purchase” and “sale” broadly to effectuate the remedial purpose of the 1934 Act.<sup>34</sup> Other courts have held that the terms “purchase” and “sale” should not be limited to their common-law meaning.<sup>35</sup> Accordingly, courts developed “qualifications”<sup>36</sup> to the *Birnbaum* doctrine, granting standing to plaintiffs in numerous nontraditional sale situations.<sup>37</sup>

In *Northland Capital Corp. v. Silver*,<sup>38</sup> the District of Columbia Circuit Court of Appeals addressed the meaning of the terms “purchase” and “sale” in an unusual fact situation.<sup>39</sup> Focusing on the words “any contract” in the statutory definitions of “purchase” and “sale,”<sup>40</sup> the court

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33. The Court apparently rejected the judicially developed exceptions to the rule created through case-by-case policy analysis. *Id.* at 755.

34. *See infra* note 38. The decision in *Mansbach v. Prescott Ball & Turben*, 598 F.2d 1017 (6th Cir. 1979), illustrates the broad construction of purchase and sale adopted by many courts. In *Mansbach*, the plaintiff pledged stock to a securities broker as collateral for anticipated transactions. *Id.* at 1019. The court held that a pledge of securities was a “purchase and sale” under § 10(b) and rule 10b-5. *Id.* at 1028. After carefully considering the particular facts of the case and the policy concerns expressed in *Blue Chip Stamps*, the court concluded that the pledge of securities constituted a “sale” under rule 10b-5. *Id.* at 1030.

Several courts have focused on the extent of the plaintiff’s control of the security. These courts reason that a purchase or sale occurs upon a nongratisuitous “surrendering of control, change in ownership, or change in the fundamental nature of an investment.” *Sacks v. Reynolds Securities, Inc.*, 593 F.2d 1234, 1240 (D.C. Cir. 1978); *see also* *Baurer v. Planning Group, Inc.*, 669 F.2d 770, 777 (D.C. Cir. 1981) (a purchase of a security occurred because “notes were . . . disposed of.”).

35. *See, e.g.*, *Broad v. Rockwell Int’l Corp.*, 614 F.2d 418, 435 (5th Cir. 1980), *aff’d on other grounds and rev’d in part on other grounds*, 642 F.2d 929 (5th Cir.) (en banc), *cert. denied*, 454 U.S. 965 (1981); *Sacks v. Reynolds Securities, Inc.*, 593 F.2d 1234, 1240 (D.C. Cir. 1978); *Goodman v. Epstein*, 582 F.2d 388, 410 (7th Cir. 1978); *Vine v. Beneficial Finance Co.*, 374 F.2d 627, 634 (2d Cir.), *cert. denied*, 389 U.S. 970 (1967). *But cf.* *Radiation Dynamics, Inc. v. Goldmuntz*, 464 F.2d 876 (2d Cir. 1972) (court relied upon common-law principle of meeting of the minds to determine when purchase was made).

36. A broad interpretation of the statutory terms “purchase” and “sale” for purposes of rule 10b-5 is sometimes referred to as a qualification.

37. In the context of rule 10b-5, factual situations which do not constitute sales under strict common law are commonly referred to as nontraditional sales. *See, e.g.*, *Alley v. Miramon*, 614 F.2d 1372, 1380-81, 1384-85 (5th Cir. 1980) (liquidation constitutes forced sale); *Mallis v. Federal Deposit Ins. Corp.*, 568 F.2d 824, 828-30 (2d Cir. 1977) (pledgor of a security held to be a seller); *Bolton v. Gramlick*, 540 F. Supp. 822, 839-40 (S.D. N.Y. 1982) (liquidation constitutes forced sale); *Valente v. Pepsico*, 454 F. Supp. 1228, 1236-37 (D. Del. 1978) (merger constitutes forced sale). *But see* *National Bank of Commerce v. All American Assurance Co.*, 583 F.2d 1295 (5th Cir. 1978) (pledge is not a purchase or sale).

38. 735 F.2d 1421 (D.C. Cir. 1984).

39. *See supra* notes 3-9 and accompanying text.

40. *See supra* note 32 (defining “purchase” and “sale”).

held that absent an enforceable contract of sale, the parties have not engaged in a transaction “in connection with the purchase or sale” of a security.<sup>41</sup>

Judge Starr, writing for the majority, first discussed *Blue Chip Stamps*, concluding that the Supreme Court based its adoption of the *Birnbaum* doctrine principally upon the language of the 1934 Act.<sup>42</sup> The fear of vexatious litigation and of abuse of federal jurisdiction that was expressed in *Blue Chip Stamps*, Judge Starr reasoned, were secondary considerations to the Court’s holding.<sup>43</sup> He thus rejected Northland’s argument that the court should balance the fear of vexatious litigation against the need for protection from fraud on a case-by-case basis.<sup>44</sup>

Turning to the issue of Northland’s standing under rule 10b-5, Judge Starr concluded that a “meeting of the minds”<sup>45</sup> between the purchaser and seller with respect to the essential terms of their agreement is a requirement for a “purchase” or “sale.”<sup>46</sup> Judge Starr pointed to several facts that precluded the formation of a contract: the parties failed to close as provided by their agreement;<sup>47</sup> neither the wiring of funds by Northland nor the delivery of securities by Watkins constituted an offer and acceptance; and finally, the agreement provided that a group of investors, not Northland alone, would participate in the transaction.<sup>48</sup> In conclusion, Judge Starr argued that the federal securities laws do not provide broad remedies for every injury an investment company may sus-

41. 735 F.2d at 1422. See *supra* note 2.

42. *Id.* at 1426. See *supra* note 31.

43. *Id.* See *supra* notes 26-33 and accompanying text (discussing *Blue Chip Stamps*).

44. *Id.*

45. The concept of a meeting of the minds, commonly known as mutual assent, is a requirement for the formation of a contract under strict contract law. See, e.g., *Fairway Center Corp. v. V.I.P. Corp.*, 502 F.2d 1135, 1141 (8th Cir. 1974) (contract not binding for lack of mutual assent when parties separately sign varying versions of agreement); *Christian v. Waiialua Agricultural Co.*, 94 F.2d 806, 807 (9th Cir.), *rev’d*, 305 U.S. 91 (1938) (contract not binding because insane person cannot give the required assent). See generally RESTATEMENT (SECOND) OF CONTRACTS § 17 (1979) (providing that “the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.”).

46. 735 F.2d at 1427.

47. *Id.* at 1428. The court argued that by expressly authorizing Allied to act on its behalf at the contemplated closing, Northland signified that it considered a successful closing to be a prerequisite to any transaction.

48. Although recognizing that Northland and Watkins could have struck a separate agreement, Judge Starr concluded that they failed to do so. Northland’s ministerial act of wiring funds did not constitute an offer from Northland to Watkins. Even if such an act were an offer, Watkins never accepted it because Northland failed to sign the written agreement and contemplated materially different terms on an essential item of the contract. *Id.* at 1428-29.

tain while attempting to negotiate and close a deal.<sup>49</sup>

In his dissent, Judge Wald criticized the majority's restrictive reading of the purchase and sale requirement.<sup>50</sup> In particular, he criticized the majority for ignoring the 1933 Act's definition of "sale," which provides that "sale" includes any "disposition of . . . an interest in a security, for value."<sup>51</sup> According to Judge Wald, Congress could not have intended, one year after passing the 1933 Act, to dilute the concept of "sale" in the 1934 Act.<sup>52</sup> Additionally, Judge Wald argued that *Blue Chip Stamps* mandates a balancing of various policy considerations to determine whether a person has standing under rule 10b-5.<sup>53</sup> The majority, therefore, failed to comply with *Blue Chip Stamps*.<sup>54</sup>

The *Northland* court's holding is unwise and unprecedented. Nearly all courts have adopted extremely liberal interpretations, in nontraditional sale situations, of the statutory terms "purchase" and "sale."<sup>55</sup> Ignoring precedent, the majority relied exclusively on strict tenets of contract law.<sup>56</sup>

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49. *Id.* at 1431. Moreover, Judge Starr stressed that imposing strict contract rules on determinations whether a purchase or sale has occurred would not undermine the broad remedial purposes of the federal securities laws. *Id.* Judge Starr reasoned that the cause of *Northland's* injury was its failure to escrow the funds until closing rather than any violation of the securities laws. *Id.*

50. *Id.* at 1432.

51. *Id.* at 1433. *See supra* note 32.

52. Stating that Congress in the 1933 Act defined "sale" as a "disposition of . . . an interest in a security for value," 15 U.S.C. § 77b(3), Judge Wald argued that Congress clearly intended to cover transactions like that between *Northland* and *Watkins*. 735 F.2d at 1433.

53. *See supra* note 30 and accompanying text.

54. Judge Wald noted that the Supreme Court turned to policy considerations to ascertain those portions of the law that neither congressional enactment nor administrative regulations conclusively interpreted. 735 F.2d at 1434.

Judge Wald argued that because the exchange of money and securities between *Northland* and *Watkins* was both objective and verifiable, a court would not have to engage in a subjective inquiry to determine whether a purchase or sale occurred. Judge Wald thus concluded that the *Blue Chip Stamps* concerns did not counsel against granting standing in this case. *Id.* at 1434-35.

Finally, Judge Wald criticized the majority opinion for "imposing its own 'meeting of the minds' prerequisite to a 'purchase or sale' under the Act" and thus shielding "from the investor protection provisions of the Securities Exchange Act the very kind of fraudulent conduct which was a core concern of the drafters." *Id.* at 1431-32. Judge Wald noted that several circuits have recognized the remedial policies of the 1934 Act and, accordingly, have granted standing to plaintiffs in situations much less recognizable as traditional sales than the facts of this case. Judge Wald argued that the majority's meeting-of-the-minds requirement conflicts with such holdings. For example, a merger or liquidation's conversion of a stockholder's shares into cash involves no meeting of the minds because the stockholder does not agree to transfer the stock for a bargained price. *Id.* at 1435.

55. *See supra* notes 34-37 and accompanying text.

56. *See supra* notes 45-49 and accompanying text.



The majority's strict adherence to common-law contract principles fails to recognize *Blue Chip Stamps*' policy concerns.<sup>57</sup> The majority's failure to consider such concerns in its analysis therefore reflects a mistaken departure from the teachings of *Blue Chip Stamps*.

By focusing on a meeting-of-the-minds requirement as a prerequisite to a purchase and sale under rule 10b-5, the majority mandates an inquiry in every case into the enforceability of the contract underlying the sale of the security. The court therefore requires analysis of the subjective thought processes of the parties—the very type of inquiry that *Blue Chip Stamps* seeks to avoid.<sup>58</sup> Rather, courts should consider *Blue Chip Stamps*' policy concerns, scrutinizing the facts of the case in light of those concerns. In the instant case, no sound reason exists to deny Northland standing to sue. An objective and verifiable event such as the parties' exchange of money and securities<sup>59</sup> presents no danger of strike suits or undesirable inquiries into the plaintiff's subjective decision to invest or sell. The court should have granted Northland standing to sue under rule 10b-5.

In refusing to grant the plaintiff standing to sue in *Northland Capital Corp.*, the District of Columbia Circuit took a wayward step from the judicial effort to liberally construe a purchase or sale under rule 10b-5.<sup>60</sup> By adopting a restrictive approach in such a context, the court undermined the remedial purposes of the federal securities laws.

J.G.B.

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57. See *supra* note 30 and accompanying text.

58. See *supra* note 30 and accompanying text.

59. See *supra* notes 3-9 and accompanying text.

60. Recently, in *Landreth Timber Company v. Landreth*, 105 S. Ct. 2313 (1985), the Supreme Court firmly rejected the so-called "sale of business" doctrine, thereby broadening the potential scope of the federal securities laws. The District of Columbia Circuit's restrictive interpretation of "purchase" and "sale" appears out of step with the Supreme Court's recent trend toward broadening the availability of the federal securities laws.