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**Comment Letter  
Comments by Germany's Federal Government on the SEC-Paper [Release No. 34-63174; File No. 4-617]  
Study on Extraterritorial Private Rights of Action**

Dear Ms. Murphy,

The Government of the Federal Republic of Germany wishes to express its thanks for being given the opportunity to comment on the envisaged "Study on Extraterritorial Private Rights of Action" (Dodd Frank Act Section 929Y).

Just like the U.S. Government, the Federal Government is concerned about investors being harmed by securities fraud. It shares the U.S. Government's view that securities fraud needs to be effectively combated. In Germany's view, this involves not just strict regulatory control measures but also creating possibilities that enable investors who have suffered damages resulting from securities fraud to seek compensation from the liable parties. However, this should happen where there is a forum in accordance with standard international practise under procedural law. The Federal Government therefore advises against extending the extraterritorial scope of private actions in U.S. law.

Germany deliberately shaped its legal position towards combating securities fraud in such a way that the rights other countries have, in principle, under international law to

determine the scope of their legislation themselves are compromised as little as possible. This explains why in order for German law to apply to securities fraud, there must be clear and strong evidence of links to Germany.

Germany now fears that the considerations undertaken in the USA in relation to Section 929Y of the Dodd Frank Act on investors having private rights of action could potentially seriously hamper Germany's proven and internationally well-balanced regulatory system. An unreasonable extraterritorial application of U.S. private rights of action could potentially interfere with Germany's sovereignty, thus hugely affecting German governmental interests in a way that would be unacceptable. No such interference should occur between two countries like Germany and the USA which cooperate so closely in economic and political terms and that are pursuing the same goals in combating securities fraud.

This fear is substantiated above all by the fact that owing to the broad definition of the criteria ("conduct and effect test") mentioned in Section 929Y of the Dodd Frank Act, the envisaged U.S. regulations on securities fraud could also apply to facts that have no links or minor links with the USA but that display close links with Germany.

U.S. citizens can avail themselves of effective legal protection in Germany in cases involving securities fraud. Their rights would not be limited in any way if the U.S. Government decided not to introduce extraterritorial private rights of action. The Federal Republic of Germany, just like the USA, has established an effective system of securities markets supervision as well as effective legal protection of individuals by the national courts.

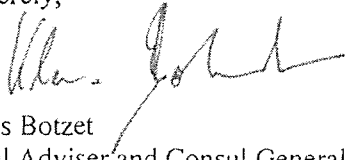
The Federal Financial Supervisory Authority (BaFin) ensures the transparency and integrity of the financial markets and the protection of investors. The legal basis for supervision is laid down in numerous acts, regulations and publications, for example, in the Securities Trading Act (Wertpapierhandelsgesetz). The Securities Trading Act regulates market abuse and stipulates rules of professional conduct which investment services institutions are obliged to observe in their dealings with their clients and organisational requirements which investment services institutions are obliged to meet. The Federal Financial Supervisory Authority checks compliance with these rules on a regular basis.

The German regulations on international jurisdiction, private international law and on substantive law of compensation ensure that investors can enforce their rights simply and efficiently before the German courts in cases involving securities fraud displaying clear and strong links with Germany. Both German and U.S. nationals who are the victims of securities fraud are entitled to file an action. The German law of compensation does not make any distinction between nationality or the principal place of residence of the victims of securities fraud. In addition, German procedural law provides all plaintiffs with the same fair process guarantee as U.S. law. Furthermore, if it is necessary to take evidence in judicial proceedings, the evidence is taken wherever the bulk of the evidence can be proven in line with standard international practice. The aggrieved parties have the opportunity to enforce their titled claims in Germany without having to have decisions handed down by foreign courts recognized and declared enforceable here in Germany. Last but by no means least, in German law relating to the enforcement of court judgements, international creditors are treated exactly the same as national creditors.

These protective mechanisms for the benefit of investors who are the victims of securities fraud are consistently implemented in legal practise. The Federal Financial Supervisory Authority (BaFin) consistently clamps down on all cases involving securities fraud. Plaintiffs who are the victims of securities fraud have successfully contested legal action for compensation before German courts.

Against this backdrop, in Germany's opinion, the decision handed down by the U.S. Supreme Court in the lawsuit Morrison vs. National Australia Bank and the introduction of Section 929P of the Dodd Frank Act fully articulates the U.S.'s vested interest in strictly and effectively combating transnational securities fraud. At the same time, it sensibly avoids, by and large, any conflict with Germany's governmental interest in having an equally effective, independent regulation in this area. This balance would be sustainably disturbed if private rights of action were also to be introduced.

Sincerely,

  
Klaus Botzet  
Legal Adviser and Consul General



