DEUTSCHES AKTIENINSTITUT

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Miss
Elizabeth M. Murphy
Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
UNITED STATES OF AMERICA

18 February 2011

Dear Ms. Murphy,

Deutsches Aktieninstitut welcomes the possibility to comment on the SEC-study on extraterritorial private rights of action.

In the past, numerous American courts have frequently affirmed US subject matter jurisdiction in cases with only minor or just fragile links to the US territory. From a European point of view, this generous affirmation has often lead to legal uncertainties and numerous obstacles, especially abusive litigation due to the opportunity of 'forum shopping'.

Certain instruments and traditions which originate within the American legal system are unknown, unpractised or even expressively banned in the jurisdictions of continental Europe. European investors should not be given incentives to bypass their national rules by possibly enjoying legal benefits of the US law which their own laws do not provide for. In particular, they should not have the possibility to raise claims against European issuers or European companies in the United States when the respective conduct on which these claims are based has occurred entirely outside the US.

Contrary measures result in the extraterritorial application of American law and are capable of fostering abusive litigation. A prominent example can be seen in class actions raised by European investors against European companies before American courts. A combination of key-features of US class action law, contingency fees and the absence of a looser-pays-principle among others, has triggered a development which enables plaintiffs to literally extort profitable settlements from company-defendants without any risk or costs. Excessive settlement payments have in the past proved as being capable of threatening companies' existences. This development has also been criticised by domestic institutions in the United States and has affected economic growth and employment in a very disadvantageous way.

Furthermore a decline of the quality and credibility of the US jurisdiction is likely to occur. Due to the attractiveness of American lawsuit for foreign investors US courts will have to deal with a steadily increasing number of extraterritorial cases raised by non-US-residents. This will result in a capacity overload of American courts which will negatively influence the quality of judgements.

Besides this, foreign national jurisdictions will be circumvented or even undermined by the extraterritorial application of US law. This could lead to severe interferences with fundamental principles of a foreign legal system which is unacceptable as it could threaten a democratic country's sovereignty at last.

The Morrison-decision of the US Supreme Court has shown an unmistakable sign in this respect and was welcomed throughout corporate Europe. By the statement that section 10(b) of the Securities Exchange Act of 1934 shall only be employed 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, the Supreme Court made clear that a sufficient stable link to the US territory shall be a prerequisite for the application of US law.

This general principle should not be questioned. A continuous extraterritorial reach of American securities law could bring a tenderly growing legal certainty which European companies have long hoped for to an abrupt end. Serious effects on the economic situation on both sides of the Atlantic as regards business-relations and investments in particular could be the consequence. Both, European and American enterprises need to be assured that their business activities abroad remain calculable and predictable. Being exposed to abusive litigation due to the extraterritorial application of national law may encourage companies to reassess their business activities in the respective market. This tendency should be prevented. The importance of the transatlantic economic relations is too enormous for Europe and America. I kindly ask you to take this into consideration.

Sincerely yours

Prof. Dr. Ruediger von Rosen