Council of Institutional Investors
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Council Study Urges Congress to Strengthen Investors' Right to Sue for Securities Fraud

Washington, D.C., Feb. 2, 2012 — Congress should grant U.S. investors the right to sue for securities fraud regardless of where they purchased the shares, lawyers at Yetter Coleman assert in a white paper published today by the Council of Institutional Investors.

The independent study commissioned by the Council is timely because the Securities and Exchange Commission (SEC) is expected to issue a report to Congress soon on private rights of action for securities fraud.

In the report, "Morrison v. National Australia Bank: The Impact on Investors," authors Christian J. Ward and J. Campbell Barker examine the impact on investors of the U.S. Supreme Court's decision in that landmark 2010 case. The Court's ruling cast aside the conduct and effects tests that federal courts had applied for 40 years to determine when the antifraud provisions of U.S. securities law cover injured American investors.

Before *Morrison*, if the fraud involved conduct in the United States or had an effect in the United States, injured investors could bring suit. In *Morrison*, the Court said the right to sue hinged on the *location* of the securities transaction; under the Morrison test, American investors cannot sue for fraud if the securities trade only on foreign exchanges, even if the purchase order for the securities originated in the United States.

In 2011, Congress restored the conduct and effects tests for antifraud suits brought by the SEC and the Department of Justice, in a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act. But lawmakers did not re-establish a corresponding private right of action for investors.

The white paper asserts that reliance on the government alone to recover American investors' losses from transnational securities fraud offers insufficient deterrence and investor protection, and that Congress should extend a private right of action to all securities fraud that affects U.S. investors regardless of where the trade took place. The paper also calls on Congress to consider whether a new private action should be extended to foreign investors to promote ethical conduct to the benefit of all investors.

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The Council of Institutional Investors (CII) is a nonprofit association of pension and other employee benefit funds, foundations and endowments with combined assets that exceed $3 trillion. The Council is a leading voice for good corporate governance and strong shareowner rights. The Council strives to educate its members, policymakers and the public about good corporate governance, shareowner rights and related investment issues, and to advocate on members' behalf.