



Via Hand Delivery

February 3, 2012

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Shelby:

As nonprofit, nonpartisan association of public, corporate and union pension funds, and other employee benefit funds, foundations and endowments with combined assets that exceed \$3 trillion, the Council of Institutional Investors (Council) is committed to protecting the retirement savings of millions of American workers. As part of that commitment, the Council has long taken a strong interest in ensuring that the antifraud provisions of the Securities and Exchange Act of 1934 (Act) continue to honor the longstanding aims of those provisions—deterring fraud in the securities markets and compensating those actually injured by such fraud.

We understand that, in accordance with Section 929Y of the Dodd-Frank Wall Street Reform and Consumer Protection Act, your Committee will soon be receiving a report by the United States (U.S.) Securities and Exchange Commission (SEC) providing an analysis and recommendations on whether private rights of action under the antifraud provisions of the Act should be extended to cover—

- (1) conduct within the United States that constitutes a significant step in the furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; and
- (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

In contemplation of the issuance of the SEC report, the Council commissioned an independent analysis of the related issues raised by the U.S. Supreme Court's June 2010 ruling in *Morrison v. National Australian Bank*. The resulting white paper, *Morrison v. National Australian Bank: The Impact on Institutional Investors*, authored by Christian J. Ward and J. Campbell Barker of Yetter Coleman LLP, is attached to this letter.

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We respectfully request that the Committee carefully consider the Council's white paper in connection with its examination of the recommendations contained in the pending SEC report. If you should have any questions or require any additional information about the Council or the white paper, please feel free to contact me at 202.261.7081 or Jeff@cii.org, or Senior Analyst Laurel Leitner at 202.658.9431 or Laurel@cii.org.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeff Mahoney
General Counsel

Attachment

cc: The Honorable Jack Reed, Chairman, Subcommittee on Securities, Insurance, and Investment (w/Attachment)

The Honorable Michael D. Crapo, Ranking Member, Subcommittee on Securities, Insurance, and Investment (w/Attachment)