



EUROPEAN COMMISSION
Directorate General Internal Market and Services

Director General

Brussels, 22.02.2011
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Ms Mary L. Schapiro
Chairman
Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549

Ref.: File Number 4-617 - Study on Extraterritorial Private Rights of Action

Dear Ms Schapiro,

I take the opportunity of the SEC's public consultation on the study mandated by Section 929Y of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to express our concern regarding the possible extraterritorial application of the antifraud provisions of the United States' securities laws in relation to private rights of action.

The European Union's regime of securities regulation, together with the national regimes of its Member States, provides measures to deter securities fraud by way of firm enforcement and to compensate those, including U.S. investors, who transact in securities listed on European trading venues, or any other security in the European Union, and who suffer damage as a result of securities fraud.

The European Union and the United States have made legitimate policy choices which both ensure financial market integrity and transparency, but rest on different legal or business traditions and thus often differ in important substantive and procedural respects. Insofar as specific features of the European Union's and its Member States' regimes differ from those of the United States, they do not prejudice investor protection, but rather provide appropriate investor protection by different means. Moreover, in order to enhance investors' protection in our respective jurisdictions, the U.S. and the E.U. should cooperate and develop international agreements for the exchange of information and evidence relating to transnational securities transactions.

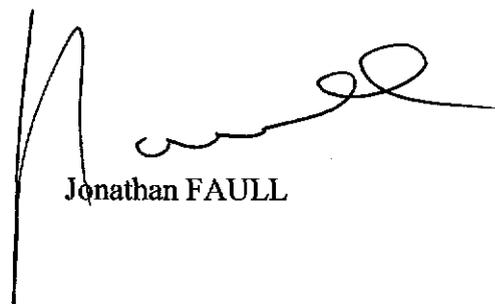
Extraterritorial application of the antifraud provisions of the United States' securities laws, as envisaged by the Dodd-Frank Act regarding the public enforcement by the U.S. government and the SEC, to cases involving a private right of action regarding alleged misconduct in connection with securities, where the *nexus* is stronger with a foreign jurisdiction, is liable to violate the E.U.'s and its Member States' sovereignty, and to

impede the proper development of E.U.'s securities regulation. As such we strongly urge the SEC to advise against such an extension.

On the contrary, in relation to private rights of action, we believe that the "transactional" test established by the U.S. Supreme Court in *Morrison v. National Bank of Australia*, is in accordance with the principles of comity and international law, and helps to "...avoid unreasonable interference with sovereign authority of other nations".¹

In the context of the increasing integration of securities markets, we believe that our common objective of investor protection can be more effectively achieved by developing coordinated approaches to transnational securities-fraud public enforcement in a process of constructive discussions between U.S. authorities, the Commission, the European Securities and Markets Authority, and the European regulators.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan FAULL'. The signature is fluid and cursive, with a large initial 'J' and a long horizontal stroke extending to the right.

Jonathan FAULL

¹ *F.Hoffman-LaRoche Ltd. v. Empagran S.A.*, 542 U.S. 155, 163 (2004).