EQUILIBRIUM

Office of the Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

18 February 2025

BY EMAIL ONLY: rule-comments@sec.gov

Administrative Proceeding File No. 3-21181

***Request for comment re. "Proposed Plan of Distribution" Barclays PLC and Barclays Bank PLC* (the "Proposed Plan")[1] ("Barclays")**

Dear Members of the SEC Commission,

My name is Richard Jansson, I am a director of Equilibrium Capital Limited, which is authorised and regulated by the Financial Conduct Authority in the United Kingdom (reference number: 464325) and specialises in the provision of advice to minority shareholders.

Before providing comments on the Proposed Plan and more specifically SEC Commissioner Hester M. Peirce's[2] related concerns expressed in her Statement of 22 January 2025[3], please allow me first to emphasise what Sarbanes-Oxley Act ("**SOX**") 308(a) actually stipulates, in accordance with the below extract, highlighting relevant sections:

> SEC. 308. <<NOTE: 15 USC 7246.>> FAIR FUNDS FOR INVESTORS.
>
> (a) Civil Penalties Added to Disgorgement Funds for the Relief of Victims.--If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

Commissioner Peirce's Statement promotes the view that certain "*victims*" shall be restituted from a Fair Fund under SOX 308(a) but not others, seemingly in line with President Trump's "*putting America first*"[4] agenda, but upon closer inspection, such approach is fundamentally misconceived, as further laid out below:

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[1] https://www.sec.gov/files/litigation/admin/2025/34-102254.pdf?utm_medium=email&utm_source=govdelivery

[2] "*Hester M. Peirce was appointed by President Donald J. Trump to the U.S. Securities and Exchange Commission and was sworn in on January 11, 2018*": https://www.sec.gov/about/sec-commissioners/hester-m-peirce#:~:text=Peirce-,Hester%20M.,Center%20at%20George%20Mason%20University.

[3] https://www.sec.gov/newsroom/speeches-statements/peirce-statement-barclays-012225?utm_medium=email&utm_source=govdelivery

[4] https://en.wikipedia.org/wiki/America_First_(policy)#:~:text=One%20hundred%20years%20later%2C%20Donald,in%20the%20administration's%20foreign%20policy.

Comments on Commissioner Peirce's Statement

Commissioner Peirce notes that Barclays' misconduct[5] occurred "*both domestically (ADR transactions on NYSE)*" ("**US Share**") and in a "*foreign country (common stock transactions on the LSE)*" ("**UK Share**"), being at the London Stock Exchange, United Kingdom.

Commissioner Peirce is in this context questioning if the above extracted legal text under SOX 308(a) should (or could) be interpreted by the Commission as if the SEC has no legal obligation to restitute "*victims*" who were "*harmed by a violation of the federal securities laws*" and suffered losses on a "*foreign exchange*"[6]; i.e. investors who traded the UK Share, as opposed to trading the US Share (despite both suffering the same line of losses).

Commissioner Peirce expresses "*legal and policy concerns*" regarding the SEC using a Fair Fund under SOX 308(a) to "*compensate investors who purchased securities of a foreign issuer on a foreign exchange*" (Appendix [1•]) and asserts that such handling by the SEC Commission would be "*somewhat novel*" and therefore those who suffered losses from the UK Share ought not to be restituted under the related SEC Fair Fund.

> **First Comment**: Commissioner Peirce portrays Barclays in her Statement as only being a "*foreign issuer*". This is not correct, as Barclays is also correspondingly a "*U.S. issuer*"[7] (Appendix [2•]).
>
> As noted by the now former SEC Chairman under the topic "*Coverage of foreign issuers in the U.S.*", it was recently pointed out that "*Congress required foreign issuers to comply with [SOX] as well*" and investors should be "*protected - and should have trust in the numbers - regardless of whether an issuer is foreign or domestic*"[8].
>
> Even if Commissioner Peirce in theory were to be right in asserting that Barclays is only a "*foreign issuer*" operating on a "*foreign exchange*", the SOX legislation, which has extraterritorial application (see further below), would still apply to Barclays' UK Share and any related SEC Fair Fund.
>
> In fact, even if Barclays was a "*foreign private issuer*"[9], the SOX legislation would still apply[10]. Already back in 2003, the SEC noted "*the importance of maintaining effective oversight over the financial reporting process is relevant for listed securities of any issuer, regardless of its domicile*"[11]. Accordingly, there is nothing "*novel*" at all about the SEC under its Fair Fund facility also compensating investors who traded the UK Share and suffered harm[12].

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[5] "*In the Order, the Commission found that Barclays Bank failed to put into place any internal control around the real-time tracking of securities being offered or sold off of its Commission-registered shelf registration statements*", in violation of "*Sections 5(a) and 5(c) of the Securities Act*".
[6] "*Barclays ordinary shares traded on the [London Stock Exchange] ("LSE").*", whilst its ADR's traded "*on a U.S. exchange*".
[7] https://www.sec.gov/files/litigation/admin/2025/34-102254.pdf
[8] https://www.sec.gov/newsroom/speeches-statements/gensler-remarks-center-audit-quality-072722
[9] https://www.gibsondunn.com/wp-content/uploads/documents/publications/Kelley-Sarbanes-OxleyActForeignPrivateIssuers.pdf
[10] Barclays is a "*public issuer*", both in the US and in the UK.
[11] Final Rule: Standards Relating to Listed Company Audit Committees, Rel. Nos 33-8220; 34-47654 and IC-26001 (9 April 2003): https://www.sec.gov/rules-regulations/2003/04/standards-relating-listed-company-audit-committees
[12] As pointed out in the Notice: "*SEC v. BP p.l.c., In the Matter of Logitech International, and SEC v. CR Intrinsic Invs., LLC.*".

Commissioner Peirce asserts that "*SOX 308(a) lacks any language that "gives a clear, affirmative indication" that Congress meant for the statute to have extraterritorial application*".

> **Second Comment**: The text of the law is clear; the heading reads "*FAIR FUNDS FOR INVESTORS*" and its purpose is to provide "*Relief of Victims*" of the violation(s) in question under SOX, irrespectively if they suffered losses from the US Share or the UK Share, as SOX has extraterritorial application (see further below), whilst the SEC Fair Fund facility is an integral part thereof.

Commissioner Peirce questions if it "*make sense for the Commission to provide compensation to investors who chose to transact in [the UK Share] rather than purchasing the economically equivalent [US Share]?*".

> **Third Comment**: The SOX legislation applies to Barclays both in the US and the UK and accordingly, proceeds allocated to a related SEC Fair Fund (an integral part of SOX) applies also to investors being harmed from trading in the UK Share, so the answer to Commissioner Peirce's question is YES; it makes perfect sense, as further laid out below.

Commissioner Peirce asserts that when "*people choose to go outside the United States to trade, they do not get the protection of the Securities and Exchange Commission*", as they are then allegedly "*opting out of U.S. securities laws and into another set of laws and regulations*".

> **Fourth Comment**: I believe that this statement is false; Barclays stand under the SOX legislation and accordingly, investors[13] ("*victims of such violation*") are protected by that legal framework, including access to the related SEC Fair Fund.
>
> In reality, Persons who opted for trading the UK Share, as opposed to the US Share, perhaps for reasons as simple as liquidity, likely did so expecting that they were protected under the SOX legislation; quite the opposite of what is being asserted by Commissioner Peirce in her Statement.

Commissioner Peirce notes that "*penalty money not paid out to investors through a Fair Fund is deposited into the United States Treasury*" and accordingly, compensating "*foreign investors who traded on foreign exchanges comes at a cost to American taxpayers*".

> **Fifth Comment**: The rhetoric here being promoted by Commissioner Peirce reminds me of when the former SEC Chairman Clayton on 28 June 2018 under the First Trump Administration launched proposed "*amendments to the rules*" governing its "*whistleblower program*" by promoting the assertion that it would allegedly "*help strengthen*" the SEC Whistleblower Program if awards related to large ($100m+) SEC sanctions[14] were subject to a 'cap' of $30m[15], as such withheld award money could instead allegedly be made "*available to the United States Treasury, where they could be used for other important public purposes*"[16].

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[13] In any shape or form they may come - see further below.
[14] As for example in relation to this $200 million fine imposed against Barclays.
[15] https://www.sec.gov/newsroom/press-releases/2018-120
[16] See top page 13 in: https://www.sec.gov/files/rules/proposed/2018/34-83557.pdf

It was plain obvious, in my view, that such an order would not "*help strengthen*" the SEC Whistleblower Program, but instead help strengthen the Wall Street Establishment[17], who participates in such large scale misconduct, a view supported by (amongst other) the head of the Judiciary at the time, Republican Senator Charles E. Grassley (Appendix [3•]), as extracted below:

> "*This reasoning is not supported by the text or the legislative history establishing the program. Congress made a very clear policy choice to prioritize amply rewarding a whistleblower above other priorities*"[18]; and the same applies to SOX 308(a) and the SEC Fair Fund in terms of restitute and protect vulnerable and defenceless investors who falls victims to breaches of the US securities laws.

In the same manner as Clayton, Commissioner Peirce seems to be creating a two-tiered system, based on incorrect premisses (see further below).

On this basis, Commissioner Peirce concludes that a "*clear authorization or instruction*" from Congress "*appears lacking on the face of SOX 308(a)*" in the context of the SEC's obligation to compensate victims who traded the UK Share.

Sixth Comment: In accordance with the above, such a statement is not accurate.

The letter of the law is unambiguous; its purpose is to provide "*Relief of Victims*" of the violation(s) in question under SOX, and the Fair Funds were created to restitute "*INVESTORS*". It does not say that "*Victims*" in this context refers only to a specific category of investors having suffered losses domestically, in the US only (by trading the US Share).

The total amount in question, a $200,000,000 civil penalty[19], shall be "*added to and become part of the disgorgement fund for the benefit of the victims of such violation*", irrespectively if they suffered losses from the US Share or the UK Share.

Commissioner Peirce finalises her Statement by asking the following specific questions:

1. "*Is the Commission's conclusion that the presumption against extraterritoriality does not apply to SOX 308(a) because the statute confers a benefit and does not conflict with foreign law correct?*"

   Seventh Comment: This is correct.

2. "*Does the Notice correctly construe and apply the Supreme Court's precedents regarding the presumption against extraterritoriality?*"

   Eight Comment: Commissioner Peirce is here, as far as I understand, referring to the United States Supreme Court cases RJR Nabisco, Inc. v.

[17] The Wall Street Establishment covers a broad definition of any Person(s) and/or organisation(s) that benefits, directly and/or indirectly, from lax regulations as the laxer, the easier it is to cheat and enrich itself and undermine exposure of their misconduct.
[18] Please see bottom page 4 in: https://www.sec.gov/comments/s7-16-18/s71618-4373264-175545.pdf
[19] An amount one would have thought has taken hight for both the losses suffered under the US Share and the UK Share.

European Cmty., 579 U.S. (2016)[20] and Morrison v. National Australia Bank Ltd., 561 U.S. 247 (2010)[21] concerning the extraterritorial effect of U.S. securities legislation, without mentioning that the "*Dodd–Frank Wall Street Reform and Consumer Protection Act of July 21, 2010, in its section 929P(b), allowed the SEC and DOJ extraterritorial jurisdiction*"[22], and accordingly, YES, the Notice accurately reflects the valid legislation.

3. "*Is the Commission's proposal to compensate foreign investors for losses incurred trading on foreign exchanges consistent with its mission to further fair and efficient markets and to protect investors?*"

Ninth Comment: The Mission of the SEC is based on the straightforward concept that "*everyone should be treated fairly and have access to certain facts about investments and those who sell them*"[23].

Accordingly, the Commission shall "*compensate foreign investors for losses incurred trading on foreign exchanges*" as long as the offender (in this case Barclays) stands under US legislation (including but not limited to SOX and Dodd–Frank).

In this context, please see further below regarding Arcelor and T-Online as illustrative examples supporting the view that also those who traded (and suffered losses from) the UK Share were likely ultimately, to a large extent, also US based investors, and therefore also represents the average US taxpayer.

Commissioner Peirce's views on the Proposed Plan can - as far as I understand - be summarised as follows:

By the SEC Protect Worthy Investors according to Commissioner Peirce

Investor Type	Residency	US Share Victim	UK Share Victim
Private Person	US	Yes ✅	No ❌
Private Person	Non-US	Yes ✅	No ❌
Institutional	US	Yes ✅	No ❌
Institutional	Non-US	Yes ✅	No ❌

Commissioner Peirce is accordingly promoting an interpretation of SOX which in effect means for example that a US based Private Person (like herself) who invests in a non-US

[20] "*No private right of action arises under RICO for a foreign injury caused by the violation of a predicate statute that applies outside the U.S., unless Congress clearly provides this right of action*": https://supreme.justia.com/cases/federal/us/579/15-138/

[21] Morrison was a "*United States Supreme Court case concerning the extraterritorial effect of U.S. securities legislation. Morrison extinguished two species of securities class-action claims that had proliferated in preceding years: "foreign-cubed" claims, in which foreign plaintiffs sued foreign issuers for losses on transactions on foreign exchanges, and "foreign-squared" claims, brought by domestic plaintiffs against foreign issuers for losses on transactions on foreign exchanges*": https://supreme.justia.com/cases/federal/us/561/247/

[22] https://en.wikipedia.org/wiki/Morrison_v._National_Australia_Bank

[23] https://www.sec.gov/about/mission

share of a "*U.S. issuer*" like Barclays' UK Share, is not, or should not be protect worthy and ought to accordingly not be restituted by the SEC under an SEC Fair Fund under SOX 308(a).

The same would also apply if Commissioner Peirce were to invest indirectly in a US based Institutional investor (such as via a mutual fund, retirement account or other investment) which in turn had invested in the UK Share and suffered losses.

Somewhat curiously, Commissioner Peirce is in this context trying to portray herself as promoting the interests of the average US taxpayer.

To illustrate how dangerous it is to try to divide investors up into different 'categories' or 'groups' (protect worthy v. non-protect worthy) as Commissioner Peirce is promoting in relation to Barclays and the Proposed Plan, please allow me to share two other theoretical examples based in reality with the Commission, to further illustrate my point:

First Illustrative Example: Arcelor

Deutsche Bank AG, Amsterdam branch acted as the custodian to Deutsche Bank AG, London branch ("**DB London**") in respect of 1,236,969 ordinary shares held in Arcelor S.A. ("**Arcelor**"[24]) as per the close of business on 15 May 2007 (Appendix [4•]).

Arcelor, just like Barclays, also had "*American depositary shares*" ("**Arcelor ADR's**")[25], but was primarily listed (and traded) outside the US, and Arcelor is (or rather was) both a US issuer (through its ADR's) and a non-US issuer, just like Barclays, and accordingly stand (or rather stood) under the SOX legislation.

Without going into too many details[26], let's assume, for illustration purposes only, that the SEC determined that Arcelor minority shareholders holding 40 million Arcelor shares (including DB London's 1,236,969 Arcelor shares) had, due to breaches of US federal securities laws, on 16 May 2007 suffered instant losses that day totalling say €20 per Arcelor share and on that basis established a €800 million[27] SEC Fair Fund (the theoretical "**Arcelor Fair Fund**") with a view to restitute such harmed investors:

> **- What would the impact be on DB and its ultimate beneficial shareholders if one were to accept Commissioner Peirce's interpretations of SOX 308(a) in the context of the Proposed Plan, if applied to this theoretical Arcelor Fair Fund?**

DB London made the choice to acquire its Arcelor shares over the Luxembourg stock exchange (via its Amsterdam custodian). According to Commissioner Peirce's 'logic' in her Statement, had DB London instead acquired its 1,236,969 Arcelor shares in the form of Arcelor ADR's (US), it would have been entitled to seek restitution from this theoretical Arcelor Fair Fund totalling €24,739,380[28] but given the fact that DB London acquired its 1,236,969 Arcelor shares in the form of non-US Arcelor shares[29], DB London should, according to Commissioner Peirce receive nothing from a such theoretical Arcelor Fair Fund.

This of course leads on to the following key question:

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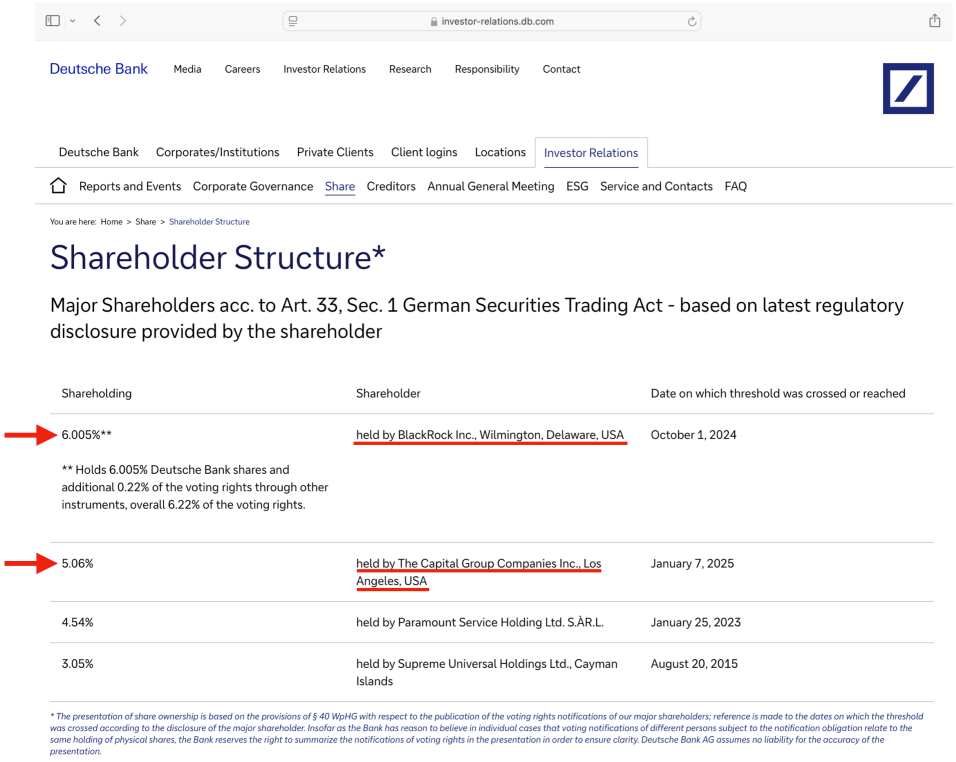
[24] Securities with the ISIN LU0140205948
[25] https://www.sec.gov/Archives/edgar/data/1243429/000115697307001457/y01811b3e424b3.htm
[26] https://knyvet.bailii.org/ew/cases/EWHC/Comm/2020/2327.html
[27] 40m Arcelor shares x €20
[28] 1,236,969 x €20
[29] Luxembourg shares via its Amsterdam custodian.

- Who are the ultimate beneficial owners of DB[30] who would be entitled to this potential and hypothetical €25m restitution under the theoretical Arcelor Fair Fund[31]?

According to DB's Investor Relations department, based on its latest regulatory disclosure, its "*Major Shareholders*" are as follows[32] (Appendix [5•]):



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Shareholder Structure*

Major Shareholders acc. to Art. 33, Sec. 1 German Securities Trading Act - based on latest regulatory disclosure provided by the shareholder

Shareholding	Shareholder	Date on which threshold was crossed or reached
6.005%**	held by BlackRock Inc., Wilmington, Delaware, USA	October 1, 2024
** Holds 6.005% Deutsche Bank shares and additional 0.22% of the voting rights through other instruments, overall 6.22% of the voting rights.		
5.06%	held by The Capital Group Companies Inc., Los Angeles, USA	January 7, 2025
4.54%	held by Paramount Service Holding Ltd. S.ÀR.L.	January 25, 2023
3.05%	held by Supreme Universal Holdings Ltd., Cayman Islands	August 20, 2015

* The presentation of share ownership is based on the provisions of § 40 WpHG with respect to the publication of the voting rights notifications of our major shareholders; reference is made to the dates on which the threshold was crossed according to the disclosure of the major shareholder. Insofar as the Bank has reason to believe in individual cases that voting notifications of different persons subject to the notification obligation relate to the same holding of physical shares, the Bank reserves the right to summarize the notifications of voting rights in the presentation in order to ensure clarity. Deutsche Bank AG assumes no liability for the accuracy of the presentation.

DB's top two largest shareholders are "*BlackRock Inc., Wilmington, Delaware, USA*" (6.005%) and "*The Capital Group Companies Inc., Los Angeles, USA*" (5.06%).

Accordingly, when Commissioner Peirce promotes the idea ('concept') that shareholders having held non-US shares[33] should not be entitled to compensation from an SEC Fair Fund under SOX, Commissioner Peirce is in effect depriving US based institutional investors[34] the right to restitution, who in turn represents the average US Saver the SEC is instructed by law to "*protect*" and make whole when harmed.

According to my sources, there were numerous large US domiciled banks[35] who held even larger positions than DB of non-US minority shares in Arcelor as per the relevant date, as opposed to Arcelor ADR's, and accordingly, there is a relative high probability that a significant proportion (perhaps in excess of 50%) of the theoretical victims of this misconduct would ultimately be American citizens (which is the same as the average US tax payers), yet

[30] Which includes DB London.
[31] On the basis that Commissioner Peirce's discriminatory views on the Proposed Plan are not being implemented.
[32] https://investor-relations.db.com/share/shareholder-structure
[33] Like DB here in relation to Arcelor via Amsterdam custody and a Luxembourg listing, but still under the SOX legislation.
[34] Who are ultimately the beneficial owners of the likes of DB.
[35] With an even higher ownership-ratio based in the US than DB.

Commissioner Peirce seems to be on a mission to promote the idea that such victims shall not be entitled to restitution by the SEC under a Fair Fund in accordance with SOX 308(a).

The same logic can obviously be applied to a significant number of similar large M&A-transactions (please refer to T-Online below as just another illustrative example of the same) or other situations where SEC Fair Funds may be established, meaning that the SEC under Commissioner Peirce's own interpretation of SOX 308(a) fails to even protect basic American investors.

Second Illustrative Example: T-Online

Again, without going into too many details, let's assume, for illustration purposes only, that the SEC determined that T-Online minority shareholders holding 319 million T-Online shares ("**T-Online Minorities**") had, due to breaches of US federal securities laws, suffered average losses totalling €5.25 per T-Online share, in line with a court settlement proposal from late 2007 (Appendix [6•])[36] and on that basis established a €1,675 million[37] SEC Fair Fund (the theoretical "**T-Online Fair Fund**") with a view to restitute such harmed investors:

> **- Who were the ultimate beneficial T-Online Minorities and how would they be impacted if one were to accept Commissioner Peirce's interpretations of SOX 308(a) in the context of the Proposed Plan, if applied to this theoretical T-Online Fair Fund?**

T-Online is (or rather was) a non-US issuer, like Barclays and Arcelor, but did not have any ADR listing in the US, but despite this stood under the SOX legislation.

From a letter sent by legal counsel for Deutsche Telekom (the controlling shareholder of T-Online) to the SEC at the time of the announcement of the re-integration of T-Online (Appendix [7•]), the following was explained[38]:

CONFIDENTIAL TREATMENT REQUESTED

DTAG believes that more than 10% but less than 40% of the Shares (excluding Shares held by any person holding more than 10% of the Shares or held by DTAG) are held by residents of the United States. More specifically, DTAG believes that persons located in the United States beneficially own between 15% and 25% of the outstanding Shares and that no shareholder of T-Online other than DTAG beneficially owns 10% or more of the registered share capital of T-Online.

DTAG believes that it has made reasonable inquiry into the beneficial share ownership of T-Online and that it exhausted all practical means likely to produce additional reliable information regarding beneficial holders of Shares with a U.S. residence.

Based on the above SEC filing, it is not unreasonable to assume that up to 40% of all T-Online shares held by the T-Online Minorities (128 million T-Online shares[39]) were

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[36] Which was subsequently abandoned by the German courts due to the belief that the T-Online / Deutsche Telekom share market prices (in determining the share exchange ratio) represented truly fair value, had not been manipulated and that court appointed merger auditors had conducted themselves in compliance with laws and regulations in assessing the imposed terms as being "*appropriate and adequate*", without identifying a single "*valuation difficulty*".

[37] 319m T-Online shares x €5.25

[38] Please note that "*the Shares*" here refers to the 319 million T-Online shares owned by the T-Online Minorities (out of a total of 1,224 million T-Online shares in total), and "*DTAG*" is the definition of Deutsche Telekom AG (the dominating T-Online shareholder).

[39] 319 million T-Online shares x 40%

"*beneficially*" owned by "*persons located in the United States*" and/or were "*held by residents of the United States*" ("**US T-Online Investors**").

The US T-Online Investors accordingly made the choice to acquire its T-Online shares over a "*foreign*", non-US "*exchange*"[40] (Germany), which stands under the SOX legislation, but despite this would according to Commissioner Peirce's 'logic' in her Statement receive nothing from a such theoretical T-Online Fair Fund, despite representing a pro rata share of up to €672 million[41] in compensation claim for suffered losses.

Accordingly, when Commissioner Peirce promotes the idea ('concept') that shareholders like the US T-Online Investors should not be entitled to compensation from an SEC Fair Fund under SOX, Commissioner Peirce is here again in effect depriving US based investors the right to restitution who in turn represents the average US Saver the SEC is instructed by law to "*protect*", which is also the same Person as the average US taxpayer, whose interests Commissioner Peirce want us to believe she is representing by undermining the interpretation of SOX 308(a) in this discriminatory manner.

According to my sources, it is not unlikely that even more than 40% of the T-Online Minorities were held by US based investors, directly and/or indirectly, through mutual funds, retirement accounts and other investments.

Lawmakers Expanding (not contracting) the SEC's Extraterritorial Application

Commissioner Peirce, in her speech of "*May 11, 2018*" which was headed "*The Why Behind the No*", she promoted the idea of conserving "*resources*" if a "*foreign authority*" is "*addressing conduct*", in which case she would be "*likely to vote against*" an SEC investigation, as the SEC might then "*step aside and apply its resources elsewhere*"[42]; playing straight into the manuscript of the Wall Street Establishment, as it is well recognised that such foreign authorities do not have access to the US securities laws, SOX, and the ability to establish SEC Fair Funds.

Such an order would accordingly discourage non-US victims to bring foreign abuse to the attention of the US authorities, as if such victims will not be entitled to restitution under an SEC Fair Fund (as being promoted by Commissioner Peirce), there would be no or little point of bringing such abuse to the US authorities' attention in the first place.

The fact is however that Congress as recently as in December 2020[43] passed over a Trump "*presidential veto*" a bipartisan "*sweeping change to the SEC's disgorgement powers*"[44] which amongst other "*tolls the statute of limitations for disgorgement and other equitable relief for time spent outside the United States*"[45] and accordingly removed any and all time limitations for the SEC to seek disgorgement of ill-gotten gains in any to the US "*foreign country*".

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[40] No alternative ADR listing for T-Online shares in the US existed (as was the case for both Barclays and Arcelor).
[41] 128 million T-Online shares x €5.25
[42] https://www.sec.gov/newsroom/speeches-statements/peirce-why-behind-no-051118
[43] Signed into law on 1 January 2021.
[44] https://www.quinnemanuel.com/media/zqmg5tg0/client-alert-congress-expands-the-sec-s-disgorgement-powers-in-a-defense-spending-bill.pdf
[45] See "*134 STAT. 4626*" in: https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf

The above legislation implies that lawmakers from both sides of the aisle are committed for the SEC to recover non-US ill-gotten gains, with a view to restitute all such "*victims*" under SOX and within the scope of the SEC Fair Fund, irrespective of domiciliary.

Conclusion

It would be utterly unreasonable to on the one hand impose the SOX legislation on a "*foreign issuer on a foreign exchange*" (at significant compliance cost) like Barclays[46], and then on the other hand, not offer its shareholders access to the related protective facilities set up under the same structure, such as the SEC Fair Fund.

The Commission has an obligation to faithfully implement the law, not systematically try to undermine its purpose, and shall focus on protecting and restitute harmed investors, not find ways to try to deprive such investors of their legally entitled safeguards, by promoting the clandestine interests of the Wall Street Establishment from within organisations like the SEC.

Sincerely yours,

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United States of America

Ranking Member
Senate Banking Committee
Senator Elizabeth Warren
311 Hart Senate Office Building
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United States of America

[46] Who is also a "*U.S. issuer*".

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Equilibrium Capital Ltd is regulated by the Financial Conduct Authority in the United Kingdom.

the NYSE and in "Barclays ordinary shares traded on the [London Stock Exchange] ("LSE")."[2] This proposed plan — to use a Fair Fund to compensate investors who purchased securities of a foreign issuer on a foreign exchange — is somewhat novel. I have both legal and policy concerns regarding the novel proposal.

First, the Notice's discussion of extraterritoriality misapplies the presumption against extraterritoriality. In discussing the Commission's statutory authority under Section 308(a) of the Sarbanes-Oxley Act of 2002, the Notice argues that because "SOX 308(a) does not regulate conduct but rather confers a benefit," it therefore does not "implicat[e] the sovereignty of foreign nations — one of the core animating principles" underpinning the presumption against extraterritorial, and on that basis concludes that the presumption against extraterritoriality does not apply to SOX 308(a). The Supreme Court, in explaining the various reasons for the presumption, has noted that it "serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries."[3] However, the Court likewise instructed that "the presumption applies regardless of whether there is a risk of conflict between the American statute and a foreign law."[4] The Court further has explained that its precedents

> reflect a two-step framework for analyzing extraterritoriality issues. At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially. We must ask this question regardless of whether the statute in question regulates the

Appendix 2

The SEC's economists have determined that following Barclays' disclosure of the over-issuance of its securities on March 28, 2022, the price of its ordinary shares declined 3.7% in the U.K., and the price of its American Depository Receipts ("ADRs") declined 3.4% in the U.S. Based on the facts and circumstances presented in this matter, the Commission proposes, for the first time in an administrative proceeding, to use a single claims process to compensate investors who purchased or acquired ADRs on a U.S. exchange and ordinary shares/common stock on a foreign exchange, and were harmed by a violation of the federal securities laws. Specifically, the Fair Fund will be allocated in two stages: first to investors who suffered Recognized Losses on Barclays ADRs, and then, from any remaining funds to investors who incurred Recognized Losses on Barclays ordinary shares due to Respondents' violations.

In determining the distribution methodology and the scope of eligible claimants, the Commission considered the Supreme Court's decision in *Morrison v. Nat'l Australia Bank Ltd*[4] that reasserted a canon of statutory construction imposing a general presumption against the extraterritorial application of the U.S. securities laws, unless such application is expressly conferred by statute. In *Morrison,* the Supreme Court analyzed whether, in the context of a private cause of action relating to transactions executed solely on a foreign exchange, the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder extend to transnational fraud. Relying upon the "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States,"[5] the Court held that Section 10(b) and Rule 10b-5 of the Exchange Act do not provide a cause of action to foreign plaintiffs suing foreign and U.S. defendants for misconduct in connection with securities traded on a foreign exchange. The Court rejected the notion that the Exchange Act reaches conduct occurring in the U.S. that affects foreign exchanges or transactions because such an application could be incompatible with the laws of foreign countries relating to the same conduct.

The Commission seeks to distribute, for the benefit of harmed investors, the civil penalty collected in connection with its administrative action against Barclays, a U.S. issuer, for its violations of the reporting, internal controls, and recordkeeping provisions of the federal securities laws. On March 28, 2022, in a report provided to the London Stock Exchange and furnished to the SEC on Form 6-K, Barclays revealed, for the first time, a material weakness in certain aspects of its control environment and the control environment of Barclays Bank related to the over-issuance of securities and, consequently, in each company's respective internal controls over financial reporting.[6] Following this disclosure, the price of Barclays' ADRs and ordinary shares declined. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("SOX §308"), as amended by Section 929B of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Commission proposes to compensate harmed investors who were victims of Barclays' violations of the federal securities laws. SOX §308(a) provides:

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[4] 561 U.S. 247 (2010)

[5] *EEOC v. Arabian American Oil Co*., 499 U.S. 244,248.

[6] On March 28, 2022, Barclays Bank announced its intent to conduct a rescission offer, with respect to the over issuance, which commenced on August 1, 2022, and expired on September 12, 2022.

The Commission makes much of the notion that the $30 million/10% limitation is a *floor* and not a *ceiling*. That particular number may not be a ceiling, but the Commission's proposal nevertheless would operate as an arbitrary cap. It says that whistleblowers who provide information that results in very, very successful cases and who otherwise could receive a much larger award based on their assistance likely will have their potential awards docked for reasons that have nothing to do with the value of the whistleblower's information or the whistleblower's behavior.

Additionally, for all of its focus on the supposed lack of need for very large awards to achieve the program's goals, the proposal seems to underestimate the impact of very large awards on a potential whistleblower's decision whether to report, and does not adequately consider the deterrent effect of very large sanctions and awards on future potential violators. The counsel of whistleblower advocates familiar with these cases is instructive.[15] According to their experience, it appears that the strength of the anti-fraud message delivered by a whistleblower award (not to mention its effectiveness in encouraging reports in large, serious cases) is directly proportional to the award size. The bigger the award, the more potent the message sent to the nefarious-minded that while crime may pay in the short run, speaking up about it pays very well, too. Those individuals contemplating breaking the rules know their colleagues are watching them—and in cases of potentially very large awards will have significantly less to lose by disclosing bad conduct. This is even more important in cases of the most well-informed whistleblowers—who are usually the most highly-placed in a company, and who should not be subjected to artificial award limits when those who commit wrongdoing or stay silent will not likewise face artificially limited executive compensation rates.[16]

Second, the Commission asserts that it might be better to use the extra money it withholds from a whistleblower in very large cases to pay for something else. That, the Commission says, is "good public policy."[17] This reasoning is not supported by the text or the legislative history establishing the program. Congress made a very clear policy choice to prioritize *amply* rewarding a whistleblower above *other priorities*.[18] That is because there would be *no recovery at all* in these cases—to spend on *any* policy priority—were it not for the whistleblower.[19] It is difficult to understand how Congress could intend that "other priorities,"

[15] Kohn, Kohn & Calapinto, LLP, *Submitted Comment on Proposed Rule: Amendments to the Commission's Whistleblower Program Rules* at 4–9 (July 24, 2018), https://www.sec.gov/comments/s7-16-18/s71618-4107169-170275.pdf.

[16] *Id.* at 5 (The Proposed Rule "creates an appearance of bias against whistleblowers, especially in light of the fact that there are no caps on executive compensation or other profit-based motives that proliferate the culture within the financial services industry.").

[17] Proposed Rule at 46.

[18] 15 U.S.C. § 78u–6(g)(3)(B) ("If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in the covered judicial or administrative action on which the award is based."); *see also* S. REP. NO. 111-176 (2010) at 112.

[19] S. REP. 111-176 (2010) at 111-112 ("[T]he intent of the Committee is to reward the whistleblower prior or at the same time as paying such victims, recognizing that were it not for the whistleblower's actions, there would have been no discovery of the harm to the investors and no collection of any sanctions for their benefit.") (emphasis added).

particularly those not even mentioned in the statute, should be a factor in determining the size of an award.

Appendix 4

Deutsche Bank

Deutsche Bank AG, acting through its London branch

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16 March 2021

Re: Shares in Arcelor S.A. ISIN LU0140205948 and ISIN LU0325453354

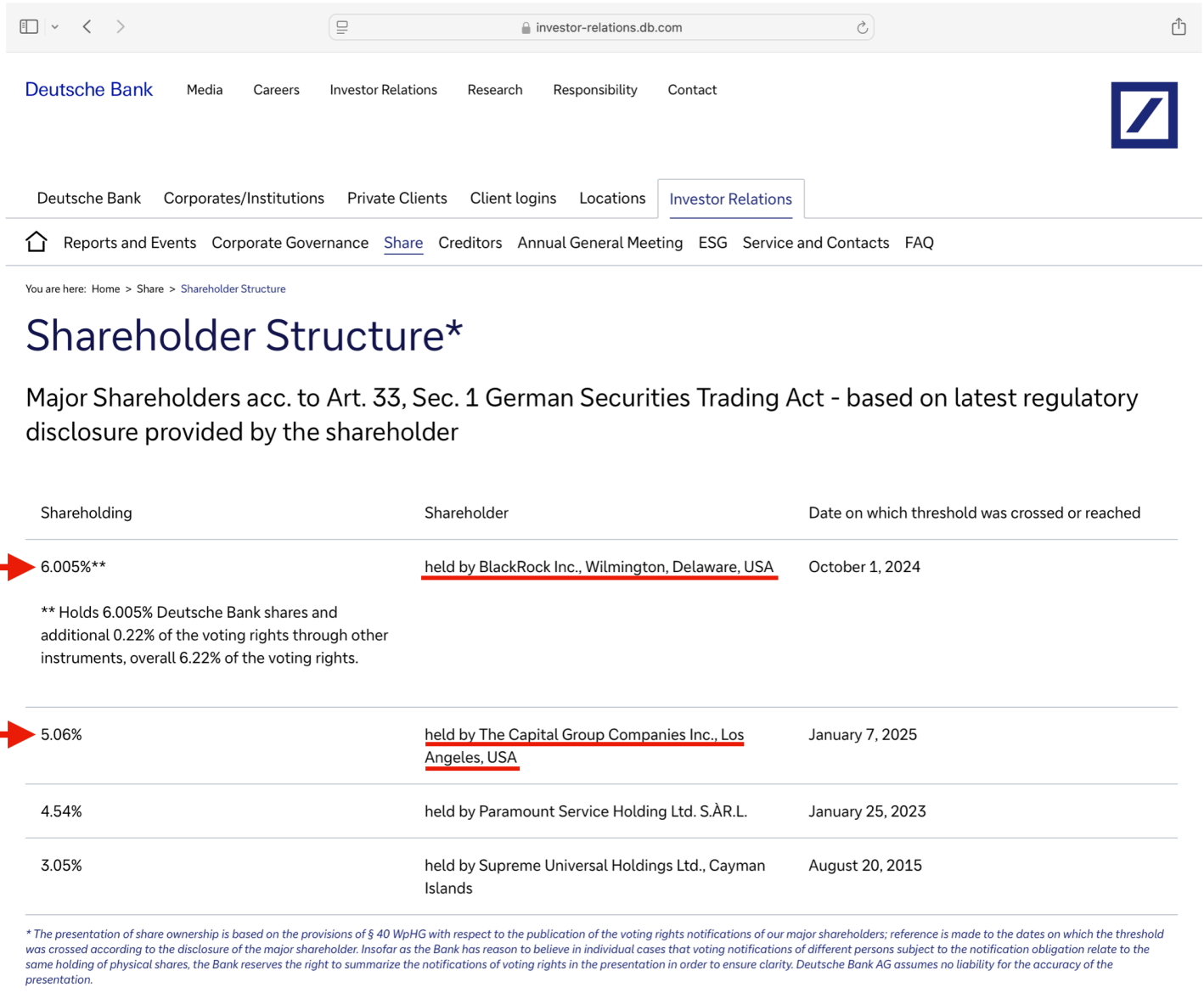
Dear Sir, Madam,

We confirm that Deutsche Bank AG, Amsterdam branch ("**DB Amsterdam**") acted as the custodian to Deutsche Bank AG, London branch ("**DB London**") in respect of the securities with the ISIN LU0140205948 and ISIN LU0325453354 being ordinary shares in Arcelor S.A. and the subsequently merged entity ArcelorMittal S.A. respectively on each of 14 May 2007, 15 May 2007, 5 November 2007, 6 November 2007, 9 November 2007 and 12 November 2007 (the "**Relevant Dates**").

According to DB Amsterdam's books and record, we hereby confirm the amounts of securities under the ISIN LU0140205948 and ISIN LU0325453354 held by DB Amsterdam for and on behalf of DB London on the Relevant Dates as follows:

Relevant Dates	LU0140205948	LU0325453354
14 May 2007	1,237,369	Nil
15 May 2007	1,236,969	Nil
5 November 2007	401,098	Nil
6 November 2007	592,963	Nil
9 November 2007	Nil	677,671
12 November 2007	Nil	677,671

Appendix 5



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Shareholder Structure*

Major Shareholders acc. to Art. 33, Sec. 1 German Securities Trading Act - based on latest regulatory disclosure provided by the shareholder

Shareholding	Shareholder	Date on which threshold was crossed or reached
6.005%**	held by BlackRock Inc., Wilmington, Delaware, USA	October 1, 2024
** Holds 6.005% Deutsche Bank shares and additional 0.22% of the voting rights through other instruments, overall 6.22% of the voting rights.		
5.06%	held by The Capital Group Companies Inc., Los Angeles, USA	January 7, 2025
4.54%	held by Paramount Service Holding Ltd. S.ÀR.L.	January 25, 2023
3.05%	held by Supreme Universal Holdings Ltd., Cayman Islands	August 20, 2015

** The presentation of share ownership is based on the provisions of § 40 WpHG with respect to the publication of the voting rights notifications of our major shareholders; reference is made to the dates on which the threshold was crossed according to the disclosure of the major shareholder. Insofar as the Bank has reason to believe in individual cases that voting notifications of different persons subject to the notification obligation relate to the same holding of physical shares, the Bank reserves the right to summarize the notifications of voting rights in the presentation in order to ensure clarity. Deutsche Bank AG assumes no liability for the accuracy of the presentation.*

Appendix 6

D Telekom compensation could rise

MOBILE & TELECOMS

Extra pay-out for T-Online investors

Court proposes €600m top-up

By Gerrit Wiesmann in Frankfurt

Deutsche Telekom may have to pay out up to €600m ($879.2m) in extra compensation to former shareholders of T-Online, its internet subsidiary, which the German telecoms group took off the stock exchange 18 months ago.

Toni Riedel, a lawyer representing investors unhappy with the terms of the 2006 reintegration of the web provider, said a Frankfurt court had proposed that Deutsche Telekom pay €5.25 per former T-Online share to top up a stock swap carried out last year.

With investors who once held about 10 per cent of T-Online being eligible for any deal, Mr Riedel said the proposal could cost Europe's largest telecoms company about €600m – unless it successfully challenged the proposal.

But Deutsche Telekom signalled it was unlikely to agree to the plan any time soon. A spokesman said two auditors and an expert commissioned by another court had approved valuations when the stock swap was announced late in 2004.

"This is a non-binding proposal," the spokesman said about the Frankfurt court's suggestion. Deutsche Telekom would study what the judge had tabled, but would not comment further. A court spokesman was not able to comment.

The move adds yet another twist to the fraught history of T-Online. Deutsche Telekom floated the unit at €27 per share in 2000, only to buy it back – using Telekom stock – at a valuation of €8.99 per share after the end of the dotcom boom.

T-Online shareholders protested about the low valuation when Telekom announced the buy-back in 2004 and legal action blocked the reintegration until the summer 2006 – a delay that cost Telekom's head his job.

Kai-Uwe Ricke, chief executive, was ousted a year ago after failing to make up for the loss of traditional fixed-line clients with new ones for high-speed internet lines, a deficit Mr Ricke blamed on slow progress at T-Online.

In June 2006, a judge allowed Deutsche Telekom to reintegrate the business, meaning that dissatisfied shareholders – including speculative hedge funds – could lobby the Frankfurt court to decide whether the deal's valuation was fair.

The judge's tabling of a compromise ahead of a first hearing in February seems designed to avoid a process that could drag on for a year or two. But with Deutsche Telekom signalling that it will not bend, a lengthy case looks likely.

After two years of falling profits, Mr Ricke's successor, René Obermann, hopes to stabilise profits next year.

DTAG believes that more than 10% but less than 40% of the Shares (excluding Shares held by any person holding more than 10% of the Shares or held by DTAG) are held by residents of the United States. More specifically, DTAG believes that persons located in the United States beneficially own between 15% and 25% of the outstanding Shares and that no shareholder of T-Online other than DTAG beneficially owns 10% or more of the registered share capital of T-Online.

DTAG believes that it has made reasonable inquiry into the beneficial share ownership of T-Online and that it exhausted all practical means likely to produce additional reliable information regarding beneficial holders of Shares with a U.S. residence.

B. DTAG

DTAG is one of the world's largest telecommunications companies, with a significant presence in Germany, elsewhere in Europe and the United States through its subsidiary undertakings and investments. DTAG provides a range of telecommunications services through its four main business divisions: T-Com (for fixed-line network access and services), T-Mobile (for mobile communications), T-Systems (for data communications and systems solutions for large business customers) and T-Online (for Internet services). The planned merger of T-Online into DTAG under German law will allow DTAG to better integrate its Internet and broadband services for the wholesale and retail market in Germany and throughout Europe.

Based on generally accepted accounting principles in Germany, DTAG had net revenues of approximately EUR 55,838 million in the year ended December 31, 2003, and had net income of approximately EUR 1,253 million in the same period. DTAG's German GAAP shareholders' equity as at December 31, 2004 was EUR 33,811 million. As at December 31, 2003, DTAG had 4,195,081,597 ordinary no par shares issued and outstanding.

DTAG's ordinary shares are listed on the Frankfurt Stock Exchange, and American Depositary Shares representing its ordinary shares are listed on the New York Stock Exchange.

II. Proposed Structure of the Offer

The following description of the Offer is based upon discussions with Hengeler Mueller, German counsel for DTAG.

The Offer will be made in cash and will be structured as a single offer made concurrently in Germany and in the United States, as well as in other jurisdictions where such offer may legally be made. There will be no condition with respect to the minimum number of Shares that need to be tendered into the Offer.

The Offer will be structured to comply with the applicable provisions of the German Takeover Act (the "Act") and the regulations issued under the Act. In addition, except as otherwise requested herein, the Offer will be structured to comply with Section 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. The Offer is not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder since no class of securities of T-Online is registered under Section 12 of the Exchange Act.