

Claims for Damages against Hypo Real Estate Holding AG are at Risk of Expiring

- German law firm advises to act quickly, by January 15, 2009 at the latest -

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Claims for damages against HRE and its former Board of Directors

Investors who purchased shares in HRE Holding AG (HRE) between October 2, 2007 and September 28, 2008 are most likely entitled to claims for damages against the company and its former management. In addition, owners of certificates referencing HRE shares as base value, can hope for their damages to be compensated.

As explained by Martin Sach, attorney at German firm WINHELLER Attorneys at Law in Frankfurt, the claims for damages are based, in particular, on false and/or incomplete statements made by the HRE board of directors with regard to HRE's state of economic affairs on November 7, 2007, January 15, 2008 and June 30, 2008. According to Sach, shareholders may demand reimbursement of the difference between the price that they actually paid for their shares and the price that they would have had to pay had the true economic situation of HRE been known.

The attorney is advising the investors concerned to act quickly: The claims under Sections 37b and 37c WpHG [German Securities Trading Act] based on false ad-hoc announcements made by HRE will expire after merely one year. In some individual cases, longer statutes of limitation might be applicable, such as until September 29, 2009. However, in order to be able to assert all grounds for claims in court, it is recommendable that actions for damages be filed by January 15, 2009 at the latest.

HRE stock prices dropped dramatically

Between September 2007 and December 2008, the price of shares in HRE Holding AG dropped from more than €35 a share to less than €3 a share. The reason for the share price drop is most likely that the shares were significantly overvalued based on false capital market information provided by the company's board of directors up until September 29, 2008. Numerous investors in Germany and abroad suffered substantial financial losses as a result of the drop of the share price.

HRE in crisis after DEPFA takeover

The HRE crisis was triggered by taking over Deutsche Pfandbriefbank AG (DEPFA) on October 2, 2007. DEPFA, for the acquisition of which HRE incurred costs of approximately €5 billion, is a bank headquartered in Dublin (Ireland) that specializes in financing governmental projects. DEPFA had encountered financial difficulties because it had secured long-term loans, which it had granted, by taking out short and medium-term bonds. As a result of the international crisis in the financial markets, however, these bonds became so expensive that interest payable by DEPFA significantly exceeded the amount of interest earned since mid 2007, which in consequence caused the bank to experience financial distress.

At the time of the DEPFA takeover in October 2007, the HRE board of directors had not made these circumstances public. As late as on November 7, 2007, Georg Funke, CEO, still emphasized that HRE had not been affected by the financial crisis to any notable extent and that it would presumably emerge even stronger from the crisis, although he must have been aware at the time that DEPFA as a 100% subsidiary had already been strongly affected by the financial crisis. In consequence, HRE shares continued to remain at an average price of €35 between November 2007 and January 2008, even though, in view of the imminent losses, a significant downward adjustment to the price would have been in order.

On January 15, 2008, HRE finally acknowledged that write-offs of €390 million were necessary to the company's own portfolio of structured securities. Nevertheless, in its Interim Report dated June 30, 2008, HRE still claimed that even in a worst-case scenario, its unlimited solvency would be assured. Not until September 29, 2008 did HRE finally make public that DEPFA Bank was in an imminent liquidity crisis that threatened its very existence and that, as a result, the entire HRE Group was on the verge of insolvency.

Even the district attorney's office and BaFin have begun to investigate

The district attorney's office in Munich and the German Federal Financial Supervisory Authority (BaFin) are at this time investigating whether or not former members of the HRE board of directors had misrepresented HRE's true state of economic affairs and whether they are criminally punishable of illegal insider trading. Raids of the HRE offices in Munich conducted by the investigative authorities as well as in the private residences of former HRE members of the board had already taken place on December 16, 2008.

Solid evidence

Based on statements made by the district attorney's office, it had seized important documents at HRE. These documents will most likely show that the members of the HRE board must have already been aware of the company's imminent economic difficulties as early as in September 2007 and that they had nonetheless knowingly concealed such information. Attorney Sach is pleased with the fact that the authorities have now been able to access these documents: "The results of the investigation by the authorities will help the harmed investors and will make the process of asserting damages in court considerably easier. The investors can count themselves lucky that the raids took place before their claims had expired – even though there is not very much time left now. In any event, all of the injured parties have the right to review the files of the district attorney's investigation and will thus gain access to these documents, which can subsequently be used and presented as evidence in a civil court of law."

Moreover, what is also interesting in the HRE case is the fact that in all likelihood it may be conducted as what is known as investors' class action lawsuit. This kind of lawsuit makes it possible for many injured parties to take cost-effective concerted action. The most well-known action to date conducted in this manner was the class action lawsuit against Deutsche Telekom brought before the Upper Regional Court Frankfurt/Main, where close to 17,000 investors are claiming damages in the millions.

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WINHELLER Attorneys at Law, headquartered in Frankfurt am Main and with offices in Karlsruhe and Shanghai (China), is a law office specializing in German and U.S. securities law.

The firm cooperates with Barroway Topaz Kessler Meltzer Check, LLP, Philadelphia (USA), one of the leading U.S. law firms for securities class action litigation (www.btkmc.com). Together with its partner firm, WINHELLER Attorneys at Law counsel private and institutional investors on the opportunities available to them by taking part in securities class actions in the U.S. and in Germany.



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