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Commentary

German Corporate Culture in the Twenty-First Century: The Interrelation Between the End of Germany, Inc. and Germany's Corporate Capital Gains Tax Reform

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INTRODUCTION

From 1945 until 1989, the world operated in two distinct economic spheres: the Soviet controlled economies and the United States and its allies.¹ In 1989, the governments of the Soviet bloc began collapsing and the wall dividing the two worlds crumbled. During the 1990's, Europe's economic growth was impressive considering the integration of the two distinct economic systems of the capitalist West and the communist East. Currently, the merging of the Eastern European economies into the larger Western European market is not complete, but the countries have taken Herculean steps in this unprecedented effort.

Germany's economy best exemplifies the new unification among European economics at the beginning of the twenty-first century. Germans have had to deal with staggering reunification costs associated with folding the German Democratic Union's (East German) economy into the Federal Republic of Germany's (West German) economy. Although the Germans have

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1. See generally WERNER MEYER-LARSEN, *GERMANY, INC.: THE NEW GERMAN JUGGERNAUT AND ITS CHALLENGE TO WORLD BUSINESS*, at v-xii (2000) (examining the history of large corporations in Germany since World War II and how Germany has developed one of the strongest corporate structures in the World).

dealt with a myriad of reunification problems, they have also helped lead the charge in strengthening the European Monetary Union and initiating the European Common Currency (the euro).

Amazingly, with all of the internal upheaval surrounding German reunification, Germany's large corporations became even stronger in the 1990's. "Germany, Inc.," as the large German corporations are collectively called, is in a very strong position at the beginning of the new century.² Even with its strong position, Germany, Inc. must still make additional changes to improve its standing in the world economy. Germany, Inc. must change because too much of corporate Germany's capital is tied up in ownership of other German corporations.³ These corporations must diversify into other business areas and other marketplaces, such as the United States, to compete in the global economy. The German government must help Germany, Inc. unwind its gigantic cross-holdings without too much interference. Germany's Chancellor Schroeder gave this process a big boost when he traded government subsidies for projects in certain legislative districts to win passage of his tax reform bill during the 2000 legislative session.⁴ The Chancellor secured the votes of key members of the legislature by promising large amounts of direct governmental aid to various districts within Germany.⁵

Changes to Germany, Inc. have been greatly accelerated by Chancellor Schroeder's proposed tax reform that affects corporate transactions involving Germany, Inc. This Commentary begins with a discussion and description of Germany, Inc.'s make-up and the reaction of its members to Chancellor Schroe-

2. *See id.* at 3-6.

3. *Review & Outlook*, WALL ST. J. EUR., Dec. 28, 1999, at 6; *see also* MEYER-LARSEN, *supra* note 1, at 30-31.

4. Christopher Rhoads, *Tax Breakthrough in Germany Opens Window of Opportunity: Change is Expected to Unleash a Wave of Divestitures, Spin-Offs and Acquisitions: Bill Looked Dead, but Pork-Barrel Spending Revived It*, WALL ST. J. EUR., July 17, 2000, at 1 (discussing how Chancellor Schroeder handed out monies to aid the districts of key legislators in a successful effort to win their votes on the tax reform measure); *see also* CNNFN, *German Tax Reform Stalls: Bank-Friendly Plan to Cut Capital Gains Tax Hits Political Snag*, at http://cnnfn.cnn.com/2000/07/03/europe/germany_tax/ (July 3, 2001) [hereinafter *Stalls*] (discussing the expected delay of the tax reform); CNNFN, *Germany Passes Tax Reform: Vote Clear Way for Big Cuts in Company Taxes; Financial Stocks Soar*, at http://cnnfn.cnn.com/2000/07/14/europe/germany_tax (July 14, 2000) [hereinafter *Vote Clears*] (discussing the recent passage of the tax reform).

5. Rhoads, *supra* note 4, at 1.

der's surprise tax reform proposal. Next, this Commentary will discuss three deals that exemplify the possibilities and problems of the future of corporate Germany: Daimler-Benz's merger with Chrysler Corporation; the successful takeover battle by British telecommunications giant Vodafone AirTouch PLC (hereinafter "Vodafone") for control of German telecommunications and industrial behemoth Mannesmann AGC (hereinafter "Mannesman") in early 2000; and the aborted merger attempt between Deutsche Bank and Dresdner Bank, two of Germany's largest banks. The above transactions will be examined to demonstrate how Germany, Inc.'s members are being forced to change by adopting more aggressive growth targets and shifting their focus to increasing shareholder value. Lastly, this Commentary will analyze the recently announced merger of Allianz and Dresdner Bank as an example of the impending wave of mergers and acquisitions that will increasingly occur as a result of Germany's repeal of its corporate capital gains tax.

I. GERMANY, INC.—ITS COMPOSITION AND A SURPRISING TAX REFORM PROPOSAL

A. GERMAN CORPORATION CROSS-OWNERSHIP

After World War II, German banking and insurance industries slowly became intertwined with other corporations in Germany through cross-ownership.⁶ The German government encouraged this interlocking of companies because it helped rebuild the shattered West German economy.⁷ The amount of the cross-ownership of large German corporations is staggering. Estimates place German cross-ownership at possibly more than 250 billion euros (228 billion U.S. dollars⁸), or fifteen percent of Germany's 1.5 trillion euro stock market capitalization.⁹ Even

6. Dagman Aalund and Brian Coleman, *Deutsche Bank Plan May Shake Germany: Spinoff of Holdings Could Be Precursor to Sales of Stakes*, WALL ST. J. EUR., Dec. 16, 1998, at 13.

7. *Id.*

8. All conversions into U.S. currency were completed September 8, 2001.

9. Vanessa Fuhrmans, *European Country Factors Continue to Influence Investment Strategy: National Developments Give Sectoral-Based Trend Some Competition: German Tax Reform 'Makes a Good Case for Balancing'*, WALL ST. J. EUR., August 7, 2000, at 11; Christopher Rhoads, *'The Big Bang: Simple Tax Proposal Promises to Light a Rocket in Germany: Eliminating Levy on Shares Held by Firms to Give Major Push to Reform: Setting Free 250 Billion Euros*, WALL ST. J. EUR., Jan. 31, 2000, at 1.

now, before the tax repeal is fully effective, fierce corporate competitors often own large chunks of each other and have members on each other's supervisory boards (the equivalent of an American board of directors).¹⁰ In the past, because of the large cross-ownership between German corporations, the managers of many of these enterprises have not had to worry about increasing individual shareholder value because each company's management was only required to please their large institutional shareholders.¹¹ The large cross-ownership also shielded many companies from hostile takeovers because a large number of corporate executives sat on each other's supervisory boards, but shareholders are now demanding more power.¹²

Corporate Germany is currently handcuffed by its ownership structure, the crux of which is its pervasive cross-holdings. For example, Munich Re owns stakes in more than 30 German corporations.¹³ Although it is the biggest reinsurer in the world, Munich Re does not make a move without consulting its largest outside shareholder, its fierce rival Allianz, who owns 25 percent of Munich Re.¹⁴ Allianz and Deutsche Bank's stakes in other large German corporations, if combined, have been estimated to be at least 65 billion euros (59 billion U.S. dollars) on January 31, 2000.¹⁵ In 1994, Deutsche Bank alone held over 100 seats on the supervisory boards of other large German corporations, which it used to watch its investments closely.¹⁶ The following is a listing of some of the cross-ownership by the largest members of Germany, Inc. as of January 31, 2000 and the estimated market value of those holdings in American dollars.¹⁷

10. See William Boston, Gantam Naik and Anita Raghavan, *Down to the Wire: Gent and Esser Strike Deal for Vodafone to Buy Mannesmann: Record 181.4 Billion Euros Accord Creates Wireless Giant After Bruising: All Eyes on Mobile Phones*, WALL ST. J. EUR., Feb. 4, 2000, at 1.

11. See Thomas Kamm, *Continental Drift: Europe Marks a Year of Serious Flirtation With the Free Market: Big Steps Forward and Back Shows Uneven Evolution Under Global Pressures: Germany's Culture Concerns*, WALL ST. J. EUR., Dec. 30, 1999, at 1.

12. See David Woodruff, *German Showdown: Under Siege: Germany, Inc. Model of Postwar Prosperity Begins to Unravel*, WALL ST. J. EUR., Mar. 5, 1999, at 1.

13. Vanessa Fuhrmans, *Munich Re is Relieved Merger Mania is Over: Deal's Collapse Ends Pressure to Link Up*, WALL ST. J. EUR., Apr. 14, 2000, at 15.

14. *Id.*

15. Christopher Rhoads, *German Markets Gear Up For 'Big Bang' if Tax Law Passes*, WALL ST. J., Jan. 31, 2000, at A24.

16. See David Duffy and Lachlan Murray, *Germany's Disclosure Dilemma*, WALL ST. J. EUR., Feb. 24, 1994, at 10.

17. Rhoads, *supra* note 15, at A24.

Stock Ownership	Percentage	Dollar Amount in Billions
Allianz		
Munich Re	25%	\$10.38
Dresdner Bank	21.4	5.44
BASF	10.4	3.06
Veba	10.1	2.37
Beiersdorf	38.4	2.27
RWE	10.1	1.78
Linde	11	0.69
Munich Re		
Allianz	25%	\$19.37
Hypo Vereinsbank	6.5	1.29
Deutsche Bank		
Munich Re	10%	\$9.29
DaimlerChrysler	12	8.40
Allianz	7.3	5.34
Linde	10.1	0.50
Heidelberger Zement	10.1	0.40
HypoVereinsbank		
Munich Re	13.3%	\$6.13
Allianz	6.8	5.44
Viag	10.3	1.29
Brau und Brunner	55.2	0.10
Dresdner Bank		
Allianz	10%	\$8.00
Munich Re	10	4.65
BMW	5	0.89
Heidelberger Zement	20.8	0.69

German banks and insurers took stakes in other German corporations either because the government granted loans to the corporations who did so or as payment for loans to corporations that could not raise capital.¹⁸ An example of this government inducement occurred during the 1970s when Deutsche Bank purchased Daimler-Benz stock to maintain German ownership

18. Aalund and Coleman, *supra* note 6, at 13.

of the automaker. During that time the Royal family of Kuwait already owned 16.5 percent of Daimler-Benz and the Shah of Iran hoped to purchase a major portion of the company.¹⁹ If the Shah had succeeded in completing his purchase of Daimler stock, control of Daimler-Benz would have left Germany. Deutsche Bank's actions kept the automaker safely in German hands.²⁰ Since its purchase of Daimler-Benz stock, Deutsche Bank has been hesitant to sell its longstanding holding in the carmaker because of the onerous corporate capital gains tax in Germany.²¹ Until the repeal of this tax is effective, the corporate capital gain tax rate is approximately 50 percent.²²

B. REPEAL OF THE CORPORATE CAPITAL GAINS TAX

In late 1998, Deutsche Bank spun its holdings in the members of Germany, Inc. into a newly formed subsidiary named DB Investors.²³ At the time of the creation of DB Investors, the press reported that Deutsche Bank created the subsidiary to divest the bank's holdings in Germany, Inc.²⁴ Deutsche Bank's creation of DB Investors was well received in the business world and Deutsche Bank's stock jumped seven percent.²⁵ It was thought that without DB Investors, the slow-growing cross-ownership investments in the other companies of Germany, Inc. would still be on Deutsche Bank's books years later.²⁶ Without the investments in other members of Germany, Inc., Deutsche Bank's balance sheet can grow at a much faster pace.

In October 1999, through its use of DB Investors, Deutsche Bank took the first step in divesting itself of its Germany, Inc. holdings. On October 28, 1999, Deutsche Bank sold twenty-three percent of its multi-billion euro stake in Allianz, another member of Germany, Inc.²⁷ The transaction was the first for DB

19. MEYER-LARSEN, *supra* note 1, at 56.

20. *Id.* at 55-57.

21. Aalund and Coleman, *supra* note 6, at 13.

22. Vanessa Fuhrmans, *Allianz Seeks to Shed Dresdner Stake, Top Executive Says*, WALL ST. J. EUR., Apr. 13, 2000, at 1.

23. Rhoads, *supra* note 9, at 1.

24. *Id.*

25. Aalund and Coleman, *supra* note 6, at 13.

26. *See id.*; see also CNNFN, *Deutsche Sells \$1.5B Stake: Allianz Shares Sold, More Asset Sales From Deutsche Bank Likely* (October 29, 1999), at <http://cnfnfnn.com/1999/10/29/europe/deutsche-allianz/> (discussing Deutsche Bank's sale of Allianz shares).

27. Silvia Ascarelli, *Deutsche Bank Sells Big Chunk of Allianz Shares*, WALL ST. J. EUR., Oct. 29, 1999, at 17.

Investors and was valued at nearly 1.4 billion euros (1.28 billion U.S. dollars).²⁸ Deutsche Bank sold five million shares to "international investors" at 275 euros (251 U.S. dollars) a share on October 28, 1999, or a 5.2 percent discount on Allianz's closing price of 290.1 euros (265 U.S. dollars) on October 28, 1999.²⁹ Analysts estimated that the transaction generated a capital gain of more than 1 billion euros (912 million U.S. dollars) and was completed in spite of a punishing capital gains tax of more than 50 percent.³⁰

Unfortunately for Deutsche Bank, it could not have sold its stake in Allianz at a worse time. In December 1999, in a move that shocked everyone involved in the German equity markets, and was beyond anything that corporate Germany could have ever hoped for, Chancellor Schroeder proposed eliminating the corporate capital gains tax on German corporations as part of a tax reform bill.³¹ The Chancellor's move was an abrupt about face from his previous protectionism rhetoric.³² Just months earlier, Chancellor Schroeder, when discussing the takeover attempt by Vodafone of Mannesmann, stated, "Hostile takeovers destroy corporate culture."³³ Chancellor Schroeder had also personally led a bailout of the large German construction firm Holzmann a few days after his comments on hostile takeovers.³⁴ Chancellor Schroeder must have realized that eliminating the corporate capital gains tax would make many German corporations the subject of takeover attempts because large chunks of their stock will now be for sale. Located in what appeared to be a minor clause in the back of the tax reform bill, the unexpected corporate tax reform was not discovered by the market until two days after it was made.³⁵

After the discovery of the corporate capital gains repeal in the tax reform bill, the chairman of the supervisory board of Deutsche Bank, Hilmar Kopper, was quoted as saying, "I was not expecting this at all . . . I've been talking about this for the

28. *Id.*

29. *Id.*

30. *Id.*

31. See Kamm, *supra* note 11, at 1; see also *Review & Outlook*, *supra* note 3, at 6.

32. Kamm, *supra* note 11, at 1.

33. *Id.*

34. *Id.*

35. Wilfried Prewo, *The End of Germany, Inc.*, WALL ST. J. EUR., Dec. 29, 1999, at 10.

last five years and there's been no reaction."³⁶ Deutsche Bank's action selling part of its stake in Allianz two months prior to the tax return demonstrated that the bank was caught off-guard by Chancellor Schroeder's proposal.³⁷ One top German executive likened the tax reform to "Germany's big bang".³⁸ Chancellor Schroeder's tax relief proposal is also widely seen as being a boost to the restructuring of the German economy and to shareholder driven values.³⁹

Chancellor Schroeder was successful in repealing the onerous fifty percent capital gains tax, but not until he gave key members of the German legislature monies for programs in their districts.⁴⁰ To gain passage of the tax reform, Chancellor Schroeder traded government subsidies for votes. Until just before the tax reform legislation passed, and after it had been rejected in an earlier vote, the proposal seemed doomed.⁴¹ Last minute revisions to the tax reform package and "federal aid" of hundreds of million deutsche marks for other programs saved the reform.⁴² The Christian Democrats, the conservative political party in Germany, reversed their normal role of fighting for larger businesses and refused to pass the tax reform bill unless it included more provisions for small and medium-sized businesses.⁴³ Another important change to the law, which helped win its passage, delays the effective date of the corporate capital gains repeal until January 2002.⁴⁴ Surprisingly, Chancellor Schroeder's proposal will probably be seen as a catalyst for the future growth of the top German companies.⁴⁵

Commentators and economists predicted there would be four major consequences to repealing the corporate capital gains tax in Germany.⁴⁶ First, there will be a surge in mergers and divestitures that will involve both foreign and German corporations.⁴⁷ Second, German corporations will become more profitable since they will be able to allocate more of their capital to

36. Rhoads, *supra* note 15, at A24.

37. *Id.*

38. *Id.*

39. *See id.*

40. Rhoads, *supra* note 4, at 1.

41. *See id.*; *see also* *Vote Clears*, *supra* note 4.

42. Rhoads, *supra* note 4, at 1; *see also* *Vote Clears*, *supra* note 4.

43. *Stalls*, *supra* note 4.

44. Rhoads, *supra* note 4, at 1.

45. Prewo, *supra* note 35, at 10.

46. Rhoads, *supra* note 15, at A24.

47. *Id.*

core businesses.⁴⁸ Third, more shares will become available to individual investors and, therefore, shareholder culture will become more important to German corporations. Finally, shareholders will become more powerful and deepen the German capital markets.⁴⁹

Proposing a tax reform package was a dramatic change for the Social Democratic Party. In 1994, the SPD had advocated forcing large German banks (i.e. Deutsche Bank and Dresdner Bank) to trim their industrial holdings despite the punitive corporate capital gains tax.⁵⁰ During the 1998 campaign, the Social Democrats had also threatened to increase taxes on the sale of corporate assets.⁵¹ During the first fifteen months in office, the Social Democrats increased taxes, reversed reasonable labor and pension reforms, and passed on an earlier prior change to make a sweeping business tax reform.⁵²

Protests against the corporate capital gains tax repeal from the left side of the Social Democrats were silenced to gain passage of the tax reform package. Chancellor Schroeder now appears to have most of the Social Democrats behind the tax reforms.⁵³ The initial reaction to the tax reform package by some of the left-leaning Social Democrats was not positive. Two Social Democrat members of the German Parliament were even forced to retract public statements that they had made against the proposal.⁵⁴ Whereas some Social Democrats had originally opposed the tax reform because they thought it would cause tax shortfalls, the same politicians praised the move as leading to "more growth and employment by creating more efficient corporate structures and facilitating investment in the German economy."⁵⁵ The initial opponents to the repeal of the corporate capital gains tax failed to realize one crucial aspect of the high tax rate: Germany's corporate capital gains tax was so onerous that it made it too expensive for German companies to sell their corporate cross-holdings. The tax effectively generated very little

48. *Id.*

49. *Id.*

50. See *Deutsche Bank is Wary of Stake-Paring*, WALL ST. J. EUR., Nov. 8, 1994, at 25.

51. Dieter Fockenbrock, *Germany's M & A Activity Slowed in 1999*, WALL ST. J. EUR., Jan. 19, 2000, at 13.

52. Prewo, *supra* note 35.

53. Cecilie Rohwedder, *Key German Party Backs Plan to Drop Capital-Gains Tax*, WALL ST. J., Dec. 29, 1999, at A11.

54. See Cecilie Rohwedder, *Schroeder's Tax-Cut Plan Gains Support: Social Democrats Reverse Earlier Opposition*, WALL ST. J. EUR., Dec. 29, 1999, at 2.

55. *Id.*

revenue because its punitive nature essentially prohibited corporations from selling their stakes in other companies.⁵⁶ Even the one billion dollars generated by DB Investors' sale of Allianz stock is a small amount in the scheme of German taxation. The Social Democrats who had opposed the reform acknowledged in their retraction of earlier critical comments that Germany was not gaining any tax revenues from its corporate capital gains tax.⁵⁷

Christian Democrats could not put up much of a fight against the corporate capital gains repeal contained in Chancellor Schroeder's tax reform package because they could not be seen as blocking a proposal that would bring foreign investment to Germany.⁵⁸ The Christian Democrats extracted some concessions during the passing of the larger tax reform legislation, but the Christian Democrats were unsuccessful in preventing final passage of the much needed tax reform bill.⁵⁹ In fact, the Christian Democrats' initial opposition was little more than the expected perfunctory opposition to any Social Democrat proposal.⁶⁰ This tax reform is seen as a major step in overhauling the German economy, and the Christian Democrats could not be perceived as trying to stop such an important economic reform.⁶¹ Christian Democrats would not want to be seen as opposing a measure that has the potential to attract foreign investment, stimulate economic growth, and break up the holdings of Germany, Inc.⁶²

II. THREE DEALS THAT PROVIDE A ROAD MAP TO THE PROBLEMS AND POSSIBILITIES OF THE FUTURE

A. OVERVIEW

1. *DaimlerChrysler: The Trailblazer*

The \$38 billion merger between Daimler-Benz and the Chrysler Corporation characterized by DaimlerChrysler's larg-

56. *See id.*; *see also* Rohwedder, *supra* note 54.

57. *See id.*

58. *See id.*

59. *See* Rhoads, *supra* note 4.

60. *See* Rohwedder, *supra* note 54.

61. *See id.*

62. *See id.*

est American shareholder as a takeover disguised as a merger by the Germans⁶³ was the largest merger in Germany when it was announced in 1998.⁶⁴ Daimler-Benz's bold move provides a guide for the mechanics of such a transaction for the other members of Germany Inc. as they attempt to extend their holdings to the United States. Under the leadership of Jurgenn Schrempp, Daimler-Benz remade itself during the mid-1990s and boosted shareholder value.⁶⁵ Moreover, Daimler-Benz listed itself on the New York Stock Exchange (hereinafter "NYSE").⁶⁶ When investors drove up Daimler-Benz's share price, the company had the capital it needed to merge with Chrysler Corporation and control the transaction.⁶⁷

2. *Vodafone: A Rare Hostile Takeover on German Soil*

Mannesmann, a German industrial and telecommunications giant, recently agreed to a takeover by Vodafone, a British communications behemoth, after a protracted takeover battle.⁶⁸ Mannemann's unsuccessful and unassisted attempt to fend off Vodafone's hostile takeover bid exemplifies the new German corporate culture. The Vodafone hostile takeover was the first such acquisition of a large Germany company in recent history, with Mannesmann's board agreeing to the most expensive acquisition in corporate history, much larger than the Daimler-Chrysler merger.⁶⁹

3. *Dresdner Bank: The Perils of the Emerging Market for German Corporate Executives.*

In the Spring of 2000, Deutsche Bank and Dresdner Bank announced a merger and then aborted the discussions after a month of deadlocked talks.⁷⁰ The impasse was primarily caused

63. See *Tough Road for Kerkorian: Daimler Says \$8 Billion Suit Has No Merit While Legal Experts Call it a Long Shot* (analyzing Kerkorian's Tracinda Corp's law suit alleging that Tracinda Corp. and other investors were fraudulently lured into agreeing to the \$38 billion merger of Daimler-Benz and Chrysler Corp.) [hereinafter *Kerkorian*] (Nov. 28, 2000), available at <http://cnnfn.cnn.com/2000/11/28/worldbiz/kerkorian/index.htm>.

64. See MEYER-LARSEN, *supra* note 1, at 3; see also *Kerkorian*, *supra* note 63.

65. See MEYER-LARSEN, *supra* note 1, at 22.

66. See Duffy and Murray, *supra* note 16.

67. See MEYER-LARSEN, *supra* note 1, at 22.

68. See Boston, Naik and Raghavan, *supra* note 10.

69. See Boston, Naik, and Raghavan, *supra* note 10.

70. Christopher Rhoads and Erik Portanger, *Dresdner, Deutsche Bank Deal*

by a disagreement over whether to sell Dresdner Bank's London-based investment banking operation Dresdner Kleinwort Benson (DKB), now Dresdner Kleinwort Wassertein. The fallout from the failed merger was substantial, with Dresdner Bank's Chairman and three members of his management board resigning, and calls for the Deutsche Bank Chairman to leave.⁷¹

The aborted deal between Deutsche Bank and Dresdner Bank is a precursor of impending tough deals for German companies. Future deals will become increasingly complex and adversarial.⁷² The traditional German way of only analyzing corporate transactions in the boardroom has become obsolete, and is being replaced by merger and acquisition strategies similar to those in the United States. Shareholder value and the value of the parts of each corporation will drive acquisitions in the future, not the value and prestige of the whole company and the wishes of only the Germany, Inc. shareholders. Executives from Deutsche Bank and Dresdner Bank learned this lesson quickly after they called off their merger.⁷³ Fallout from the aborted bank merger began almost immediately with the resignation of the Dresdner Bank Chairman.⁷⁴ Furthermore, there has been a call for the resignation of the Chairman of Deutsche Bank, Rolf Breuer, who until the aborted merger had been very well received throughout the corporate and investment communities.⁷⁵ The staid corporate culture of Germany is about to end, and deal-making will be fast and furious over the next few years.

Collapses Under Weight of Rift, WALL ST. J. EUR., Apr. 6, 2000, at 1.

71. Erik Portanger and Deborah Steinborn, *Three Members of Dresdner Board Resign Their Jobs: Executives are Victims of Failed Merger Fallout*, WALL ST. J. EUR., Apr. 14, 2000, at 15; See also Christopher Rhoads and Erik Portanger, *Dresdner Chairman Quits, First Victim of Merger Fiasco* [hereinafter *Quit*], WALL ST. J. EUR., Apr. 7, 2000, at 1; see also Christopher Rhoads and Erik Portanger, *Failed Deal Leave Turmoil at Deutsche and Dresdner Banks* [hereinafter *Turmoil*], WALL ST. J. EUR., Apr. 10, 2000, at 1.

72. See *The Urge to Merge: Bankers Uber Alles*, WALL ST. J. EUR., Apr. 17, 2000, at 10 (examining the future of mergers in Germany and Europe as a whole while European economies undergo reform).

73. See *Quit*, supra note 71; see also *Turmoil*, supra note 71.

74. *Quit*, supra note 71.

75. See *id.*; see also *Turmoil*, supra note 71.

B. THE DAIMLERCHRYSLER MERGER

1. *Increasing International Presence*

DaimlerChrysler's formation was the most public sign of growing German influence in the world economy and an indication that the barriers between German and American companies were beginning to fall. German companies had already taken over some large American brand name companies, such as Fireman's Fund Insurance,⁷⁶ but this was the most public display of a German company holding the upper hand in a large transaction. Soon, another substantial merger occurred and a German corporation was once again controlling the transaction. On November 23, 1998, Deutsche Bank announced its takeover of Banker's Trust, a New York financial institution, for approximately \$9.2 billion in cash.⁷⁷ While the DaimlerChrysler merger used stock, the preferred "currency," to pay for the merger, Deutsche Bank was forced to pay cash for Banker's Trust because Deutsche Bank is not listed on a United States stock exchange.⁷⁸

Historically, Germany, Inc. has received the bulk of its revenues from businesses inside German borders, contributing to a corporate structure not conducive to having the proper currency, a NYSE or NASDAQ listing, and the ability to move nimbly in acquisitions in the United States. The Daimler-Benz merger with Chrysler Corporation demonstrates the need for large German corporations to have a NYSE or a NASDAQ listing if they are going to purchase established American companies. In order to achieve an American stock exchange listing, German companies must shift their focus from internal strength, preservation of value, and behind the scenes deal-making to increased revenues and shareholder value. It would be a gross overstatement to say that the balance of power has shifted or will shift from America to Germany, but the Germans are gaining more than a mere foothold in major American business, an inroad that must be taken seriously.

2. *Gaining Exposure to the American Stock Markets: The*

76. See generally Timothy Aepfel and Beatrice E. Garcia, *Allianz to Buy Fireman's Fund for \$1.1 Billion*, WALL ST. J., Sept. 3, 1990, at A3.

77. MEYER-LARSEN, *supra* note 1, at 77.

78. See *id.*, at 21.

Required Currency to be a Big Player in America.

Even German companies with substantial capital reserves must list their stocks on either the NYSE or NASDAQ if they hope to become large players in the United States. With the "currency" of U.S. listed stocks, German corporations will not be forced to drain their capital reserves by acquiring U.S. corporations with cash, and will, therefore, expand more economically and with greater ease in the United States.⁷⁹ Strikingly, save for the DaimlerChrysler merger, most large multi-billion dollar German acquisitions in the United States have occurred with cash because the Germans have not been able to use their stock listed in other countries as currency for the transactions.⁸⁰ The DaimlerChrysler merger was the first very large German-American combination that was able to use a stock for stock trade because Daimler-Benz was listed on the NYSE.⁸¹

Many of the large German insurers and banks have been hesitant to list their stocks on an American stock exchange. Such a listing would require the German corporations to convert to American accounting methods and consolidate the results of their vast holdings in other companies into their own financial statements.⁸² These insurers and banks originally took equity in other German corporations as collateral for loans.⁸³ Now, these equity stakes were increasingly regarded as a hindrance to competitiveness and the growing shareholder value movement.⁸⁴ German corporations have also had problems buying large American corporations because the German corporations have been valued too low by the markets in comparison to their American counterparts.⁸⁵

One of the possible explanations for the low stock market valuations of German corporations in comparison with their American counterparts is the difference in stability between German and American corporations.⁸⁶ The inner stability of the German corporations has not been included in the economic

79. See Vanessa Fuhrmans, *Skandia Strives to List its Shares on NYSE: Insurer Joins Its Peers in Drive to Expand in U.S.*, WALL ST. J. EUR., Feb. 17, 2000, at 27.

80. See MEYER-LARSEN, *supra* note 1, at 21.

81. See *id.*

82. See Duffy & Murray, *supra* note 16.

83. See Rhoads, *supra* note 4, at 1.

84. See *id.*

85. See MEYER-LARSEN, *supra* note 1, at 21-23.

86. See *id.* at 21.

valuation of these companies, whereas the entrepreneurial nature of the American corporations is included.⁸⁷ This inherent stability in German corporations comes from the expensive fringe benefits and the social security that the companies offer their employees.⁸⁸

Many German corporations of comparable size are valued at substantially less than their American counterparts.⁸⁹ On the stock market, this disparity has meant that the return on revenue for larger German corporations was lower than for their American counterparts.⁹⁰ A snapshot of comparable German and American companies on any given day shows this unequal treatment. For example, on September 23, 1998, Siemens corporation was worth, according to its stock market valuation, 54.4 billion Deutsche marks (25.4 billion U.S. dollars) while General Electric was valued at 441.8 billion dollars (947 billion Deutsche marks).⁹¹ One commentator stated that this disparity in market valuation was a joke because if the two companies merged based on stock valuation Siemens would only be worth approximately 11 percent of General Electric.⁹² This unequal valuation arises even though a good argument can be made that the companies, based upon their holdings, are of comparable size.⁹³

3. Daimler-Benz and the NYSE: How Daimler-Benz Was Able to Merge with Chrysler

The formation of DaimlerChrysler and its subsequent internal management decisions lend great insight into the differences between German and American corporate structures. Long before the fall of the Berlin Wall and into the early 1990's, Daimler-Benz was stagnating.⁹⁴ Daimler-Benz's attempt to protect its core businesses while tepidly attempting diversification into areas such as aerospace were not successful.⁹⁵ Daimler-Benz was so timid in its diversification attempts that it chose to

87. *See id.*

88. *See id.*

89. *See id.*, at 21-23.

90. *See id.*

91. *See MEYER-LARSEN, supra note 1, at 21-23.*

92. *See id.* at 21.

93. *See id.*

94. *See MEYER-LARSEN, supra note 1, at 63-68.*

95. *See id.*

expand only with the help of government subsidies.⁹⁶ As a result of the government support, Daimler-Benz did not carefully investigate prospective acquisitions, and it became dependent on the government handouts.⁹⁷ Daimler-Benz finally sold, at major losses, most of its attempts to enter into other businesses.⁹⁸

As mentioned previously, the Daimler-Benz merger with Chrysler Corporation was a stock transaction. Daimler-Benz could not have even contemplated merging with a company the size of Chrysler without listing stock on the NYSE. Although Edward Reuter, the former Chief Executive of Daimler-Benz, had serious problems running Daimler, his decision to list Daimler-Benz on the NYSE played a key role in the company's later growth.⁹⁹ After the NYSE listing, the performance of Daimler-Benz could be directly compared to General Motors, Ford, and Chrysler because all of the automakers were now using the same accounting principles and filling the same Securities Exchange Commission ("SEC") reports. Aside from Mr. Reuter's listing of Daimler-Benz on the NYSE, he gained a reputation as the "worst squanderer of capital in the history of German corporations" because of his failed attempts to diversify the automaker.¹⁰⁰ Mr. Reuter's successor, Jurgenn Schrempp, ultimately received credit for the introduction of Daimler-Benz to Wall Street, though he did not wholly deserve this credit.¹⁰¹ Mr. Schrempp was successful in increasing the market capitalization of Daimler-Benz which gave the German automaker the necessary leverage to merge eventually with an American partner, but Mr. Schrempp was not the driving force behind the company's original listing on the NYSE.¹⁰²

Daimler-Benz shocked corporate Germany by listing its common stock on the NYSE.¹⁰³ To obtain a listing on the NYSE, Daimler-Benz had to change its accounting methods drastically and report its results under the GAAP.¹⁰⁴ Daimler-Benz's change to GAAP had a dramatic effect on how the company's earnings were reported and, ultimately, made the company

96. *See id.*

97. *See id.*

98. *See id.* at 66-67.

99. *See id.* at 22.

100. *See MEYER-LARSEN, supra note 1, at 22.*

101. *See id.*

102. *See id.*

103. *See Duffy & Murray, supra note 16.*

104. *See id.*

more accountable to its individual shareholders and less so to its institutional shareholders.¹⁰⁵ The change from German accounting principles to GAAP was highlighted when Daimler-Benz prepared its first-half 1993 results in preparation for listing on the NYSE. Under German accounting rules, Daimler-Benz would have been able to use its hidden capital reserves in reporting and would have shown a profit of \$97 million (168 million Deutsche marks).¹⁰⁶ Under the more conservative GAAP, the automaker was forced to eliminate the impact of its hidden reserves and instead showed a loss of \$548.55 million (949 million Deutsche marks.)¹⁰⁷

In 1998, the value of Daimler-Benz's stock was usually high, much like other German automakers, while the share prices of its American counterparts were low.¹⁰⁸ Because of the NYSE listing, Mr. Schrempp now had the requisite "currency" he needed for a merger with an American counterpart. Daimler-Benz's high valuation was one result of a plan to make the German automaker leaner and more profitable so that it would be better received in the American market.¹⁰⁹ Mr. Schrempp's shareholder-value campaign was so successful that Daimler-Benz had a higher market capitalization than Chrysler at the time of the 1998 merger.¹¹⁰ Daimler-Benz's strategy to drop every business line that was in danger of losing money and concentrate on its primary luxury car and heavy truck business had been a smashing success.¹¹¹

What was reported as an "overnight deal" between Daimler-Benz and Chrysler was anything but spontaneous for Mr. Schrempp.¹¹² Mr. Schrempp paved the way for a merger by starting his search for a possible partner in 1997.¹¹³ After deciding that Daimler-Benz would not benefit greatly in a merger with a European partner, Mr. Schrempp turned his attention to the "Big Three" in America-General Motors, Ford, and Chrysler.¹¹⁴ Daimler-Benz management quickly eliminated General Motors because of that company's massive internal restructur-

105. *See id.*

106. *See id.*

107. *See id.*

108. *See MEYER-LARSEN, supra note 1, at 22.*

109. *See id.* at 69.

110. *See id.* at 22.

111. *See id.* at 13.

112. *See id.* at 69.

113. *See id.* at 69.

114. *See MEYER-LARSEN, supra note 1.*

ing Daimler-Benz thought would not be completed until 2003 at the earliest.¹¹⁵ Ford was also quickly eliminated as a possibility because Ford hoped to become the world's number one auto-maker in sales and was not willing to merge with Daimler-Benz on equal footing.¹¹⁶ In the end, Daimler-Benz was left with Chrysler Corporation as its only potential American partner.

Most analysts at the time thought Chrysler Corporation was an ideal merger partner for Daimler-Benz because both companies had undergone many of the same internal reforms. Chrysler had revamped its entire car line in recent years and had recovered remarkably well from near bankruptcy in the early 1980's.¹¹⁷ A merger between Daimler-Benz and Chrysler also made sense because there was little overlap in each company's strengths. Chrysler was a leader in the light truck market and SUV market while Daimler-Benz led the heavy truck market and the luxury car market.¹¹⁸

Once the initial concept of the DaimlerChrysler merger was announced the real work began. The lawyers and management for both sides worked hard to close the deal and within six months the physical details of the merger were finalized.¹¹⁹ Upon completion of the merger, the new company attempted the complicated and difficult task of merging the German and American corporate cultures, efforts that have not been wholly successful.¹²⁰ There has been an exodus of top executives at Chrysler as American executives have lost out behind closed doors to their German counterparts.¹²¹ The list of Chrysler executives that have left, either voluntarily or involuntarily, is long and distinguished. Departed executives include: Robert Eaton, CEO; Bob Lutz, president; Tom Gale, top designer; and Jim Holden, who was hand-picked by Jurgenn Schrempp to bridge the gap between management in the United States and Germany.¹²²

Although the creation of DaimlerChrysler will probably

115. *See id.*

116. *See id.*

117. *See id.* at 69-75.

118. *See DaimlerChrysler: What Went Wrong? Two Years After Historic Merger, Warning Lights Are Flashing at DaimlerChrysler* (Dec. 27, 2000), available at http://cnnfn.cnn.com/2000/12/27/europe/chrysler_outlook/ [hereinafter *DaimlerChrysler*] (examining the Daimler-Benz and Chrysler Corporation merger after a couple of years).

119. MEYER-LARSEN, *supra* note 1, at 3.

120. *See id.*

121. *See DaimlerChrysler, supra* note 118.

122. *See id.*

prove to be successful over time, the company's fortunes have been dismal since the completion of the merger. DaimlerChrysler's stock has been in a steady decline since the merger, going from a high of \$108 a share in January 1999 after the merger to 43.16 euros (approximately \$37.75) in December 2000.¹²³ In early 2001, DaimlerChrysler also announced layoffs of over 26,000 workers and other cost-cutting measures.¹²⁴ Moreover, DaimlerChrysler is now defending a string of lawsuits started by its largest U.S. shareholder, Kirk Kerkorian.¹²⁵ Mr. Kerkorian is suing DaimlerChrysler over the merger and the subsequent decline in the value of his stock.¹²⁶ The foundation of Mr. Kerkorian's legal claims are statements made by Jurgenn Schrempp that Daimler-Benz actually viewed the transaction with Chrysler as a takeover of the American company instead of the merger of equals that they had described to the public.¹²⁷ Although commentators say Mr. Kerkorian's lawsuit has a low probability of success, it is another example of the problems that have beset DaimlerChrysler since the merger.¹²⁸

C. VODAFONE'S HOSTILE TAKEOVER OF MANNESMAN

Vodafone's takeover of Mannesmann exemplifies the blurring of European economic borders and the weakening of Germany, Inc.'s ability to insulate domestic companies from competition inherent in the evolving German economy. If Vodafone's contentious takeover of Mannesmann is any indication, German companies will now have to be leery of advances from outside of German borders. The Vodafone hostile takeover was the first such acquisition of a large Germany company in recent history, notable both for its selling price and adversarial nature.

On December 23, 1999, British telecommunications giant Vodafone made an offer to buy Mannesmann for approximately

123. See *id.*

124. See *Chrysler to Cut 26,000 Jobs: Automaker to Slash Jobs, Idle Plants at Money-Losing North American Unit* (Jan. 29, 2001), available at <http://cnnfn.cnn.com/2001/01/29/europe/daimler>.

125. See *Daimler Takes New Hits: Faces 2 New U.S. Suits and Calls From German Critics for Chairman's Removal* (Nov. 29, 2000), available at <http://cnnfn.cnn.com/2000/11/29/companies/daimler/index.htm> [hereinafter *Lawsuits*] (discussing multiple lawsuits filed in early 2001 against DaimlerChrysler related to the 1998 merger between Daimler-Benz and Chrysler Corp. and the subsequent fall in share price).

126. See *id.*

127. See *Kerkorian*, *supra* note 63.

128. See *id.*

130 billion euros (119 billion U.S. dollars).¹²⁹ The initial offer was greater than that in any merger in Germany's past, and grew throughout the course of negotiations.¹³⁰ Mannesmann, under the direction of its CEO, Klaus Esser, quickly rejected Vodafone's initial offer as inadequate.¹³¹ At the time, Mannesmann's recent takeover of Orange, another very large telecommunications company and one that Vodafone had hoped to acquire, had triggered Vodafone's overture to Mannesmann.¹³² Nearly a month and a half later, on February 4, 2000, Mannesmann's management board agreed to a takeover offer, but at a substantially higher price than Vodafone's first offer. The final price of the takeover was 181.4 billion euros (165.4 billion U.S. dollars).¹³³ Vodafone's offer rose from an initial 240 euros (219 U.S. dollars) per share for Mannesmann to 350.5 euros (320 U.S. dollars) per share.¹³⁴ The Vodafone/Mannesmann deal is so large that it is valued at approximately 50 billion more euros (45.6 billion U.S. dollars) than the America Online acquisition of Time-Warner and has created the largest wireless telecommunications company in the world.¹³⁵

One of the usual suspects in German business, Daimler-Chrysler's CEO, Jurgenn Schrempp, played a key role in Vodafone's takeover of Mannesmann. In early February 2000, after Vodafone had substantially increased its offer for Mannesmann, Mr. Schrempp reportedly pushed Mannesmann's CEO Esser to accept Vodafone's offer.¹³⁶ Mr. Schrempp exerted his influence by virtue of being one of the strongest members of Mannesmann's supervisory board.¹³⁷ During the negotiations Mannesmann spokespeople denied to the press that Mr. Schrempp or any other Mannesmann board members were urging Mr. Esser to accept Vodafone's offer, but two days later a deal had been reached.¹³⁸

Vodafone's acquisition of Mannesmann through a cross-border takeover would not have been feasible a few years ago

129. See William Boston, *Mannesmann To Put Heat On Vodafone*, WALL ST. J. EUR., Dec. 27, 1999, at 10.

130. See *id.*

131. See *id.*

132. See *id.*

133. See Boston, Naik, & Raghavan, *supra* note 10.

134. See *id.*

135. See *id.*

136. Neal E. Boudette and Anita Raghavan, *Mannesmann Urged to Make Deal*, WALL ST. J. EUR., Feb. 2, 2000, at 3.

137. *Id.*

138. *Id.*

because of protective actions by Germany, Inc. or the German government against outside acquirers.¹³⁹ In today's changed climate, Mr. Schrempp was able to counsel a peer to sell to a British acquirer.¹⁴⁰ The Vodafone takeover of Mannesmann will likely help both corporations and their shareholders because of synergies between the companies.

Mannesmann executives may be the only people who will not benefit long-term from Vodafone's acquisition of their company.¹⁴¹ Unlike their American counterparts, German executives do not have golden parachutes and many of them do not own substantial stakes in the companies that they run.¹⁴² After the takeover by Vodafone, Mr. Esser will lose much of the social prestige and power that came with running one of the largest German corporations, and he will be out of a job.¹⁴³ It seems ironic that a German CEO who will not benefit from a golden parachute accomplished exactly what most American CEOs with large buyout clauses would hope to do in the same situation.

D. DEUTSCHE BANK'S DISASTROUS ATTEMPT TO MERGE WITH DRESDNER BANK

The success of the Vodafone deal was not replicated in the failed merger attempt between Deutsche Bank and Dresdner Bank. The failed bank merger is a crucial lesson for German managers, however. It demonstrates that increased competition in the market and the new economic order will not look favorably upon German managers who cannot complete important mergers.

In March 2000, Deutsche Bank and Dresdner Bank announced they would merge, but a month changed negotiations from terms and conditions to accusations and blame for the failed attempt.¹⁴⁴ Many people, including Chancellor Schroeder, had hailed the proposed banking merger as a step forward in the modernization of Germany's Economy. Chancellor Schroeder stated, "This merger creates new opportunities for the Ger-

139. See Boudette and Raghavan, *supra* note 136.

140. See *id.*

141. See Gautam Naik and Anita Raghavan, *In Vodafone Battle, Esser Was Flying With No Parachute: Mannesmann CEO Had No Incentive to Give Up: Fighting for Shareholders and for His Job*, WALL ST. J EUR., Feb. 7, 2000, at 1.

142. See *id.*

143. See *id.*

144. See Portanger and Rhoads, *supra* note 70.

man economy.”¹⁴⁵ Amazingly, Chancellor Schroeder’s comments came after it was announced that the merger would cost 14,000 Germans their jobs.¹⁴⁶

Dresdner Bank stopped the merger because it disagreed with Deutsche Bank about the fate of Dresdner’s profitable London-based investment banking operation.¹⁴⁷ Deutsche Bank wanted to sell the London-based investment bank, while Dresdner Bank hoped to retain it.¹⁴⁸ Initially, the Deutsche Bank’s CEO, Rolf Breuer, nicknamed “Mr. Stockmarket” by some in Germany,¹⁴⁹ called the DKB operation a “‘jewel’ that would never be sold.”¹⁵⁰ After discussions with Deutsche Bank’s heads of investment banking and global markets, Mr. Breuer decided that Deutsche Bank wanted to sell the London operation.¹⁵¹ Conversely, Bernhard Walter, Dresdner Bank’s CEO, hoped to keep the London investment banking operation and cancelled the merger after learning of Mr. Breuer’s intentions.¹⁵² Deutsche Bank changed its opinion about retaining the DKB investment bank in part because of the bank’s problems integrating the New York-based Bankers Trust.¹⁵³ Another factor contributing to the collapse of the merger agreement was Dresdner Bank’s opinion that the combination was a “merger of equals” while Deutsche Bank’s chairman said that approach would have been “nonsensical”.¹⁵⁴

The fallout from the aborted German bank merger was almost immediate. Chancellor Schroeder said that he had “seen more mature behavior by companies.”¹⁵⁵ Within days, Dresdner Bank’s CEO Mr. Walter resigned.¹⁵⁶ At the same time, Mr. Walter was leaving, there was also speculation that Mr. Breuer would also be forced to exit at Deutsche Bank.¹⁵⁷ The initial call for Mr. Breuer’s job was surprisingly strong, and something he

145. Christopher Rhoads, *Europe Puts Its Faith in Bank Mergers*, WALL ST. J. EUR., Apr. 4, 2000, at 13.

146. *Id.*

147. *Id.*

148. *Id.*

149. See MEYER-LARSEN, *supra* note 1, at 90.

150. Portanger and Rhoads, *supra* note 70, at 1.

151. *See id.*

152. *See id.*

153. *See id.*

154. *See Quit*, *supra* note 71.

155. Portanger and Rhoads, *supra* note 70, at 1.

156. *Quit*, *supra* note 71, at 1.

157. *See id.*

had not experienced before.¹⁵⁸ Criticism of Mr. Breuer included an editorial in the German newspaper *Die Welt* that stated, "the chairman has led his bank into its biggest crisis since the end of the War," and added that Mr. Breuer had no choice but to step down.¹⁵⁹ Despite the failed merger, Mr. Breuer has been able to keep his job, but the glare of the spotlight is increasing on him.

Dresdner Bank immediately became a takeover target after it called off its merger with Deutsche Bank. During the course of the merger with Deutsche Bank, Dresdner Bank lost about 100 bankers in London, which weakened Dresdner's most profitable unit.¹⁶⁰ Dresdner Bank was soon trying to stem defections from its investment banking sector by offering larger bonuses and extra autonomy.¹⁶¹

Allianz, who was to sell its stake in both Dresdner Bank and Deutsche Bank as part of a merger, also helped to keep Dresdner as a takeover target. Within a week of the collapsed merger, Allianz announced that it was still interested in selling its 21.4 percent interest in Dresdner Bank.¹⁶² Initially, Allianz also tried to salvage its proposed partnership with Deutsche Bank's retail banking operation.¹⁶³ Allianz wanted to salvage its partnership because of the distribution capabilities with Deutsche Bank's retail network. The opportunity for Allianz to gain control of the Deutsche Bank retail network is one of the primary reasons that Allianz had supported the Deutsche Bank/Dresdner Bank merger in the first place.¹⁶⁴

III. GERMANY FIGHTS BACK: ALLIANZ AS AN AGGRESSIVE INTERNATIONAL ACQUIRER

A. BUSINESS ACTIVITY AT HOME

Although Allianz was not able to force Deutsche Bank and Dresdner Bank to complete their merger, the situation appears

158. See generally *Turmoil*, *supra* note 7173, at 1 (explaining the fallout for bank executives after the failure of the Deutsche Bank and Dresdner Bank merger).

159. See Portanger and Rhoads, *supra* note 70, at 1.

160. See *Turmoil*, *supra* note 71, at 1.

161. See *id.*; see also Portanger and Rhoads, *supra* note 70, at 1.

162. Fuhrmans, *supra* note 22, at 1.

163. See *id.*

164. See *id.* (discussing the benefits of access to Deutsche Bank's retail network on Allianz's business).

to have worked out well for Allianz in the long run.¹⁶⁵ The period after the aborted merger between Dresdner Bank and Deutsche Bank was bleak for both Allianz and Dresdner Bank. Allianz was unable to find a suitable solution for disposing of its 21.4 percent ownership stake in Dresdner Bank. Dresdner Bank entered into a second aborted merger attempt, this time with Commerzbank, which later ended with accusations about the deal's collapse coming from both sides.¹⁶⁶ The attempted merger between Commerzbank and Dresdner Bank was called off after lengthy discussions due to a valuation dispute.¹⁶⁷ Dresdner Bank was not having success finding a merger partner when fall 2000 rolled around, and Allianz was not happy because it still held a large ownership interest in the company it wanted to sell.¹⁶⁸ Allianz's attempts to divest its stake in Dresdner Bank also stagnated because of Dresdner Bank's difficulties finding a proper business partner.¹⁶⁹

During its discussions with Deutsche Bank and Commerzbank, Dresdner Bank paid large bonuses to keep its key investment bankers at its subsidiary Dresdner Kleinwort Benson.¹⁷⁰ In 2000, Dresdner Bank paid roughly 550 million euros in bonuses to its investment bankers so they would not leave the bank, after its failed merger attempts.¹⁷¹ Dresdner Bank could not let its investment banking subsidiary lose value because it is one of its most profitable arms.¹⁷²

Although Dresdner Bank had problems finding a merger partner in 2000, the bank was not opposed to growth through acquisition of financial companies. In September 2000, Dresdner Bank bought the New York based investment banking

165. See Allianz, *Dresdner Agree Tie: German Insurer Agrees to Buy Dresdner Bank for \$21 Billion* (Apr. 1, 2001), available at <http://cgi.cnnfn.cnn.com/output/pfv/2001/04/01/Europe/allianz/> [hereinafter *Agree to Tie*].

166. See Kevin Delaney, Anita Raghavan, and Marcus Walker, *Allianz-Dresdner Deal May Spur Others: Birth of Finance Colossus is Expected to Prompt a New Wave of Mergers*, WALL ST. J., Apr. 2, 2001, at A17 (discussing Allianz's purchase of Dresdner Bank and Dresdner's string of prior failed deals).

167. See *Allianz-Dresdner Deal Near: Insurer's \$19.5 Billion Takeover of Bank Could Come Next Week, Lead to IPO of DKW* (Mar. 29, 2001) [hereinafter *Allianz-Dresdner Deal*], available at <http://cnnfn.cnn.com/2001/03/29/europe/dresdner/index.htm> (discussing the possibility of an Allianz and Dresdner Bank merger and Dresdner's earlier aborted attempts to find other partners).

168. See *id.*

169. See *id.*

170. See Portanger and Rhoads, *supra* note 70, at 1; see also Portanger and Steinborn, *supra* note 71, at 15.

171. See *Allianz-Dresdner Deal*, *supra* note 167.

172. See Portanger and Rhoads, *supra* note 70.

firm of Wasserstein, Perella & Co. for approximately 1.4 billion dollars in an attempt to strengthen its investment banking operations.¹⁷³ Dresdner-Kleinwort-Benson became Dresdner Kleinwort Wasserstein after the takeover. As part of its acquisition of Wasserstein, Perella & Co., Dresdner Bank paid the investment bankers at Wasserstein, Perella & Co. generously and signed large contracts so they would not leave, causing a decrease in the company value.¹⁷⁴ A key aspect of the Wasserstein, Perella & Co. deal was the possibility for Wasserstein, Perella & Co. executives to make large amounts of money on a future sale or merger of Dresdner Bank with another company.¹⁷⁵ The Wasserstein, Perella & Co. executives fought to use Dresdner stock as the “currency” for the purchase of their investment so as to have a stake in any future acquisition of Dresdner Bank.¹⁷⁶

Wasserstein, Perella & Co's executives are now much wealthier because Allianz will purchase Dresdner Bank.¹⁷⁷ On April 2, 2001, Allianz announced that it was buying Dresdner Bank and merging with the bank.¹⁷⁸ The purchase price was stated as nearly 21 billion euros in cash and stock.¹⁷⁹ The proposed Allianz-Dresdner merger is the first of impending consolidations between large German corporations, creating the German equivalent of Citigroup. Allianz's purchase of Dresdner is the first of what may be many future alliances between members of the German banking and insurance industries as finan-

173. See Luisa Beltran, *Dresdner Deal Nearly Done: Merger between German Bank and Wasserstein Perella Expected Monday* (Sept. 15, 2000), available at <http://cgi.cnnfn.com/output/pfv/2000/09/15/deals/dresdner/>; see also *Dresdner Buys Wasserstein: German Bank to Pay \$1.4 Billion Stock for New York Investment Firm, \$190 Million to Keep Staff* (Sept. 18, 2000), available at http://cgi.cnnfn.com/output/pfv/2000/09/18/deals/dresdner_wasserstein [hereinafter *Keep Staff*]; see also, *Dresdner Kleinwort Wasserstein, Combination of Dresdner Kleinwort Benson with Wasserstein Perella Strengthens Dresdner Bank's Investment Banking Activities*, available at http://www.wasserella.com/press_releases/pr20000918-1.htm (last visited Sept. 19, 2001).

174. See *Keep Staff*, *supra* note 173.

175. See generally *Allianz-Dresdner Deal*, *supra* note 167.

176. See *id.*

177. See Marcus Walker, *Deals for Dresdner Won't Satisfy an Acquisitive Allianz: German Insurer Now to Play Catch-Up in U.S: Keep an Eye on U.K. and Asia*, WALL ST. J., Apr. 3, 2001, at A16; see also Delaney, Raghavan, and Walker, *supra* note 166.

178. See Delaney, Raghavan, and Walker, *supra* note 166, at A17 (discussing Allianz's purchase of Dresdner Bank for nearly 25 billion euros); see also *Agree to Tie*, *supra* note **Error! Bookmark not defined.**

179. See Delaney, Raghavan, and Walker, *supra* note 166, at A17.

cial institutions attempt to take advantage of the economies of scale that accompany this type of combination.¹⁸⁰ Allianz and Dresdner Bank will now cross-sell products to clients more easily.

The combination of Allianz and Dresdner Bank boasts 23 million customers in Germany alone.¹⁸¹ Dresdner Bank's recent record of not closing deals within the last year makes commentators leery, but they should be confident considering the situation. The mechanics of Allianz's purchase of Dresdner Bank are different than the deals that were not completed with Deutsche Bank and Commerzbank.

Allianz is in control of the acquisition of Dresdner Bank because it is also a huge shareholder of Dresdner Bank with its 21.4 percent stake in the German Bank.¹⁸² The merger between Allianz and Dresdner Bank would force other German financial institutions to change the way they do business because of its alignment between the banking and insurance industries.¹⁸³ The Merger creates two towering German financial networks with a global reach, Allianz-Dresdner and Deutsche Bank.¹⁸⁴ The Allianz-Dresdner Bank combination moves ahead of Deutsche Bank in size with a market capitalization, at the time of the merger announcement, of approximately 110 billion euros, or roughly twice that of Deutsche Bank.¹⁸⁵ In this transaction, Allianz was not granting its assent or trying to mold a combination of Dresdner Bank with another third party, but it is a two party transaction.

It is true that there are smaller minority shareholders who need to be satisfied to complete the merger, but Allianz has already made steps to placate them and in doing so has started to unravel Germany, Inc.¹⁸⁶ As part of the transaction, Allianz agreed to swap its stake in HypoVereinsbank AG, the second largest bank in Germany,¹⁸⁷ to Munich Re in exchange for Munich Re's four percent ownership stake in Allianz.¹⁸⁸ Allianz's

180. See generally *Allianz-Dresdner Deal*, *supra* note 167.

181. See Walker, *supra* note 177, at 18.

182. See Rhoads, *supra* note 15, at A24.

183. See Delaney, Raghavan, and Walker, *supra* note 166, at A17.

184. See Anita Raghavan and Marcus Walker, *Allianz is In Talks To Buy Dresdner Bank: German Insurance Giant Would Pay \$19.5 Billion In Stock And Cash Deal*, WALL ST. J. EUR., Mar. 29, 2001, at A3 & A8.

185. See Delaney, Raghavan, and Walker, *supra* note 166.

186. See Raghavan and Walker, *supra* note 184; see also Delaney, Raghavan, and Walker, *supra* note 166 (analyzing the mechanics of the recent merger).

187. See Raghavan and Walker, *supra* note 184, at A3.

188. See *id.*

share exchange with Munich Re will also serve to strengthen the relationship between Munich Re and HypoVereinsbank AG as German banks and insurance companies try to combine to form large one-stop financial institutions, much like the Citigroup model.¹⁸⁹ Allianz's purchase of Dresdner Bank assures the German insurer a strong, lasting banking partner and positions the insurer to take advantage of the impending explosion of Germany's private pension market.¹⁹⁰

If Allianz had waited too long, all of the quality members of the German banking industry might have had partners and Allianz would have been left without a retail distribution network. Instead, Allianz was able to pick its partner. One of the questions that remains is who Deutsche Bank will combine with to grow its non-banking operations. If no possible German insurers remain, Deutsche Bank might be forced to combine with an American or French insurance giant such as Axa.¹⁹¹ Deutsche Bank may also be apprehensive about new acquisitions after its problems integrating Banker's Trust and its failed merger attempt with Dresdner Bank, but Deutsche Bank must find a partner soon or it will lose market share.¹⁹² In the fall of 2000, Deutsche Bank announced that it was not looking to purchase an investment banking operation in an attempt to strengthen its mergers and acquisitions practice, even though Deutsche Bank is a leading player in this lucrative area.¹⁹³ Deutsche Bank recently signaled that it is working towards listing its stock on the NYSE and using those shares to pay for new acquisitions in the United States.¹⁹⁴ In fact, on October 3, 2001, Deutsche Bank listed its global shares on the NYSE.¹⁹⁵

189. *See id.*

190. *See id.*

191. *See id.*

192. *See id.*

193. *See id.*

194. Tony Major, *Deutsche Bank Seeking Partners and Takeovers*, FIN. TIMES (May 18, 2001), available at <http://globalorc..articles.html?id=0105180011178query=deutsche+bank+sells+allianz+stak>; see also Tony Major and Alison Beard, *Deutsche Bank Close To Winning U.S. Listing*, FIN. TIMES (Aug. 12, 2001), available at <http://globalarchive.ft.com/globalarchive/article.html?id=010813001194&query=deutsche+bank+close+to+winning+us+listing>.

195. *Deutsche Bank's Share on Wall Street*, available at http://fircontent.db.com/i.nyse/main_e.php (last visited October 15, 2001) (discussing the listing of Deutsche Bank shares on the NYSE for the first time on October 3, 2001); see also Tony Major, *Deutsche Bank Lists in U.S.*, FIN. TIMES (Oct. 3, 2001), available at <http://globalarchive.ft.com/globalarchive/article.html?id=011003002018&query=deutsche+bank+and+tony+major>.

B. INCREASING MARKET SHARE ABROAD: ALLIANZ'S UNITED STATES ACQUISITIONS

1. *An Ambitious Plan*

Allianz has signaled it is actively looking in the United States for quality acquisitions in both life insurance and the asset management area.¹⁹⁶ Allianz is currently the fifty-first ranked life insurance company in the United States by size, and the company's goal is to be a top five company in every market.¹⁹⁷ In a statement posted on the company's web site, Allianz management board member Helmut Perlet stated, "We have already said for a long time that we wanted to build up our U.S. position. That is especially true for the life insurance-business there."¹⁹⁸

Allianz must buy a large United States based life insurance company if it is to reach its goal in the United States. Allianz cannot simply go from fifty-first to fifth by increasing the strength of its current businesses. In addition, no other member of Germany, Inc. stands to benefit as much as Allianz from the corporate capital gains repeal in 2002.¹⁹⁹ If Allianz has good execution in selling its stakes in Germany, Inc. it will provide the insurer with a very large cash infusion, because of its status as the linchpin of Germany, Inc. and its estimated 120 billion euros (at the end of 2000) in holdings.²⁰⁰

2. *Current Market Share in the United States*

German insurance giants Allianz and Munich Re are estab-

196. See *Allianz Net Grows 12%; Firm Predicts Stronger 2001: German Insurer Turns Focus to Expanding U.S. Presence*, WALL ST. J. EUR., Feb. 15, 2001, at 18 [hereinafter *Strong 2001*] (discussing Allianz's profits in 2000 and its focus on growth in the United States); see also Walker, *supra* note 177, at A16; see also Schulte-Nolte, Dr. Henning, *Allianz AG: Speech by the Chairman of the Board of Management*, available at http://www.allianz.com/us-listing/3_02d.html (last visited Sept. 16, 2001) (explaining the final fiscal figures for 1999 and the outlook for Allianz in 2000 and its expansion plans throughout the world); see also *About Us*, available at <http://www.allianz.com/Vx/cda/0,,519-44,00.html> (last visited Sept. 25, 2001) (Allianz's annual report available online for the period ending June 30, 2000).

197. See *Strong 2001*, *supra* note 196; see also Walker, *supra* note 177.

198. *Strong 2001*, *supra* note 196.

199. See Walker, *supra* note 177.

200. See generally Vanessa Fuhrmans and Marcus Walker, *Paul Achleitner Discovers Untangling Allianz Isn't Easy: Dresdner Disappointment May Alter Expectations for the Star Banker*, WALL ST. J., Dec. 26, 2000, at A8.

lishing a corporate presence in the United States by acquiring companies and moving toward being listed on United States stock markets.²⁰¹ Allianz has long had a small North American subsidiary based in Minneapolis, Allianz Life Company of North America was founded in 1896,²⁰² but the insurance juggernaut has only recently begun to extend its empire within the United States. Eleven years ago, Allianz bought Fireman's Fund Insurance Co. for 1.1 billion dollars.²⁰³ Allianz had been slow in acquiring other United States corporations in the period between its Fireman's Fund purchase and 1999. In the Spring of 1999, Allianz purchased Life USA, an insurance holding company for a substantial premium over Life USA's share price on the NASDAQ.²⁰⁴ Allianz paid more than double the premium for Life USA's stock that had languished around eleven dollars a share for many years.²⁰⁵ Allianz paid more than twenty dollars a share for the seventy-five percent of Life USA that it did not already own because Allianz wanted Life USA's strong sales network of independent agents.²⁰⁶

Since buying Life USA, Allianz also acquired the PIMCO mutual funds family for 3.3 billion dollars in hopes of increasing Allianz's exposure to the lucrative asset management business.²⁰⁷ A year later, Allianz also purchased the San Diego based Nicholas-Applegate family of mutual funds for approximately 2 billion dollars.²⁰⁸ After the Nicholas Applegate acquisition, Allianz had approximately 740 billion euros (675 billion

201. See *Strong 2001*, *supra* note 196; see also See Jesse Eisinger, *Heard in Europe: Rival Munich Re Learns and Gains From Allianz*, WALL ST. J. EUR., Mar. 6, 2000, at 13.

202. See *Report of Target Market Conduct Examination of Allianz Life Insurance Company of North America Minneapolis, Minnesota* (visited on Oct. 22, 2001), at <http://www.insurance.wa.gov/tableofcontents/orders/marketconduct/Allianz%20Life%20of%20North%20America%20Report.htm>.

203. See Aepfel and Garcia, *supra* note 76.

204. *Allianz AG: Unit Reaches Deal to Buy Rest of Life USA Holding*, WALL ST. J., May 18, 1999, at C15.

205. See *id.*

206. See *id.*

207. See Vanessa Fuhrmans and Pui-Wing Tam, *Allianz Agrees To Buy Stake In U.S.'s Pimco*, WALL ST. J., Nov. 1, 1999, at C1; see also *Allianz Buys Pimco Stake: German Insurer Takes 70% of U.S. Fund Manager for \$3.3 Billion* (Nov. 1, 1999), available at <http://cnfnf.cnn.com/1999/11/01/worldbiz/allianz/> (examining Allianz's purchase of the 70 percent of Pimco that it did not already own).

208. See *Allianz Completes Acquisition of Nicholas-Applegate*, available at http://www.allianz-vermoegen.de/js/vermoegen_2/unternehmen/presse/010201_e.htm (last visited Sept. 25, 2001) (discussing briefly about the Allianz's purchase of Nicholas-Applegate).

U.S. dollars) under management, up from approximately 250 billion euros (228 billion U.S. dollars) before the PIMCO and Nicholas-Applegate acquisitions.²⁰⁹

Now Allianz has joined DaimlerChrysler in the United States. Allianz listed its stock on the NYSE through an American Depository Receipt ("ADR") on November 3, 2000.²¹⁰ Allianz's listing on the NYSE shows that the company is serious about expanding its presence in the United States through acquisitions. There have also been signals that Munich Re, of which Allianz owns a 25 percent stake, has plans to follow Allianz's lead and obtain an NYSE listing for its stock in the near future.²¹¹

3. A Unifying Strategy

Although Allianz's purchase of Dresdner Bank is a much larger transaction than Allianz's purchase of Life USA, both takeovers bear surprising similarities. Allianz was the largest minority shareholder in both corporations. One of the driving reasons behind Allianz's purchase in both instances was the distribution systems of the respective companies. Life USA had a strong network of independent agents throughout the United States who could be used as a conduit to funnel Allianz products. Dresdner Bank has a large retail banking operation that Allianz will be able to cross-sell to millions of Dresdner Bank clients.²¹² Allianz had been unable to come to an agreement with Deutsche Bank about selling Allianz products in Deutsche Bank retail offices. Without a cross-selling agreement with Deutsche Bank, Allianz needed a new way to distribute its increasing array of financial products, including mutual funds and private pension products, to the German public at a retail level.²¹³ The merger would also give Allianz an opportunity to sell its products to thousands of Dresdner Bank's corporate customers and make those clients of Allianz's corporate pension

209. See *id.*; see also *Allianz Eyeing Applegate: Other Bidders for Fund Manager Said to Include AIG, Nuveen and First Union* (Sept. 18, 2000), available at <http://cnnfn.cnn.com/2000/09/18/deals/applegate/index.htm>.

210. See *Allianz AG (NYSE-Listed AZ) Lists on the NYSE: To Celebrate, Dr. Henning Schulte-Noelle, Chairman of the Board, Rings the Opening Bell*, available at <http://www.nyse.com/events/NT0007EDFA.html>, (last visited Sept. 16, 2001).

211. See *id.*

212. See Raghavan and Walker, *supra* note 184, at A3.

213. See *id.*

business.²¹⁴ Donald Moore, chairman of Morgan Stanley Group Europe, was quoted as saying, "this is about products, customers and distribution."²¹⁵ Mr. Moore continued that the merger is an indication that corporate Germany is moving away from its longstanding tradition of cross-ownership.²¹⁶

C. A SLOWER MOVE TO THE UNITED STATES: MUNICH RE

Munich Re is also making moves to expose itself to the American market in an attempt, albeit slower than Allianz, to capitalize on the impending capital gains tax reform in Germany.²¹⁷ Munich Re switched accounting methods to the more accepted International Accounting Standards that are closer to the American Generally Accepted Accounting Principles (GAAP) in its preparation for a future listing on the NYSE.²¹⁸ Munich Re is also reported to have approximately 47 billion euros in capital, with 18 billion euros considered "excess" capital.²¹⁹

IV. THE FUTURE?

Germany is in the midst of a great and exciting economic time as it enters the twenty-first century. Germany, Inc. is breaking up and the German government has been surprisingly willing to help this change by repealing the excessive fifty percent corporate capital gains tax on corporate shareholdings.²²⁰

Within German borders, Germany, Inc. is losing its grip over the country's economy, yet the same German corporations may now become larger players in the global economy. Germany, Inc.'s transition will likely continue to gain speed in the near future, increasing its acceleration once the corporate capital gains tax repeal takes effect in early 2002.

Individual corporate transactions highlight the economic transformation occurring in Germany. Daimler-Benz started the transition in 1993 when it listed its securities on the NYSE, and since then the momentum has been slowly increasing. Allianz's recent acquisitions of Life USA, PIMCO funds, and Nicholas Applegate in the United States show that the insur-

214. *See id.*

215. *See id.*

216. *See id.*

217. *See* Eisinger, *supra* note 201.

218. *Id.*

219. *Id.*

220. *See* Fuhrmans, *supra* note 9, at 11.

ance giant is readying itself to buy companies in the United States. Allianz's status in corporate America will increase as it moves to become a top five life insurance and financial company in the United States in terms of size. Munich Re has also moved forward by changing its accounting standards to more closely resemble GAAP in an attempt to ready itself for a listing on the NYSE. Deutsche Bank created a subsidiary in late 1998 to hold all of its outside industrial holdings and the bank sold some of its stake in Allianz in late 1999.

Germany, Inc.'s increased merger activity also demonstrates that dramatic change is looming in the horizon. In early 2000, after Chancellor Schroeder announced his corporate tax reform proposal, the merger activity among Germany, Inc. corporations began to pickup steam. Daimler-Benz led the way with its groundbreaking merger with Chrysler Corporation in Spring 1998. Deutsche Bank soon followed the DaimlerChrysler deal with its acquisition of Bankers Trust for 9.2 billion dollars. British-based Vodafone acquired Mannesmann in the largest merger ever, approximately 180 billion euros (164 billion U.S. dollars).

Once the corporate tax reform becomes law in 2002, the large German corporate world will be full of activity as the members of Germany, Inc. divest themselves of their cross-holdings.²²¹ If the euro rebounds and becomes stronger against the dollar, German companies should buy corporations in the United States and abroad. On the other hand, if the euro continues to be weak against the dollar and British pound, both British and American companies and buyout firms will look to Germany because of its good values and depressed currency. American and British companies have attempted to acquire their German counterparts because of the typically strong capital reserves of German companies, their well-respected management teams, and the low book values. The possibility of acquisitions, hostile takeovers, and establishing a corporate presence in the United States will make the future exciting for large corporations in Germany.

221. See Rhoads, *supra* note 4, at 1; see also Rhoads, *supra* note 15, at A24.