THOMAS P. DiNAPOLI
STATE COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 18, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release No. 34-63174; File No. 4-617; Study on Extraterritorial Private Rights of Action

Dear Ms. Murphy:

As Comptroller of the State of New York, I am the Trustee of the New York State Common Retirement Fund ("the Fund"). The Fund, currently valued at approximately $140.6 billion, is the third largest public pension fund in the United States, and provides pension, disability and death benefits for over one million members, retirees and beneficiaries of the New York State and Local Retirement System.

I submit this letter in response to Release No. 34-63174 of the Securities and Exchange Commission ("SEC"), which seeks comments regarding changes to the U.S. securities laws that may be required as a result of the United States Supreme Court decision in *Morrison v. National Australia Bank Ltd.*, 130 S.Ct. 2869 (2010) ("*Morrison*"). Specifically, I request that the SEC make a finding that Section 10(b), and other relevant portions of the Securities Exchange Act of 1934 (the "Exchange Act"), should be applicable to all U.S. Investors (i.e., both financial institutions located in the United States and individuals or entities who reside in the U.S.) who purchase and sell securities of foreign companies. Accordingly, I ask that the SEC recommend to the U.S. Congress that the Exchange Act be amended to ensure that U.S. Investors are given the full protection of the laws of the United States, without regard to whether such securities were purchased in the U.S. or abroad.

Prior to the *Morrison* decision in June 2010, U.S. Investors were protected by the anti-fraud provisions of the Federal securities laws, as courts held that there could be extraterritorial application of the Exchange Act where U.S. interests were affected. The *Morrison* case involved foreign investors who purchased securities on foreign exchanges. Since the *Morrison* decision was handed down, however, courts have been extending *Morrison* to preclude U.S. Investors from bringing claims based on the purchase and sale of securities on international exchanges. We continue to challenge this as an overly expansive and erroneous interpretation of the holding in *Morrison*. Nevertheless, the best way to prevent this result is for Congress to enact legislation to protect U.S. Investors who purchase securities on foreign exchanges.

The reality is that, as a large institutional investor, the Fund must have a diversified investment portfolio. To meet its fiduciary duty as a prudent investor in a global economy, the Fund has substantial international equity holdings. Generally, the most efficient and cost effective way to purchase shares in foreign companies is on a foreign exchange. As of December 31, 2010, approximately 29 percent of the Fund's public equity holdings, or approximately $22.7 billion, were international. The vast majority of these assets were purchased on foreign exchanges. I am very concerned that the Fund's extensive international portfolio be fully protected by the U.S. securities laws and that our ability to pursue claims of fraud when necessary based on the purchase and sale of the Fund's international holdings not be diminished or eliminated.

As a large institutional investor, the Fund has a substantial interest in insuring the integrity of the market place. To that end, the Fund has served as lead plaintiff in some of the largest successful securities class actions, and has aggressively fought not only to protect innocent investors, but also to restore public confidence in the market. Most recently, the Fund has been named co-lead plaintiff in a securities class action against BP, plc for its alleged misrepresentations to shareholders regarding both its lax safety procedures, which led to the disastrous explosion of the Deepwater Horizon, and its inability to clean up the oil spill in the Gulf of Mexico.

Since the class of investors the Fund represents in the BP case includes U.S. citizens and entities that purchased ordinary shares on a foreign exchange, this case is an excellent example of the potentially sweeping negative effects that the *Morrison* decision may cause. BP plc is a UK corporation with its principal executive offices located in London, England. This is not a case, however, where the corporation has little or no connection to the United States; rather, BP has numerous contacts with this country. In fact, BP is the largest oil and gas producer in the U.S., 40 percent of its assets and workers are in North America, and roughly 40 percent of BP's ordinary common shares are owned by individuals and institutions within the U.S. Moreover, BP America, Inc. and BP Exploration & Production, Inc., both wholly-owned subsidiaries of BP, plc, are Delaware corporations.

Prior to *Morrison*, there was no question that BP's U.S. contacts were sufficient to invoke the protection of the U.S. securities laws. Post -*Morrison*, however, these protections could be in jeopardy. Given the substantial U.S. presence of BP and of other foreign corporations whose stock is held by U.S. Investors, the protection of U.S. Investors by U.S. securities laws should not be diminished simply because the stock purchase occurred on a foreign exchange.

We continue to press and preserve all potentially viable claims against BP. Clearly, however, Congress is in the best position to remedy this situation and analogous situations that regularly arise in the market place. Therefore, on behalf of the Fund, I strongly urge the SEC to recommend to Congress that the Exchange Act be amended to protect U.S. Investors.
I greatly appreciate your careful attention to this matter.

Sincerely,

Thomas P. DiNapoli
State Comptroller