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COLORADO PERA®

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November 23, 2011

Mary L. Schapiro
Chairman
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 Chairman Shapiro:

Thank you for the time that you and your staff took to meet with myself and Brian Bartow on November 15, 2011. As representatives of large public pension plans we value the opportunity to express our concerns and perspectives on important issues affecting our members and beneficiaries. The opportunity to address with you and your staff concerns about the U.S. Supreme Court's decision in *Morrison* and the critical importance of an affirmative recommendation by the SEC to extend the conduct and effects tests to private rights of action was greatly appreciated. A report issued in January that demonstrates strong support for restoration of the pre-*Morrison* application of the U.S. securities laws for purposes of private rights of action is an imperative foundational step for future efforts by investors seeking congressional action.

Private actions overseen by sophisticated institutional investors have been a valuable compliment to the enforcement efforts of the Commission since the passage of the PSLRA. The importance of this role by investors becomes increasingly vital during times of reduced resources and increased burdens on the Commission. The Supreme Court's decision in *Morrison* leaves the investor community unable to fulfill its role and pursue financial fraud committed within the borders of the United States. Like the fines levied by the Commission, private actions serve as an important deterrent to individuals in a position to commit fraud. The inability to hold those responsible for fraud committed within the U.S. accountable for their actions will eventually erode investor confidence, ultimately impairing capital formation while causing increased costs for U.S. investors. We believe that an affirmative recommendation in the SEC report required by Section 929Y of the Dodd-Frank Act is critically important to future efforts by the investor community and a report that fails to recommend Congressional action will not serve the interests of investors.

Some have suggested that *Morrison* will reduce litigation and litigation costs, thereby benefiting investors. In reality those of us responsible as fiduciaries for the retirement assets of thousands of individuals will be forced to pursue redress for fraud when it occurs by whatever means are available. The effect of *Morrison* will be, and frankly already is, to force U.S. investors defrauded within the U.S. to pursue recourse in foreign courts. We are already experiencing substantially increased costs of litigation in other countries as well as a reduction in our ability to effectively oversee foreign actions. There are at least 62 foreign markets that may be the location of a securities sale with 62 separate substantive and procedural frameworks for claimants to pursue recourse for fraud. The size of our investments will likely not allow for us to simply ignore the losses associated with a financial fraud. Rather we will be forced to retain counsel to litigate in forums that lack the efficiencies of class action suits and present significant other barriers to recovery. The costs of such actions will substantially increase, causing either a reduction in recovery by investors, an increase in payouts by offending companies, or both. Since the *Morrison* decision, the U.S. law firms that have long been at the forefront of securities litigation continue to dominate and are affiliating with foreign counsel to facilitate pursuit of frauds in various countries. Thus far we are seeing dramatic increases in fees and costs associated with foreign litigation as well as underdeveloped substantive precedent in foreign courts.

As an institutional investor that selectively becomes involved in securities litigation as a lead plaintiff (*See In re Royal Ahold N.V.*, Case 1:03-MD-01539, United States District Court, District of Maryland) we at Colorado PERA are disturbed by the evolving landscape. The PSLRA emphasized the value of oversight of securities litigation by institutional investors. The *Morrison* decision significantly undermines that principal, leaving institutional investors more reliant on counsel to identify, assess, and pursue litigation for securities fraud in forums around the world with less ability and substantially greater costs associated with overseeing the litigation.

Looking back at the major financial frauds that have occurred over the past decade provides an instructive framework to assess the impact of *Morrison*. If the *Morrison* decision had been issued in 2000 and remained in effect, more than $6 billion in recoveries would have been barred. Cases such as *Nortel Networks Corporation* (U.S. District Court for the Southern District of New York) and *Royal Ahold* (United States District Court, District of Maryland) in large part would not have survived. The importance of these private actions in restoring investor confidence cannot be overstated. Without the public process of litigating these high profile frauds in the U.S. courts, the public sense of integrity in the markets would have been substantially undermined.

The U.S. has long provided a marketplace that fosters investor confidence through principles of transparency, consistency in reporting, and accountability. The exclusion of investors from the enforcement regime focused on financial fraud can only erode these principals. Restoration of the conduct and effects tests for private litigants is in the best interest of investors and the securities marketplace.

Thank you again for your time and commitment to protecting our markets and the interests of U.S. investors. If at any time we at Colorado PERA can be of assistance in your consideration or evaluation of this issue please do not hesitate to contact me.

Very truly yours,

Gregory W. Smith
Chief Operating Officer/General Counsel