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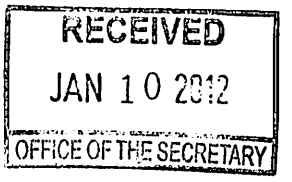
SPECTOR ROSEMAN
KODROFF & WILLIS PC

Direct E-Mail: [redacted]

January 5, 2012

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



Dear Ms. Murphy:

I am writing to you on behalf of my firm, Spector Roseman Kodroff & Willis, PC, to submit the following comments in response to Release No. 34-63174 of the Securities and Exchange Commission ("SEC" or "the "Commission"), which seeks comments regarding the impact of and changes to the U.S. securities laws that may be required as a result of the decision of the United States Supreme Court in *Morrison v. National Australia Bank Ltd*, 130 S.Ct. 2869 (2010) ("*Morrison*"). We request that the SEC make a finding that Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 ("Rule 10b-5"), and other provisions of the Exchange Act, should be applicable to all purchases and sales of securities by financial institutions located in the United States and individuals or entities who are resident in the U.S. (collectively "U.S. Investors") and that, accordingly, *the Commission recommend to the U.S. Congress that the Exchange Act be so amended*.

As you know, the *Morrison* decision reversed over 40 years of precedent and significantly altered the legal landscape for investors seeking redress for securities fraud against foreign actors. Subsequent lower court decisions have broadly applied *Morrison* to further limit a private plaintiff's ability to avail himself/herself of U.S. securities laws as a means to recover losses in securities transactions.

My firm represents many public pension funds in the U.S. These clients allocate a material percentage of their respective portfolios to direct investments in foreign companies, largely by purchasing these securities directly via foreign exchanges. Thus, *Morrison* directly impacts – *i.e.*, largely eliminates – their ability to recover in the U.S. losses suffered when these foreign purchased shares are the subject of U.S. securities litigation. We have followed the impact of *Morrison* by noting the large number of U.S. securities actions that our clients have been precluded from joining, simply because their shares were purchased outside the U.S.

Historically, Section 10(b) had a broad application and provided a venue for both domestic and foreign investors seeking redress against foreign companies for securities fraud. *Morrison*

dramatically narrowed this by stating that Section 10(b) does not apply extraterritorially and instead applies only to domestic securities transactions. As a result of *Morrison*, U.S. investors (including my firm's clients) have sought alternatives to federal securities litigation claims, including bringing state law claims for fraud as well as claims for fraud based on foreign law.

We feel that the "conduct" and "effects" tests, developed by various courts over past decades, are the proper gauges for whether and when Section 10(b) should be given extraterritorial application. Under the "conduct" test, extraterritorial application of the federal securities laws was appropriate if the wrongful conduct associated with a particular transaction occurred in the United States. (*Cornwell v Credit Suisse Group* (S.D.N.Y. 2010) 729 F.Supp.2d 620, 623 [discussing the Second Circuit's extraterritoriality doctrine before *Morrison*].) Under the "effects" test, extraterritorial application of the securities laws was appropriate if the wrongful conduct had a substantial effect on United States markets or upon American citizens. (*Id.*) The tests were applied jointly, when possible, however, a case often proceeded when just one of the tests was satisfied.

U.S. courts have generally held that claims brought by domestic shareholders who purchased shares of foreign corporations on foreign exchanges (known as "f-squared" cases) were properly heard under Section 10(b) in U.S. courts – *i.e.*, the mere fact that the putative class members are domestic has traditionally been all that is required to demonstrate a substantial effect upon U.S. citizens and thus to satisfy the effects test

We believe that re-establishing the long-standing and easy to apply pre-*Morrison* interpretation of the Exchange Act under which U.S. Investors were afforded the protection of the laws of the United States in connection with their purchases and sales of securities (through the "conduct" and "effects" tests) best protects the interests of U.S. investors.

Very truly yours,

Mark Willis

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