



July 9, 2008

Advisory Committee on the Auditing Profession  
Office of Financial Institutions Policy  
Room 1418  
United States Department of the Treasury  
1500 Pennsylvania Ave, N.W.  
Washington, DC 20220

Re: Advisory Committee on the Auditing Profession Draft Report and Addendum

Dear Committee Members:

We are writing on behalf of the Ohio Public Employees Retirement System (“OPERS”). As the 11<sup>th</sup> largest public retirement system, OPERS manages assets approximately \$77.6 billion in assets and serves more than 920,000 members.

OPERS appreciates the opportunity to provide comments to the United States Treasury Advisory Committee on the Auditing Profession (“Committee”) on the recommendations in its Draft Report – May 5, 2008 (“Draft”) and Addendum to VI. Firm Structure and Finances (“Addendum”). OPERS’ comments regarding certain aspects in the Draft and Addendum follow.

## **VI. Firm Structure and Finances**

### **Draft Report**

*Recommendation 1. Strengthen auditing firms’ fraud detection and prevention skills and clarify communications with investors regarding auditing firms’ fraud detection responsibilities.*

OPERS agrees with the Committee that continued enhancement of auditors’ fraud prevention and detection skills will improve financial reporting and audit quality and enhance investor confidence in financial reporting and the auditing function.

OPERS supports the Advisory Committees recommendation that the Public Company Accounting Oversight Board (“PCAOB”) and the Securities and Exchange Commission (“SEC”) clarify in the auditor’s report the auditor’s role in detecting fraud under current auditing standards and that the PCAOB periodically review and update these standards.

*Recommendation 3. Urge the PCAOB and the SEC, in consultation with other federal and state regulators, auditing firms, investors, other financial statement users, and public companies, to analyze, explore, and enable, as appropriate, the possibility and feasibility of firms appointing independent members with full voting power to firm boards and/or advisory boards with meaningful governance responsibilities to improve governance and transparency at auditing firms.*

OPERS recognizes that public company auditing firms as private partnerships are not subject to the requirements of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”) or exchange listing standards that mandate fully independent audit committees, nominating/corporate governance, and compensation committees. As outlined in the Draft, state laws and partnership agreements determine the governance of auditing firms and often times a firm’s governing body is comprised of elected firm partners.

OPERS agrees with the Committee that enhancing the corporate governance of the auditing firms through the appointment of independent board members, whose duties run to the auditing firm and its partners/owners, to firm boards could be particularly beneficial to auditing firm management and governance. OPERS also agrees with the Committee that the addition of independent board members could improve investor protection through enhanced audit quality and firm transparency.

*Recommendation 4. Urge the SEC to amend Form 8-K disclosure requirements to characterize appropriately and report every public company auditor change and to require auditing firms to notify the PCAOB of any premature engagement partner changes on public company audit clients.*

OPERS supports the Committee’s recommendation that the SEC amend its Form 8-K disclosure on auditor changes by providing for the mechanism recommended by the Advisory Committee. OPERS also supports the Committee’s recommendation that the auditing firms notify the PCAOB of any engagement partner changes on public company audits if made before the normal rotation period and the reasons for those changes.

## **Addendum to VI. Firm Structure and Finances**

### ***Auditors Report***

*Recommendation: Urge the PCAOB to undertake a standard-setting initiative to consider improvements to the auditor’s reporting model.*

As noted by the Committee, the auditor’s report is the primary means by which the auditor communicates to the users of financial statements regarding its audit of financial statements, which has not be altered since the 1930’s. OPERS supports the Committee’s recommendation to request that the PCAOB address this issue. As suggested by the PCAOB Standing Advisory Group in 2005 and the Committee, the auditor’s report should include more information relating

to the auditor's judgments regarding financial reporting quality, particularly with respect to key risk areas.

### ***Engagement Partner Signature***

As noted by the Committee, SEC regulations require that the auditor's report be signed with the audit firm name. OPERS supports the Committee's considered recommendation to request that the PCAOB revise its auditor's report standard to mandate the engagement partner's signature on the auditor's report to improve audit quality.

### ***Transparency***

OPERS agrees with the Committee's recommendation that the PCAOB require that, beginning in 2010, larger auditing firms produce a public annual report containing the information noted in the Addendum to improve the transparency of auditing firms.

### ***Litigation***

The Committee is seeking commentary on whether it would be appropriate to have exclusive federal jurisdiction for claims that presently may be brought in state courts against auditors related to audits of public company financial statements. OPERS does not believe it is in the best interests of investors to eliminate state court jurisdiction for these types of claims against auditors in lieu of exclusive federal court jurisdiction. Exclusive federal jurisdiction would weaken investors' rights and remedies.

OPERS does not support the proposed auditor liability changes, including exclusive federal jurisdiction over auditor claims or a downward revision to an auditors' standard of care. Such changes could compromise investor protection and/or the integrity of the capital markets.

Currently, federal courts have virtually exclusive jurisdiction over class action securities claims. Any class action filed under the federal securities laws must be filed in federal court. Under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") class actions with 50 or more investors filed in a state court are removable to a federal court. The only remaining lawsuits against auditors in state courts are individual investor lawsuits, such as opt-outs, and claims asserted by companies against their auditors. States have a strong interest in protecting investors and preserving investors' rights. Further, state courts are uniquely skilled, and experienced in resolving controversies under state law, including state law claims against auditors.

If Congress were to enact legislation that provided for exclusive federal jurisdiction over auditor claims, the standard of care applied to auditors should not be weakened and the burdens of proof applied to plaintiffs should not be strengthened. The risk of litigation encourages auditors to maintain a high level of audit quality. Any weakening of the standard of care imposed on accountants who conduct audits of public companies, including for example the removal of fraud on the market presumption to establish reliance; the creation of a special "professional judgment" rule; the implementation of special safe harbor provisions for auditors; the discontinuance of a negligence standard for claims by companies against their auditors, and/or

the legislation of a standardized scienter requirement to be applied to auditors, would be adverse to protecting the interests of investors and, therefore, the capital markets.

## **VII. Concentration and Competition**

### **Draft Report**

*Recommendation 1(a). Require disclosure by public companies in their annual reports and proxy statements of any provisions in agreements with third parties that limit auditor choice.*

OPERS agrees with the Committee that requiring public disclosure of limitation of liability provisions in agreements would reduce barrier to the growth of the smaller firms and assist with their entry into the large public company audit market. OPERS also supports the Committee's recommendation that the SEC should require public companies to disclose any provisions in agreements limiting auditor choice with the information as outlined in Draft.

*Recommendation 3. Recommend the PCAOB, in consultation with auditors, investors, public companies, audit committees, boards of directors, academics, and others, determine the feasibility of developing key indicators of audit quality and effectiveness and requiring auditing firms to publicly disclose those indicators. Assuming development and disclosure of indicators of audit quality are feasible, require the PCAOB to monitor these indicators.*

As noted by the Committee, a key issue in the public company audit market is what drives competition for audit clients and whether audit quality is the most significant driver. Currently, there is minimal publicly available information regarding indicators of audit quality at individual auditing firms.

OPERS supports the Committee's recommendation that the PCAOB determine the feasibility of developing key indicators of audit quality and requiring auditing firms to publicly disclose those indicators. OPERS also supports the Committee's recommendation that the PCAOB, through its inspection process, should monitor these indicators once identified.

*Recommendation 4(a). Compile the SEC and PCAOB independence requirements into a single document and make this document website accessible. The American Institute of Certified Public Accountants (AICPA) and states should clarify and prominently note that differences exist between the SEC and PCAOB standards (applicable to public companies) and the AICPA and state standards (applicable in all circumstances, but subject to SEC and PCAOB standards, in the case of public companies) and indicate, at each place in their standards where differences exist, that stricter SEC and PCAOB independence requirements applicable to public company auditors may supersede or supplement the stated requirements. This compilation should not require rulemaking by either the SEC or the PCAOB because it only calls for assembly and compilation of existing rules.*

OPERS supports the Committee's recommendations as outlined in the Draft.

*Recommendation 5. Adopt annual shareholder ratification of public company auditors by all public companies.*

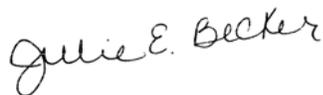
OPERS agrees with the Committee that shareholder ratification of auditor selection through the annual meeting and proxy process can enhance the audit committee's oversight to ensure that the auditor is suitable for the company's size and financial reporting needs and may enhance competition in the audit industry. OPERS also agrees with the Committee's encouragement of such an approach as a best practice for all public companies and the Committee's urging exchange self-regulatory organizations to also adopt such a requirement as a listing standard. In addition, OPERS supports the Committee's recommendation that disclosure in the company proxy statement regarding shareholder ratification include the name(s) of the senior auditing partner(s) staffed on the engagement.

*Recommendation 6. Enhance regulatory collaboration and coordination between the PCAOB and its foreign counterparts, consistent with the PCAOB mission of promoting quality audits of public companies in the United States.*

OPERS agrees with the Committee that global regulatory coordination and cooperation are important elements in making sure public company audit firms are contributing effectively to audit quality. As we move to one high quality set of global accounting standards under the International Financial Reporting Standards, the need for this coordination and cooperation is increasing. OPERS also agrees with the Committee's strong support of the efforts of the PCAOB to enhance the efficiency and effectiveness of its programs by communicating with foreign regulators and participating in global regulatory bodies and the Committee's urging the PCAOB and its foreign counterparts to continue to improve regulatory cooperation and coordination on a global basis.

OPERS appreciates the opportunity to comment on these matters. Should you have any questions, please feel free to contact us.

Sincerely,



Julie Becker  
General Counsel



Carol Nolan Drake  
Director – External Relations