



NASCAT

The National Association of
Shareholder & Consumer
Attorneys

818 Connecticut Avenue, NW
Suite 1100
Washington, D.C. 20006

215.988.9548 voice
215.988.9885 fax
www.nascat.org

Advisory Committee on the Auditing Profession
Office of Financial Institutions Policy
Room 1418
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

July 9, 2008

Dear Chairman Levitt, Chairman Nicolaisen and Members of the Advisory Committee:

I am writing in my capacity as President of the National Association of Shareholder and Consumer Attorneys (NASCAT). Founded in 1988, NASCAT is a trade organization that focuses on protecting investors and consumers through the strengthening of federal and state laws and the prosecution of corporate fraud. NASCAT's members are law firms, located all over the country, which represent public pension funds, Taft-Hartley Funds and other institutional investors, along with retail investors, in class actions and private actions. NASCAT believes that a thorough review of the auditing profession should include the input of those representing American investors. Accordingly, the following outlines NASCAT's positions and comments to the Advisory Committee's Draft Report and Addendum on the Auditing Profession.

NASCAT supports several of the recommendations set forth in the Draft Report. In general, we believe that the finances and activities of the auditors of public companies -- like those of senior corporate officers and the corporations, themselves -- should be as transparent as possible. More public disclosure serves investor protection far better than unnecessary secrecy.

NASCAT also believes that when auditors engage in the preparation of misleading or otherwise wrongful financial statements, they should be held accountable to the investors who have relied upon their work. Indeed, America's securities markets are the world's largest and safest markets because we have constructed the world's best regulatory system. This system deploys and relies upon both federal and state regulators and law enforcement agencies to oversee our increasingly complex and ever-growing capital markets, and also relies upon private actions by investors and other market participants as a necessary supplement to these activities. As a result, companies that list with our markets enjoy a significant listing premium. Within this framework investor protection is well served by our current judicial system, which provides investors access to both federal and state courts, depending upon the nature and magnitude of the allegations and claims. As Congress recognized when it passed the Securities Litigation Uniform Standards Act of 1998 (SLUSA), federal courts are often best suited to handle truly national cases brought by investor plaintiffs in multiple states. At the same time, Congress was wise to recognize the vital

role of state courts, which are often more responsive to the local public interest and best-suited to consider cases involving few plaintiffs and fewer or smaller corporate defendants.

Beyond these general principles, NASCAT specifically supports the Advisory Committee's draft recommendations to:

-- improve the Auditor's Report to include information on how the audit opinion was reached, including disclosure of significant assumptions and possible uncertainties in measurements. It is also critical that audits accept and acknowledge their responsibility for detecting fraud and improving disclosure of frauds to investors.

-- require the auditor's engagement partner's signature on the Auditor's Report in order to affirm the accountability of the individuals who had authority over the work product; and

-- mandate that auditors produce an Annual Report incorporating information such as the firm's financial results and sources of revenues, including a breakdown between auditing and consulting fees and, as recommended by the Advisory Committee's Draft Report, key performance indicators including staff numbers, turnover, training, client satisfaction, profit per partner and the engagement team's composition. And, we strongly support the Committee's "alternative 2" version of the auditor's Annual Report. All audited financial statements of audit firms should be made available to the public on the PCAOB's website so that investors can read and consider the information themselves.

However, NASCAT urges the Advisory Committee not to recommend that Congress provide federal courts with exclusive jurisdiction over some categories of claims, which presently may be brought in state courts against auditors, when such claims are related to audits of public company financial statements. First, our already overworked federal court system should not be required to handle the claims of small investor groups. This is one reason why Congress in passing SLUSA specifically empowered individual investors and small groups of investors (numbering 50 or less) to seek relief in their own state courts.

Under SLUSA, it is very likely that federal courts will already hear the type of large cases involving potentially significant auditor liability that the Advisory Committee seems most concerned with. And, Congress has already provided significant shields against possible crushing auditor liability in the large cases heard in federal courts through several provisions of the Private Securities Litigation Act of 1995 (PSLRA).

Specifically, the PSLRA established the most stringent pleading standard in any field of civil litigation in the United States. And, unless and until a federal court determines that a private plaintiff's complaint has met those very high standards, an automatic stay of discovery is in place. In other words, a private plaintiff cannot obtain discovery from defendants or third parties to support a securities claim until after a federal judge has ruled that the plaintiff has already made a strong and particularized showing that a defendant made a misleading statement or omission and, further, that the defendant did so with the requisite fraudulent state of mind, or *scienter*.

Of particular relevance to the Advisory Committee's concerns about possible "life threatening" auditor liability is the PSLRA's establishment of a system of proportionate fault in securities fraud cases. This provision sharply limits auditors' exposure to liability in the type of large, complex cases with which the Committee seems especially concerned. Under the PSLRA, auditors are shielded by proportionate liability unless it can be proven that they knowingly -- as opposed to recklessly -- committed fraud in violation of federal securities laws. This is a very difficult standard to meet.

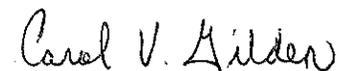
Beyond the protective PSLRA statute, a series of federal court decisions over the past 12 years have strengthened the shields against auditor liability. Most recently, in the U.S. Supreme Court decision (*Stoneridge v. Scientific-Atlanta*), the Court made it far more difficult to hold secondary actors, such as auditors or attorneys, accountable to defrauded investors seeking relief under the PSLRA for wrongful conduct other than by making public misrepresentations. While not entirely shutting the door to potential liability, the Court imposed a restrictive view of the circumstances under which such liability may exist, drawing a distinction (which we regard as artificial) between whether the secondary actor's wrongful conduct took place in the investment sphere as opposed to that of ordinary business operations, as well as focusing on whether the public was aware of the conduct and the secondary actor's role in that conduct.

Taken together, the PSLRA and court decisions have already erected strong shields for auditors against liability in cases in which the investing public is misled or lied to about the financial condition of large publicly held companies. And, SLUSA already ensures large cases of most concern to the Advisory Committee are heard in federal courts.

As such, there is no justification for individuals and small investor groups to be denied access to their own state courts where they are likely to receive a faster hearing than in a sometimes remote and/or overburdened U.S. District Court. Moreover, in state courts, these claims -- which pose no significant liability threat to a "big four" accounting firm -- will be heard under the jurisdiction of the plaintiffs' own state laws promulgated by their own state legislatures (which as a practical matter already have a similar standard of care to one another). This is a hallmark of the federal system established under our Constitution.

Thank you for considering our views and comments on the Advisory Committee on the Auditing Profession's Draft Report and Addendum. Please contact me at (312) 357-0370 if you have any questions or if NASCAT may be of further assistance.

Sincerely,



Carol V. Gilden

President, National Association of Shareholder and Consumer Attorneys