CALSTRS
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California State Teachers'
Retirement System
Investments
7667 Folsom Blvd., Ste. 250
Sacramento, CA 95826
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cailman@calstrs.com

October 8, 2008

Dennis J. Meekins, Vice President, Listing Qualifications
American Stock Exchange
86 Trinity Place
New York, NY 10006

Re: California State Teachers' Retirement System Petition Concerning Shareholder Ratification of Auditors

Dear Mr. Meekins,

We hereby are petitioning American Stock Exchange ("AMEX") to require all companies listed on AMEX to submit their choice of auditor to a non-binding vote of shareholders for ratification ("Proposed Listing Requirement"). Recently, such a listing requirement was recommended by the Draft Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury, which stated:

> The Committee believes 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 . . . The Committee also urges exchange self-regulatory organizations to adopt such a requirement as a listing standard.[1]

Currently, however, the AMEX Company Guide, Section 803(b), provides that a listed company's audit committee must meet certain minimum standards, but does not require shareholder ratification of a company's choice of auditor. We believe that the Proposed Listing Requirement will strengthen auditor independence and integrity in accordance with the principles set forth in the AMEX Company Guide.

Auditor ratification has become an industry "best practice" with over 79% of firms in California State Teachers Retirement System's ("CalSTRS") portfolio placing their auditors up for ratification, according to a survey performed by CalSTRS in 2008 ("CalSTRS Survey"). In total,

[1] THE DEPARTMENT OF THE TREASURY, ADVISORY COMMITTEE ON THE AUDITING PROFESSION, *Draft Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury* , at VIII:20 (September 25, 2008) ("Draft Final Report").

nearly 95% of the S&P 500 and 70-80% of smaller companies allow shareholders to ratify their choice of auditor.[2]

The CalSTRS Survey, summarized below, illustrates that smaller companies are less likely to allow auditor ratification:

Market Cap	**Percentage of Companies that do not Allow Auditor Ratification**
Over $10 Billion	5.75%
Between $5 and $10 Billion	12.25%
Between $1 and $5 Billion	17.90%
Between $250 Million and $1 Billion	23.97%
Below $250 million	27.93%

These statistics are further confirmed by an analysis of Corporate Governance Quotient ("CGQ") profiles compiled by the RiskMetrics Group, which rates over 7,400 companies on corporate governance matters.[3] The analysis shows that only 12.1% of profiled companies listed on the Russell 3000 did not seek to have their auditor ratified at their most recent annual meeting.[4] However, of those Russell 3000 firms that did not seek shareowner ratification, 90.56% were small cap firms. Additionally, an analysis of foreign companies profiled by the RiskMetrics Group shows that 38% did not seek to have their auditor ratified at their most recent annual meeting. Thus, small cap and foreign companies are lagging behind their competitors in enabling shareholders to ratify their choice of auditor.

For companies that currently enable such shareholder ratification, the advisory vote is an important tool for shareholders to express concerns about a company's relationship with its auditor. While auditor ratification has the potential to improve corporate governance, many companies do not allow shareholders to vote on the company's selection of auditor. In CalSTRS' survey, the following reasons were given by companies for not allowing ratification:

1. The company would not know what to do if shareholders did not ratify its choice of auditor.

2. The company does not have a choice in the selection of auditor, so ratification would be of little practical value.

3. The company is unable to determine appropriate timing of auditor ratification by shareholders because its annual meeting does not coincide with the selection of auditor.

However, these objections are easily addressable. <u>First</u>, if shareholders do not ratify a companies' selection of an auditor, the company could do 1 of 3 things: (1) it could replace the auditor immediately; (2) if immediate change of auditor is not practical, a company could commit

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[2] *Id.*

[3] The database is available at http://www.issproxy.com/issgovernance/esg/cgq.html.

[4] The RiskMetrics Group profiled 2,977 companies listed on the Russell 3000.

to review its selection of auditor and change auditors when practical; or (3) it could keep the same auditor and address shareholder concerns regarding the auditor.

Second, even if a company has no choice but to keep the same auditor, submitting the company's choice of auditor to a shareholder vote can have an impact on corporate governance. For example, based on the vote, the company may reduce the auditor's fees from non-audit work or take further steps to ensure independence.

Third, because some companies' fiscal year-ends coincide with their annual meetings, at the time of the annual meeting, such companies may not have decided to retain or dismiss their auditor. Under the Proposed Listing Requirement, such firms may be permitted to state in the proxy that the Audit Committee is evaluating the current auditor and considering a change. They would further state that because no decision on choosing an auditor had been made, a ratification vote is not appropriate. However, under the Proposed Listing Requirement, the company would state that the current auditor may be retained in the next year and, regardless of which auditor is eventually chosen, that auditor will be put up for ratification at the next annual meeting.

Further, some companies have made the argument that shareholder ratification would serve little purpose in light of the fact that shareholders already have the ability to withhold votes when audit committee members stand for election. However, this argument discounts the fact that a shareholder may withhold a vote for an audit committee member for a wide variety of reasons. A company that monitors withheld votes would not necessarily be aware that shareholders were not satisfied with a company's choice of auditor. Thus, the Proposed Listing Requirement is uniquely tailored to give shareholders a voice in ensuring an appropriate relationship between a company and its auditor.

Sarbanes Oxley Pub. L. No. 107-204, 116 Stat. 745 (Codified in Scattered Sections of 11, 15, 18, 28, and 29 U. S. C.) and the Security Exchange Commission's Rules promulgated thereunder, give audit committees broad powers to ensure that auditors are sufficiently independent from companies. Under the Proposed Listing Requirement, the audit committee would still have primary responsibility for selecting the auditor. Indeed, it would still have the discretion to choose any auditor it sees fit as shareholder ratification is non-binding. However, the Proposed Listing Requirement would give shareholders a voice to concur or disagree with the audit committee's selection.

Sincerely,

Christopher Ailman
Chief Investment Officer

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October 8, 2008

Robert Greifeld, Chief Executive Officer
The NASDAQ OMX Group, Inc.
9600 Blackwell Road
Rockville, MD 20850

Re: California State Teachers' Retirement System Petition Concerning Shareholder Ratification of Auditors

Dear Robert Greifeld,

We are hereby petitioning The NASDAQ OMX Group, Inc. to require all companies listed on the NASDAQ Stock Market ("NASDAQ") to submit their choice of auditor to a non-binding vote of shareholders for ratification ("Proposed Listing Requirement"). Recently, such a listing requirement was recommended by the Draft Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury, which stated:

> The Committee believes 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 . . . The Committee also urges exchange self-regulatory organizations to adopt such a requirement as a listing standard.[1]

Currently, however, NASDAQ Stock Market Rule 4350(d) provides that a listed company's audit committee must meet certain minimum standards, but does not require shareholder ratification of a company's choice of auditor. We believe that the Proposed Listing Requirement will strengthen auditor independence and integrity in accordance with the principles set forth in the NASDAQ Stock Market Rules.

Auditor ratification has become an industry "best practice" with over 79% of firms in California State Teachers Retirement System's ("CalSTRS") portfolio placing their auditors up for ratification, according to a survey performed by CalSTRS in 2008 ("CalSTRS Survey"). In total,

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The CalSTRS Survey, summarized below, illustrates that smaller companies are less likely to allow auditor ratification:

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These statistics are further confirmed by an analysis of Corporate Governance Quotient ("CGQ") profiles compiled by the RiskMetrics Group, which rates over 7,400 companies on corporate governance matters.[3] The analysis shows that only 12.1% of profiled companies listed on the Russell 3000 did not seek to have their auditor ratified at their most recent annual meeting.[4] However, of those Russell 3000 firms that did not seek shareowner ratification, 90.56% were small cap firms. Additionally, an analysis of foreign companies profiled by the RiskMetrics Group shows that 38% did not seek to have their auditor ratified at their most recent annual meeting. Thus, small cap and foreign companies are lagging behind their competitors in enabling shareholders to ratify their choice of auditor.

For companies that currently enable such shareholder ratification, the advisory vote is an important tool for shareholders to express concerns about a company's relationship with its auditor. While auditor ratification has the potential to improve corporate governance, many companies do not allow shareholders to vote on the company's selection of auditor. In CalSTRS' survey, the following reasons were given by companies for not allowing ratification:

1. The company would not know what to do if shareholders did not ratify its choice of auditor.

2. The company does not have a choice in the selection of auditor, so ratification would be of little practical value.

3. The company is unable to determine appropriate timing of auditor ratification by shareholders because its annual meeting does not coincide with the selection of auditor.

However, these objections are easily addressable. <u>First</u>, if shareholders do not ratify a companies' selection of an auditor, the company could do 1 of 3 things: (1) it could replace the auditor immediately; (2) if immediate change of auditor is not practical, a company could commit to review its selection of auditor and change auditors when practical; or (3) it could keep the same auditor and address shareholder concerns regarding the auditor.

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[3] The database is available at http://www.issproxy.com/issgovernance/esg/cgq.html.
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<u>Second</u>, even if a company has no choice but to keep the same auditor, submitting the company's choice of auditor to a shareholder vote can have an impact on corporate governance. For example, based on the vote, the company may reduce the auditor's fees from non-audit work or take further steps to ensure independence.

<u>Third</u>, because some companies' fiscal year-ends coincide with their annual meetings, at the time of the annual meeting, such companies may not have decided to retain or dismiss their auditor. Under the Proposed Listing Requirement, such firms may be permitted to state in the proxy that the Audit Committee is evaluating the current auditor and considering a change. They would further state that because no decision on choosing an auditor had been made, a ratification vote is not appropriate. However, under the Proposed Listing Requirement, the company would state that the current auditor may be retained in the next year and, regardless of which auditor is eventually chosen, that auditor will be put up for ratification at the next annual meeting.

Further, some companies have made the argument that shareholder ratification would serve little purpose in light of the fact that shareholders already have the ability to withhold votes when audit committee members stand for election. However, this argument discounts the fact that a shareholder may withhold a vote for an audit committee member for a wide variety of reasons. A company that monitors withheld votes would not necessarily be aware that shareholders were not satisfied with a company's choice of auditor. Thus, the Proposed Listing Requirement is uniquely tailored to give shareholders a voice in ensuring an appropriate relationship between a company and its auditor.

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Christopher Ailman
Chief Investment Officer

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October 8, 2008

Duncan L. Niederauer, Chief Executive Officer and Director
NYSE Euronext
11 Wall Street
New York, NY 10005

Re: California State Teachers' Retirement System Petition Concerning Shareholder Ratification of Auditors

Dear Mr. Niederauer,

We are hereby petitioning NYSE Euronext to require all companies listed on the New York Stock Exchange ("NYSE") to submit their choice of auditor to a non-binding vote of shareholders for ratification ("Proposed Listing Requirement"). Recently, such a listing requirement was recommended by the Draft Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury, which stated:

> The Committee believes 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 . . . The Committee also urges exchange self-regulatory organizations to adopt such a requirement as a listing standard.[1]

Currently, however, the NYSE Listed Company Manual, Section 303A.07, provides that a listed company's audit committee must meet certain minimum standards, but does not require shareholder ratification of a company's choice of auditor. We believe that the Proposed Listing Requirement will strengthen auditor independence and integrity in accordance with the principles set forth in the NYSE Listed Company Manual.

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For companies that currently enable such shareholder ratification, the advisory vote is an important tool for shareholders to express concerns about a company's relationship with its auditor. While auditor ratification has the potential to improve corporate governance, many companies do not allow shareholders to vote on the company's selection of auditor. In CalSTRS' survey, the following reasons were given by companies for not allowing ratification:

1. The company would not know what to do if shareholders did not ratify its choice of auditor.

2. The company does not have a choice in the selection of auditor, so ratification would be of little practical value.

3. The company is unable to determine appropriate timing of auditor ratification by shareholders because its annual meeting does not coincide with the selection of auditor.

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Third, because some companies' fiscal year-ends coincide with their annual meetings, at the time of the annual meeting, such companies may not have decided to retain or dismiss their auditor. Under the Proposed Listing Requirement, such firms may be permitted to state in the proxy that the Audit Committee is evaluating the current auditor and considering a change. They would further state that because no decision on choosing an auditor had been made, a ratification vote is not appropriate. However, under the Proposed Listing Requirement, the company would state that the current auditor may be retained in the next year and, regardless of which auditor is eventually chosen, that auditor will be put up for ratification at the next annual meeting.

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Sincerely,

Christopher Ailman
Chief Investment Officer

Hank Kim
National Conference on Public Employee Retirement Systems

Keith Johnson
Global Institutional Governance Network

Mary Morris
California Public Employees Retirement System

Mike McCauley
State of Florida

Steve Abrecht
Service Employees International Union Master Trust Fund

Timothy Smith
Walden Asset Management

Frank Curtiss
RailPen Investments

Bess Joffe
Hermes Equity Ownership Services Ltd.

Michael Garland
CtW Investment Group

Anita Skipper
Aviva Investors

Ann Yerger
Council of Institutional Investors