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October 30, 2009 Via E-Mail: commentsolicitation@nasdaq.com

Michael S. Emen, Senior Vice President
Listing Qualifications
The NASDAQ Stock Market
9600 Blackwell Road
Rockville, Maryland 20850

Dear Mr. Emen and Listing Council:

Re: Corporate Governance "Best Practices"

I am writing on behalf of the California Public Employees' Retirement System (CalPERS), the largest public pension fund in the United States with approximately $200.9 billion in global assets and equity holdings in over 9,000 companies. CalPERS provides retirement benefits to over 1.5 million public workers, retirees, and their families and beneficiaries. Acting as fiduciaries to the members of the system, the CalPERS Board of Administration and its staff invest the pension funds of its members over the long term throughout the global capital markets.

CalPERS supports the Listing Councils' robust, dynamic and transparent approach to regulation of its listing companies and trades. We believe the reforms made by the NASDAQ in recent years has strengthened the governance process at public companies and benefited shareowners, the providers of capital, and the capital markets. CalPERS believes the global markets rely upon the quality and integrity of information which are enhanced through governance structures at public companies. CalPERS welcomes the opportunity to provide comments to the Listing Council about Corporate Governance "Best Practices" and the benefits to its listing companies.

The financial crisis has revealed fundamental flaws in corporate governance in the US system. The point has been made by the Investors' Working Group in US Financial Regulatory Reform.[1] CalPERS agrees that the current financial crisis has many causes but supports the concept that the root cause attributable to the financial market crisis are the breakdowns in the internal governance structures, corporate governance

[1] US Financial Regulatory Reform: The Investors' Perspective, A Report by the Investors' Working Group, July 2009.

arrangements at public companies.[2] "The report also suggests that the importance of qualified board oversight and robust risk management including reference to widely accepted standards is not limited to financial institutions." CalPERS also agrees with the International Corporate Governance Network Second Statement on the Global Financial Crisis, which states "It is now widely agreed that corporate governance failings were not the only cause of the crisis but they were highly significant, above all because boards failed to understand and manage risk and tolerated perverse incentives."[3]

CalPERS believes that key corporate governance reforms are necessary to achieve appropriate transparency, accountability and risk oversight, hence adoption of "best practices" at the corporate level. This is reflected in a letter submitted by CalPERS along with other State and local government pension funds to the Honorable Jack Reed, Chairman of the Subcommittee on Securities, Insurance and Investment Committee on Banking, Housing and Urban Affairs supporting the protection of shareowners and enhancing public confidence by improving corporate governance.[4] Robust, effective listing standards should allow investors the necessary tools to hold management and boards accountable in order to protect the interests of the owners of the company. From a broader perspective, as shareowners, we are the first line of defense against mismanagement of risk by the company and identify in this letter key corporate governance reforms.

CalPERS also feels strongly that timely, relevant and easily accessible disclosures are integral to strong corporate governance and healthy financial markets. Many of the "best practice proposals" outlined in the Listing Councils' document about Corporate Governance "best practices" are outlined in this letter sent by the Council of Institutional Investors (CII) regarding NYSE proposed rule change to amend certain Corporate Governance Requirements. [5]

In the context outlined above, CalPERS recommends that if companies do not comply, they would have to explain why and under all circumstances disclose their approach towards corporate governance best practices.

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[2] The Corporate Governance Lessons from the Financial Crisis, Organisation for Economic Co-Operation and Development (OECD) Steering Group on Corporate Governance, Grant Kirkpatrick, 11 February 2009.

[3] The International Corporate Governance Network's second statement on the financial crisis and accompanying letter to the Prime Minister , 23 March 2009 http://www.icgn.org/press/press-releases/articles/-/page/671/

[4] Letter to Hon. Jack Reed, Chairman for the Record of the July 29 Subcommittee Hearing on "Protecting Shareholders and Enhancing Public Confidence by Improving Corporate Governance", July 28, 2009.

[5] Letter to Elizabeth M. Murphy, Secretary, SEC regarding NYSE proposed rule change to amend certain Corporate Governance Requirements, File No. SR-NYSE-2009-89, from the Council of Institutional Investors, October 8, 2009 http://www.cii.org/resourcesCorrespondence
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We strongly believe that a prudent board would support the adoption of these best practices. We also believe the proposed "Shareholder Bill of Rights of 2009" by Senator Charles Schumer provides support, that if enacted, may require the national securities exchanges and associations to prohibit the listing of companies that do not comply with specific requirements as it relates to corporate governance best practices.

CalPERS' Global Principles of Accountable Corporate Governance http://www.calpers-governance.org/principles/home provides a framework by which CalPERS executes its fiduciary responsibilities and embodies what we believe companies should adopt as "best practices." Therefore we respond to the questions in the order outlined in your solicitation and have not prioritized based on the order.

Best Practice Proposals

1) We believe that one of the more important governance requirements adopted in 2003 was that independent directors meet regularly in executive session, apart from management and other directors. Should this practice be expanded such that companies would hold an executive session of independent directors at each regularly scheduled board meeting? Should companies disclose the frequency with which they hold such meetings?

- *CalPERS believes independent directors should meet periodically (at least once a year) alone in an executive session, without the CEO. The independent board chair or lead independent director should preside over this meeting. CalPERS also believes disclosure on the frequency in which these meetings are held would be a benefit to shareowners.*

2) The agenda for executive sessions will likely vary from meeting to meeting and company to company. Should companies adopt an annual agenda for their executive sessions? If so, which of the following topics are appropriate for inclusion on that agenda:

- *We agree an annual agenda should be developed with the flexibility of addressing critical issues on demand. The independent chairperson of the board should be responsible for coordinating the activities of the directors and executive sessions. We support and agreed that topics outlined in a-e (below) are important components that should be addressed in the executive sessions. CalPERS supports the board determining where the responsibility of addressing risk should be allocated and outlined in its disclosures to ensure the proper accountability.*

a) Has the "tone at the top" of the company established a culture of integrity?

b) Does the company use self-evaluations to assess whether its board, board committees and individual directors are operating competently and effectively?

c) Do the independent directors have adequate access to information about corporate strategy and other issues and adequate input into setting the board's agenda?

d) Does the company have an effective business risk management strategy and are sufficient resources allocated to it? Should this responsibility be allocated to a committee other than the audit committee, given the existing responsibilities of that committee?

e) Does the company have an effective orientation program for new directors? Should other topics also be considered?

- *See above*

3) Given the demands on director's time, should the company adopt a limit on the number of outside boards on which a director can serve, and, if so, what number is appropriate?

- *CalPERS believes that CEOs or executive officers should not sit on more than 2 boards and all directors should not sit on more than 5 boards.*

4) Should the company require its directors to participate, either annually or on some periodic basis, in continuing education programs, as are, for example, sponsored by various universities and certified by certain governance organizations?

- *Directors should receive training from independent sources on their fiduciary responsibilities and liabilities.*

5) Should shareholders vote annually on appointing the outside auditor?

- *The selection of the independent external auditor should be ratified by shareowners annually.*

6) Should the company adopt some form of advanced resignation requirement to address the circumstance where a director fails to receive a favorable vote by a majority of the shareholders?

- *Resignation for any director that receives a withhold vote greater than 50% of the votes cast should be required. Unless the incumbent director receiving less than a majority of the votes cast has earlier resigned, the term of the incumbent director should not exceed 90 days after the date on which the voting results are determined.*

7) Should the company develop a process to facilitate shareholder communications with directors and, if so, what role should the independent directors play in that process?

- *Directors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters. All directors should attend the annual shareowners' meeting and be available, when* requested by the chair, to answer shareowner questions.

8) To facilitate independent board leadership, should the company either have an independent Chairman or an independent Lead Director?

- *The board should be chaired by an independent director. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interest of shareowners, and it should name a lead independent director to fulfill duties that are consistent with those provided in Appendix C of CalPERS Global Principles of Accountable Corporate Governance.*

9) Should all directors be elected annually?

- *All directors should be elected annually (no classified boards).*

Thank you for considering our comments and your robust, dynamic and transparent approach to regulation of its listing companies and trades. Attached are the letters discussed for your reference and convenience. We support that the NASDAQ embrace corporate governance best practices for the companies listed on its exchange. If you would like to discuss any of these points, please do not hesitate to contact me directly at (916) 795-9672 or Mary Hartman Morris at (916)-795-4129.

Yours sincerely,

Anne Simpson
Senior Portfolio Manager, Global Equity

cc: Joseph A. Dear, Chief Investment Officer - CalPERS
Eric Baggesen, Senior Investment Officer – CalPERS
Mary Hartman Morris, Investment Officer -- CalPERS

Attachments:

(1) A Report by the Investors' Working Group, An Independent Taskforce Sponsored by CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, July 2009.

(2) The Corporate Governance Lessons from the Financial Crisis, Organisation for Economic Co-Operation and Development (OECD) Steering Group on Corporate Governance, Grant Kirkpatric, 11 February 2009

(3) The International Corporate Governance Network's second statement on the financial crisis and accompanying letter to the Prime Minister , 23 March 2009 http://www.icgn.org/press/press-releases/articles/-/page/671/

(4) Letter to Hon. Jack Reed, Chairman for the Record of the July 29 Subcommittee Hearing on "Protecting Shareholders and Enhancing Public Confidence by Improving Corporate Governance", July 28, 2009.

(5) Letter to Elizabeth M. Murphy, Secretary, SEC regarding NYSE proposed rule change to amend certain Corporate Governance Requirements, File No. SR-NYSE-2009-89, from the Council of Institutional Investors, October 8, 2009 http://www.cii.org/resourcesCorrespondence