



CalPERS

Russell Read, Ph.D., CFA

Chief Investment Officer

Investment Office

P.O. Box 2749

Sacramento, CA 95812-2749

Telecommunications Device for the Deaf - (916) 795-3240

Telephone: (916) 795-3400

February 25, 2008

Nancy M. Morris, Secretary

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090

RE: File No. S7-06-03 Internal Control over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers¹

Dear Ms. Morris:

I am writing you on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS is the 4th largest retirement system² in the world and the largest public pension system in the U.S., managing approximately \$238 billion in assets. CalPERS manages pension and health benefits for approximately 1.5 million California public employees, retirees and their families.

The Commission requested comment regarding proposed amendments of the temporary rules as it pertains to internal control over financial reporting in Exchange Act - Periodic reports of non-accelerated filers. The proposed amendments would postpone for one year the date by which a non-accelerated filer would be required to include in its annual report an auditor attestation report³ management's assessment of internal control over financial reporting (ICFR).

As a long-term shareowner, CalPERS has a significant financial interest in seeking improvement in the integrity of financial reporting. CalPERS is a strong supporter of the Sarbanes-Oxley Act of 2002 and believes the application of Section 404 (SOX 404)

¹ Non-accelerated filers are companies that have public equity floats of less than \$75 million. – Accelerated filers as companies that have public equity floats of at least \$75 million but less than \$700 million. Large accelerated filers with public float of \$700 million or more.

² Pensions & Investments, "P&I/Watson Wyatt world's 300 largest retirement plans", 2007 Databook, Page 28, December 24, 2007.

³ Item 308(b) of Regulation S-K.

**California Public Employees' Retirement System
Lincoln Plaza East - 400 Q Street, Suite E4800 - Sacramento, CA 95811**

moves all public companies in the direction of implementing and maintaining internal controls that improve the integrity of financial reporting.

The Sarbanes-Oxley Act of 2002 does not make any distinction based on a publicly traded company's size or complexity. In a report by Glass Lewis & Co, Material Weaknesses Trend Alert⁴ found that "In 2006, material weaknesses were down among companies that had gone through at least one year of SOX 404 testing." This was especially true among companies with market capitalization of \$75 million to \$749 million. Conversely, those companies with less than \$75 million in market capitalization (non-accelerated filers) filed 677 new material-weakness disclosures last year, up 18% from 573 a year earlier. As a long-term investor, we find this fact troubling and a compelling reason why all public companies should be required to immediately become SOX 404 compliant.

On December 7th and 19th of 2007, CalPERS sent a letter to Chairman Cox and to Secretary J. Gordon Seymour of the PCAOB respectively, asking their agencies to not weaken investor protections by inappropriately providing relief to micro and small capitalization companies from complying with SOX 404. The proposed amendments will mean that investors will have to wait even longer for the assurances provided by the attestation report by the companies' auditor on management's report on ICFR. CalPERS does not believe a further extension is warranted and would recommend the SEC maintain, pursuant to rules implementing Section 404 (b) of the Sarbanes-Oxley Act of 2002, its requirement that non-accelerated filers include in their annual reports an attestation report of their independent auditor on ICFR for fiscal years ending on or after December 15, 2008. We do not support extending this date to December 15, 2009.

CalPERS believes the proposed additional deferral of the auditor's attestation report requirement makes the application of SOX 404 requirements less efficient and effective by reducing investor confidence in the assessment completed by management. CalPERS provided testimony to the US Treasury Advisory Committee on the Auditing Profession (ACAP) on February 4, 2008⁵ on the importance of auditors, the vital role they play in helping ensure the integrity of financial reporting and in bringing standardization and discipline to corporate accounting, which in turn enhances investor confidence. The auditor's attestation supports or disputes management's assertion regarding internal controls over financial reporting.

⁴ Mark Grothe and others, "The Materially Weak", Glass Lewis & Company, Yellow Card Trend Alert, February 27, 2007.

⁵ Written Testimony to US Treasury Department Advisory Committee on the Auditing Profession (ACAP), Panel on General Sustainability, <http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Johnson020408.pdf>.

SEC – File No. S7-06-03
February 25, 2008
Page 3 of 3

Finally, CalPERS supports the position that management's report on ICFR should be considered "filed" and subject to liability under Section 18 of the Exchange Act.⁶ Confidence and assurances are supported by enforcement and consequences.

CalPERS is prepared to provide assistance to the Commission at its request. Please contact Dennis Johnson, Senior Portfolio Manager at (916) 795-2731 if you have any questions or if we can be of further assistance.

Sincerely,



cc: Fred Buenrostro, Chief Executive Officer, CalPERS
Dennis Johnson, Senior Portfolio Manager, CalPERS

⁶ Section 18 of the Exchange Act imposes liability on any person who makes or causes to be made in an application or report or document filed under the Act, any statement that "was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact."