



## Ohio Public Employees Retirement System

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March 1, 2005

William H. Donaldson, Chairman  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

Re: File No. 4-497, Sarbanes-Oxley Act of 2002, Section 404, Management Assessment of Internal Controls

Dear Chairman Donaldson:

The Ohio Public Employees Retirement System (“OPERS”) is a more than \$64.5 billion fund serving three quarters of a million Ohioans, making the system the 10<sup>th</sup> largest state pension fund in the U.S. We are writing in response to the Securities and Exchange Commission’s request for written feedback from investors and others regarding the implementation of Section 404 of the Sarbanes-Oxley Act of 2002.

Congress enacted the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”) after a series of large-scale business failures that began with Enron in 2001. Sarbanes-Oxley represents a significant step forward in protecting investors by improving the accuracy and reliability of corporate disclosures and financial statements. As an integral part of Sarbanes-Oxley, Section 404, Management Assessment of Internal Controls, requires companies to include in their *annual* reports filed with the Securities and Exchange Commission (“SEC”) a report on management’s assessment of the effectiveness of internal controls over financial reporting and also requires the auditor to attest to and report on the internal control assessments made by management.

With the goal of achieving reliable financial statements, the auditor is required to test the design and operating effectiveness of internal control to assess control risk under Section 404. However, audit quality will diminish if control risk is assessed too low by the auditor for reasons such as inadequately testing controls, using insufficient sample sizes, relying too much on evidence from prior audits, and dismissing test exceptions without adequate follow-up and examination. Yet, critics of Sarbanes-Oxley are putting pressure on the SEC to adopt a new interpretation of Sarbanes-Oxley that would permit such short cuts for the purpose of reducing company costs regardless of the negative impact such short cuts would have on audit quality and investors. OPERS believes that the majority of costs associated with the implementation of Section 404 will be incurred during the first year of compliance and that company costs should substantially reduce thereafter.

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According to Compliance Week, last year more than 580 companies announced they found weaknesses or deficiencies in their internal controls. However, companies have been required to maintain a system of internal controls since 1977 when Congress enacted the Foreign Corrupt Practices Act. Despite this previous requirement, many companies have continued to rely on outdated or non-comprehensive financial-management infrastructures that cannot provide accurate information in a timely manner resulting in earnings misses.

A recent study by Parsons Consulting found that the percentage of companies in the S&P 500 stock index that *missed analysts' earnings* per share projections fell to under 30% in the third-quarter of 2004, which is *an eighteen-month low* that indicates Sarbanes-Oxley is working as Congress intended. In addition, the 2004 Oversight Systems Financial Executive Report on Sarbanes-Oxley Compliance found that 57% of financial executives surveyed believe that compliance with Sarbanes-Oxley was a good investment for stockholders and 79% report having stronger internal controls as a result of Sarbanes-Oxley compliance.

Investors are just starting to realize the benefits of Sarbanes-Oxley. We urge the SEC to leave Sarbanes-Oxley intact and reject any proposal by its critics to weaken this important investor protection legislation, including Section 404. Should you need any additional information, please contact Cynthia L. Richson, OPERS Corporate Governance Officer, at 614.222.0398.

Sincerely,



Laurie Fiori Hacking  
Executive Director

cc: Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Cynthia A. Glassman  
Commissioner Harvey J. Goldschmid  
Alan L. Beller, Director, Division of Corporation Finance  
Martin P. Dunn, Deputy Director, Division of Corporation Finance  
Donald T. Nicolaisen, SEC Chief Accountant