



## Ohio Public Employees Retirement System

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Sent via e-mail: rule-comments@sec.gov

March 8, 2005

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

Re: File Nos. S7-39-04 and S7-40-04, Proposed Changes to SROs

Dear Secretary Katz:

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 comments regarding its concept release (File No. S7-40-04) concerning self-regulation of the securities markets and proposed rules that would mandate new governance standards (File No. S7-39-04) for all self-regulatory organizations (“SROs”) that includes a requirement for greater separation of regulatory and operational functions.

The rules that apply to the U.S. capital markets should promote honest and ethical behavior to ensure that competition is as fair and efficient as possible. OPERS applauds the efforts of the New York Stock Exchange (“NYSE”), the Nasdaq stock market and other exchanges to foster high quality and cost effective marketplaces.

Investors have long questioned the appropriateness of the stock exchanges acting as both a marketplace and a regulator. These concerns are magnified by the SROs histories of maintaining outdated listing standard requirements and by press reports suggesting that some exchanges have been lax in their duty to oversee member firms.

These oversight failures provide solid evidence of the need to reform the SRO models.

Regarding the proposed rulemaking release (S7-39-04):

1. OPERS supports requiring SRO boards to be composed of a majority of independent directors and audit, compensation, nominating and regulatory committees to be all-independent. OPERS agrees that the definition should apply to relationships between SRO directors and immediate family members and SROs, SRO affiliates, member firms and listed companies.

In addition, we encourage the SEC to strengthen its definition of independence in accord with the independent director definition adopted by the Council of Institutional Investors (see [www.cii.org](http://www.cii.org)). Consistent with the position of the Council of Institutional Investors (“CII”), OPERS also believes that SROs should be banned from making campaign or charitable contributions to entities affiliated with SRO directors or family members as these types of contributions may create conflicts-of-interest that have the ability to weaken the effectiveness of oversight of the exchanges.

OPERS also believes the SEC should require public disclosure of all links between a director/immediate family member and the SRO, any SRO affiliates, listed companies, member firms and governmental agencies responsible for the oversight of the SRO. Greater transparency in this area would provide investors with the opportunity to make their own assessments of a director’s independence.

2. The “fair representation” requirement is of concern if an SRO board has regulatory powers. Consistent with the position advocated by CII, OPERS does not believe that broker-dealers and specialists should nominate and select directors responsible for their oversight. OPERS agrees that SRO boards should include directors representing issuers and investors. However, we believe such representation should be meaningful, and we question whether having “at least one” such director will ensure meaningful representation of these valuable viewpoints. OPERS also believes the SROs should be required to follow a publicly disclosed process to solicit nominations from the investing public and the issuer communities.
3. OPERS urges the SEC to adopt a tougher approach to the independent chair issue by incorporating the OPERS and CII policies, which endorse the separation of the chair and CEO roles, except in limited situations. If the Chair and CEO roles are combined, the board should disclose the reasons why it decided to keep the two roles combined, how the combined role is in the best interests of shareholders, and the name of the independent Lead Director.
4. OPERS supports requiring SROs to follow the same disclosure and governance standards required of listed companies.
5. With respect to separating the commercial and regulatory functions of the SROs, OPERS remains concerned about structures similar to the one in place at the NYSE, where broker dealers and specialists have the authority to select the individuals responsible for their oversight. Although the NYSE considers its current model to be “transitional,” we urge the NYSE and SEC to move forward with exploring alternative models. Another concern is the funding of regulatory operations. Funding is of critical importance and a mechanism needs to be put in place to ensure independent funding of regulatory programs.

Jonathan G. Katz, Secretary

March 8, 2005

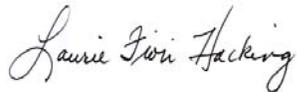
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6. Another important issue not addressed by the proposed rule is the 21-day comment period for most SRO releases. This is too short a period of time to solicit meaningful feedback and we respectfully request that the SEC lengthen the comment period.

OPERS applauds the SEC for acknowledging some of the problems with self-regulation. Although OPERS does not endorse any particular model, it is clear that the additional reforms are needed at the NYSE. OPERS urges the SEC to continue its course as outlined in the concept paper, with the goal being to eliminate self-regulation by the securities exchanges. The SEC should establish a timeframe for achieving its reform goals and open up the process through public roundtables and other forums to encourage investor participation.

As an overarching principle, the system should ensure that all exchanges meet or exceed established investor protection best practices. Should you need any additional information, please contact Cynthia L. Richson, OPERS Corporate Governance Officer, at 614.222.0398.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Fiori Hacking".

Laurie Fiori Hacking  
Executive Director