Jack Ehnes
Chief Executive Officer

CALSTRS
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California State Teachers'
Retirement System
7667 Folsom Boulevard
Post Office Box 15275
Sacramento, CA 95851-0275

916.229.3706 Tel
www.calstrs.com

November 30, 2004

Mr. Jonathan Katz
Secretary, Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549

Dear Secretary Katz:

RE: FILE NO. SR-NYSE-2004-41

Just a little over a year ago, I wrote a comment letter to you on behalf of the California State Teachers' Retirement System (CalSTRS) regarding file number SR-NYSE-2003-34. That comment letter was written in response to CalSTRS' concerns regarding the actions of the New York Stock Exchange (NYSE) with respect to its own governance; this letter concerns the NYSE's proposal to weaken the independent director standards for the companies that are listed on its exchange. CalSTRS opposes the proposed rule change submitted by the NYSE to amend the listing standards for companies listed on the Exchange. Specifically, we oppose both the look-back period, as it relates to compensation and the definition of family relationships to be used in determining director independence.

We believe that a five-year (fiscal) is more appropriate for determining director independence regarding payments than the rolling 12-month period contained in the Exchange's proposal. If at any time during this five-year period, the indicated director(s) received payments that raise questions of independence, the director(s) would not be considered independent; that distinction does not mean that the director(s) could not serve on the full board, but he or she would be removed from consideration for any of the review committees (audit, compensation and nominating). We believe that having to recalculate the relevant time period is burdensome to both investors and corporations; this burden does not seem to be offset by any benefit of greater clarity or transparency, so we recommend that the period be changed to standard that offers greater certainty and relevance. CalSTRS uses a five-year look-back in its determinations of director independence and believes that this period strikes the right balance between being too short or too long, so that it is rendered meaningless. Additionally, the five-year market cycle is still a relevant benchmark and is long-term enough to establish relevance. The current proposal describes the benchmark period as being "during any twelve-month period within the last three years." In our view, this suggests that the proposed period starts again with each new month trailed by the 11 months preceding it; payments received in drop-off months would be masked in this rolling period calculation, thus avoiding the clarity and transparency that appears to be the intent of the proposal. This calculation appears needlessly complex and expensive to us and seems almost certain to result in less disclosure to investors than the spirit of these reforms intended. Moreover, the five-year look-back would seem to give independent directors better tools to encourage excellence throughout the whole board. CalSTRS believes that independence and independent directors are the hallmarks of an accountable corporate governance and free market system; and that any proposals for changes should affirm the intentions of honest, competent, ethical directors and not turn them into abacus recorders to evidence those abilities.

We do not support the proposals that seek to define independence with respect to director ties to the outside auditor. It seems ironic to us that the original recommendations that were made by the Corporate Accountability and Listing Standards Committee (the Committee) in June 2002 are now proposed to be weakened by the NYSE; the Committee made its recommendations after a thorough review that invited and received considerable input from investors and companies. The Committee specifically recommended a five year look-back period for determining independence. Additionally, the determinations regarding familial relationships were more suited to managing the conflict of interests that can occur than the current definition. The relationship between parent and child extends well beyond the residence of the parties or the achievement of adulthood by the child. The proposed change would seem to allow parents, children, as long as they are not minors, siblings, in-laws of directors to be excluded when independence is measured. Just as the rolling 12-months time period seems unduly complex and may have the consequence of less transparency and less accountability not more, this new change would seem to gut the independence standards of the honest, competent, ethical directors and encourage less protection in the management of conflicts in the corporation. Certainly we understand, as did the Committee, that prohibitions and criteria alone cannot guarantee that directors will also accord primacy to the honest, competent, ethical protection of shareholders' interests, but we do believe that fact argues for stronger standards, not weaker ones.

Approximately 80 percent ($42 billion) of our domestic holdings are represented by companies that are listed on the NYSE. In addition, it is fair to say that the NYSE represents the leading United States companies in terms of market capitalization, sales revenue, profit or physical size. We believe that this leadership position means that the institutions who have an interest in this market must set gold standards when it comes to corporate governance; in our view, the NYSE should not seek to mimic the lowest conflict of interest standards in the market place, but should work to raise all such standards to the highest level.

The scandals of the last several years were attributable, at least in part, to the failure of directors to exercise the highest standards when conflict of issues arose. The audit committee and the persons who serve it, from directors to accounting professionals, have been the greatest examples of this failure and the costs to investors, employees and communities have been enormous. We see no reason that the health of the financial markets and correspondingly, the health of the plan participants like CalSTRS members and beneficiaries should accept a weakened independence standard for any of the review committees of corporations, but especially not for the audit committee. The failures of the market over the past several years have resulted not only in massive portfolio losses to CalSTRS, but also a massive redirection of our limited resources. The CalSTRS staff and its external partners, such as investment managers, consultants, and lawyers have all devoted a considerable amount of time to the restoration of investor confidence in the securities markets. We do not believe that the proposed standards adequately consider the events of the last several years in the markets and the resources that have been expended to restore investor confidence in the markets.

Please feel free to contact me to discuss this matter further.

Sincerely,

Jack Ehnes
Chief Executive Officer