# Ohio Retirement Systems


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Sent via e-mail to: pubcom@nasd.com

December 9, 2004

Ms. Barbara Z. Sweeney
Office of the Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1500

Re: 04-83: Whether to Propose New Rule that would address Conflicts of Interest regarding Fairness Opinions

Dear Ms. Sweeney:

The Ohio Retirement Systems (ORS) collectively manage $134 billion in assets and serve 1.5 million Ohioians. We are writing in support of the NASD request for comment on whether it should propose a new rule that would establish procedures and disclosure requirements for investment bankers to disclose material conflicts of interest when providing fairness opinions in corporate control transactions. We strongly urge the NASD to propose a new rule to address the important issue of fairness opinions and conflicts of interests, which is not explicitly addressed by Sarbanes-Oxley or any other related legislation, regulation or exchange listing standard.

Ideally, fairness opinions should consist of an independent appraisal by outside experts, who are not connected to the transaction, to ensure that the valuation is fair to shareholders. However, fairness opinions are frequently prepared by the same investment bank that is driving the transaction and also stands to financially benefit when the transaction is completed by receiving millions of dollars in fees. At a minimum, better disclosure of material conflicts of interests should be required so that shareholders will be in a better position to judge the weight it may give to any particular valuation depending on whether or not it is provided by a truly independent outside expert.

In addition, the NASD should require due diligence beyond the mere examination of public filings, which should also include an examination and disclosure of the financial rewards that senior company executives are eligible to receive when the transaction is completed. The terms and conditions of such change in control clauses in executive employment contracts should be disclosed to shareholders as these clauses can result in millions of dollars in payments to executives when the deal is consummated. Better disclosure of this critical information will put shareholders in a more informed position to analyze the key drivers of the proposed transaction to evaluate whether or not the transaction is likely to result in building long-term shareholder value.

We applaud the NASD for addressing this important issue. Should you need any additional information, please feel free to contact us.

Sincerely,

Richard A. Curtis

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