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Before the Department of Treasury Advisory Committee on the Auditing Profession
"NASDAQ OMX Views of the May 5, 2008 Draft Report on the Auditing Profession"

Thank you Chairman Levitt and Chairman Nicolaisen. NASDAQ OMX appreciates your invitation to address some important issues that affect financial reporting in today's complex capital market system. In particular, NASDAQ OMX is pleased to give our views on the Competition and Concentration Section of the May 2008 draft report.

About NASDAQ OMX Group:

The NASDAQ OMX Group, Inc. is the world's largest exchange company. It delivers trading, exchange technology and public company services across six continents, and with over 3,900 companies, it is number one in worldwide listings among major markets. NASDAQ OMX Group offers multiple capital raising solutions to companies around the globe, including its U.S. listings market; the OMX Nordic Exchange, including First North; and the 144A PORTAL Market. The company offers trading across multiple asset classes including equities, derivatives, commodities, structured products and ETFs. NASDAQ OMX Group technology supports the operations of over 60 exchanges, clearing organizations and central securities depositories in more than 50 countries. NASDAQ OMX Group operates exchanges in the United States, Helsinki, Copenhagen, Stockholm, Iceland, Tallinn, Riga, and Vilnius.

NASDAQ OMX is a central player in the global capital markets, a public company with all the responsibilities of financial reporting imposed on our listed companies and a regulator of public companies as the enforcer of comprehensive listing standards. In all of these roles, we rely on the work of auditing firms, corporate board members and corporate executive managers. Hard working Americans – investors, through pension funds, mutual funds, direct holdings and many avenues -- direct their capital based on the numbers they trust because of auditing systems and controls. There is much at stake to get it right. As we have seen time and again, the very functioning of the marketplace can be brought into question when auditor conflicts arise, management behavior is called into question or board members wilt from their very serious responsibilities.

As the Advisory Committee points out, in the post Enron/Sarbanes Oxley world, there are four accounting firms that perform:

> 98% of the 1500 largest public company audits,
> 92% of the audits of companies with annual revenues between $500 million and $1 billion; and
> 22% of companies with revenues of $100 million or less.

Thus, while concentration in the smaller/mid-size public company realm seems acceptable, larger company audit work appears to be locked into the realm of the big four accounting firms.

In reality, this concentration is a concern. The very tangible possibility of the big four becoming the huge three is only one lost firm away from reality. As the Advisory Committee points out, civil or criminal litigation, regulatory action or even unforeseen economic events can bring down an auditing firm – and we have very recent examples of that occurring in real life.

The Advisory Committee Draft sets forth some good recommendations that NASDAQ OMX believes will incrementally help the current situation. The draft recognizes both long and interim term goals aimed at bolstering competition, providing enhanced transparency to the audit engagement and buttressing against another loss of one of the market's large players.

Discussion of Recommendations:

Recommendation 1: Reduce barriers to the growth of smaller auditing firms consistent with an overall policy goal of promoting audit quality. Because smaller auditing firms are likely to become significant competitors in the market for larger company audits only in the long term, the Committee recognizes that Recommendation 2 will be a higher priority in the near term.

Recommendation 1 suggests that smaller firms can be incubated towards joining the big four as globally staffed experienced firms that can handle the demands of the most complicated audit clients. The Advisory Committee wisely set the expectation that this recommendation would have a long-term timeline. The most interesting intermediate recommendation to affect this change is requiring public companies to disclose in annual reports and proxy statements any provisions in agreements with third parties that limit auditor choice.

As the Committee noted, within the IPO arena, some participants such as lenders, investment bankers and credit rating agencies insist that some companies be audited by a big four audit firm. In many cases, these requirements are driven by the desire to have an IPO appear to the markets with a "Good Housekeeping Seal of Approval." Functionally, this practice, over time, severely limits competition among audit firms. The idea to require disclosure of this kind of third party requirement may at least add transparency of participants whose insistence takes the form of a requirement. However, the root cause remains and it will be interesting to see how often the disclosure is used. Ultimately the real or imagined negative perception of the market place needs to be measured so root causes can be identified and change can occur.

Recommendation 2: Monitor potential sources of catastrophic risk faced by public company auditing firms and create a mechanism for the preservation and rehabilitation of troubled larger public company auditing firms.

Recommendation 2 deals with the preeminent issue facing the auditing industry; the "boogeyman" scenario -- that is how do we prevent the big four from becoming the big three? The Advisory Committee again correctly advises that the PCAOB monitor for all potential sources of catastrophic risk involved in the audit exercise and that mechanisms for the PCAOB/SEC to assist a troubled firm be developed. Accounting firms, at the end of the day, rely on the credibility of their name and its brand. As we saw with Arthur Anderson, an entire firm can melt away when clients flee a damaged name brand. With the global nature and importance of the remaining big four firms, such a catastrophe today would certainly carry global negative impact. Like we have seen in the banking industry, government regulators have a role and responsibility in crisis situations. The regulators, industry and Congress need to examine, in simulated real time, how they would handle another crisis of confidence with a large auditing firm. Perhaps structural changes within the firms could be pursued to 'firewall' the damage and prevent a firm wide melt down. I am sure that the majority of partners at Arthur Anderson were capable and reputable but they paid the price for those that were not. Could the market place sustain another loss? I would think not. The SEC and PCAOB should work to fully understand this question.

Recommendation 3: Recommend the PCAOB, in consultation with auditors, investors, public companies, audit committees, boards of directors, academics, and others, determine the feasibility of developing key indicators of audit quality and effectiveness and requiring auditing firms to publicly disclose these indicators. Assuming development and disclosure of indicators of audit quality are feasible; require the PCAOB to monitor these indicators.

Recommendation 3 raises an important issue for public debate and regulator consideration. This portion of the Advisory Committee report seems well intentioned but still a grandiose undertaking. The challenge continues to be consistent and quality execution by a multitude of audit teams that span across the globe. The accounting rules have become very complex. Perhaps the focus should be on how these large firms perform quality control and quality assurance so that under or over auditing is identified through self awareness vs. through regulatory oversight of specific audits. An important concern in the global marketplace is that U.S. listed companies are over audited enduring needless cost. Any measurement should include determining how firms can control this increasingly costly problem.

While enhanced disclosure is a fitting objective, defining a set of metrics as indicative of a good audit could in the long run prove counterproductive. We would hate to see an audit industry that tried to mange itself towards some set of preconceived metrics that might sway them from the good goals of serving investors and alleviate them of their professional auditing responsibilities.

Recommendation 4: Promote the understanding of and compliance with auditor independence requirements among auditors, investors, public companies, audit committees, and boards of directors, in order to enhance investor confidence in the quality of audit processes and audits.

The draft report in recommendation 4 touches on the important issue of making sure that all stakeholders in an audit understand their role and the important position of the auditor through efforts to clearly delineate the independence requirements placed on the auditor and protect the auditor from conflicts. NASDAQ OMX believes the compilation of SEC and PCAOB independence requirements into a web accessible environment would be a great asset in this area of concern. NASDAQ OMX also believes that auditor skepticism throughout an auditor's career is the keystone, all incentives and disincentives should be focused on its achievement.

Recommendation 5: Adopt annual shareholder ratification of public company auditors by all public companies.

As the Advisory Committee understands, shareholder approval of auditors is a very common and accepted practice. NASDAQ OMX, on our own accord, submits its auditor to the shareholders for approval. NASDAQ OMX is interested in this idea as a potential listing standard improvement. In considering this idea, we believe that there would need to be a uniform standard across all listed markets and the requirement should be carefully structured so that a company could, if it felt the need, make a change in their auditors between annual meetings. In our early discussions seeking input on this issue, with a range of companies, it has been suggested that this recommendation may provide a benefit beyond that discussed in the Draft Report; we understand that requiring a vote on auditor selection may benefit, in particular, smaller public companies that may experience difficulty in achieving a quorum at their annual meetings -- particularly in the context of some recent actions to limit broker held share voting.

Recommendation 6: Enhance regulatory collaboration and coordination between the PCAOB and its foreign counterparts, consistent with the PCAOB mission of promoting quality audits of public companies in the United States.

NASDAQ OMX supports enhanced collaboration. As previously stated, NASDAQ OMX operates exchanges in many jurisdictions and we list companies from across the globe on our U.S. and other platforms. We understand and support efforts that might help the global capital markets operate efficiently and effectively.

Thank you for the opportunity to testify on this important draft report. I am pleased to answer your questions.