

**U.S. Securities and Exchange Commission
Equity Market Structure Advisory Committee
Trading Venues Regulation Subcommittee Panel**

**Written Statement of Anthony J. Albanese
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My name is Anthony Albanese and I am the Chief Regulatory Officer of the New York Stock Exchange. Prior to joining NYSE, I served as a regulator, running the New York State Department of Financial Services, which regulates the financial services industry in New York.

I appreciate the opportunity to share our views on the Trading Venues Regulation Subcommittee's recent recommendations regarding regulatory consolidation following the implementation of the Consolidated Audit Trail ("CAT"). I will begin today by sharing our thoughts on NYSE market regulation generally and providing an update on the changes at NYSE over the past year after taking back our market-specific surveillance, investigation and enforcement work from FINRA. Then, in the context of the Subcommittee's recommendations, I will provide our thoughts on what cross-market regulation should look like in a post-CAT implementation environment. As I will discuss, we believe that the proposal to create a cross-market regulatory monopoly in the post-CAT world would suppress efficiency and innovation and not serve the markets or investors.

Self-Regulatory Responsibilities of NYSE Exchanges

I will start with a brief overview of regulation at the New York Stock Exchange.

NYSE Group operates the following four registered securities exchanges (together, the "NYSE Exchanges"):

- New York Stock Exchange LLC, which lists cash equity securities and bonds and operates trading platforms for these securities;
- NYSE MKT LLC, which lists cash equity securities and equity options and operates trading platforms for these securities;
- NYSE Arca, Inc., which lists exchange traded funds and equity options and operates trading platforms for these securities and for securities listed on other exchanges; and
- NYSE National, Inc., which will operate a next generation trading platform when it re-commences operations in 2018.

Under the Securities Exchange Act of 1934, each of these registered securities exchanges is required to enforce compliance by its members with exchange rules and certain securities laws. The NYSE Exchanges take this obligation seriously. Our expertise as market operators provides us with a deep understanding of market practices and allows us to keep abreast of new issues and developments impacting market participants. While the NYSE Exchanges' role as a market

operator provides us with a unique ability to regulate our markets and the members trading on them, we also understand that the regulatory function of the NYSE Exchanges must remain independent and separate in order to avoid any potential conflict of interest with commercial concerns.

Independence and Composition of NYSE Regulation

NYSE Regulation is independent from the business at NYSE, both in structure and function. In my role as Chief Regulatory Officer, I report to an independent committee of the NYSE Board, known as the Regulatory Oversight Committee (the “ROC”), the Chair of which is a well-regarded former regulator – Fred Hatfield, former commissioner of the CFTC.¹ The ROC oversees our regulatory responsibilities. It has adopted a policy to provide for the independence of the CRO. Pursuant to that policy, the CRO ensures that non-regulatory exchange personnel do not inappropriately influence any investigation, enforcement or other regulatory action.

NYSE Regulation is comprised of approximately 100 professionals, including lawyers who have served at the SEC and others with regulatory analyst skill sets. NYSE Regulation prioritizes collaboration, cooperation and communication within our team. Our surveillance analysts and investigators, who have extensive industry knowledge, work closely with enforcement lawyers as matters are detected, investigated and, when appropriate, disciplined through formal action. And, the entire team benefits from our proximity to NYSE’s markets and members, which provides us with an in-depth knowledge of existing issues and new developments impacting our Exchanges.

Insourcing Regulation from FINRA

I will now turn to our recent insourcing of regulation at NYSE. Approximately 15 months ago, NYSE brought back our market surveillance, investigation and enforcement functions from FINRA, where they had been handled for five years pursuant to a Regulatory Services Agreement (“RSA”). FINRA was very helpful in the process of insourcing regulation and we very much appreciate all of their efforts in ensuring a smooth transition. FINRA continues to conduct, under an RSA and our oversight, cross-market surveillance, investigations and enforcement for activity that occurs across NYSE and other exchanges.

The decision to insource our regulatory function was largely driven by our belief that a well-regulated market is one of the core responsibilities of operating an exchange. More importantly, we believed that we could conduct this regulatory work in-house more effectively and efficiently than any third party given our in-depth knowledge of our markets and members. Based on our experience over the past year, and as the statistics bear out, this belief was correct. We are completing the investigation and enforcement of single-market cases far more

¹ Each NYSE Exchange board appoints its own ROC, comprised of at least three independent directors.

quickly than before. Since starting our program, we have received numerous compliments about the timeliness and effectiveness of our investigations.

In creating our regulatory program, we spent millions of dollars developing a state-of-the-art real-time surveillance system, which did not exist at FINRA. This real-time system allows us to quickly identify and review potential problems. We believe this is a significant improvement over surveillances being run on a quarterly basis. The real-time nature of our surveillances allows us to work with members to correct issues soon after they occur – rather than addressing them long after the fact. Not only is this a huge benefit in regulating the markets, but it is also more efficient for members who can address questions about potential violations involving current conduct while it is still fresh in people's memories.

Another example of the efficiencies we have gained relates to NYSE Regulation successfully working through the backlog of cases that existed at FINRA at the end of 2015. As we brought back our market regulation program, there were several hundred single-market surveillance matters that had accumulated over time, but had not yet been completed. More than half of the matters were more than a year old and approximately a quarter of them were over two years old. We decided to handle the matters in-house instead of having FINRA complete them. In just six months, our surveillance team was able to complete all the investigations, resulting in numerous disciplinary actions. The results of those investigations are consistent with our surveillance program today.

In sum, in the year since we have moved our regulatory function in-house, the quality of our program has improved significantly. We are surveilling market activity in real-time, completing investigations and disciplinary actions far more efficiently, and communicating more timely and effectively with our regulated members.

Subcommittee Recommendation

I will now turn to the Subcommittee's recommendation before us. The Subcommittee recommends that cross-market investigations and enforcement be centralized in a single SRO in a post-CAT world. We respectfully disagree with that recommendation and believe that it is premature – especially since SROs have not yet had the opportunity to operate under the CAT.

With the establishment of the CAT, each SRO will have access to cross-market data. This new landscape, in turn, would permit any SRO to conduct cross-market investigations. We view this as a positive development, not something to be quashed by a preemptive sanctioning of a single entity as the cross-market regulator.

The Subcommittee's recommendation seeks to provide a regulatory monopoly to a single SRO for cross-market investigation and enforcement, but does not give a compelling rationale, based on evidence, as to why such action is a necessary solution to a problem in the market. While the Subcommittee has raised concerns about regulatory duplication, there is no reason that this could not be addressed through appropriate coordination without providing a single

SRO a monopoly. Moreover, various regulators (such as the SEC, FINRA, the Department of Justice, and state Attorneys General) routinely conduct and coordinate parallel investigations in a way that is efficient, effective and sends a strong regulatory message.

Having regulation conducted by only a single SRO, across multiple exchanges, requires a cookie-cutter, one-size-fits-all approach. By contrast, encouraging multiple exchanges to look at these issues allows for a variety of different approaches developed by the market experts themselves and incentivizes exchanges to adopt better practices. Currently, even using single-market data, exchanges detect and refer cross-market misconduct that would not necessarily be picked up by existing cross-market surveillances. And, we have been innovative in adopting new investigative and enforcement approaches in addressing manipulative activity. In a complex world where sophisticated traders are quickly developing new and evolving trading strategies, having multiple experts looking at this activity from a variety of different angles is far better than limiting any investigation to a single entity.

Providing a single SRO a monopoly over cross-market investigation and enforcement, especially without accountability to and oversight by the exchanges, would significantly reduce incentives for efficiency, creativity, self-improvement and innovation. Moreover, it would take away responsibility for regulating trading from the exchanges, which have the greatest interest in promoting the quality of their markets.

The successful insourcing of regulation at NYSE demonstrates that individual exchanges are uniquely qualified to regulate their markets through surveillance, investigation and enforcement. Since taking over market-specific regulation, the quality of our regulatory program has improved in numerous meaningful ways. Insourcing has yielded many significant benefits, including a reduction in the aging of matters, the prosecution of stronger cases, and the development of a new real-time approach to disruptive activity. This experience counsels against requiring today, even before we have had any experience with the CAT, that all cross-market regulation be performed by a single entity removed from the markets, the exchanges and their members. NYSE and its fellow exchanges are well-positioned to work together to make sure that America's securities markets remain the strongest and fairest in the world.