Janet L. McGinness
Senior Vice President – Legal & Corporate Secretary
Legal & Government Affairs

20 Broad Street
New York, New York 10005
t 212.656.2039 | f 212.656.8101
jmcginness@nyx.com

VIA EMAIL AND FEDERAL EXPRESS

April 29, 2011

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Proposed Rule: *Listing Standards for Compensation Committees*
Release Nos. 33-9199; 34-64149 (March 30, 2011)
File No. S7-13-11

Dear Ms. Murphy:

NYSE Euronext is pleased to submit this letter in response to rules proposed by the U.S. Securities and Exchange Commission to implement Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), which among other things amends the Securities Exchange Act of 1934 (as amended, the "Exchange Act"), to add a new Section 10C setting forth requirements relating to compensation committees of, and compensation advisers to, issuers whose equity securities are listed on a national securities exchange. NYSE Euronext operates three national securities exchanges registered under Section 6 of the Exchange Act, including the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. and NYSE Amex LLC.

We commend the Commission for the approach embodied in the proposed rules, which faithfully reflect the requirements of Section 952 of the Dodd-Frank Act while affording national securities exchanges latitude to adopt rules tailored to the diverse constituents they oversee. We encourage the Commission to follow this approach when adopting final rules, and to allow each exchange the flexibility to adopt rules that conform to the requirements of the Dodd-Frank Act but that are appropriately crafted for that exchange's cohort of listed issuers. Our comments on the proposed rules follow.

1. Commission approval of exchange rules

Proposed rule 10C-1(a)(4)(i) would require each national securities exchange to provide the Commission with proposed rules that comply with the Commission's final rules, no later than 90 days after publication of the Commission's final rules in the Federal Register. Under proposed rule 10C-1(a)(4)(ii), each exchange would be required to "have rules or rule amendments that comply with [the final rules] approved by the Commission no later than one year after publication of [the final rules] in the Federal Register."

We believe the 90-day deadline in proposed rule 10C-1(a)(4)(i) should be adequate to formulate and submit proposed rules to the Commission. However, we do not believe exchanges can be under an obligation to have rules approved by the Commission within any set timeframe, because approval by the Commission or its staff acting pursuant to delegated authority is not something an exchange can control. If the Commission believes that specific timing requirements beyond the initial 90-day deadline should be incorporated into rule 10C-1(a)(4), we suggest that exchanges be required to respond within 90 days to any written comments provided by the Commission or its staff on the initial submission or any amended submission required by rule 10C-1(a)(4)(i). We believe this would be consistent with the mandate of Section 10C(f)(1) of the Exchange Act, which requires the Commission to have rules in place no later than 360 days after the enactment of the Dodd-Frank Act, but does not further specify when the exchange rules contemplated by Section 10C must become effective.

2. Listed company implementation

We believe that an exchange should be authorized to provide its listed companies a transition period to come into compliance with the exchange's new rules required by rule 10C-1. Issuers will need time to determine whether their compensation committee members are independent under the rules and, if necessary, recruit qualified replacements for any members who are not. In general, we believe that an exchange should be able to permit an issuer to have at least until its next annual meeting to implement any necessary changes; and if the next annual meeting comes within a relatively short time after Commission approval of the exchange's rules (e.g., within six months), the exchange should be permitted to allow the issuer an additional period of time in order to achieve compliance. By analogy, when Section 303A (Corporate Governance Standards) of the Listed Company Manual ("LCM") of the NYSE became effective on November 4, 2003, the NYSE's transition rule required listed company compliance by the earlier of the company's first annual meeting after January 15, 2004, and October 31, 2004. Exchanges should be permitted the flexibility to adopt similar transition periods for the rules contemplated by Section 10C of the Exchange Act.

Similarly, we believe that an exchange should have the flexibility to permit an issuer listing in conjunction with its initial public offering to phase-in its independent compensation

committee under the exchange rules to be adopted pursuant to rule 10C-1. By analogy, a newly public NYSE-listed company is not required to have fully independent audit, nominating and compensation committees at the time of its IPO, and instead is permitted to have only one independent member on each committee at the time of listing and a majority of independent members within 90 days of listing (or effectiveness of the IPO registration statement in the case of the audit committee); fully independent committees are not required until one year after listing or effectiveness. See NYSE LCM § 303.00 – *Introduction – Compliance Dates* and rule 10A-3(b)(iv)(A) under the Exchange Act.

We believe the Commission may explicitly grant exchanges the authority to devise transition periods under both Section 10C(f)(3)(A) of the Exchange Act, which provides that the rules of the Commission shall permit an exchange to exempt a "category" of issuers from the exchange rules contemplated by Section 10C (as further discussed below), and Section 10C(f)(2) of the Exchange Act, which provides that the Commission's rules under Section 10C "shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects" that would otherwise prohibit the issuer from listing or continued listing on a national securities exchange. In this regard we believe it would be helpful for the Commission to clarify, in the adopting release or in the rule text, that the authority exchanges would have under proposed rule 10C-1(a)(3) to provide issuers with an opportunity to cure defects is not limited to situations where a previously independent compensation committee member loses his or her independent status for reasons outside his or her control.

3. Exempted issuers

Section 10C(a)(1) of the Exchange Act exempts specified categories of listed issuers from the compensation committee independence requirements under Section 10C, including controlled companies, limited partnerships, companies in bankruptcy proceedings, open-ended management investment companies registered under the Investment Company Act of 1940 (as amended, the "Investment Company Act") and foreign private issuers that disclose why they do not have independent compensation committees. These categories are generally consistent with the categories of issuers that are exempt from the compensation committee requirements of NYSE LCM § 303A.05, except that NYSE LCM § 303A also explicitly exempts closed-end management investment companies registered under the Investment Company Act, passive business organizations in the form of trusts (such as royalty trusts) and derivatives and special purpose securities. See NYSE LCM § 303.00 – *Introduction – Equity Listings*.

Since both closed-end and open-end management companies are subject to pervasive federal regulation under the Investment Company Act, and do not have their own executive employees but rely upon the services of an adviser regulated under the Investment Advisers Act of 1940, we do not believe that the omission of closed-end management investment companies from the list in Section 10C(a)(1) of the Exchange Act should be taken to imply

that an exchange could not, pursuant to the Commission's rules required by Section 10C(f)(1), exempt closed-end management investment companies from the compensation committee independence rules contemplated by Section 10C. Similarly, we believe that the express exclusion of certain types of issuers in Section 10C(a)(1) should not prevent an exchange from exempting other types of issuers, such as passive business organizations, derivatives or special purpose securities, from the scope of rulemaking to be required by rule 10C-1, provided the exchange has carefully weighed and articulated the benefits and drawbacks of doing so.

In this regard we believe it would be helpful for the Commission to clarify, in the adopting release or in the rule text, that the general exemptive authority exchanges would have under proposed rule 10C-1(b)(5) is not limited to "smaller reporting issuers." Section 10C(f)(3)(A) of the Exchange Act states that the rules of the Commission shall permit an exchange to exempt a "category" of issuers from the exchange rules contemplated by Section 10C. Although Section 10C(f)(3)(B) states that an exchange is to consider the potential impact on smaller reporting issuers in determining appropriate exemptions, nowhere does Section 10C say that such an impact is the only factor an exchange may consider. We do not believe Congress's direction to the Commission and the exchanges to be mindful of increasing regulatory burdens on smaller companies in any way implies that exchanges should not have the flexibility to exempt other categories of issuers when circumstances warrant.

4. Minimum independence standards

Proposed rule 10C-1 does not establish minimum independence standards and instead would permit each exchange to establish its own independence criteria, provided the exchange considers the relevant factors specified in Section 10C relating to affiliate relationships and sources of compensation. We believe this approach is both consistent with Section 10C and preferable to the Commission itself establishing independence standards, which have historically been developed by the listing exchanges and with which the listing exchanges have long familiarity and expertise. Although Section 10A of the Exchange Act established minimum standards for audit committee independence, as the Commission noted with respect to compensation committees, in Section 10C Congress "only required that the exchanges '*consider* relevant factors' (emphasis added), which include the source of compensation and any affiliate relationship, in developing independence standards for compensation committee members." (*Listing Standards for Compensation Committees*, Rel. Nos. 33-9199; 34-64149 (Mar. 30, 2011), 76 Fed. Reg. 18966, at 18970.)

We do not believe it would be appropriate for the Commission to specify additional factors that exchanges must consider in developing compensation committee independence standards, beyond those set forth in Section 10C. In the proposing release, the Commission has solicited comment on whether exchanges should be required to include "employment of a director at a

company included in the listed issuer's compensation peer group" as a mandatory factor for consideration. (76 Fed. Reg. at 18971.) We believe that many listed companies would find such an independence standard unduly restrictive of the pool of board candidates, because an issuer's compensation peer group may be composed of a wide cross-section of companies included in a broad market index based on market capitalization or annual revenues. While each exchange will have the opportunity to consider whether a director's employment at a compensation peer group company impinges on independence, we are concerned that including this in the final rule as a mandatory factor that exchanges must consider would be understood by exchanges (and indeed many boards of directors) as a Commission determination that such a relationship compromises independence, effectively preempting the review that exchanges will be required to undertake and report on pursuant to rule 10C-1(a)(4)(i).

* * *

We appreciate the opportunity to comment on the proposed rules and look forward to working with the Commission on the final rules and their implementation. Please feel free to contact the undersigned at (212) 656-2039 with any questions regarding our comments.

Very truly yours,