American Federation of Labor and Congress of Industrial Organizations

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Sent via e-mail to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. St., N.E.
Washington, D.C. 20549-1090

Re: Release No. 34-68011; File No. SR-NYSE-2012-49

Dear Ms. Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing regarding the proposed rule changes submitted by the New York Stock Exchange LLC ("NYSE") as required by Securities and Exchange Commission's Rule 10C-1 under the Securities Exchange Act of 1934. Rule 10C-1 requires the national securities exchanges to adopt listing standards for the independence of compensation committees and compensation consultants.

The AFL-CIO is the largest labor union federation in the United States and represents more than 12 million union members. Union-sponsored pension and employee benefit plans hold more than $480 billion in assets. Union members also participate in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers.

In our view, too many corporate directors have significant personal, financial or business ties to the senior executives that they are responsible for compensating. Such conflicts of interest preclude an "arms-length" negotiation process between compensation committees and senior executives. We believe that a lack of director independence helps explain escalating pay levels for chief executive officers.

According to the AFL-CIO's Executive Paywatch website, the average CEO pay of companies in the S&P 500 Index rose 13.9 percent to $12.94 million in 2011.

Improved listing standards to require compensation committee independence will generate significant benefits for companies, investors and the general public by helping to restrain runaway executive pay levels. Excessive executive pay comes at the cost of companies and their shareholders, and high ratios of CEO-to-worker pay can hurt employee morale and productivity. In addition, high compensation levels can encourage senior executives to take excessive risks to achieve performance goals.

We believe that the Commission should seek to strengthen the bright line director independence criteria of the proposed NYSE listing standards. Although boards are supposed to evaluate all potential conflicts of interest, too often boards rely exclusively on bright line independence standards. These bright line standards should seek to encompass any business, financial, and personal relationships between directors and senior executives that create the appearance of a conflict of interest.

We note that the corporate governance guidelines of the Council of Institutional Investors provide a basic definition of who is an independent director: "An independent director is someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation."

The NYSE proposal falls short of the requirement under SEC Rule 10C-1 to consider other "relevant factors," in determining the independence of compensation committee members. In particular, Rule 10C-1 requires the exchanges to consider a director's source of compensation, including director fees. High director fees relative to other sources of income can compromise director objectivity. Highly paid directors also may be more inclined to approve large executive pay packages.

In our view, the relevant factors for determining who is an independent director should include related party transactions that are required to be disclosed under Item 404(a) of Regulation S-K. For example, we believe that the compensation of a director's immediate family member in excess of $120,000 per year — not just as an executive officer, as noted in the NYSE's commentary to Section 303A.02(b)(ii) — should disqualify the director from service on the compensation committee.

The proposed NYSE listing standards should clarify that a single "relevant factor" may result in the loss of independence. The standards should also be strengthened to require that boards of directors evaluate the "personal or business relationships between members of the compensation committee and the listed issuer's executive officers" as suggested by SEC Rule 10C-1. We encourage the Commission to require the disclosure of nature of such relationships in company proxy statements.

We appreciate the opportunity to comment on this rulemaking. If the AFL-CIO can be of further assistance, please contact me at (202) 637-5152.

Sincerely,

Brandon J. Rees
Acting Director,
Office of Investment

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