

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President

25 Louisiana Avenue, NW  
Washington, DC 20001



KEN HALL  
General Secretary-Treasurer

202.624.6800  
www.teamster.org

November 5, 2012

**Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

**Via U.S. Postal Service**

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

*Re: Release No. 34-68013 File No. SR- NYSE-2012-49*

Dear Secretary Murphy:

On behalf of the International Brotherhood of Teamsters (“Teamsters”), I am pleased to submit these comments regarding the rule changes proposed 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 International Brotherhood of Teamsters represents the retirement security of roughly 1.4 million active and 600,000 retired members. Teamsters-affiliated pension and benefit funds have more than \$100 billion in equity assets invested in the capital markets.

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 undermine what should be an “arms-length” negotiation process between compensation committees and senior executives. These conflicts, we believe, have contributed to escalating

Ms. Elizabeth M. Murphy  
November 5, 2012  
Page 2

compensation levels for executives as well as executive pay structures that reward poor performance and excessive risk. The average CEO pay of companies in the S&P Index rose 13.9 percent to \$12.94 million in 2011 according to the AFL-CIO's Executive Paywatch website.

We believe that improved listing standards that require true compensation committee independence will generate significant benefits for companies and investors by helping to restrain runaway executive pay. High ratios of CEO-to-worker pay, we believe, also hurts employee morale and productivity.

We urge the Commission 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, they often rely exclusively on bright line independence standards. That is why it is essential that these bright line standards encompass any business, financial, and personal relationships between directors and senior executives that create the appearance of a conflict of interest.

The Council of Institutional Investors provides this basic definition of 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."

Unfortunately, we find that the NYSE proposal falls short of the requirement under the Securities and Exchange Commission 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.

The relevant factors for determining an independent director should also 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

Ms. Elizabeth M. Murphy  
November 5, 2012  
Page 3

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 urge the Commission to require the disclosure of nature of such relationships in company proxy statements.

The Teamsters appreciate the opportunity to comment on this rulemaking. If we can be of further assistance please do not hesitate to contact me, Carin Zelenko, Director, International Brotherhood of Teamsters, Capital Strategies Department, at (202) 624-8100 or [czelenko@teamster.org](mailto:czelenko@teamster.org).

Thank you for the opportunity to present our views on this important matter.

Sincerely,



Carin Zelenko  
Director  
IBT Capital Strategies Department

CZ/mj