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Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE Washington, DC 20549-1090

Re: Release No. 34-75288; File No. SR-NYSE-2015 27; Proposed Rule Change Amending the Eighth Amended and Restated Operating Agreement of the Exchange to Establish a Regulatory Oversight Committee as a Committee of the Board of Directors of the Exchange and Make Certain Conforming Amendments to Exchange Rules

Dear Mr. Field:

I write briefly in response to the letter provided by Ms. Redding at the NYSE ("NYSE Letter").[1]

The NYSE Letter misstates a number of positions taken in my original letter.[2] With respect to the appropriateness of comparing the Proposal to other exchanges, the NYSE Letter essentially ignores the issue. The NYSE Letter simply states that it is "subject to the same obligations and requirements under the Act as other national securities exchanges". The statement seeks to equate the actual role of the NYSE in the regulatory process with all registered national securities exchanges, even apparently the smallest.

The contention completely ignores the actual and functional differences in the regulatory role of the Exchange compared with other exchanges.[3] Rather than ignore the differences, the

[1] Capitalized terms in this letter are defined in my earlier letter, available at http://www.sec.gov/comments/sr-nyse-2015-27/nyse201527-1.pdf

[2] As an example, the NYSE Letter states: "Professor Brown states that, with the exception of the Chief Executive Officer, the NYSE Regulation board of directors is made up of independent directors, and that the Operating Agreement [of the Exchange] does not impose a similar requirement. This assertion is incorrect." As the NYSE Letter notes on page 7, however, "[t]he Exchange board is only required to have a majority of independent directors." Thus, in fact, the Operating Agreement for the Exchange does not, in contrast with the bylaws of NYSE Regulation, require that all directors be independent, excepting only the CEO. *See also* notes 5 & 7 *supra*.

[3] For example, as a practical matter, it is the Exchange that determines the reimbursement charges for the forwarding of materials to shareholders. *See* Section 402.10 of the NYSE Listed Company Manual. NASDAQ relies on the fee

Exchange should at least be made to discuss the functional differences and to discuss the impact of the differences on any governance structure. It is not enough to simply say that the governance structure proposed by the Exchange is acceptable because other exchanges use the same approach absent this analysis.[4]

The Proposal will result in a governance structure that increases the potential influence of the holding company over the regulatory mission of the Exchange.[5] The ROC can consist entirely of directors from the holding company. The ROC will be appointed annually by a Board that can include directors from the holding company who do not meet the independence standards adopted by the Exchange.

Moreover, as much as the NYSE Letter tries to assert otherwise, the ROC has little substantive authority with respect to the regulatory function. Under the Proposal, the ROC has the authority to "oversee" and "evaluate" and "assess" and "review" and "meet regularly". But, aside from the authority to "establish goals," something that can only be done in consultation with the CEO, the ROC has no actual substantive authority. Final decisions are presumably left to the full Board, which, as noted, can consist of a supermajority of directors from the holding company and can include directors from the holding company who do not meet the independence standards of the Exchange.

There is, however, one apparent exception to this lack of authority by the ROC. The NYSE Letter has clarified that the CRO is not subordinate to the CEO.[6] Any attempt to subordinate the CRO to the CEO in the future would, therefore, be inconsistent with the Proposal.

Moreover, the NYSE Letter states for the first time that "the ROC clearly has the power to retain or dismiss the CRO . . . in consultation with the Exchange's Chief Executive Officer as part of the process of establishing the goals, assessing the performance, and recommending the CRO's compensation." Thus, the ROC and not the CEO or the full Board has the authority to

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structure set by FINRA. *See* http://www.stai.org/pdfs/2011-11-sta-letter-to-robert-greifeld-nasdaq.pdf/ FINRA in turn relies on NYSE Section 402.10. *See* Exchange Act Release No. 71271 (Jan. 9, 2014) ("Consistent with the NYSE action, FINRA is proposing to amend FINRA Rule 2251 to establish, in language virtually identical to the corresponding provisions under the new NYSE proxy rate rules, the same rate reimbursement provisions that have been adopted by the NYSE, including the specified success fee for the development of EBIPs, and to delete the provisions under FINRA Rule 2251 that are rendered obsolete by the NYSE rule change").

[4] Thus, the NYSE Letter contends that my earlier letter ignores a governance structure at the BOX Options Exchange. *See* NYSE Letter, at p. 9 (noting that "the BOX Options Exchange's CRO reports to both the ROC and the President of the Exchange" and stating that Professor Brown "ignores" the fact). The NYSE Letter is apparently asserting that the two exchanges are sufficiently comparable in their actual regulatory functions and responsibilities that they can have similar or identical governance structures. Perhaps. But it is not convincing to simply point to governance structures at other exchanges without having first made the case that the exchanges are truly comparable in their regulatory responsibilities. Neither the Proposal nor the NYSE Letter undertakes such an analysis.

[5] The NYSE Letter states that my letter references safeguards at NYSE Regulation but "only mentions one", that NYSE Regulation "limits the number of ICE board members that can sit on the NYSE Regulation board to less than a majority." This is incorrect. The Letter mentions any number of other safeguards, including the committee structure at NYSE Regulation, the greater substantive authority of NYSE Regulation compared with the ROC, and the non-profit status of NYSE Regulation.

[6] The NYSE Letter provides that the assertion that "the CRO could be 'subordinated' to Exchange's CEO" is "incorrect."

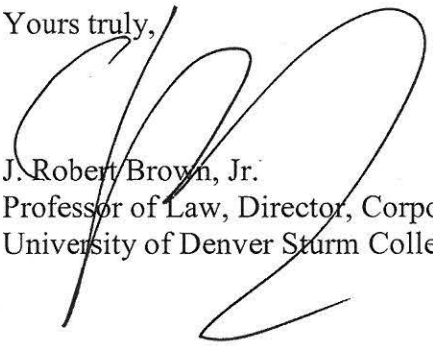
retain or remove the CRO.[7] Such authority should be more appropriately placed in the Operating Agreement.

My original letter contains a number of changes that can help ensure that that the ROC has adequate authority to ensure the insulation of the regulatory function from the business interests of the holding company. My hope is that the staff will give these suggestions serious consideration.

Thank you again for this opportunity to comment on this important development.

With regards.

Yours truly,



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[7] Oddly, the NYSE Letter states "Professor Brown maintains that the CRO is inadequately insulated from the Exchange's commercial interests because the CRO does not report to the ROC". In fact, this is not the argument made in the Letter. The Letter acknowledges the reporting relationship. *See* P. 5 (noting that ROC must "meet regularly with the Chief Regulatory Officer in executive session"); P. 7 ("The CRO does report to the ROC but the ROC can only set goals and assess performance."). The argument is not whether the CRO reports to the ROC but whether a reporting relationship is adequate.