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VIA EMAIL

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Release No. 33-10998; 34-93311; IC-34399; File No. S7-12-15

Dear Ms. Countryman:

NYSE Group, Inc., on behalf of the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. (together, the "NYSE Listing Exchanges"), submits this letter to comment on the Commission's proposed rule and rule amendments with respect to listing standards for the recovery of erroneously-awarded compensation. We appreciate the opportunity to provide comment during this reopened comment period.

The proposed rule and rule amendments would direct the national securities exchanges to propose rules or rule amendments to prohibit the initial or continued listing of any security of an issuer that does not adopt and comply with a written policy for the recovery, under certain circumstances, of erroneously-awarded incentive-based compensation ("Proposed Rule 10D-1").¹ The Proposed Rules implement Section 10D of the Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Proposed Rule 10D-1 would require each listing exchange to establish rules that, among other things, require its listed companies to:

- adopt a compensation recovery policy that complies with the applicable listing standard;

¹ The Proposed Rules were published for comment in 2015. See Listing Standards for Recovery of Erroneously Awarded Compensation, Release No. 34-75342 (July 1, 2015), 80 FR 41143 (July 14, 2015) ("Proposing Release").

- disclose the policy in accordance with Commission rules, including providing the information in tagged data format; and
- comply with the policy's recovery provisions.

Proposed Rule 10D-1 does not include specific provisions regarding the delisting of securities when issuers do not comply with the exchange's listing standards established pursuant to Rule 10D-1, though the Proposing Release states that an issuer would be subject to delisting if it does not comply with exchange rules related to erroneously-awarded compensation.²

The Proposed Rules do not specify the time by which an issuer would need to complete the recovery of excess incentive-based compensation to avoid delisting. Rather, under proposed Rule 10D-1, an exchange would determine whether the steps an issuer is taking constitute compliance with its recovery policy. The Proposing Release states that, in making this assessment, an exchange would need to determine, among other things, whether the issuer was making a good faith effort to promptly pursue recovery. In that regard, the Proposing Release solicits comment on whether proposed Rule 10D-1 should include provisions requiring delisting if an issuer does not comply with the recovery policy by a specified deadline. The Proposing Release also solicits comment on whether proposed Rule 10D-1 should include either objective standards or subjective criteria to be applied in determining whether an issuer has complied with its recovery policy. The NYSE Listing Exchanges' comments are limited to this specific element of the proposal.

The NYSE Listing Exchanges support the approach to delisting in the Proposing Release. Each of the NYSE Listing Exchanges' listing rules provide exchange staff the ability to allow cure periods to listed issuers when they are deemed to be noncompliant with listing rules.³ Exchange staff exercise discretion as to whether to grant a listed issuer a period to regain compliance with the applicable listing standard under these cure provisions, subject to specified maximum allowable time periods.⁴ Exchange staff's decision with respect to any particular issuer is informed by discussion with representatives of the issuer and is tailored to the issuer's specific circumstances. In addition, exchange staff have discretion to decline to provide any cure period at all and instead move to immediately suspend and delist the securities of a noncompliant issuer. Similarly, exchange staff have the authority to truncate an issuer's cure period at any time the exchange deems appropriate and move to delist the securities.⁵

² See Proposing Release, *supra* note 1, 80 FR at 41146, 41164, and note 201.

³ See, e.g., Sections 803 and 804 of the NYSE Listed Company Manual; see also Section 1009 of the NYSE American Company Guide.

⁴ See Sections 802.02 and 802.03 of the NYSE Listed Company Manual, permitting a maximum cure period of up to 18 months for domestic companies and foreign companies, respectively. See also, Section 1009(b) of the NYSE American Company Guide, permitting a maximum cure period of up to 18 months. NYSE Arca applies similar cure period policies under NYSE Arca Rule 5.5-E(m).

⁵ We note that, consistent with exchange rules, when an exchange commences a delisting action against an issuer for failure to comply with the exchange's listing standards, including any listing standards that will be adopted pursuant to Rule 10D-1, the issuer has the right to appeal

NYSE Group recommends that the Commission's final rule not be prescriptive with respect to the length of time provided to an issuer to comply with its recovery policy or in determining whether an issuer's actions are compliant with its recovery policy. The appropriate compliance period and what constitutes compliance with the recovery policy will involve complex questions that depend on the nature of the individual issuer and the specific circumstances giving rise to the application of the recovery policy. As such, a "one-size-fits all" approach could lead to outcomes that are inconsistent with the interests of investors. Rather, the NYSE Listing Exchanges believe that these determinations should be made by the exchange regulatory staff in their discretion under the specific facts and circumstances of a particular issuer, subject to the maximum cure periods established under existing exchange rules.

For the foregoing reasons, the NYSE Listing Exchanges believe it is not necessary or desirable for Rule 10D-1 or exchanges' rules adopted to comply with Rule 10D-1 to address the circumstances in which an exchange should delist an issuer for noncompliance with its recovery policy, as existing exchange rules provide an appropriate procedure for making such determinations.

Respectfully submitted,

A handwritten signature in blue ink, consisting of several fluid, connected loops and curves, positioned below the text "Respectfully submitted,".

that decision to an exchange review panel and, pursuant to Section 19(d) of the Exchange Act and Rule 19d-1 thereunder, to the Commission.