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Ms. Claudia Crowley
NYSE Regulation, Inc.
20 Broad Street
New York, NY 10005

Re: *New York Stock Exchange Listed Company Rules*

Dear Ms. Crowley:

This letter is being submitted on behalf of the Committee on Financial Reporting of The Association of the Bar of the City of New York to raise with you an aspect of the New York Stock Exchange listed company rules that has been the subject of the committee's attention and discussion. The point of this letter is to propose a revision to the rules regarding board of director oversight of risk management. In particular, we ask you to consider revising Rule 303A.07 regarding the extent to which responsibility for oversight of risk management is placed within the audit committee.

The relevant part of the rule, including the accompanying commentary, provides:

> The audit committee must have a written charter that addresses . . . the duties and responsibilities of the audit committee – which, at a minimum, must include those set out in Rule 10A-3(b)(2), (3), (4) and (5) of the Exchange Act, as well as to:
>
> (D) discuss policies with respect to risk assessment and risk management;

> *Commentary:* While it is the job of the CEO and senior management to assess and manage the listed company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the listed company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

The concern prompting this letter is twofold. First, the rule calls upon audit committees to assume some degree of responsibility for the oversight of risks beyond the risks associated with financial reporting. Second, the level of responsibility to be assumed by the audit committee is itself ambiguous and may contribute to ineffective oversight of risk management at the board level.

We acknowledge as a threshold matter that the issue of board oversight of risk management is a subject of active discussion and experimentation, and a consensus on optimal approach has yet to be established. Most recently, the Dodd-Frank Act has created new federally-mandated risk management procedures principally for financial institutions, the Federal Reserve Board has proposed new risk management structures involving risk committees for certain types of entities, and the SEC has added requirements regarding discussion of the board's role in risk management oversight in proxy statements. It is in part the result of this continuing evolution that we believe it to be useful to examine whether Rule 303A.07 is consistent with developing practices.

The Audit Committee's Responsibility

The first concern, as mentioned above, is that the rule appears to require the audit committee to assume some degree of responsibility for the oversight of risks beyond the risks associated with financial reporting.

To that extent, the rule expands audit committee responsibility beyond the parameters mandated by the Sarbanes-Oxley Act, which describes the audit committee as a committee established by the board of directors "for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer." Sarbanes-Oxley thus established as a matter of federal law the approach to financial reporting oversight recommended by the Treadway Commission which, in its Report of the National Commission on Fraudulent Financial Reporting, described the audit committee's responsibility as the "vigilant and informed oversight of the financial reporting process."

It is, of course, entirely consistent with, and indeed an integral part of, the audit committee's responsibility for financial reporting that the audit committee assume responsibility for oversight of the risks associated with financial reporting. However, insofar as Rule 303A.07 requires audit committee involvement with broader "policies with respect to risk assessment and risk management" including "major financial risk exposures," the rule takes the audit committee well beyond responsibility for financial reporting risk.

We believe there are significant disadvantages to this approach. One is that, under Rule 303A.07, an audit committee is apparently expected to assume some level of responsibility for such areas as credit risk, liquidity risk, market risk, legal and compliance risk, and operational risk, as well as additional risks unique to the reporting entity's particular industry such as, for example, environmental risk. There is little reason to assume that an audit committee, whose expertise will normally reside in the disciplines of financial reporting and financial statement presentation and disclosure, will possess particular expertise in such broader subjects.

A compounding problem is the expanding workload to which audit committees are now being subject simply in the area of financial reporting. Demands upon the audit committee's time continue to increase as new rules and regulations are accompanied by an understandable desire that audit committees delve more deeply into the workings of financial reporting systems. Audit committees are already sufficiently burdened with their financial reporting responsibilities without adding responsibility for risk management oversight in areas beyond their expertise.

Lack of Clarity as to the Audit Committee's Role

The second concern is that, while placing some level of responsibility for oversight of risk beyond financial reporting within the audit committee, the rule is ambiguous as to the parameters of the audit committee's role as compared to other board committees and the board of directors as a whole. The rule, for example, appears to acknowledge that areas of risk management oversight may properly be placed within other committees of the board of directors. Nonetheless, the rule requires the audit committee to "discuss policies" regarding these other risks and, while the audit committee is "not required to be the sole body responsible for risk assessment and management," the audit committee is nonetheless to review risk oversight processes "in a general manner."

We understand that Rule 303A.07 was formulated at a time when board-level oversight of risk management was in a nascent stage. The placement of additional areas of risk management within the audit committee may have seemed a logical reaction to a developing desire that boards of directors assume more explicit responsibility for risk management and undertake to put in place board structures so that oversight of risk management might be enhanced. However, as audit committee responsibility has come to be more clearly defined, so has the recognition of the need for clarity and accountability for broader risk management at the board level as well as for flexibility as boards seek to tailor oversight structures to their particular company's circumstances. We are concerned that the existing rule serves to confuse the audit committee's role as compared to other board committees, as well as the role of the board as a whole, with the resulting opportunity for loss of accountability and desired flexibility.

Conclusion

We would encourage the NYSE to revisit whether Rule 303A.07 reflects an optimum approach to board-level oversight of risk management. In particular, we would ask the NYSE to consider that, while audit committees should certainly retain responsibility for the oversight of those risks associated with financial reporting, the audit committee should not be *required* to assume broader risk management oversight responsibility.

While the scope of our committee's activity does not extend beyond financial reporting, we would observe that one useful approach may be to elevate the rule's articulation of responsibility to the level of the board of directors as a whole. The board of directors as a whole would thus be required (in the words of the rule) "to discuss policies with respect to risk assessment and risk management" with the objective of vesting in the full board of directors responsibility for the allocation of risk management oversight based upon the particular circumstances of the company, its industry, and its governance structure. The board, in turn, would then have the ability to use its judgment to delegate certain or all aspects of risk management oversight to the audit committee or other committees as the board deems appropriate.

Very truly yours,

Michael R. Young

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The content of this letter does not necessarily reflect the views of any institution or organization with whom a member of the Committee on Financial Reporting is affiliated.