September 2, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Submitted electronically to rule-comments@sec.gov

Re: File No. SR-NYSE-2026-37; Release No. 34-106128; Proposed Rule Change to Amend Sections 303A.00 and 303A.07 of the NYSE Listed Company Manual (91 FR 53448)

Dear Ms. Countryman:

I write with concern regarding the New York Stock Exchange proposal to extend the transition period for the internal audit function requirement of Section 303A.07(c) from one year to five years.

I have spent more than twenty years in internal audit and risk management. I have built internal audit functions from the ground up, led them, assessed them against professional standards, and been engaged to rebuild them after they failed. That work has spanned the full range of the market, from Fortune 500 companies with global operations and thousands of controls to small organizations where the entire accounting function fits around a single table. I hold the CIA, CRMA, CISA, CISSP, and CDPSE certifications, and I serve as Chief Executive Officer and Managing Principal of Cherry Hill Advisory, where our work includes internal audit co-sourcing, external quality assessments, Sarbanes-Oxley support, IT audit, and governance advisory services.

Position. The Commission should disapprove this proposed rule change. Section 19(b)(2)(C)(i) of the Exchange Act permits approval only upon an affirmative finding that the change is consistent with the requirements of the Act. Rule 700(b)(3)(i) of the Commission's Rules of Practice places the burden of demonstrating that consistency on the Exchange and states that a mere assertion of consistency, or the fact that another self-regulatory organization has a similar rule in place, will not carry it. This filing offers little beyond those two things. I ask the Commission to institute proceedings under Section 19(b)(2)(B) for the purpose of disapproving the filing under Section 19(b)(2)(C)(ii).

1. What the internal audit function delivers, and what is being deferred

The filing characterizes the internal audit function as a supplement to the statutory protections of the Sarbanes-Oxley Act. I would ask the Commission to examine that characterization closely, because it understates what the function does and, in my experience, misstates where its value comes from.

Internal audit is the only function inside a company that reports functionally to the audit committee and independently evaluates whether controls, risk management, and governance processes are operating as management represents they are. The external auditor renders an opinion on the financial statements once a year and scopes the work to what is material to those statements. Management asserts on its own controls. Internal audit is the only continuous, independent source of information a board has about the actual condition of the organization it oversees. That distinction matters in four specific ways.

Detecting and preventing significant risk before it becomes loss

The Association of Certified Fraud Examiners studied 2,402 occupational fraud cases across 143 countries in its 2026 Report to the Nations, representing more than $3.4 billion in losses. The findings on duration are directly relevant here. Schemes detected within the first six months produced a median loss of $40,000. Schemes that persisted more than five years produced median losses exceeding $1.1 million. The median scheme ran twelve months before anyone found it. More than half of all cases involved either an absence of internal controls or the override of controls that existed, and median losses caused by owners and executives were more than nine times those caused by employees.

That last point deserves emphasis. Frauds committed by owners and executives are precisely the schemes that management self-assessment and an annual financial statement audit are least positioned to detect, because the individuals involved control the representations on which both depend. An independent function reporting to the audit committee is the structural answer to that problem. Deferring it for five years is, in loss terms, deferring it across the exact interval in which undetected schemes become expensive.

Coverage of risks that no other assurance provider touches

Sections 404(a) and 404(b) address internal control over financial reporting. They do not address cybersecurity, third-party and vendor risk, data privacy, regulatory compliance, supply chain concentration, operational resilience, or the governance of artificial intelligence now being deployed across finance, human resources, and customer-facing operations. For a newly public company, the risks most likely to destroy value in the first several years are frequently not in the financial statements at all. Internal audit is the mechanism through which the board obtains independent coverage of them.

Timely information for those charged with governance

This, more than anything else, is the value the function delivers to a board. An audit committee that receives assurance only through the annual external audit cycle learns about a control breakdown months after the fiscal year has closed, at a point when its remaining options are disclosure and remediation. An audit committee with a functioning internal audit activity learns about the same breakdown during the quarter in which it occurs, when correction is still available and the cost is a fraction of what it becomes later. Directors cannot exercise judgment on information they do not have. The interval between when a problem starts and when the board hears about it is where organizational value is preserved or lost, and internal audit is the function built to compress that interval.

Investor confidence

Investors have no access to the inside of a company. They rely on the integrity of the reported numbers and on the credibility of the governance structure standing behind them. The internal audit requirement is one of a small number of visible signals that an independent internal check exists and reports to the board rather than to management. Restatements, material weakness disclosures, and fraud announcements do not damage confidence only in the company that issues them. They raise the discount investors apply to comparable issuers. A listing standard that assures investors of an independent internal assurance function is doing work on behalf of the whole market, not simply the individual registrant.

What the proposal defers, then, is not a supplementary formality. It is the board's only continuous independent line of sight into the organization, for the first five years of that organization's public life. A change of that consequence requires a demonstration. The filing does not contain one.

2. The Exchange has not carried its burden under Rule 700(b)(3)

Section 19(b)(2)(C)(i) permits the Commission to approve a proposed rule change only upon an affirmative finding that the change is consistent with the requirements of the Exchange Act. Rule 700(b)(3)(i) of the Commission's Rules of Practice assigns the burden of establishing that consistency to the self-regulatory organization that filed the change. The rule is explicit that a mere assertion of consistency, or the fact that another self-regulatory organization has a similar rule in place, is not sufficient. It requires that the description of the change, its purpose and operation, its effect, and the legal analysis of its consistency all be detailed and specific enough to support an affirmative finding.

Measured against that standard, this filing does not reach the threshold. Its statutory basis section asserts that the change furthers the objectives of Section 6(b)(5) and rests that assertion on two supports. The first is that internal audit supplements Sarbanes-Oxley, which I address in Section 4 and which does not hold for the population the rule reaches. The second is that Nasdaq imposes no internal audit requirement, which is the precise form of argument Rule 700(b)(3)(i) identifies as insufficient.

On the question that actually governs, what effect a five-year deferral would have on investors, the filing contains no analysis. There is no data. There is no estimate of how many companies would rely on the extended period or for how long. There is no examination of the risk characteristics of newly listed issuers. There is no consideration of any narrower means of addressing the concern the Exchange describes. The Exchange further reports that no written comments were solicited or received, so the Commission is being asked to make an affirmative statutory finding on a record consisting entirely of the Exchange's own unsupported representations. Unquestioning reliance on those representations is not a basis for approval.

3. The Exchange advanced this same reasoning in 2013 to justify one year

In 2013 the Exchange asked the Commission to extend the existing one-year transition period to companies listing through an initial public offering, a carve-out, or a spin-off, so that they would receive the same accommodation already available to companies transferring from other exchanges. The reasons offered were that newly public companies are typically upgrading accounting systems and internal controls and adding staff, and that a newly constituted audit committee needs time to become familiar with the business before determining what form of internal audit function suits it. The Commission approved that filing in August 2013 as File No. SR-NYSE-2013-40.

The present filing offers those same two reasons, in substantially the same language, to justify a period five times as long. It does not identify what has changed in the intervening thirteen years. It provides no data on how the current one-year period has performed, no count of companies unable to comply, and no description of the specific obstacles encountered. The support offered is the assertion that issuers have expressed concern.

A rationale that supported twelve months in 2013 cannot, without more, support sixty months in 2026. The Exchange had every opportunity to develop a record on the operation of the current requirement: how many newly listed companies failed to establish the function within one year, what obstacles they identified, and what compliance or remedial action followed. It presented none of it.

4. The Sarbanes-Oxley argument does not hold for the companies this rule reaches

The filing's central statutory argument is that internal audit supplements Sections 404(a) and 404(b), so that deferral raises no investor protection concern. Having spent a substantial portion of my career on Sarbanes-Oxley engagements, I do not believe that argument survives examination of the population the rule covers.

- Management is not required to provide its internal control report under Section 404(a) in the company's first annual report following an initial public offering. In year one there is no management conclusion on internal control over financial reporting.
- Emerging growth companies are exempt from the Section 404(b) auditor attestation for up to five years after going public under the JOBS Act. Most newly listed companies qualify.
- Non-accelerated filers and many smaller reporting companies are exempt from Section 404(b) with no time limitation.

Placed side by side, the effect is clear. For a newly listed emerging growth company, the proposed five-year internal audit transition would run nearly concurrent with the five-year attestation exemption. Across that period there would be no external auditor opinion on internal control over financial reporting, no internal audit function, and in the first year no management report either. Internal audit would not be supplementing external assurance during that window. It would be the only independent examination of risk management and control that the listing standard otherwise requires. Removing it does not leave a supplement absent. It leaves the position unfilled.

The filing does not address this overlap. It presents Sections 404(a) and 404(b) as though they applied uniformly to the companies in question, when for most of them one does not apply at all during the proposed transition and the other does not apply in year one. A statutory basis resting on protections that will not be present cannot support the finding Section 19(b)(2)(C)(i) requires.

5. The Nasdaq comparison is the argument the Commission's own rule excludes

The filing relies substantially on the observation that Nasdaq imposes no internal audit requirement, and concludes both that investor protection is not implicated and that no burden on competition arises. Rule 700(b)(3)(i) forecloses that reasoning directly. The presence or absence of a comparable rule at another self-regulatory organization is not a substitute for a demonstration that this change is consistent with the Act.

The reasoning also proves too much. If a governance requirement may be reduced whenever the reduction still leaves NYSE standards ahead of the least demanding venue available, then every NYSE governance provision Nasdaq does not impose is available for reduction without any investor protection analysis, because some reduction always preserves the differential. Section 6(b)(5) asks whether a rule is designed to protect investors and the public interest. It does not ask whether a rule remains stricter than a competitor.

The history does not support the inference either. Nasdaq filed a proposed rule in 2013 that would have required listed companies to establish an internal audit function, File No. SR-NASDAQ-2013-032, and withdrew it on May 7, 2013 following issuer objection. In withdrawing, Nasdaq stated that it was doing so in order to consider the comments received, that it remained committed to the underlying goal of ensuring that listed companies have appropriate processes in place to assess risk and the system of internal controls, and that it intended to file a revised proposal. It never did. NYSE MKT withdrew a parallel proposal one week later, File No. SR-NYSEMKT-2013-41. What the Nasdaq rulebook reflects is an abandoned proposal, not a determination that internal audit does not protect investors.

6. The available evidence contradicts the premise of the filing

The Exchange treats the control immaturity of a newly listed company as the reason to defer assurance. The published evidence indicates it is the reason to provide it.

- KPMG examined 569 traditional initial public offerings completed between 2021 and 2023 and found that 253 of them, or 46.4 percent, disclosed material weaknesses in their initial registration statements. In 2023 alone, 54 of 122 companies did so, and only 14 of those 54 appear to have remediated by the time of their first Form 10-K.
- PwC reviewed NYSE and Nasdaq initial public offerings from 2019 through 2024 and found that an average of 46 percent of companies disclosed at least one material weakness while going public, reaching 59 percent in 2022. Foreign private issuers disclosed at a rate of 79 percent, compared with 37 percent for domestic issuers.

Roughly half of newly public companies arrive on the exchange with a known, documented breakdown in internal control. Those are the companies the proposal would permit to operate for five years without an internal audit function. A company that enters the public markets carrying an unremediated material weakness presents the strongest available case for internal audit in year one. It is not a case for year five. The filing does not engage with this evidence, or with any evidence, on the risk profile of the affected population.

7. The consequences extend beyond the individual issuer

I would ask the Commission to weigh three effects that operate at the level of the market rather than the registrant.

First, each year's listing class becomes the following decade's mid-cap and large-cap market. Organizations do not develop assurance discipline on a schedule. They develop it under pressure, generally after a failure has already occurred, which is the most expensive and least effective moment to begin. The first two to three years following a listing are when a management team establishes what kind of company it intends to be with respect to controls. A rule providing that independent internal oversight may wait five years communicates a position at precisely that formative moment, and control culture is not something an organization can retrofit later at any price.

Second, director oversight obligations do not pause during a transition period. An audit committee member of a company that listed last month owes the same duty of oversight as one serving a thirty-year-old registrant, and carries the same personal exposure. The proposal would relieve the company of the function while leaving the committee with the responsibility and without the internal source of information built to serve it. In my experience, audit committees that encounter serious difficulty are rarely the ones that asked too many questions. They are the ones that had no independent means of testing the answers management provided.

Third, the listing standard is itself part of what a U.S. listing offers. The argument for listing in the United States has rested on the quality of the governance framework surrounding it. Governance requirements are not a cost attached to that argument. They are the argument. If exchanges compete by moving toward the least demanding standard available, the value of a U.S. listing is diminished for every company already listed, not only for those arriving.

8. The proposal should not be considered apart from pending Commission rulemaking

On May 19, 2026, the Commission proposed to consolidate filer status into large accelerated and non-accelerated categories, raise the large accelerated filer public float threshold to two billion dollars, and extend smaller reporting company and emerging growth company accommodations to all non-accelerated filers. That proposal, Release Nos. 33-11419 and 34-105515, File No. S7-2026-18, remains pending.

If both this filing and that proposal are adopted, the population of newly listed NYSE companies operating with neither an auditor attestation on internal control nor an internal audit function would expand considerably beyond current levels. The filing does not acknowledge the pending proposal or account for the combined effect, which is a further respect in which the record before the Commission is incomplete.

9. Narrower measures were available to the Exchange and were not pursued

The deficiency in this filing is not only evidentiary. The Exchange identified a concern and then proposed the broadest possible response to it without examining anything narrower, and the record contains no explanation of why a less sweeping measure would not have addressed the concern it describes.

Section 303A.07(c) already permits a listed company to source the internal audit function from a third party other than its independent auditor. A first-year internal audit function at a newly public company does not require a department. It requires a charter, a risk assessment the audit committee has genuinely engaged with, an audit plan sized to the business, and a limited number of engagements executed by experienced professionals. Companies do this routinely and well within twelve months of listing, at a cost that is modest measured against what a newly public company spends on its external audit, its directors and officers program, or its first year of investor relations. The flexibility the Exchange indicates issuers need is already written into the rule it seeks to relax.

Beyond that, the filing does not consider any of the obvious intermediate measures available to it. A shorter extension conditioned on affirmative audit committee action. A required implementation plan addressing scope, sourcing, budget, and reporting line within the first year. Disclosure of reliance on the transition and of the date the function will be in place, so that investors can identify which listed companies operate without one. Exclusion of companies that disclosed an unremediated material weakness in their registration statement or first annual report. Retention of the audit committee duties in Sections 303A.07(b)(iii)(A), (E), (F), and (H), which were amended in 2013 for a twelve-month window and would become the ordinary condition if stretched across five years without modification.

I raise these not as a proposed compromise but as evidence of what the filing omits. An exchange that had weighed the effect of its proposal on investors would have addressed at least some of them. This one addressed none, which is itself an indication that the analysis Rule 700(b)(3)(i) requires was not performed.

Conclusion

The burden here rests with the Exchange, and this filing does not carry it. It asserts consistency with Section 6(b)(5) without analyzing the effect of the change on investors. It relies on a comparison to another exchange's rulebook that the Commission's own Rules of Practice identify as insufficient. It reproduces a 2013 rationale in support of a period five times longer, on a record containing no data and no comments. It presents Sarbanes-Oxley protections as a substitute for the deferred function without acknowledging that, for most of the companies affected, those protections will not apply during the same window.

What the proposal would defer is the board's only continuous independent view into the organization, for the companies with the highest documented rate of internal control failure, during the precise period in which external attestation is least likely to apply. The Commission cannot make the finding Section 19(b)(2)(C)(i) requires on this record.

I respectfully ask the Commission to institute proceedings under Section 19(b)(2)(B) and to disapprove File No. SR-NYSE-2026-37 under Section 19(b)(2)(C)(ii). I would welcome the opportunity to provide further detail, data, or practitioner perspective should it be useful to the staff.

Respectfully submitted,

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