THE STA
SECURITIES TRANSFER
ASSOCIATION, INC.

March 4, 2013

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

Re: NYSE Proposed Rule – Proxy Fees
SEC File No. SR-NYSE-2013-07

Dear Ms. Murphy:

The Securities Transfer Association (STA)[1] appreciates the opportunity to provide its comments on the proposed rule change by the NYSE to amend its Rules 451 and 465, regarding the fees to be charged to issuers for the processing of proxy materials to investors holding securities in street name.[2]

This NYSE rule proposal implements recommendations by the NYSE Proxy Fee Advisory Committee (PFAC), which were contained in a report issued on May 16, 2012.[3] The PFAC was formed in 2010 to review NYSE proxy rules and their application to issuers and other stakeholders. The substantial majority of the members of the PFAC were executives of large cap companies, with only two PFAC members representing small cap issuers.

[1] The Securities Transfer Association (STA) is an industry trade association, established in 1911, comprised of transfer agents that provide services to more than 12,000 large and small public companies in the United States. The STA and its members work closely with issuers of securities on a variety of public policy matters and have been active over many years in advocating for a fair and efficient system for proxy distribution and shareholder communications.
[2] SEC Release No. 34-68936, 78 Fed. Reg. 12,381 (Feb. 22, 2013) (hereinafter "NYSE Proxy Fee Rule Filing").
[3] New York Stock Exchange, *Recommendations of the Proxy Fee Advisory Committee to the New York Stock Exchange*, May 16, 2012, *available at* https://usequities.nyx.com/sites/usequities.nyx.com/files/final_pfac_report.pdf (hereinafter "NYSE PFAC Report").

The PFAC recommendations have been modified in several respects since the May 2012 report was issued, based on additional information supplied by Broadridge Financial Solutions (Broadridge).

Despite an 18-month effort by PFAC to review and update the NYSE proxy fee schedule, the NYSE proposed rule changes should be disapproved for the following reasons:

- The NYSE rule filing does not include an independent review of proxy costs, as recommended by the NYSE Proxy Working Group in 2006;
- The NYSE rule filing does not include a thorough analysis of the costs and benefits of the proposed proxy fee changes, using the same degree of rigor as the SEC applies to its own rules;
- The proposed NYSE processing and intermediary unit fees do not allocate fees equitably between large and small issuers;
- The NYSE proxy fee proposals favor the interests of broker-dealers and discriminate against issuers; and
- The structure and level of the proposed NYSE proxy fees place a burden on competition.

The NYSE Rule Filing Does Not Include an Independent Review of Proxy Costs

Attached is an STA letter to Commissioners Daniel Gallagher and Troy Paredes concerning the proposed NYSE rule changes, dated December 13, 2012.[4] The STA re-affirms the position it expressed in this letter that the NYSE should engage an independent third-party to evaluate the structure and level of fees being paid for proxy distribution and shareholder communications services.

The use of a third-party for this purpose was strongly recommended by a previous NYSE Proxy Working Group, in a report issued in 2006:

> The Proxy Working Group therefore recommends that the NYSE should periodically re-evaluate the fees structure to ensure that no entity is unduly profiting off the current system. Issuers and shareholders deserve periodic confirmation that the system is performing as cost-effectively, efficiently and accurately as possible, with the proper level of responsibility and accountability in the system.

[4] A copy of this letter can also be obtained on the STA's website: http://www.stai.org/pdfs/2012-12-13-sec-commissioners-gallagher-and-paredes-re-nyse-proxy-fees.pdf.

> To achieve these objectives, the Proxy Working Group recommends that the NYSE engage an independent third party to analyze what is a 'reasonable' amount for issuers to be charged pursuant to Rule 465 and to conduct cost studies of the current services provided by [Broadridge] and commission an audit of [Broadridge] costs and revenues for proxy mailing. These studies and audit should include a detailed review of [Broadridge's] actual and anticipated future costs, especially in light of the new electronic delivery proposal by the SEC. The NYSE should disclose the findings of these regular reviews to a Sub-Committee of the Working Group before instituting any changes to the current fees.[5]

There has never been an independent evaluation of the actual costs incurred in proxy distribution activities. Instead, the historical practice of the NYSE has been to assemble a working group of broker-dealers, banks, issuers, and other stakeholders to develop proxy fee recommendations on an ad hoc basis.

The Chairman of the PFAC defended the lack of an independent review of proxy costs in a webinar announcing the PFAC report, stating that he and the other members of PFAC did not feel the need to conduct such a study, as they were "comfortable" with the information they were receiving from Broadridge and the broker-dealers:

> If you are looking at the cost among 900 different brokers who all have different ways of dealing with investors and getting materials out and so forth with their own complementary system to those of Broadridge or other intermediaries, it would have been a massive undertaking. It would have taken, I think, several years to do that kind of forensic accounting to try to piece it all together.
>
> And what we really did is we were mindful of the overall costs, we were mindful that the fees haven't changed for basically a decade and then there's been considerable inflation since then. So there was, to our mind, no basis to think that the fees were significantly out of line with the costs that are actually being incurred in the system.
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> And so, I agree, the cost-benefit analysis just wasn't there to justify doing probably what would be an impossible task. And by the time you completed the task, the costs would have changed substantially and you'd have to start all over again. So the infrastructure just isn't there to support that kind of analysis, but I think everyone on the Committee felt very comfortable that working with the information we did have, we do believe

[5] New York Stock Exchange, *Report and Recommendations of the Proxy Working Group to the New York Stock Exchange*, at 28, June 5, 2006, *available at* http://www.nyse.com/pdfs/REVISED_NYSE_Report_6_5_06.pdf.

> that the fees provide for reasonable and fair reimbursement of costs that are being incurred.[6]

This ad hoc approach, while convenient for the NYSE, should not be a substitute for engaging an independent third-party to evaluate proxy costs and make recommendations about what are reasonable expenses for issuers to reimburse to broker-dealers and banks. The NYSE has been "kicking the can down the road" on this independent study, and the SEC should disapprove this rule filing until that study has been commissioned and completed.

The NYSE Rule Filing Does Not Include a Thorough Cost/Benefit Analysis of the Proxy Fee Proposals, Using the Same Degree of Rigor Applicable to SEC Rule Changes

Two SEC Commissioners have urged the agency to require self-regulatory organizations (SROs) to adhere to the same thorough analysis that the SEC follows in evaluating and approving its own rules.

In May 2012, Commissioners Gallagher and Paredes objected to the SEC's approval of an interpretive notice by the Municipal Securities Rulemaking Board (MSRB), an SRO regulated by the SEC. After this interpretative notice was approved, the Commissioners released a public statement expressing their opinion that approval of SRO rules should be subject to the same degree of rigorous analysis as the SEC applies to its own rules:

> Any rulemaking—whether by a self-regulatory organization, such as the MSRB, or by the Commission itself—should be the product of a careful and balanced assessment of the potential consequences that could arise. Such an assessment should entail a thorough analysis of both the intended benefits and the possible costs of a proposed rulemaking in order to ensure that any regulatory decision to proceed with the initiative reflects a well-reasoned conclusion that the benefits will come at an acceptable cost. This requires identifying the scope and nature of the problem to be addressed, determining the likelihood that the proposed rulemaking will mitigate or remedy the problem, evaluating how the rule change could impact affected parties for better or for worse, and justifying the recommended course of action as compared to the primary alternatives.[7]

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[6] Transcript of NYSE Proxy Fee Advisory Committee Recommendations Webinar, Statement by Paul Washington, PFAC Chair, May 16, 2012, *available at* http://usequities.nyx.com/listings/list-with-nyse/proxy. *See also id*., Statement by James F. Duffy ("We did get information about costs from obviously the intermediaries and since the biggest one's a public company, we were able to look at analyst reports and so forth. So we did try to look at cost but we simply judged that an independent third party audit was basically not really feasible and certainly not worth the extraordinary expense that it would have entailed.").

[7] Commissioners Daniel M. Gallagher and Troy A. Paredes, Statement Regarding Commission Approval of MSRB Rule G-17 Interpretive Notice, May 14, 2012, *available at* http://www.sec.gov/news/speech/2012/spch051412dmgtap.htm (hereinafter "Gallagher and Paredes Statement"). Commissioner Gallagher also expanded on this statement in remarks at SIFMA's Annual Market Structure Conference last fall. *See* Commissioner Daniel M. Gallagher, "Market 2012: Time for a Fresh Look at Equity Market Structure and Self-Regulation," October 4, 2012, *available at*

The NYSE proposed rule on proxy fees does not meet this standard. The costs and benefits of this proposal have not been subjected to a thorough analysis to ascertain whether this new proxy fee schedule represents reimbursements for the reasonable expenses of a broker-dealer or a bank. In fact, and as noted earlier, there has never been a study conducted of the actual costs of distributing proxy materials, except for occasional representative surveys conducted by the NYSE of its members, the results of which have never been independently verified.[8]

As the STA has noted on multiple occasions, the PFAC and previous proxy fee working groups formed by the NYSE continue to base their conclusions on data provided exclusively by Broadridge and its broker-dealer clients—the stakeholders with the most to gain or lose by changes to the structure and level of fees authorized by the NYSE. None of this data has ever been evaluated by an independent third-party source, and none of this data has been the subject of a thorough cost-benefit analysis.

Until an objective and comprehensive cost-benefit analysis can be developed, the SEC should disapprove this rule filing, as it has not followed the same analytical framework that the SEC now requires for its own rules. As stated by Commissioners Gallagher and Paredes in objecting to the MSRB's interpretive notice in May 2012:

> If there is any question as to the rigor of an SRO's analysis, then it is all the more paramount that the Commission not defer to the SRO's claims, conclusions, and judgments. The Commission has a fundamental oversight role with respect to SROs, and undue deference to an SRO in the SRO rulemaking process undercuts the basic structure of that regulatory relationship.[9]

The Proposed NYSE Processing and Intermediary Unit Fees Do Not Allocate Fees Equitably Between Large and Small Issuers

As noted in the attached STA letter to Commissioners Gallagher and Paredes, the basic processing fee and the intermediary unit fee were originally intended to be charged for

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http://www.sec.gov/news/speech/2012/spch100412dmg.htm ("The Commission's 19(b) review process for SRO rule filings is not meant to be a rubber stamp for proposed new SRO rules, and the Commission's delegation of authority to staff to review those filings cannot be an abdication of its responsibilities to ensure that SRO rule proposals are fully vetted and pass legal muster. … If self-regulation is to continue to play a central role in securities regulation, SROs must be committed to ensuring that the rules they send to the Commission for approval are the result of the same degree of rigorous analysis as the Commission applies to its own rules.").

[8] For example, the Securities Industry and Financial Markets Association (SIFMA) conducted a representative survey for this NYSE rule filing of 15 of 855 (1.8%) broker-dealers and banks involved in the proxy process. Most of this data was obtained and coordinated through Broadridge and the conclusions were so conditional that SIFMA could only state, in very general terms, that "proxy fees are reasonably in line with costs incurred by brokers and banks, despite … limited sample size and other limitations …." Letter from Tom Price, Managing Director, Operations, Technology, & BCP, SIFMA, to Judy McLevey, Vice President, NYSE Euronext, at 3, May 30, 2012, *available at* http://www.sifma.org/uploadedfiles/societies/sifma_corporate_actions_section/sifma-final-proxy-letter.pdf (hereinafter "SIFMA Letter").

[9] *Gallagher and Paredes Statement*, May 14, 2012.

processing activities necessary to prepare and mail a physical proxy package to a beneficial owner. These fees include the costs for print communications services and other costs in connection with delivering an actual proxy package in paper form.

Unfortunately for issuers, the basic processing fee and the intermediary unit fee are currently being charged for *all* beneficial owner positions, even when no packages are being mailed. These fees are not even reduced for beneficial owner accounts that do not require a physical proxy package, even though the fee structure is intended to reimburse broker-dealers for the cost of providing print and paper communications services.

The following is a chart summarizing the current and proposed NYSE fee schedule for the basic processing fee and the intermediary fee (combined together):

Tiers	Number of Accounts	Current NYSE Processing Fees	Proposed NYSE Processing Fees	Change in Fees (%)
I	1 - 10,000	$0.50	$0.64	+28.0%
II	10,001 - 100,000	$0.50	$0.60	+20.0%
III	100,000 - 300,000	$0.50 (<200K)	$0.50	no change
		$0.45 (>200K)	$0.50	+10.0%
IV	300,001 – 500,000	$0.45	$0.43	-4.44%
V	500,000 +	$0.45	$0.39	-13.33%

The STA acknowledges that these fees have been reduced from the original levels proposed in the May 2012 PFAC report. In its rule filing, the NYSE is proposing to reduce the recommended fees from the PFAC report by $0.03 for Tiers II and V, and $0.06 for Tiers III and IV. These changes certainly reduce the rate of growth of these fees from the fees proposed in the PFAC report.

However, the STA believes that these fee increases fall disproportionately on smaller issuers, especially those with less than 300,000 beneficial owner positions. While there are certainly economies of scale for issuers with larger numbers of beneficial owners, the STA does not believe it is fair for an issuer with 100,000 beneficial owners to be subject to more than a 20% increase in these proxy fees, while an issuer with 1,000,000 beneficial owners is going to enjoy a decrease in processing and intermediary unit fees.

In July 2012, the STA obtained 33 Broadridge invoices from a wide variety of issuers and compared the proxy fees in these 33 invoices to the fee schedule proposed by PFAC in its report.[10] The STA has updated its comparisons for these 33 invoices to reflect the fees proposed in the latest NYSE rule filing. The following are the results:

[10] The Securities Transfer Association, *Analysis of Proposed NYSE Proxy Fee Schedule*, July 12, 2012, *available at* http://www.stai.org/pdfs/sta-analysis-of-nyse-pfac-proposed-proxy-fees-final-7-10-2012.pdf.

- Of the 33 invoices reviewed by the STA, 27 of these invoices involved issuers with less than 300,000 beneficial owner positions. Applying the processing and intermediary unit fees proposed in this NYSE rule filing, the average change in these fees is an *increase* of 25.44% for these issuers.[11]

- Of the 33 invoices reviewed by the STA, 6 of these invoices involved issuers with more than 300,000 beneficial owner positions. Applying the processing and intermediary unit fees proposed in this NYSE rule filing, the average change in these fees is an average *decrease* of 2.73% for these issuers.[12]

The STA does not believe this is an equitable allocation of the costs of processing these beneficial owner accounts, between small and large issuers, especially without the benefit of any independently verifiable cost data.

In the NYSE rule filing, Broadridge discloses that it provides proxy services to 8,000 issuers within the range of issuers analyzed in the STA's analysis, *i.e.*, between 110 and 2.4 million beneficial owner positions.[13] Of these issuers, 97% hold less than 200,000 beneficial owner positions. Only 2-3% of these 8,000 issuers hold more than 200,000 beneficial owner positions. Thus, these large processing and intermediary unit fee increases will affect *97% of the issuers holding between 110 and 2.4 million positions and processed through Broadridge's platform*, without any substantive justification or evaluation of actual costs.

The STA also believes that these fees should not be charged at the same level for beneficial owners who are not receiving an actual proxy package. Issuers should not have to pay a "one-size-fits-all" fee for beneficial owners who are not receiving paper and print communications services.

Additionally, these processing and intermediary unit fees should not be charged for suppressed accounts, including beneficial owners who have agreed to householding or, as discussed below, have delegated proxy voting authority to an investment adviser in a separately managed or wrap fee account.

Even after accounting for economies of scale, the processing and intermediary unit fees proposed by the NYSE are not equitably allocated between large and small issuers, in light of the fact that there is no substantive justification for why smaller issuers with less than 300,000 beneficial owners should be bearing such a significantly larger burden under the proposed proxy fee schedule.

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[11] In dollar terms (instead of an average increase), these 27 issuers paid $500,819.45 in processing and intermediary unit fees under the current NYSE proxy fee schedule. Under the proposed NYSE proxy fee schedule, these 27 issuers would pay $609,570.60 in processing and intermediary unit fees, an increase in dollar terms of 21.71%.

[12] In dollar terms (instead of an average decrease), these 6 issuers paid $4,758,831.45 in processing and intermediary unit fees under the current NYSE proxy fee schedule. Under the proposed NYSE proxy fee schedule, these 6 issuers would pay $4,483,810.78 in processing and intermediary unit fees, a decrease in dollar terms of 5.78%.

[13] *See NYSE Proxy Fee Rule Filing* at 12,396, footnote 56.

For all these reasons, the proposed basic processing and intermediary unit fees do not represent an "equitable allocation of reasonable … fees … among [NYSE] members and issuers," as required by Section 6(b)(4) of the Securities Exchange Act.[14]

The NYSE Proxy Fee Proposals Favor the Interests of Broker-Dealers and Discriminates Against Issuers

A 2011 survey of transfer agent pricing compared to the NYSE proxy fee schedule concluded that market-based proxy fees for registered shareholders were more than 40% less than the proxy fees being charged to provide the same services to beneficial owners.[15] This study also found that all of the transfer agents participating in the survey charge processing and suppression fees that are significantly less than the fees being charged by broker-dealers under the current NYSE proxy fee schedule.

While the STA acknowledges that certain suppression fees have been reduced in the proposed NYSE proxy fee schedule, the structure and level of many of the fees listed on the NYSE proxy fee schedule are completely divorced from the true cost of providing these services in a free market environment. And, as noted earlier, without an independent review of the actual costs of distributing proxy materials, issuers are not able to evaluate what costs they are paying for and whether proxy fees reflect a true reimbursement for reasonable expenses.

A proxy system in which the structure and level of fees greatly exceed their actual costs is a system which favors broker-dealers over issuers, and discriminates against them. What follows is a more detailed discussion of several of the more significant fees on the NYSE schedule, as proposed in this rule filing.

A. **Paper and Postage Elimination Fees**

The current NYSE fee schedule authorizes a charge of $0.50 to suppress the need to mail proxy materials to certain beneficial owner accounts, such as for householding and/or electronic delivery. This fee is reduced to $0.40 per account for issuers using the Notice and Access format. This fee is also reduced to $0.25 per account for larger issuers, *i.e.*, those with 200,000 or more beneficial owners.

Without any detailed analysis (or discussion) regarding the cost of providing these services, the NYSE is recommending that these fees be set at $0.32 per account for ProxyEdge, householding, and e-delivery activities. This would result in a reduction of $0.18 per account for issuers with less than 200,000 beneficial owners and a reduction of $0.08 per account for issuers using the

[14] *See* 15 U.S.C. § 78f(b)(4).
[15] The Securities Transfer Association, *2011 Transfer Agent Survey to Estimate the Costs of a Market-based Proxy Distribution System*, October 3, 2011, *available at* http://www.stai.org/pdfs/sta-survey-proxy-processing-costs-10-3-11.pdf.

Notice and Access Format. This represents an increase of $0.07 per account for issuers with 200,000 or more beneficial owners.

Broker-dealers assess these suppression fees on an "evergreen" basis, *i.e.*, not only in the year when householding or electronic delivery is first elected, but also in each year thereafter. This problem was raised in the 2010 SEC Concept Release on the U.S. Proxy System.[16]

In its discussions with brokerage firms and Broadridge, the PFAC concluded that there is significant processing work involved in keeping track of a shareholder's election on an ongoing basis, both for householding and for eliminating paper delivery altogether. For this reason, the PFAC proposes to convert the existing paper and postage elimination fee, which was intended only to encourage the suppression of proxy mailings, into a "preference management fee."

The NYSE proposes to change the purpose of this fee without any detailed explanation or analysis of what "significant processing work" is involved. The NYSE also does not justify why issuers are to continue paying for certain suppressions that should be the sole responsibility of broker-dealers.

One significant problem with the proposed "preference management fee" concept is that the PFAC report fails to distinguish between these suppression fees and the basic processing and intermediary unit fees also charged for these beneficial owner accounts. If Broadridge is paid to "keep track" of a shareholder preference regarding householding or electronic delivery, it should not also be permitted to charge a basic processing fee and an intermediary unit fee for accounts that are suppressed.

These fees were intended to cover the printing of a Voting Instruction Form ("VIF") and enclosing it with an annual report, proxy statement, and return envelope in a poly wrapped package. If these basic processing functions are not performed, then these fees should not be charged for a suppressed account. Additionally, and for the same reasons, Broadridge should not be permitted to charge a Notice and Access fee for suppressed accounts.

B. **Separately Managed and Wrap Fee Accounts**

For a number of years, Broadridge and its broker-dealer clients have been charging issuers a series of proxy fees for separately managed accounts at the beneficial owner level. These fees are being charged despite the fact that investors in these accounts are not receiving—or expecting to receive—any proxy materials and are not casting any proxy votes.

Broadridge and its clients do not charge issuers for servicing wrap fee accounts at the beneficial owner level, even though these broker-dealer accounts function in the same manner as separately managed accounts, for the purpose of proxy voting activities.

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[16] *Concept Release on the U.S. Proxy System*, 75 Fed. Reg. 42,982, at 42,997 (July 22, 2010), *available at* http://www.sec.gov/rules/concept/2010/34-62495fr.pdf (hereinafter "SEC Concept Release").

The documentation and data processing for both wrap fee accounts and separately managed accounts are standardized within a broker-dealer's accounting platform. Both types of accounts are flagged at the time they are created for the broker-dealer's own purposes, as well as to suppress transaction confirmations and issuer communications at the beneficial owner level. For the purpose of proxy voting, these accounts only require the distribution of one proxy package—whether by mail or electronically—for each investment adviser possessing delegated voting authority.

According to the PFAC report, "a significant part of the work involved [for separately managed accounts] was in 'maintaining' or 'managing' the preferences attached to each account position."[17] Yet, during testimony before the PFAC, it was acknowledged that almost all beneficial owners in these managed accounts make a single election not to receive proxy materials and delegate their voting rights to the investment manager at account inception—a simple account flag applied once when the account is opened. Apart from the flag being read by a computer program, the PFAC does not in its report discuss what additional effort is required that justifies the "significant" work of managing these account preferences.

Despite this lack of detailed analysis, the PFAC believes that managed account fees should remain an issuer expense. The PFAC report also concluded that issuers benefit by having "added investment" in their stock and by having investment fiduciaries voting at a higher rate than the typical retail investor outside of a managed account. On this latter point, the PFAC provides no justification as to why issuers should have to pay for the proxy votes of investment fiduciaries, which are required to vote under SEC and U.S. Labor Department rules. Asking issuers to pay for these expenses is no different than proposing that companies reimburse institutional investors for their custodial expenses.

The PFAC is recommending that the paper and postage elimination fee be reduced to $0.16 for managed accounts. All other proxy fees, including the basic processing and intermediary unit fee, the notice and access fee (when applicable), and the proxy voting fee would also continue to be charged to issuers, at the beneficial owner level.

Remarkably, the PFAC is also recommending that wrap fee accounts be added back to issuer invoices as billable positions and charged in the same manner as separately managed accounts, despite SEC rule interpretations that say otherwise.[18]

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[17] *NYSE PFAC Report* at 13.

[18] *See* Status of Investment Advisory Programs Under the Investment Company Act of 1940, 62 Fed. Reg. 15,098, at 15,105 (Mar. 31, 1997) ("The Commission is clarifying that, if a client delegates voting rights to another person, the proxies, proxy materials, and if applicable, annual reports, need be furnished only to the party exercising the delegated voting authority."); *See also* Delivery of Proxy Statements and Information Statements to Households, 65 Fed. Reg. 65,736, at 65,744 (Nov. 2, 2000) ("… we are … persuaded that, in most cases, companies and intermediaries should be allowed to household to investment advisers as they have in the past. Thus, we will allow such householding to continue outside of the scope of the rules we adopt today, provided that the investment adviser is eligible to vote the proxies under the self-regulatory organization rules and does not object to householding."); and Delivery of Proxy and Information Statements to Households, 64 Fed. Reg. 62,548, at 62,554 (Nov. 16, 1999) ("Comment is requested on whether companies and intermediaries should be able to household proxy materials to such investment advisers and investment managers without having to rely on the proposed householding rules *since*

The only flexibility on this issue shown by the PFAC in its report was on the issue of fractional shares within managed accounts. These shares were being charged the full amount of processing, suppression, Notice and Access (when applicable), and proxy voting fees despite a very small amount of stock involved. The PFAC decided to exempt any shareholder position holding 5 shares or less in a managed account from all proxy fees.

The STA estimates that the benefit of this proposed change would be an average reduction in managed account charges for issuers of approximately 5.49%.[19] Some of this decrease will be offset, of course, by the PFAC recommendation to permit issuers to be charged for all wrap fee accounts, which, as noted earlier, is not a fee that issuers are incurring under the current NYSE proxy fee schedule.

Despite this modest benefit to issuers, the STA continues to believe that there is no justification for these charges to issuers. Separately managed accounts are a large profit center for broker-dealers, and the suppression of beneficial owner accounts that are enrolled in these discretionary investment programs should be the responsibility of each broker-dealer. Issuers should not be charged for these account positions at the beneficial owner level and, instead, should only be charged for the one proxy package that is provided to the sponsor of these investment programs.

The STA brought this issue to the attention of the SEC in 2010, and it was highlighted in the SEC's Concept Release later that year.[20] In 2011, the STA filed complaints with FINRA and NASDAQ while the PFAC was conducting its evaluation of proxy distribution fees.[21] In the spring of 2012, the STA and the Shareholder Services Association ("SSA") jointly filed a Petition for Rulemaking at the SEC, requesting that the agency prohibit broker-dealers and their agents from charging issuers any proxy fees for separately managed accounts.[22]

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it is unlikely that a single person or entity making the proxy voting decisions would need more than one copy of the proxy materials.")(emphasis added).

[19] This calculation is derived by taking 5 shares and dividing it by the average of 91 shares for managed accounts with between 1 – 500 shares, as noted in the PFAC report. This results in an estimated average benefit to issuers of 5.49%. This estimate can also be calculated by taking the $4.2 million savings noted in the PFAC report and dividing into the STA's estimated $70 million cost to issuers of this managed account practice. This calculation results in an estimated average benefit to issuers of 6%. *See NYSE PFAC Report* at 17.

[20] Letter from Thomas L. Montrone, The Securities Transfer Association, to Mary L. Schapiro, Chairman, Securities and Exchange Commission, June 2, 2010, *available at* http://www.stai.org/pdfs/STA_Letter_to_SEC_re_Managed_Accounts_6-2-2010.pdf.

[21] Letter from Charles Rossi, President, The Securities Transfer Association, to Richard G. Ketchum, Chairman and Chief Executive Officer, Financial Industry Regulatory Authority, October 31, 2011, *available at* http://www.stai.org/pdfs/2011-10-ketchum-letter.pdf; and Letter from Charles Rossi, President, The Securities Transfer Association, to Robert Greifeld, Chief Executive Officer and President, The NASDAQ OMX Group, November 9, 2011, *available at* http://www.stai.org/pdfs/2011-11-sta-letter-to-robert-greifeld-nasdaq.pdf.

[22] The Securities Transfer Association and the Shareholder Services Association, Petition for Immediate Regulatory Action Regarding Issuer Invoice Payments to Broker-Dealers for Separately Managed Accounts, March 12, 2012, *available at* http://www.stai.org/pdfs/2012-03-12-sta-ssa-joint-letter.pdf.

In the STA's view, this fee prohibition should apply to any circumstance in which a beneficial owner has instructed that an investment adviser is to receive issuer proxy materials and vote his or her proxies in lieu of the beneficial owner.

C. **Nominee Coordination Fees**

Under the NYSE proposal, the nominee coordination fee would increase 10%, from $20 to $22 for each nominee holding at least one share of an issuer's stock.[23] According to the NYSE, there are at least 900 bank and broker-dealer nominees that need to be contacted with a search request for shareholder accounts of each issuer.[24]

This fee appears to be significantly higher than similar fees charged by the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC), two broker-dealer utilities that work on an at-cost basis.

For example, DTC charges only $0.75 to identify holders on the record date for a shareholder meeting, on a per nominee basis.[25] DTC also charges between $0.18 and $0.34 to transmit messages and deliver and receive forms through its Participant Exchange Service.[26] Likewise, the NSCC Networking service only charges a fraction of a penny ($0.20 for every 100 records) to exchange and reconcile beneficial owner account information between broker-dealers and mutual funds, on an automated basis.[27]

Without independent verification of the actual cost of sending electronic search requests to 900 nominees and processing the responses, it is hard to justify a 10% increase in this fee, especially when the cost of sending electronic requests, messages, and beneficial owner account information is significantly less expensive when conducted through the DTC and/or NSCC processing systems.

D. **Notice and Access Fees**

Fees charged to issuers using the Notice and Access format are currently not included in the NYSE proxy fee schedule. This fee is tiered, starting at $0.25 per shareholder position for the

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[23] This fee no longer discriminates between smaller and larger issuers, as the NYSE has dropped its proposal to have Broadridge and other broker-dealer agents charge $0.50 for any nominee who is contacted and has responded that it does not have any account holding an issuer's securities. The application of this $0.50 fee would have caused as much as a 30% increase in the nominee coordination fee for smaller issuers with only 100 nominees holding its securities.

[24] *NYSE PFAC Report* at 3.

[25] *See* DTCC, *Guide to the 2013 DTC Fee Schedule*, at 15, *available at* http://www.dtcc.com/products/documentation/dtcfeeguide.pdf.

[26] *Id*. at 22.

[27] *See* DTCC, *Guide to the 2013 NSCC Fee Schedule*, at 14, *available at* http://www.dtcc.com/products/documentation/nsccfeeguide.pdf.

first 10,000 beneficial owners and then reducing itself to $0.05 per position for any beneficial owner positions that exceed 500,000.[28]

The fees for Notice and Access processing are applied in addition to the basic processing and intermediary unit fees, despite the significantly lower costs associated with one-page mailings and electronic delivery of proxy material. Again, the lack of an independent audit hampers the ability of issuers to know what costs are incurred, and why these fees are needed to handle a much lower level of mail processing, *i.e.*, the mailing of one piece instead of a four-piece proxy package.[29]

Without any evaluation or discussion of the costs of providing these services, the NYSE is recommending that Notice and Access fees be included in the NYSE proxy fee schedule at their current levels. Despite issuer concerns that Broadridge charges these fees for all account positions holding an issuer's shares—including those that are already suppressed—the PFAC decided not to change any Broadridge practices involving these fees. The one exception is the elimination of the $1,500 minimum fee for issuers with fewer than 6,000 beneficial owner positions.

When the proposed NYSE Notice and Access fees are applied to the 33 Broadridge invoices in the possession of the STA, these fees *increase by 0.51%*, on average, largely as a result of wrap fee accounts being added back into issuer invoices in the same manner as other managed accounts.[30]

The STA maintains that the Notice and Access fee schedule that Broadridge has been following for several years will now be codified in the NYSE proxy fee schedule, again without any analysis of actual costs and a review of the appropriateness of charging these fees against all beneficial owner accounts, including suppressed accounts.

E. **NOBO List Fees**

For many years, issuers have complained about the pricing of the NOBO list. This list is only available to issuers through the purchase of contact information for all beneficial owners classified as NOBOs, at a cost of between $0.105 and $0.165 a name.

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[28] For positions between 10,001 – 100,000, the fee is $0.20 per position; for positions between 100,001 – 200,000, the fee is $0.15 per position; and for positions between 200,001 – 500,000, the fee is $0.10 per position. For issuers with beneficial owner positions that total 6,000 or less, Broadridge charges a flat fee of $1,500.

[29] As noted earlier, a full proxy package consists of four pieces: a VIF, an annual report, a proxy statement, and a return envelope.

[30] These 33 issuers paid $578,854 in Notice and Access fees, according to the Broadridge invoices in the possession of the STA. Under the fee schedule proposed by the NYSE in this rule filing, these same issuers would pay $581,831 in Notice and Access fees, an increase of 0.51%. This increase is primarily a result of the PFAC recommendation to add back to issuer invoices all wrap fee accounts in the same manner as separately managed accounts.

Many issuers find it more cost-effective to order a subset of this list, segmented by whether or not a beneficial owner has already voted on a solicitation, or stratified by a minimum threshold of shares held.

The PFAC report recommended that issuers be permitted to obtain a stratified NOBO list, using the current pricing employed by Broadridge. However, the PFAC recommendation limits the request for a stratified list to record date holders, *i.e.*, in connection with an annual or special shareholder meeting.

At a time when issuers have a greater need to communicate more frequently with their shareholders, and especially their street name holders, the STA is disappointed that an issuer cannot request a stratified NOBO list outside of a record date. If approved by the SEC, this is another example, albeit a smaller one, of the needs of broker-dealers being favored over the needs of issuers.

* * *

Section 6(b)(5) of the Securities Exchange Act requires that NYSE rules promote "just and equitable principles of trade … protect investors and the public interest, and [not permit] unfair discrimination between customers, issuers, brokers, or dealers."[31]

As proposed, the NYSE proxy fee schedule does not meet this test. The proposed fees are not based on actual costs incurred and exceed similar charges under competitive pricing and through other broker-dealer utilities operating on an at-cost basis. The structure and level of these fees benefit the broker-dealers and their agents, with issuers having little control over the provision of proxy services rendered or the fees to be paid for such services.

The STA believes that processing, suppression, and intermediary coordination fees are assessed at levels that exceed costs when compared to alternate delivery systems in place today. These fees are also being charged for beneficial owner accounts that should not be incurring these charges, either because of a shareholder election or because proxy voting authority was delegated. Likewise, Notice and Access fees are being charged in a manner than does not reflect the actual work being done (or not being done).

Taken together, an NYSE fee schedule that represents charges in excess of actual costs creates a system in which the interests of broker-dealers are favored over the interests of issuers and permits discriminatory treatment of the latter. The SEC should disapprove the proposed NYSE proxy fee schedule for these reasons.

The Structure and Level of the Proposed NYSE Proxy Fees Place a Burden on Competition

As a final point, the PFAC report and the NYSE rule filing do not adequately address the contract arrangements between broker-dealers and Broadridge, and the rebates being provided to broker-dealers based on excess profits being accrued through the use of the NYSE proxy fee

[31] 15 U.S.C. § 78(f)(b)(5).

schedule. These excess profits are causing a burden on competition that is not necessary or appropriate.

This issue was raised by the NYSE Proxy Working in 2006, with a recommendation that the NYSE review these contract arrangements:

> The Working Group also recommends that the NYSE review [Broadridge's] contract arrangements with brokers. It is understood that these contracts are designed to cover the brokers' costs of providing information about beneficial owners to [Broadridge], but since the reimbursement is tied to the fees regulated by the NYSE, they should be carefully reviewed to make sure that these agreements are not covering other costs unrelated to beneficial owner information.[32]

This issue was raised again in the 2010 SEC Concept Release on the U.S. Proxy System:

> It is our understanding that Broadridge currently bills issuers, on behalf of its broker-dealer clients, the maximum fees allowed by NYSE Rule 465. However, we understand that the fees Broadridge charges its largest broker-dealer clients for its services sometimes are less than the maximum NYSE fees charged to issuers on the broker-dealers' behalf, resulting in funds being remitted from Broadridge to a subset of its broker-dealer clients. This practice raises the question as to whether the fees in the NYSE schedule currently reflect 'reasonable reimbursement.' While the issuer pays the proxy distribution fees, the issuer has little to no control over the process by which the proxy service provider is selected, the terms of the contract between the broker-dealer and the proxy service provider, or the fees that are incurred through the proxy distribution process.[33]

The PFAC decided not to address this issue in any meaningful way. In fact, the PFAC report indicated that the Committee members were "comfortable" with this rebate system.[34] The only step that PFAC took to evaluate the cost issues was to ask SIFMA to undertake a representative survey of 10-15 broker-dealers and banks, for the purpose of collecting general cost information. These survey results were conclusory and unsubstantiated and included results from 5 broker-dealers coordinated through Broadridge. After conducting the survey, SIFMA stated that the survey's findings "support our view that proxy fees are reasonably in line with costs incurred by nominee brokers and banks, despite its limited sample size and other limitations…."[35]

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[32] New York Stock Exchange, *Report and Recommendations of the Proxy Working Group to the New York Stock Exchange*, at 28, June 5, 2006, *available at* http://www.nyse.com/pdfs/REVISED_NYSE_Report_6_5_06.pdf.
[33] *SEC Concept Release* at 42,997.
[34] *NYSE PFAC Report* at 23 ("The Committee was persuaded that the existence of these payments is not an indicator of unfairness or impropriety.").
[35] *SIFMA Letter* at 3.

The NYSE Statement on Burden of Competition in its rule filing expresses the NYSE view that its proxy fee schedule, and the dominance of Broadridge in providing proxy distribution and communications services to beneficial owners, are not a burden on competition, primarily because SEC rules place the responsibility for proxy distribution on the broker-dealers and the banks instead of the issuers:

> Under the SEC's proxy rules, issuers are unable to make distributions themselves to 'street name' account holders, but must instead rely on the brokers who are record holders to make those distributions. … For some time now a single intermediary has come to have a predominant role in the distribution of proxy material. … The Exchange does not believe that the predominance of this existing single intermediary results from the level of the existing fees or that the proposed amended fees will change its competitive position or create any additional barriers to entry for potential new intermediaries.[36]

The STA disagrees with this Statement. The excess profits generated through the NYSE proxy fee schedule are being used by Broadridge to subsidize their ability to successfully expand into the registered side of the transfer agent market. Broadridge has more than 1,000 issuers as direct clients, providing transfer agent and tabulator services to them. The argument they make to an issuer is a simple one: you have 75% of your shareholders in street name, why not let us handle the other 25% who are your registered shareholders?

The excess profits generated through this street name proxy work, paid for by the issuer community, are being used to offer attractive and aggressive pricing to issuers, for the purpose of enticing them to send their transfer agent work over to Broadridge. This would not be permitted to occur if there were a free market in the provision of proxy distribution and communications services.

Broadridge has been very clear about its ambitions to disrupt the transfer agent industry. The following is a quote from Rich Daley, the Chief Executive Officer of Broadridge, at an Investor Day presentation on June 22, 2011:

> Let me cover [Transfer Agent] first and then a couple of other pieces. First of all, we would not go out [and] buy a meaningful sized TA business because we're going to disrupt this model. So the existing TA business is a commoditized business, we are looking to move the TA business from a registered-only model to servicing all shareholders, all right?
>
> And many of those shareholder servicing pieces that you saw in both the $3 billion market opportunity slide that (Tim) and (Bob) put up are really around data, understanding your shareholders, managing that data, content and that's high margin work that one can get to. Don't forget again the fact

[36] *NYSE Proxy Fee Rule Filing* at 12,395.

> that we already have a huge processing system in place in our securities processing segment. It's going to be about $10 million to have the functionality of TA which makes us the low cost provider, okay, with a very, very low cost expense structure versus anybody else because we're leveraging an existing expense structure.[37]

NYSE proxy fees that are in excess of actual costs are subsidizing the business model of the broker-dealers, as well as the market dominance of Broadridge. Excess profits from proxy fees are also facilitating Broadridge's expansion into the transfer agent market.

SEC approval of the proposed NYSE proxy fee schedule will codify both the structure and the level of these fees. The STA acknowledges that the NYSE proxy fee rule proposal cannot address the broader question of a competitive marketplace for proxy services. In fact, the NYSE is on record in support of moving away from proxy distribution fees being set by SRO rules.[38] However, the SEC should disapprove this rule filing on the basis that the excess profits being generated are creating a burden on competition, as the dominant service provider in this arena is able to use these excess profits to subsidize its ability to successfully encroach on the proxy servicing business of transfer agents.

This does not have to be a necessary or appropriate outcome of a proxy system that requires broker-dealers and banks to distribute proxy materials to beneficial owners instead of issuers. For that reason, the SEC should disapprove this rule filing because an SRO is not permitted to "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Securities Exchange Act]."[39]

Conclusion

The NYSE rule filing does not meet the SEC's standards for approval. The NYSE has never commissioned an independent evaluation of actual proxy costs and the STA's own research and studies indicate strongly that the proxy fee schedule does not reflect a reimbursement for reasonable expenses.

In addition to its failure to evaluate actual costs in the proxy distribution process, the NYSE also did not develop a thorough cost-benefit analysis using the same degree of rigor as the SEC applies to its own rules.

As a result of these analytical flaws, the NYSE rule proposal will codify a number of proxy fee practices and fee levels which do not represent an equitable allocation of fees among issuers and discriminate between issuers and broker-dealers. Both the structure and level of these fees do

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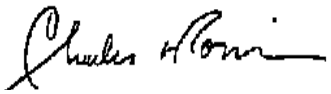
[37] Transcript of Broadridge Financial Solutions, Inc. Investor Day Presentation, Remarks by Richard Daly, Chief Executive Officer, Broadridge, June 24, 2011, *available at* http://www.faqs.org/sec-filings/110624/BROADRIDGE-FINANCIAL-SOLUTIONS-INC_8-K/dex991.htm#ixzz2KKjPly7z.
[38] *See NYSE PFAC Report* at 6, footnote 9.
[39] 15 U.S.C. § 78f(b)(8).

not reflect the cost of delivering these services in a competitive marketplace, nor do they resemble the charges for similar services by broker-dealer utilities operating on an at-cost basis.

Additionally, the excess profits generated through the NYSE proxy fee schedule are subsidizing Broadridge's ability to successfully encroach on the proxy servicing business of transfer agents, creating a burden on competition because of this subsidized fee structure.

For these reasons, the SEC should disapprove this proposed NYSE proxy fee schedule

Sincerely,



Charles V. Rossi
President
The Securities Transfer Association, Inc.

Attachment

cc: The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
The Honorable Daniel M. Gallagher
John Ramsay, Division of Trading and Markets
Lona Nallengara, Division of Corporation Finance
Norm Champ, Division of Investment Management