

# American Federation of Labor and Congress of Industrial Organizations



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Sent via e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

July 5, 2013

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
101 F Street, NE  
Washington, DC 20549

Re: *Release No. 34-69622, File No. SR-NYSE-2013-07*

Dear Secretary Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing regarding the proposed changes by the New York Stock Exchange (the "NYSE") to revise its proxy fee structure. Specifically, the NYSE proposal deals with the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other communications provided to investors holding securities in "street" name, and to establish an incentive fee structure for the development of enhanced broker internet platforms.

The AFL-CIO is the largest labor union federation in the United States and represents more than 12 million union members. Union-sponsored pension and employee benefit plans hold more than \$540 billion in assets. Union members also participate in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public employers. As long term investors who believe that good corporate governance enhances shareholder value, we believe that a fair and impartial proxy voting system is of great importance to investors.

We urge the Commission to disapprove the NYSE proposal until the NYSE employs an independent third party to assess the reasonableness of the proxy voting system and its associated costs. In 2006, a working group formed to review the NYSE proxy fee structure recommended an independent third-party audit of proxy costs and the performance of the largest proxy service provider, Broadridge Financial Solutions

Inc. That independent review has not yet been conducted. Such a review is warranted because Broadridge enjoys a near monopoly in the distribution of proxy materials.

We disagree with the conclusions of the Proxy Fee Advisory Committee that an independent review of the proxy fee structure is unnecessary. We believe that a third-party review is the best way to evaluate whether fees are reimbursed fairly, equitably and objectively. We recognize that the distribution of proxy materials may be most efficient when concentrated in a single firm. However, such a natural monopoly requires a utility rate setting regulatory process. Although Broadridge may not enjoy excessive profits, a third-party review can also help identify inefficiencies.

We are also concerned about Broadridge's impartiality in the dissemination of proxy materials and tabulation of proxy votes cast by street name investors. For at least the past decade, Broadridge has routinely provided preliminary vote results to shareholders who have used its services to send exempt solicitation proxy materials under Rule 14a-2(b)(1) of the Exchange Act. For example, shareholders often distribute exempt solicitation proxy materials as part of a director "vote-no" campaign. Providing preliminary vote results to such shareholders on the same terms as incumbent management is essential to a fair and impartial proxy voting system.

Broadridge recently stopped providing preliminary vote tallies to shareholders who disseminate exempt solicitation proxy materials. This change puts dissident shareholders at a distinct disadvantage versus incumbent management who has access to preliminary vote results. The facts and circumstances surrounding this change are troubling. Broadridge changed its policy in the middle of a highly contested vote-no campaign against certain directors at JPMorgan Chase.<sup>1</sup> This change may have been consequential in the outcome of JPMorgan Chase's annual meeting as one of its directors only narrowly won re-election by a slim majority of 53 percent.

Lastly, we urge the Commission to reject the NYSE proposal to create an incentive fee to encourage the development of enhanced broker internet platforms. NYSE Rule 452 currently prohibits brokers from voting on most issues without specific client instructions. Absent a Commission rulemaking to ensure that enhanced broker internet platforms are fair and impartial, we are concerned that such platforms may recreate the uninstructed "broker vote" phenomenon. Rules are needed to ensure that enhanced broker internet platforms encourage informed voting by retail investors, and not simply encourage voting in accordance with management's recommendations.

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<sup>1</sup> "Shareholders Denied Access to JP Morgan Vote Results" *The New York Times*, May 15, 2013, and "Investor Group Asks S.E.C. to Intervene on Access to Shareholder Vote Totals," *The New York Times*, May 17, 2013.

Letter to Elizabeth M. Murphy  
July 5, 2013  
Page 3

We appreciate the opportunity to comment on this rulemaking. If the AFL-CIO can be of further assistance, please contact Vineeta Anand at (202) 637-5182.

Sincerely,

A handwritten signature in black ink, appearing to read 'BR Rees', with a stylized flourish at the end.

Brandon Rees  
Acting Director,  
AFL-CIO Office of Investment