



March 7, 2013

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

Subject: NYSE Rule Filing on Proxy Fees (SR-NYSE-2013-07)

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals appreciates the opportunity to comment on the New York Stock Exchange's proposed rule filing on proxy fees (SR-NYSE-2013-07).<sup>1</sup> The Proposed Rule Change would update the NYSE schedule for reimbursement of expenses by issuers to NYSE member organizations involved in distributing proxy and other materials to investors holding securities in street name.

Founded in 1946, the Society is a professional membership association of more than 3,000 corporate and assistant secretaries, in-house counsel, outside counsel and other governance professionals who serve approximately 1,600 entities, including 1,200 public companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive management of their companies on corporate governance and disclosure matters. Society members are also responsible for company annual meetings and proxy voting.

The Proposed Rule Change is intended to implement recommendations issued by the NYSE Proxy Fee Advisory Committee ("PFAC"), which evaluated the existing proxy fee schedule over an 18-month period and issued a report on May 16, 2012.<sup>2</sup> The Society

---

<sup>1</sup> Proposed Rule Change Amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual, which Provide a Schedule for the Reimbursement of Expenses by Issuers to NYSE Member Organizations for the Processing of Proxy Materials and Other Issuer Communications Provided to Investors Holding Securities in Street Name and to Establish a Five-Year Fee for the Development of an Enhanced Brokers Internet Platform, filed by the New York Stock Exchange ("NYSE") with the Securities and Exchange Commission.

<sup>2</sup> NYSE Euronext, 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](https://usequities.nyx.com/sites/usequities.nyx.com/files/final_pfac_report.pdf) (hereinafter "PFAC Report").

commends the PFAC on its work.<sup>3</sup> We believe it has resulted in a more transparent and efficient fee structure. The Society supports the Proposed Rule Change and notes that it will:

- Improve the transparency of the fee structure, so that it is clearer to issuers what services they are paying for and that fees are consistent with the type and amount of work involved;
- Eliminate the “cliff” pricing schedule that distinguishes between large and small issuers, in favor of a clearly better tiered system for processing fees;
- Reduce the maximum fee level for certain suppression fees;
- Reduce the preference management fee for managed account processing by half and eliminate the fee for managed accounts with fewer than five shares;
- Eliminate all processing and preference management fees for any beneficial owner account with less than one share.
- Require that broker-dealers provide issuers with stratified lists of Non-Objecting Beneficial Owners (“NOBOs”), when requested in connection with an annual or special meeting of shareholders; and
- Authorize the Enhanced Broker Internet Platform program for five years, including the “success fee” paid by issuers to incentivize electronic delivery of materials thereby reducing mailing and production costs while at the same time enhancing retail investor participation in proxy voting.

The Society is gratified that the Proposed Rule Change includes the stratified NOBO list provision and the EBIP “success fee,” particularly since some Society members and staff have been involved in the structure, review and analysis of the EBIP in connection with their work on the Broadridge Steering Committee. We believe these two things will enhance retail vote participation and help issuers communicate with their shareholders at proxy time.

The Society understands that some commentators believe the Proposed Rule Change should not be adopted because no independent third party evaluated the costs of processing. While an independent third party may be desirable, the PFAC made a determination that “utility rate making” which could be independently audited would not work for proxy fees. We would defer to the PFAC’s view on this for purposes of this rule change, which is clearly a significant improvement on the existing framework.

---

<sup>3</sup> We note that the Chair of the PFAC, Paul Washington, is a past Chair of the Society, and further that another member of the PFAC, Beverly O’Toole, is also a director of the Society.

Elizabeth M. Murphy

March 7, 2013

Page 3

Some commentators say that issuers are concerned with contracts between Broadridge Financial Services and their broker-dealer clients that include “rebates.” We believe that the work done by the PFAC in gathering sample information from SIFMA members as to their actual costs is sufficient for this exercise. We would argue in particular that the term “rebate” is not applicable given SIFMA’s findings that most broker dealers reported costs that *exceeded* proxy reimbursement payments from Broadridge.

Finally, some commenters have criticized the reimbursement by issuers of any fees for processing the votes of Separately Managed Accounts, and cited this as a basis for denial of the Proposed Rule Change. The Society believes the PFAC and the Exchange have taken a fair and reasonable approach with respect to charges for such accounts by cutting the preference management fee in half for positions in managed accounts and eliminating the fee altogether for any position under five shares. As the proposal states:

SEC rules applicable to managed accounts require that each beneficial owner be treated as the individual owner of the shares attributed to his or her account, and that includes having the ability to elect to vote those shares and receive proxy materials. Accordingly, each beneficial owner’s election must be tracked – just as is the case with an investor in a non-managed account.

While we recognize that there is a benefit to issuers to having more investors in their stock through managed accounts, we also recognize there are costs to maintain the preferences of managed account holders. We believe the PFAC struck an appropriate balance: “the Committee was comfortable with the position that, given the relative benefit/burden on issuers and brokerage firms, it is not reasonable to make issuers reimburse the cost of proxy distribution to managed accounts holding five shares or less.”

The Society requests that you approve the proposed rule change for all the reasons above. We raise two matters for future consideration. First, while we support the proposed change to provide access to stratified NOBO lists when requested, we believe stratified NOBO lists should be made available *at any time*, not just once, around the annual meeting process.

Second, the Society also urges the SEC to establish an ongoing procedure for review of proxy fees, taking into account the recommendations of the NYSE Proxy Working Group Report in 2006 as well as the PFAC Report.

Sincerely,



Kenneth Bertsch  
President & CEO

Elizabeth M. Murphy

March 7, 2013

Page 4

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