October 31, 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: Request For Comments On The Processing Fees Charged By Intermediaries For Distributing Materials Other Than Proxy Materials To Fund Investors, Release Nos. 33-10505, 34-83379, IC-33114; File No. S7-13-18

Dear Mr. Fields,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the above-referenced release (the "Release"), which requests comment on various aspects of processing fees charged by intermediaries for distributing reports to mutual fund investors. SIFMA supports the goal of ensuring the efficient, reliable and economical distribution of mutual fund reports. Our response begins with a Background Summary, in which we summarize key background points that are relevant to our more detailed responses to the Commission's questions. Our more detailed responses are organized around the sub-headings included in the Release, including "General Framework," "SRO Rules," "Fulfillment Service Providers," "Preference Management Fee," "Processing Fees to Managed Accounts," and "Other Arrangements Between a Fund and Intermediary."

Summary of Key Background Points

The following three introductory points provide context for our more specific comments that follow.

1. **Street Name Ownership**

   The current framework for delivery of interim reports and reimbursement of fees is built upon the system of "street name" ownership. In this system, investors' relationships are primarily with their brokers or banks, rather than with the mutual fund or other issuer of the securities in question. It is for this reason that mutual funds' annual and interim reports are delivered to brokers to be forwarded on to their clients. It is also for this reason that brokers are reimbursed for forwarding

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. Its mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with its offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

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the mutual funds' reports to their clients. The delivery of the reports is one important but small part of a larger system of street name ownership that permits our capital markets to function efficiently.

The growth of street name ownership— the vast majority of all exchange-traded shares today— and the efficient systems developed around it have paved the way to average daily trading volumes that now reach more than 6 billion shares, as compared to 15 million shares in 1970.[2] This type of model is also adopted by Mutual Funds, where DTCC serves as nominee of all outstanding shares, and investors' ownership is recorded in book-entry form by market intermediaries such as broker-dealers and banks. This approach has enabled growth of total mutual fund sales, new sales, exchange sales, redemptions, and exchange redemptions from 4.63 billion in 1970, to more than 21 trillion in 2017.[3]

A fundamental precept of street name ownership is that banks and brokers maintain record ownership of the shares held by their clients, while their clients retain beneficial ownership as reflected on their account statements. This permits individual trades to be netted against each other electronically within and among banks and brokers, as compared to the slower and more cumbersome delivery of paper certificates across physical distances in the previous era. The former system had become the source of market failures and the "paper crisis" in the 1960's.

The street name system of ownership places the broker in the best position to deliver communications to its clients about their investments. The broker has a direct relationship with its client, who may be invested in multiple issuers, consolidated into a single account relationship. While clients rely on their brokers to effect transactions in securities, they also expect that each brokerage firm will provide a consolidated and uniform source of information and support with respect to multiple securities included in a given client account, which provides a number of benefits to the issuers as well, including, for example, sub-accounting relationships such as transfer agent services, and other efficiencies that facilitate overall mutual fund share ownership. Brokers accordingly are in a position to address client needs in a holistic manner, and provide an overall positive client experience.

Clients look to their brokers to provide guidance and to protect their legitimate interests when it comes to matters affecting their accounts. The broker is required by law to protect its clients' personal and financial information, and it generally is not permitted to share this information with mutual funds and other issuers.[4] Mutual fund holders who are "OBOs," or "Objecting Beneficial

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[2] SIFMA Fact Book 2018.
[3] 2018 Investment Company Fact Book, 58th Edition, Investment Company Institute, at p. 209.
[4] Subtitle A of Title V of the Gramm-Leach-Bliley Act requires financial institutions to protect certain nonpublic personal and financial information provided by their clients. As noted above, the Commission has interpreted the statute to protect a client's personal contact details along with information on share positions. See Regulation S-P Rule 3(t); see also Final Rule: Privacy of Consumer Financial Information (Regulation S-P), Exchange Act Rel. No. 42974 (June 22, 2000), at pp. 19-20.

Owners," have expressly chosen to remain anonymous to the issuer.[5] Under Commission rules, investors are considered NOBOs by default unless they elect to be OBOs.

2. **Previous NYSE Intermediary Fee Reimbursement Review**

As the Commission notes in the Release, in 2010-2013, the New York Stock Exchange undertook a broad review of reimbursement rates for the distribution of proxy and non-proxy interim reports. This was a broad review that focused on distributions by all issuers, including a review by a subcommittee on mutual funds and the reimbursement rates associated with the delivery of mutual fund reports. (The subcommittee on mutual funds included representatives from an investment company trade association, as well as from significant mutual funds and broker-dealers.) The PFAC's review culminated in the Commission's approval of certain revisions to the fee rates and structure in 2013 in the NYSE and FINRA rules. In conducting this review, the Exchange had formed the Proxy Fee Advisory Committee ("PFAC"), which in the Commission's words had been "composed of representatives of issuers, broker-dealers and investors, to review the existing NYSE fee structure and make recommendations for change as the PFAC deemed appropriate."[6] The PFAC issued a report in 2012 (the "PFAC Report") with its findings and recommendations, and these findings and recommendations addressed some of the same questions that the Commission has asked in the Release.[7] While we welcome an updated review of the matters addressed in the Release, some of the PFAC's analyses and conclusions in our view remain relevant to the current process.

Furthermore, we note that the implementation of Rule 30e-3 is in a transition period in which brokers must collect investor preferences on delivery and electronic access. It is difficult to predict how many funds will offer it, and if some investors will elect to continue to receive full package delivery. With a two-year transition period, this process will take time before we are in a position to assess the impact of the new rule on interim distributions, including the economics. It may more effective to undertake a fee review after the transition period and at a time when there is a track record that can be evaluated.

3. **Focus on Policy Should Promote E-Delivery/Engagement of Fund Investors**

As the PFAC concluded, the current structure for reimbursing brokers for distributing fund reports is substantially fair. It is not perfect, but suggestions to change the system would be impractical and costly to implement. , We respectfully suggest that the most-impactful and best way to materially improve the system for mutual funds and other issuers is to focus on ways to further accelerate the acceptance of e-delivery, to consider the possible use of new technologies in addition to email where proper safeguards can be put in place, and to improve fund disclosure so

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[5] An OBO, or "objecting beneficial owner," is a shareholder who has objected to such disclosure, preferring that only the broker or bank have his or her personal and financial information. A NOBO is a shareholder who has not objected to the disclosure of his or her name and address to the issuer.

[6] See Order Granting Approval to Proposed Rule Change Amending NYSE Rule 451 and 465, and Related Provisions of Section 402.10 of the NYSE Listed Company Manual, Rel. No. 34-70720 (Oct. 18, 2013).

[7] See Recommendations of the Proxy Fee Advisory Committee to the New York Stock Exchange (May 16, 2012). The New York Stock Exchange accepted the Committee's recommendations, and the Committee's analysis and conclusions were communicated to the Commission. See Self-Regulatory Organizations: New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual, Rel. No. 34-68936 (Feb. 15, 2013) ("NYSE 2013 Processing Fee Filing").

that more investors read and engage with what funds distribute to them. We expect that improved disclosure will have a positive impact on investor engagement over time. Growth in e-delivery over paper mailing will result in continued significant savings for mutual funds.

We expect that the Commission agrees with these goals, as illustrated by the recent adoption of Rule 30e-3, and its proposals on fund disclosure. However, electronic delivery of mutual fund reports through broker platforms saves money even as compared to the new system for on-line access, avoids the use of paper and can provide a more-user-friendly option for investors. E-delivery is clearly more economical than online access, since there are no additional costs associated with printing or mailing, and investors receive an electronic copy of the report in a format that is user-friendly and easy to view on a computer or portable electronic device. According to Broadridge Shareholder Communications, Inc. ("Broadridge"), approximately 55.7% of all annual and semi-annual reports are e-delivered currently (as of April 2018), and Broadridge estimates that the percentage will increase to more than 60% over the next 3 years.

We turn now to our responses to the specific questions that the Commission poses in the Release.

General Framework

The Commission poses several questions about the current system and rules that govern the distribution of mutual fund reports. It asks if the current rules for distributing proxy materials and interim reports to investors in public operating companies should apply to the distribution of mutual fund reports.

SIFMA believes that the current rules and framework are appropriate for the distribution of mutual fund reports. The regulatory structure created by Exchange Act Rules 14b-1 and 14b-2 exists to facilitate the distribution of materials from the issuer to an investor who holds its shares in "street name" through an intermediary such as a broker. When the Commission adopted those rules, it clearly contemplated that they would apply to mutual funds, as it expressly defines "registrant" to include "[a]n investment company registered under the Investment Company Act of 1940."

The current rules furthermore are necessary in order to appropriately allocate the roles of mutual fund and intermediary in effecting deliveries of mutual fund reports. While the issuer is not legally required to send interim materials through the intermediary, doing so is the most practical, reliable, efficient and effective manner of distribution. While an investor's name and address are available to the mutual funds for NOBO investors, the investors' relationship with their broker, the investor's distribution information, and distribution preferences, allow for more efficient and effective delivery of material in the preferred format of the investor . Brokers are in the best position to maintain and update their clients' delivery preferences, and we believe that deliveries by brokers maximize the use of e-delivery and eliminations of paper mailings. In establishing a separate fee for interim report distributions, the New York Stock Exchange rules recognize this practical reality by establishing reimbursement rates for the distribution of interim reports.[8]

Mutual fund distributions of interim reports that are made through a broker or other intermediary are completed in exactly the same way as other distributions made by issuers that are not mutual funds. Whether the report is a mutual fund report or a public operating company annual report, the practicalities

[8] See NYSE Rule 452.

of distribution, including the logistics and costs, are the same. Accordingly, establishing separate rules for reimbursement by mutual funds as compared to reimbursement by other issuers would not improve the evaluation of what constitutes "reasonable expenses." We do not believe that additional Commission rules in addition to Rule 14b-1 and 14b-2 are warranted.

The Commission asks whether differences between proxy and non-proxy distributions result in significant differences in costs. There are differences in costs between proxy solicitations, on the one hand, and the mailing of interim reports, on the other. This is because there are additional requirements associated with proxy solicitations, such as solicitation and processing of shareholder votes. However, the existing fee structure already accounts for these differences in costs. As explained in the Release, there is a special "Interim Report Fee" that applies to the mailing of interim reports, and this fee is significantly more modest than comparable fees charged for proxy distributions. The PFAC reviewed the Interim Report Fee and concluded that it should not be included among its suggested fee revisions.[9] The PFAC specifically addressed the Interim Report Fee as applied to mutual fund distributions.

The Commission asks several questions about mutual fund accounts that are designated as NOBOs. We are not aware of data indicating how frequently mutual funds distribute materials directly to NOBOs. If funds do not tend to elect to do so, it may be because the costs and other administrative burdens are higher relative to distributions through intermediaries, due to the latter's increasing use of e-delivery and number of paper eliminations. We believe that the vast majority of equity shares held by OBOs are held in institutional rather than retail accounts. [10]

SRO Rules

The Commission has asked questions about the appropriate SRO to regulate fees for the distribution of mutual fund reports by intermediaries. We do not believe that we are in a position to evaluate which regulator is more qualified to regulate reimbursement rates. Brokers may be regulated by both the NYSE and by FINRA. However, while the NYSE has historically led reviews of processing fees, the other exchanges and FINRA have been involved and have adopted similar rules for consistency. We would not support an approach that bifurcated regulatory responsibilities, such as the regulation of mutual fund distributions by one regulator, and proxy and public operating company distributions by another regulator. We believe that such an approach would result in inconsistencies, confusion, as well as inefficiencies for both regulators and regulated entities.

Fulfillment Service Providers

The Commission poses a number of questions about the current framework for the delivery of materials to "street name" holders of mutual fund shares, and our responses follow.

The Commission asks if the current framework for the distribution of mutual fund reports to street name holders is appropriate. We believe it is appropriate, given the "street name" structure where brokers have a direct relationship with clients, and the information necessary to communicate with them. The Commission asks if the current approach encourages intermediaries to reduce costs for funds. As noted in the PFAC Report, in addition to reimbursing brokers for related costs, the "preference management

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[9] PFAC Report, at 24-25.
[10] According to an analysis conducted by Broadridge, shares held by OBOs represent 72.9% of all shares outstanding, and 15.7% of such shares are held in retail accounts, the balance in institutional accounts..

fee" has provided intermediaries with an incentive to reduce the number of paper deliveries, thereby reducing overall costs

The Commission asks a series of questions about the costs of delivery to street name holders through intermediaries, as compared to the costs of delivery to investors directly by the mutual fund. While we have seen vague claims about these comparative costs, we have not seen actual data. If such a comparison is made based on data, it is important to ensure that same scope of costs for street name delivery (e.g., data, technology and client servicing costs) are being considered in calculating the costs of direct delivery to investors by the mutual fund.

The Commission asks about "remittances and rebates from fulfillment service providers for non-proxy deliveries." The distribution processing fees in the regulations compensate for all costs of the intermediary mailings, outside of printing of material and postage, including the technology, servicing and controls in place for this efficient model.[11] The PFAC investigated this issue, and published the Committee's conclusions as follows:

> The Committee was persuaded that the existence of these payments is not any indicator of unfairness or impropriety. Firms have to maintain internal data systems that are involved in the proxy distribution process, but firms differ in the make-up and size of their beneficial owner populations, and consequently in the size of the proxy distribution effort they are required to undertake beyond that which is outsourced to Broadridge. By the same token, differences in economies of scale mean that Broadridge's cost to provide service differs from firm to firm. Again, the fact that the fees are fixed at 'one size' that has to 'fit all,' means that even if on an overall basis the fee revenue is appropriate given overall distribution expenses, there will be 'winners and losers' along the spectrum.[12]

In an ideal world, each intermediary's actual costs (both billed by its fulfillment service provider, and additional costs incurred internally) would be matched to a unique level of reimbursement. However, the costs and impracticality of such a system that matched each intermediary's unique, actual costs to its reimbursement amount would be extraordinary, with a wide varying rate of costs to funds for each broker. Such a task to customize broker reimbursements would be even more difficult given that broker-dealer economics vary greatly among firms, by size, client mix, product mix, service-level, degree of automated services and/or personal service, and geographic location. By contrast, the current "one size fits all" system can be applied without incurring the significant costs and impracticalities of such customization. The current approach of course has some flexibility as certain reimbursement rates are roughly scaled to size.

The Commission asks about additional related, internal costs that intermediaries incur beyond payments to their fulfillment service providers. Brokers do incur additional internal costs aside from the payments that they make to their fulfillment service provider. While each broker's cost structure will vary, costs generally are incurred in the following categories, with further detail in a chart we had provided to the

[11] In 2012, SIFMA submitted the results of an informal survey to the NYSE that reflected these results. See NYSE 2013 Processing Fee Filing, Exhibit 2, Letter to Ms. Judy McLevey, Vice President, NYSE Euronext, from Mr. Tom Price, Managing Director, SIFMA, dated May 30, 2012. The survey reflected that despite the inconsistencies from one broker to another in terms of reimbursement, overall industry-wide costs appeared to be generally in line with overall payments by issuers.
[12] PFAC Report, pp. 23-24.

NYSE in 2012, which we attach again here as Exhibit A to this letter.[13] The broad categories of such internal costs are: Preference Management, Infrastructure – Vendor Data Exchange, Oversight Supervision, Client Service, and Record Retention.

Preference Management Fee

The Commission asks a series of questions about whether the preference management fee should be charged for each distribution, or whether it should be charged less frequently, such as annually. We believe the fee should continue to be incurred for each distribution, since the same work has to be done to update and verify preferences each time there is a new distribution. Investors for example sometimes change their preferences, move brokers, and change addresses. There are "email fails" that have to be processed and an appropriate response undertaken. There needs to be continuous technology support. Cyber protections for instance have to be continuously monitored and updated. Client service has to be provided. The PFAC considered this question, and concluded that the fee should be charged on a per-distribution basis, explaining:[14]

> [T]he Committee was persuaded that there was in fact significant processing work involved in 'keeping track of the shareholder's election,' especially given that the shareholder is entitled to change that election from time to time. Although few do change their election, data processing has to look at each position relative to each meeting or distribution event to determine how the 'switch' should be set. Data management requires ongoing technology support, services and maintenance, and is a significant part of the total cost of eliminating paper proxy materials.

If the frequency of the preference management fee were limited, it could result in significant under-reimbursement of brokers' overall costs.

Processing Fees to Manage Accounts

The Commission asks whether the current fee structure for distributions to managed accounts are appropriate, or whether reduced rates are warranted. We do not believe any reduction in the applicable fees is warranted. As the PFAC concluded, "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 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." The costs related to this activity are similar to those described above for tracking individual investors' preference elections.

Brokers cover most of the costs of consolidating multiple accounts into a single distribution recipient, and mutual funds benefit from significant savings as a result. Instead of having to incur the costs of making individual paper or electronic mailings to multiple individual account holders, mutual funds typically need make a single mailing to the advisor or manager. While we have not studied the relative costs, we expect

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[13] The NYSE filed the chart with the Commission in 2013. See NYSE 2013 Processing Fee Filing, Exhibit 2, Letter to Ms. Judy McLevey, Vice President, NYSE Euronext, from Mr. Tom Price, Managing Director, SIFMA, dated May 30, 2012 (Appendix 2).
[14] PFAC Report, at 13.

that these cost savings far outweigh the aggregate interim report fees and preference management fees, which defray the cost of tracking individual accounts for the purposes of mutual fund distributions.

Other Arrangements Between a Fund and Intermediary

The Commission poses a series of questions focused on whether there is overlap between a fund's payments to brokers to reimburse them for distributing fund reports, and payments funds make to brokers under other contractual arrangements. Brokers have a variety of contractual arrangements with mutual funds, including sub-custodian and transfer agent relationships. While we have not conducted a formal survey, based on the experience of our members we are aware of no examples of such overlap. Ordinarily, most agreements between mutual funds and brokers specifically exclude services such as the distribution of regulated mailings to customers that are covered under specific rules.

Even if there were overlap between such other agreements and mandatory reimbursements (as we believe there is not), the mutual funds are in a position to re-negotiate such other agreements to eliminate the duplication, so that, even in that case, there would be no need for regulation.

Mutual funds benefit from the other relationships they have with brokers. For example, the broker may perform a transfer agent function on behalf of the mutual fund with respect to the broker's clients, relieving the mutual fund of that responsibility. We expect that the mutual fund's savings far exceed any fee they pay brokers to perform this task. Because we understand that the cost of distributing reports is an acceptable fund expense, we would not expect those costs to be covered by 12b-1 fees.

We greatly appreciate the opportunity to comment on the proposal. If you have any questions concerning these comments or would like to discuss these comments further, please feel free to contact Ellen Greene at [redacted] or [redacted]..

Sincerely,

Ellen Greene

Ellen Greene
Managing Director

cc: The Honorable Jay Clayton, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Robert Jackson Jr., Commissioner
The Honorable Hester M. Pierce, Commissioner
The Honorable Elad L. Roisman