



October 31, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington D.C. 20549

Re: *SEC Request for Comments on the Processing Fees Charged by Intermediaries for Distributing Materials Other Than Proxy Materials to Fund Investors (File No. S7-13-18)*

Dear Mr. Fields:

On behalf of MFS Investment Management, I would like to express our appreciation for the opportunity to respond to the above-captioned request for comments. The current regulatory framework governing processing fees charged in connection with the delivery of investment company shareholder documents has given rise to inefficiencies and practices that have resulted in shareholder expenses that are higher than are reasonable or necessary. MFS commends the Commission for bringing attention to this issue and for its actions in related areas, in particular its recent adoption of Rule 30e-3 under the Investment Company Act of 1940 (the "Rule").¹ Unfortunately, important goals of the Rule will go unrealized if the Commission does not take action to address processing fees because certain unwarranted fees stand to offset most of the shareholder savings in print and mail costs. For the reasons discussed herein, MFS strongly agrees with the views expressed by the Investment Company Institute in its letter to you on the same matter² and urges the Commission to take action to remediate the problems underlying the current processing fee-setting framework in order to serve the interests of investors.

MFS is a global asset management firm providing investment management services to various clients including 135 SEC-registered investment companies held by over ten million shareholder accounts. Over nine million of these accounts are held through intermediaries and are therefore subject to processing fees. Since all such fees are fund expenses, fund shareholders will be the primary beneficiaries of Commission action on this matter.³

As discussed in the ICI Letter, we see a fundamental structural issue in the current regulatory framework governing processing fees. Under current rules, the intermediary arranges for the delivery

¹ *Optional Internet Availability of Investment Company Shareholder Reports*, 83 Fed. Reg. 29158 (June 22, 2018)

² See Letter from Susan Olson, General Counsel, Investment Company Institute, dated October 31, 2018 (the "ICI Letter").

³ Many advisers to mutual funds, including MFS, have expense limitation arrangements with certain funds whereby the adviser reimburses the fund if particular shareholder expenses exceed certain thresholds. MFS and other advisers may have a secondary benefit to the extent that Commission action reduces shareholder expenses below these thresholds.

of shareholder materials - usually through a vendor - and agrees to the fees that will be paid pursuant to this arrangement. Due to the "safe harbor" provided by the regulatory framework,⁴ the intermediary is under no obligation to minimize, negotiate or rationalize these fees. The party that is responsible for payment (i.e., the fund and, by extension, its shareholders) has no role in the terms of the arrangement. This lack of control has, over time, given rise to the inequities that now compel us to seek Commission intervention on behalf of shareholders.

The solution proposed by the ICI to address this structural flaw is simple and warrants thoughtful consideration. Funds have an independent fiduciary responsibility to determine that any expense borne by their shareholders, after consideration of all relevant facts and circumstances, is reasonable. If funds were allowed to select their own shareholder material delivery vendors then they would naturally seek to negotiate the lowest possible processing fees. This solution has the potential to introduce competition into the marketplace and may even obviate the need for the Commission and self-regulatory organizations to administer what is effectively a public utility. This solution would also be consistent with the Commission's mandate in Section 3(f) of the Securities Exchange Act of 1934 to consider the protection of investors and the promotion of efficiency, competition and capital formation.

Should the Commission determine not to move in this direction, MFS urges that it follow the recommendations of the ICI Letter to prohibit certain unreasonable billing practices. The most objectionable of these practices is the application of processing fees in connection with managed account shareholder document delivery obligations that do not exist in the first instance. This practice results in fund shareholders needlessly paying millions of dollars each year.

As you know, the plain terms of the Commission rules that gave rise to the current regulatory framework provide only for "reimbursement" of "reasonable expenses."⁵ It could not have been the intention of the Commission in adopting these rules to create a system that is without accountability to fund shareholders.⁶ We urge the Commission to take steps to put the system back on track consistent with its original purpose.

Thank you for taking the time to consider our views. Should you have any questions, please contact me at [REDACTED] or Jay Herold, Vice President and Senior Counsel, at [REDACTED].

Sincerely,



Heidi Hardin
Executive Vice President and General Counsel

⁴ NYSE Rule 451.90 and FINRA Rule 2251.01

⁵ See, e.g., Rule 14b-1 under the Securities Exchange Act of 1934, as amended.

⁶ Note the survey results referred to in the ICI Letter that show that funds are paying between three and five times more in processing fees for accounts held through intermediaries than for direct accounts. See ICI Letter, at p. 6.

cc: The Honorable Walter J. Clayton
Chairman
Securities and Exchange Commission

The Honorable Kara M. Stein
Commissioner
Securities and Exchange Commission

The Honorable Robert J. Jackson, Jr.
Commissioner
Securities and Exchange Commission

The Honorable Hester M. Peirce
Commissioner
Securities and Exchange Commission

The Honorable Elad L. Roisman
Commissioner
Securities and Exchange Commission