IBC

International Bancshares Corporation

March 13, 2013

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: New York Stock Exchange ("NYSE") Proposed Rule—Proxy Fees
SEC File No. SR-NYSE-2013-07

Dear Ms. Murphy:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC holds four state nonmember banks serving Texas and Oklahoma with each bank having less than $10 billion in assets. With over $11.9 billion in total consolidated assets, IBC is the largest Hispanic-owned financial holding company in the continental United States. IBC is a publicly-traded financial holding company. IBC's flagship bank, International Bank of Commerce, Laredo, Texas, serves as the transfer agent for IBC. IBC has approximately 2,500 shareholders of record. We appreciate the opportunity to comment on this matter.

On February 1, 2013, the NYSE, a self-regulatory organization, filed with the U.S. Securities and Exchange Commission ("SEC") a proposed rule change relating to changes to fees to be charged to issuers for the distribution of annual meeting materials to street name investors. On February 15, 2013, the SEC published notice to solicit comments on the proposed rule change. The NYSE Proxy Fee Advisory Committee ("PFAC"), which was formed in September 2010 to review and advise on proxy distribution fees paid by public companies to banks and brokers, published its recommendations on May 16, 2012. The NYSE proposed rule change implements recommendations from the PFAC.

I. <u>Overview of the Proposed Rule</u>

The proposed rule would amend 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.

II. <u>Comments</u>

A. <u>The NYSE Rule Filing Does Not Include an Independent Review of Proxy Costs</u>

We believe 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.[1]

To our knowledge, 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.[2] 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 delaying this independent study, and the SEC should disapprove this rule filing until that study has been commissioned and completed.

B. 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

We believe that approval of SRO rules should be subject to the same degree of rigorous analysis as the SEC applies to its own rules. 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.

The PFAC and previous proxy fee working groups formed by the NYSE continue to base their conclusions on data provided exclusively by Broadridge Financial Solutions ("Broadridge") and its broker-dealer clients—the stakeholders with the most to gain or lose by changes to the

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[1] 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.

[2] 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.").

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.

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

It is our understanding that the basic processing fee and the intermediary unit fee were originally intended to be charged for 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.

We believe 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, we do not believe it is fair for smaller issuers like IBC 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. We do 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.

We also believe 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.

Based on the foregoing 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.[3]

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

While certain suppression fees may 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 not based on the true cost of providing these services in a free market. And, as previously noted, 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.

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

Finally, 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 schedule. These excess profits are causing a burden on competition that is not necessary or appropriate. 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.[4]

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. 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. It is our understanding that Broadridge has more than 1,000 issuers as direct clients, providing transfer agent and tabulator services to them.

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.

[3] *See* 15 U.S.C. § 78f(b)(4).

[4] *NYSE PFAC Report at 23* ("The Committee was persuaded that the existence of these payments is not an indicator of unfairness or impropriety.").

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 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]."[5]

Thank you for your consideration.

Respectfully,

Dennis E. Nixon
President
International Bancshares Corporation

[5] 15 U.S.C. § 78f(b)(8).