



March 18, 2013

Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Release No. 34-68936; File No. SR-NYSE-2013-07; Revised Proxy Fees and Establishment of a Five-Year Fee for the Development of an Enhanced Brokers Internet Platform

Dear Ms. Murphy:

The American Business Conference (ABC), a coalition of leaders of midsize growth companies, is pleased to offer its support for the rule changes in the above-referenced Release.

These proposed revisions to the proxy fee rules are the result of a collaborative effort by the members of the NYSE's Proxy Fees Advisory Committee (PFAC) to align the interests of brokers and intermediaries with those of issuers. The result is an improvement upon the existing fee structure which itself has fostered the development of an efficient proxy system. And, while ABC was initially concerned with the dearth of small company representation on the PFAC, we have been impressed with the consideration given to smaller issuers evidenced in the PFAC Report.¹

¹ See, e.g., RECOMMENDATIONS OF THE PROXY FEE ADVISORY COMMITTEE TO THE NEW YORK STOCK EXCHANGE. May 16, 2012. (Hereinafter, "PFAC Report"), p. 11. ["In determining the fees applicable to each tier, however, the Committee was sensitive to the fact that an attempt to fully reflect the economies of scale would result in excessive increases in the rate paid by the smallest issuers, and the Committee considered such an outcome inappropriate. Indeed, it was an operating principle for the Committee that it wished to avoid recommendations that would generate large and potentially dislocating changes in the fees or in the impact of the fees on broad categories of brokers or issuers."]; p. 10 ["The Committee was concerned that this additional charge could have an inappropriately

We are also pleased that the PFAC has taken steps to advance the voting interests of retail shareholders. We consider the addition of a fee intended to promote Enhanced Broker Internet Platforms (“EBIPs”) an important addition to the proxy fee schedule. While we are aware that some brokers have provided EBIPs to their clients without the inducement of a fee, it is sensible to expect that a financial incentive would increase the availability of EBIPs and perhaps spur innovation in such platforms.

Based on the information in the PFAC report, we think it reasonable to expect that EBIPs will enhance the ability of retail shareholders to vote their shares and review proxy materials more conveniently. While EBIPs will not alone solve the long term problem of the low level of voting by retail shareholders, it is a beginning.

As an issuer organization, we note with approval that issuers will pay an EBIP fee only if the EBIP spurs a broker’s client to convert to electronic delivery of materials. This one-time fee should be offset by the cost savings on printing and postage in the year it is earned. Those savings will of course continue to accrue to issuers for years to come. It is hard to imagine another system that improves retail shareholder communication while saving money (and trees).

The Proposing Release and the PFAC Report show an appropriate approach for revising proxy fees and due consideration to the most important issues regarding fee levels.

The Release and the Report set out a thorough and practical review of the amount of money companies spend on proxy fees. The Committee took into consideration the overall quality of the street name proxy system and the importance of maintaining current service levels – a consistently high priority for issuers throughout the various reviews of the proxy process.

large impact on the smallest issuers (who are typically held by the smallest number of nominees). To address this concern, the additional fifty cents fee will be capped at \$100 for the smallest issuers (fewer than 10,000 accounts holding their stock.)” p.18 [“The 32 cents rate (for the new preference management fee) would be a reduction for companies that have been characterized under current rules as Small Issuers, and an increase for those that have been categorized as Large Issuers, but would result in an overall savings to issuers taken as a whole.”] Available at https://usequities.nyx.com/sites/usequities.nyx.com/files/final_pfacs_report.pdf.

The PFAC and the NYSE applied a reasonable cost-benefit analysis to the question of whether a third-party audit should be required.² While such an independent review is often attractive in the abstract, the regulatory landscape is laden with examples where the costs of such reviews outweigh the benefits. In this case, the Release sets out a reasonable explanation for the NYSE's decision to avoid those costs.³

We believe that the proposed revisions retain the crucial incentive-based fee structure for good reason. As noted in the Release “the introduction of incentive fees in the late 1990's established that ‘fair and reasonable rates of reimbursement’ encompassed rates that were not associated with a specified level of costs, but rather were considered adequate to encourage the development of systems that would lead to the elimination of physical delivery.”⁴ The incentive-based structure has proved effective in properly aligning the interests on issuers, brokers and intermediaries toward reduction of major costs of the proxy process: printing, paper and postage. It has also supported a proxy process that is generally praised for its transparency, efficiency and reliability.

Those who have followed discussions of the proxy process over the years know that the notion that proxy fees should be regulated as though the proxy process were a utility always lurks in the background. While a superficial look at the current make-up of proxy process intermediaries along with the fact that fees are set by a regulatory organization might suggest reconsideration of the “utility” approach, we see many reasons why it would not be in the long-term interests of issuers or their shareholders. Among the most important of these is the value of retaining the potential for a new entrant with new technologies to compete with current dominant players.

We fear that a cost-based, “reasonable rate of return” analysis that characterizes utility ratemaking can and has perpetuated monopolistic circumstances in the past. (Airlines, public power and communication utilities come to mind.) While there is a current dominant intermediary in the street-side proxy process, brokers remain free to contract with any entity that can adequately fulfill proxy process services to its clients or to provide those services themselves. Based on past observation of other

² SECURITIES AND EXCHANGE COMMISSION, (Release No. 34-68936; File No. SR-NYSE-2013-07) February 15, 2013. (hereinafter “Release”) p. 55. Available at <http://www.sec.gov/rules/sro/nyse/2013/34-68936.pdf>.

³ *Id.* See also, PFAC Report, *supra*, n.1, Pp. 7-10.

⁴ *Id.* p.9.

industries, we have faith in the ability of the free market to disrupt a situation where “excess profits” create opportunity so long as the incumbent players are not protected by legal or regulatory structures.

The revisions to the fee structure and nomenclature should improve issuers’ understanding of the relationship of fees to actual work performed.

Despite nearly a decade’s accumulation of inflation in many other prices,⁵ these proposed changes are projected to reduce overall fees paid by issuers by 4%. The revisions eliminate arbitrary cliffs in size-based fees and replace them with a more rational stair-step approach that is fairer to all issuers. Of course, we recognize that the revisions to the fee structure will impact companies differently and that some smaller companies will pay higher fees. However they will retain the opportunity to reduce the overall cost of the proxy process by reducing paper, printing, and postage costs, which have always been the bulk of annual meeting expenses. Furthermore, we hope that the elimination of the minimum fee for use of Notice and Access will make this more efficient approach to annual meeting mailings cost effective for smaller companies.

We accept the NYSE’s and the PFAC’s conclusions that the refinements to the fee structure fairly reflect the economies of scale that can be achieved in providing services to large issuers without substantially increasing costs for smaller issuers.⁶ We also appreciate the PFAC’s work in reducing a number of fees: reminder mailings (as noted above); fees related to shareholders in Separately Managed Accounts and Wraps accounts and Notice and Access minimum fees (noted above). Issuers will also be able to obtain stratified NOBO lists, thus reducing the cost involved in communicating effectively with shareholders.

A few commenters have submitted critiques of the PFAC and its decisions and have also offered their own estimates of the impact of the requested changes in fees. We believe the Release adequately addresses these criticisms of the PFAC and refutes the relevance of the separate proxy fee cost analysis.⁷

⁵ Release p. 10.

⁶ *Supra*, note 1.

⁷ Release pp. 53-55.

There have been in addition challenges to the adequacy of the NYSE's analysis of costs and benefits. As the basis for this, critics quote the dissenting opinion of Commissioners Gallagher and Paredes in an SEC decision on a Municipal Securities Rulemaking Board Interpretive Release requiring additional disclosures by municipal securities underwriters.⁸

ABC applauds the Commissioners' insistence upon rigorous cost-benefit analysis. It appears to us that the Release fulfills the requirement to provide "a thorough analysis of both the intended benefits and the possible costs of a proposed rulemaking in order to ensure that any regulatory decision to proceed with the initiative reflects a well-reasoned conclusion that the benefits will come at an acceptable cost."⁹ Certainly the cost-benefit analysis in the Release can hardly be characterized as "[u]nsupported assertions that the hoped-for benefits will materialize, that the costs will be warranted, and that the statutory standard is met..."¹⁰ Indeed, we believe the PFAC's Report and the NYSE's Proposing Release easily pass muster as careful and reasoned analysis of the costs, benefits, and alternatives to the approach it has taken.¹¹

Sincerely,



John Endean
President

⁸ Order Approving Proposed Rule Change, as Modified by Amendment No. 2, Consisting of Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities, Exchange Act Release No. 34-66927 (May 4, 2012), available at <http://sec.gov/rules/sro/msrb/2012/34-66927.pdf>.

⁹ Commissioners Daniel M. Gallagher and Troy A. Paredes, Statement Regarding Commission Approval of MSRB Rule G-17 Interpretive Notice, *U.S. Securities and Exchange Commission*, Washington, D.C., May 14, 2012. Available at <http://www.sec.gov/news/speech/2012/spch051412dmgtap.htm>

¹⁰ *Id.*

¹¹ See Release pp. 8-11.