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July 3, 2013

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

Re: Release No. 34-69622, File No. SR-NYSE-2013-07

Dear Secretary Murphy:

The American Federation of State, County and Municipal Employees ("AFSCME") appreciates the opportunity to submit comments to the Securities and Exchange Commission ("Commission") on Release No. 34-69622, "Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change Amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual" (May 23, 2013) (the "Release"), which seeks comment on whether the Commission should disapprove the NYSE Proposal. In the NYSE Proposal, the New York Stock Exchange ("NYSE") proposes rule changes regarding the reimbursement of expenses by issuers to NYSE member organizations for the distribution of proxy materials and other issuer communications to "street name" owners and the establishment of an incentive fee to support development of an enhanced brokers internet platform ("EBIP") for retail investor voting.

AFSCME is the largest union in the AFL-CIO, representing 1.6 million state and local government workers. AFSCME members participate in over 150 public pension systems whose assets total over \$1.7 trillion. Pension plans in which our members participate have taken an active approach to voting on proxy proposals at portfolio companies. As well, plans sometimes sponsor initiatives, such as shareholder proposals, "vote no" campaigns and proxy contests. Plans take these actions in order to maximize the value of investments and enhance retirement security for participants and beneficiaries. Accordingly, AFSCME has a strong interest in the integrity and transparency of the proxy voting system and shareholder communications.

We urge the Commission to disapprove the NYSE Proposal, for the reasons discussed below.

First, we agree with the Commission's concern, expressed in the Release, that the proxy fee schedule contained in the NYSE Proposal is not clearly explained and lacks an adequate factual rationale. As a result, the Commission lacks a basis for

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concluding that the NYSE Proposal is consistent with the Securities Exchange Act of 1934.

As an initial matter, we dispute the NYSE's assertion that market forces currently shape the fees issuers are currently required to pay for proxy distribution. (See Release, at 52 (quoting NYSE's expressed view that notice and access fees are the product of market forces)) Broadridge Financial Solutions, Inc. ("Broadridge") enjoys a monopoly in distributing proxy materials, with over 95% of the market. That Broadridge charges all broker-dealers the maximum exchange-approved fee amount—a burden borne by issuers (which reimburse for these expenditures) and ultimately their shareholders--and then rebates a portion of the fees to its larger broker-dealer customers undermines this notion.

In the absence of a functioning market, and given the critical importance of the proxy voting process, Broadridge's proxy distribution monopoly demands utility-like oversight by regulators. The NYSE argues that such oversight has been accomplished by delegating fee-setting to the Proxy Fee Advisory Committee ("PFAC"). In responding to concerns raised by commenters regarding the NYSE Proposal, the NYSE repeatedly invokes the PFAC's review and analysis. The PFAC, however, does not fully represent all key constituencies in the proxy voting process: out of twelve members, only one, a principal at Vanguard Group, represents investors. (Even Vanguard is not solely an investor representative, as it also must distribute proxy materials to its own funds' shareholders.) The remaining PFAC members are associated with issuers, broker-dealers or the NYSE itself. (See http://www.nyse.com/pdfs/NYSE_Proxy_Fee_Advisory_Committee_Members.pdf)

Even assuming that the PFAC provides adequate representation of all affected parties, we do not believe that the PFAC has had access to the kind of information necessary for it to recommend particular fees as reasonable expenses incurred in connection with proxy material distribution. The NYSE stated that the PFAC reviewed publicly available financial information on Broadridge. That information, however, is not granular enough to allow the PFAC to discern the revenues and expenses specifically associated with the proxy distribution business. Broadridge does not break out the proxy distribution business' results separately, but instead lumps its results in with those of other businesses in the Investor Communication Services segment, including the processing of account statements and trade confirmations, document fulfillment, and marketing communications. (Broadridge 10-K for fiscal year ended June 30, 2012 filed on August 9, 2012, at 4) The Commission noted in the Release that "it does not appear that the PFAC looked beyond this general information to obtain a clearer understanding of the costs of proxy processing or of how they may have changed in recent years, for example in light of notice and access." Without such data, we do not believe that the PFAC's recommendations are adequately supported.

The NYSE Proposal does not explain why issuers should reimburse indefinitely fees associated with not sending materials to a beneficial owner. For example, the NYSE Proposal provides for reimbursement of a fee (albeit a lower one) to be paid to nominees that do not distribute materials to beneficial owners because those owners have delegated their voting rights to an investment manager. The rationale asserted for this fee is that "data processing" must be

done from time to time to determine whether the beneficial owner has changed its mind regarding voting delegation. But the NYSE Proposal makes no effort to tie the proposed fee to the actual cost of conducting this data processing.

A similar fee is charged to shareholders sponsoring initiatives (such as shareholder proposals or "vote no" campaigns) seeking to communicate with other shareholders by mailing through Broadridge. There, shareholders are charged \$.10 per account for those accounts that do not receive the mailing, on top of a flat "stratified mailing fee" for not mailing to all shareholders. A fuller explanation of how these fees represent reimbursement for actual costs is necessary to ensure compliance with statutory requirements.

Second, the NYSE Proposal does not reflect consideration of the conflicts of interest affecting Broadridge, which strengthen the case for heightened scrutiny of the NYSE Proposal. Broadridge is a publicly traded company that derives a substantial proportion of its revenue from proxy distribution. As a result, Broadridge's objective is to maximize fee revenue. Broadridge does other kinds of business with the broker-dealers for which it handles proxy distribution; as other commenters have noted, Broadridge's payment of rebates to large broker-dealer customers raises concerns about these relationships.

As well, as you are no doubt aware, Broadridge recently faced allegations of unfairness in connection with its performance of its vote tabulation duties. In May, Broadridge abruptly changed its policy regarding access to interim vote tallies by shareholder proposal sponsors, including those that had mailed to other shareholders through Broadridge, cutting off access in the lead-up to a contested meeting at JPMorgan Chase. News reports indicate that Broadridge made that change in response to a request by the Securities Industry and Financial Markets Association ("SIFMA"), a trade association whose members include JPMorgan Chase. Broadridge stated that it believed it was required to honor the request because it came from the company's broker-dealer customers. (See Susanne Craig & Jessica Silver-Greenberg, "JPMorgan Shareholders are Denied Access to Results," New York Times (May 15, 2013) (available at http://dealbook.nytimes.com/2013/05/15/jpmorgan-voters-are-denied-access-to-results/?_r=0)) SIFMA's recently-departed CEO is now Global Head of Regulatory Strategy and Policy for JPMorgan Chase. (See Brian Browdie, "JPM Exec's SIFMA Ties Could Help Dimon Vote," American Banker (May 16, 2013) (available at <http://www.americanbanker.com/people/jpmexecs-sifma-ties-could-help-dimon-vote-1059203-1.html>))

We understand that Broadridge contends that the Commission's rules require it to provide interim vote tallies to issuers, though it has pointed to no specific language in the rules (nor were we able to identify any such requirement). Broadridge has reportedly indicated that it believes that Commission guidance is necessary to resolve disagreements regarding its role in providing vote tallies. (See "JPMorgan, under pressure, gives up vote information," Reuters (May 20, 2013) (available at <http://www.reuters.com/article/2013/05/21/us-jpmorgan-vote-broadridge-idUSBRE94J0WA20130521>) (citing Broadridge's contention that no Commission rule requires it to disclose tallies to shareholder proponents)). In light of these recent developments, we

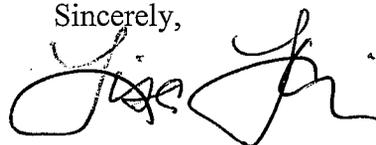
believe that the Commission should fully explore the conflicts of interest involving Broadridge and provide any guidance it deems appropriate before approving the NYSE Proposal.

Finally, we urge the Commission not to put in place an incentive fee for the development of Enhanced Brokers' Internet Platforms ("EBIPs") without evidence that such an incentive is necessary and a mechanism for ensuring that any EBIP will adhere to basic principles of fairness that underpin Commission regulation of the proxy process. As a matter of principle, we favor measures to increase genuine retail shareholder participation in the proxy process. We note that companies other than Broadridge (including commenter FOLIOfn) have already developed EBIPs without such a subsidy. The Release states that "Broadridge discussed with the PFAC a similar service that [Broadridge] offers and maintained that while some brokerage firms have already implemented services like the EBIP, it appeared likely that some financial incentive would be necessary to achieve widespread adoption." No evidence is presented that the PFAC obtained any data in support of that conclusion, or that the PFAC considered examples of EBIPs currently in use. Absent a fuller explanation with factual support, we do not believe that the Commission can conclude that approval of the EBIP fee is consistent with statutory requirements.

In our view, any EBIP developed using a Commission-approved incentive fee must adhere to fairness principles. We note with concern the fact that Broadridge had a "vote all items with management" button on its electronic voting platform, despite the absence of a similar option on proxy cards, and eliminated it only after Commission Staff intervened. (See Ross Kerber, "Proxy Sites Dump One-Click Vote Button on SEC Concerns," Reuters (Mar. 20, 2013) (available at <http://www.reuters.com/article/2013/03/20/proxy-voting-website-idUSL1N0C5D3M20130320>)) Governance expert Charles Elson, head of the University of Delaware's corporate governance center, opined "When it comes to online ballots, if you design it in a way that encourages people to vote with management, that's not real choice." (*Id.*) We urge the Commission to require that any EBIP developed in this context be designed in a way that does not unfairly favor management.

We appreciate the opportunity to share our views on this important proposal with the Commission. If you have any questions, please do not hesitate to contact the undersigned at (202) 429-1275.

Sincerely,



Lisa Lindsley
Director, Capital Strategies Program
AFSCME

LL/dd