

# THE STA

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Established 1911

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July 5, 2013

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

**RE: Additional Comments on NYSE Proposed Rule –  
Proxy Fees  
SEC File No. SR-NYSE-2013-07**

Dear Ms. Murphy:

The Securities Transfer Association (STA)<sup>1</sup> appreciates the opportunity to provide its comments on the Order published by the Securities and Exchange Commission (SEC) in the Federal Register on May 30, 2013, instituting proceedings to determine whether to disapprove proposed amendments to New York Stock Exchange (NYSE) Rules 451 and 465.<sup>2</sup> These NYSE rule proposals involve the fees to be charged to issuers for the processing of proxy materials to investors holding securities in street name.<sup>3</sup>

The STA has filed two comment letters in regard to this rulemaking and, by this letter, reaffirms the views it has already communicated to the SEC.<sup>4</sup> The STA also renews its recommendation that the NYSE

<sup>1</sup> The Securities Transfer Association (STA) is an industry trade association, established in 1911, comprised of transfer agents that provide services to more than 12,000 large and small public companies in the United States. The STA and its members work closely with issuers of securities on a variety of public policy matters and have been active over many years in advocating for a fair and efficient system for proxy distribution and shareholder communications.

<sup>2</sup> SEC Release No. 34-69622, 78 Fed. Reg. 32,510 (May 30, 2013) (hereinafter “SEC Order”).

<sup>3</sup> SEC Release No. 34-68936, 78 Fed. Reg. 12,381 (Feb. 22, 2013).

<sup>4</sup> See Letter from Charles V. Rossi, President, The Securities Transfer Association, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, February 20, 2013, *available at* <http://www.sec.gov/comments/sr-nyse-2013-07/nyse201307-2.pdf>; and Letter from Charles V. Rossi, President, The Securities Transfer Association, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, March 4, 2013, *available at* <http://www.sec.gov/comments/sr-nyse-2013-07/nyse201307-3.pdf>.

engage an independent third party to evaluate the structure and level of fees being paid for proxy distributions and communications, as recommended by the NYSE Proxy Working Group in 2006.

The STA agrees with the SEC that the NYSE rule proposals do not meet the statutory standards for approval of a proposed rule by a self-regulatory organization (SRO).

Regarding the specific SRO standards in Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Securities Exchange Act (Act), the SEC stated the following in its Order:

1. Equitable Allocation of Fees. Section 6(b)(4) of the Securities Exchange Act (Act) requires an “equitable allocation of reasonable ... fees ... among [NYSE] members and issuers and other persons using its facilities.”<sup>5</sup> The SEC expressed these views about the inability of the NYSE rule proposals to meet this standard:

As discussed above, however, neither the Exchange nor the PFAC have articulated a sufficient analysis of Broadridge’s costs of providing proxy processing services, including with respect to issuers of various sizes, or of the costs incurred by broker-dealers that may go beyond the services provided by Broadridge. Accordingly, the Commission lacks a sufficient basis upon which to assess whether the incremental changes proposed to the existing fee structure (e.g., the addition of tiered fee structures to address economies of scale, the elimination of tiered fee structures to promote simplification, the reduction of charges for managed accounts in some contexts but not others, the incorporation of the Broadridge rate schedule for notice and access fees into the Exchange’s rulebook) are consistent with the statutory standard, including whether the overall level and structure of the fees reflected in the Exchange’s rule are ‘reasonable’ or an ‘equitable’ allocation of fees. Further, the payment of rebates by Broadridge to certain larger broker-dealers of a portion of the fees paid by issuers—which the Exchange simply characterizes as the product of negotiation—raises further questions about whether the proposal meets the statutory standard.<sup>6</sup>

2. Unfair Discrimination. Section 6(b)(5) of the Act requires that NYSE rules promote “just and equitable principles of trade ... protect investors and the public interest, and [not permit] unfair discrimination between customers, issuers,

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<sup>5</sup> 15 U.S.C. § 78f(b)(4).

<sup>6</sup> SEC Order at 32,523.

brokers, or dealers.”<sup>7</sup> The SEC expressed these views about the inability of the NYSE rule proposals to meet this standard:

As a preliminary matter, the Commission notes that the fact that all issuers would be subject to the same fee schedule does not address concerns of unfair discrimination where, as here, issuers would be treated differently within that schedule. Although the Commission acknowledges the efforts by the Exchange to incrementally improve the fairness of its fee schedule, as discussed above, significant questions remain as to the rigor of the Exchange’s analysis absent more meaningful cost data and a detailed explanation for the specific levels and structure of the fees proposed, and in light of the extensive reliance by the PFAC and the Exchange on information and recommendations provided by the dominant proxy processor.<sup>8</sup>

3. Burden on Competition. Section 6(b)(8) of the Act states that SRO rules may not “impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Securities Exchange Act].”<sup>9</sup> The SEC expressed these views about the inability of the NYSE rule proposals to meet this standard:

[T]he Exchange states that its proposal would not impose any unnecessary burden on competition within the meaning of Section 6(b)(8) of the Act, because care was taken ‘not to create either any barriers to brokers being able to make their own distributions without an intermediary or any impediments to other intermediaries being able to enter the market.’ However, as discussed above, and as noted by commenters, there are concerns that the proposed fee structure, which would appear to continue to facilitate the payment of rebates by the dominant proxy processor to larger broker-dealers pursuant to long-term contracts, may result in an unnecessary or inappropriate burden on competition.<sup>10</sup>

In its Order, the SEC concludes by re-asserting that questions remain as to whether the NYSE rule proposals are consistent with these three standards in the Act, *i.e.*, an equitable allocation of fees, the absence of unfair discrimination among the affected parties, and the avoidance of an unnecessary or inappropriate burden on competition.<sup>11</sup>

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<sup>7</sup> 15 U.S.C. § 78f(b)(5).

<sup>8</sup> *SEC Order* at 32,523-24.

<sup>9</sup> 15 U.S.C. § 78f(b)(8).

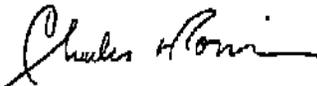
<sup>10</sup> *SEC Order* at 32,524.

<sup>11</sup> *Id.*

The STA agrees that the NYSE rule proposals do not meet these statutory standards. The STA believes that the appropriate response to this dilemma is for the NYSE to implement the 2006 recommendation of its Proxy Working Group, by engaging an independent third party to evaluate the structure and level of fees being paid for proxy distributions and communications.

Without meaningful cost data about the levels and structure of the proxy fees being charged now and those under consideration—including a detailed evaluation of any rebates being provided and the business processes being used by broker-dealers, banks, and their service providers—it is difficult, if not impossible, for the SEC, issuers, and other interested parties to evaluate whether these NYSE rule proposals meet the statutory standards for SRO rules.

Sincerely,



Charles V. Rossi  
President  
The Securities Transfer Association, Inc.

cc: The Honorable Mary Jo White  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes  
The Honorable Daniel M. Gallagher  
John Ramsay, Division of Trading and Markets  
Keith F. Higgins, Division of Corporation Finance  
Norm Champ, Division of Investment Management