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Securities and Exchange Commission
100 F St. NW
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Rule-comments@sec.gov

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

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, 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, and to Establish a Five-Year Fee for the Development of an Enhanced Brokers Internet Platform

Dear Securities and Exchange Commission:

In summary:

- The fee structure should be based on performance. Brokerage firms should be paid based on how many accounts vote, not just on how many sets of proxy materials are delivered.
- Utility ratemaking is hard because of the high fixed cost component. There is no perfect way to allocate fixed costs.

[1] I am also on the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, the University of Pennsylvania, EDGX, EDGA, or anyone else for that matter.

- Clunky voting systems are a type of poll tax that reduces shareholder participation.
- Client-directed voting will also help to increase shareholder participation.
- Managed account shareholders who retain voting rights should not be disenfranchised.

The ultimate public interest is in an efficient system of good corporate governance.

Corporations produce the bulk of goods and services in the United States. Proper oversight of their activities is thus essential for a successful economy. It is clearly in the public interest to have a large number of well-informed shareholders monitoring their investments and properly participating in the governance of their corporations.

The fee structure should be performance based: Pay for votes received.

To many brokerage firms, dealing with proxies is a nuisance that they gladly outsource to Broadridge. There are no financial incentives for most brokerage firms to do any more than the bare minimum needed to comply with their legal requirements. The result is that shareholders receive their voting materials and that is it. There are few attempts to make the process any less clunky. No additional guidance or links to other sources are provided. There are usually no follow-ups or reminders to vote.

Given that it is clearly in the public interest to encourage better shareholder participation, the most obvious thing to do is to structure the payments to brokers so that they get paid substantially more when their customers actually vote. This will be the most effective incentive to getting out the vote. Faced with such incentives, brokers would be motivated to make their systems more user friendly. They would send multiple reminders to customers who haven't voted.

In addition, there should be an additional performance bonus fee based on consumer satisfaction with the process. Brokerage firms that score high in a standardized third-party survey similar to J.D. Powers of their consumer satisfaction in one year would also be allowed to receive a higher performance-based fee in the next year.

There is already a good precedent for such performance-based fees. Brokers are already paid extra for e-delivery than for physical delivery. The extant proposal provides incentives to launch enhanced web sites known as EBIPs. We should extend this idea and pay for performance in terms of customer satisfaction and vote gathering.

There is no conflict between cost-based pricing and building incentives into the pricing structure, as long as the overall revenue that a reasonably diligent broker can collect covers the approximate cost of providing the service.

<u>Utility ratemaking is fraught with problems.</u>

Several commenters have requested thorough audits to determine the true "cost" of proxy processing services. The implication of their request is that proxy processing fees should be based on a utility style cost-of-service calculation.

I am a former utility rate engineer, and I am quite familiar with the problems involved in traditional utility rate making. Traditional utility rate making evolved to deal with situations in which entities with legally enforced monopolies operated in environments with a rather stable technology. The process of generating and distributing electricity today is much the same as it was 50 years ago.

The proxy process is quite different. First, there is no legally enforced monopoly. Broadridge figured out that it could process proxies far more efficiently than brokerage firms could on their own, and most brokerage firms outsource to them. If another competitor came along that could do it better, faster, or cheaper, then Broadridge would lose significant market share. Second, the technology is changing rapidly and should continue to change further as we go to more electronic delivery with EBIPs. This provides many opportunities for improved service at lower cost.

A cost-based approach runs into two major problems. The first is that of allocation of fixed costs. There is no perfect way to allocate fixed overhead expenses, and a cost-based ratemaking approach quickly degenerates into arguments over how to allocate fixed costs across different business lines and to different classes of customers. This problem would be especially acute for proxy processing because there are large fixed costs involved in developing the IT systems for a modern proxy processing system. The very high level of fixed costs with lower variable costs is one of the reasons why Broadridge is such a dominant player.

The second problem with a cost-based approach is defining what the service is and whose costs should be counted. With electricity, it is fairly simple to define the service: providing electricity with a certain voltage and current at a particular location. With proxy processing, do we define the service as only the current process, which runs the danger of locking us into the current process forever? Or do we define the service as what we want proxy processing to look like in the future? The movement toward "Enhanced Broker's Internet Platforms" ("EBIPs") is a great step forward. As no one knows exactly what such platforms will cost, it is absurd to attempt to cost them out in advance with any expectation of precision.

Even with a mature technology like electricity, there are interminable debates over what costs should be counted and how the cost of capital should be determined.

Furthermore, whose cost should be counted? That of the brokers, or the intermediaries? In traditional utility ratemaking, the rates are based on an estimate of what it should cost to provide the service. If the utility spends more than estimated, it eats the loss. If the utility spends less, it gets to keep the profit. Should a cost-based system be based on what a typical brokerage firm would have to spend to do the job in house, or should it be based on what intermediaries charge in arms-length negotiations?

Finally, there are the issues of rate design. Should charges be based on average cost, marginal cost, or the value of the service? Arguments can be made for each of these rate design methodologies.

Clunky voting procedures are a poll tax on shareholders.

As a finance professor, I practice what I preach in terms of diversification. I hold a well-diversified portfolio with small holdings in a large number of firms. This means that I get to vote in lots of corporate elections. It becomes a repetitive and time consuming nuisance to manually enter lots of control numbers at proxyvote.com in order to vote, although mailing in paper voting instruction forms for each holding is even worse.

For those holdings where I get e-delivery, the email often gets overlooked amongst all of the other clutter in my email inbox. For those holdings not on e-delivery, the little "notice and access" letters are easily confused with junk mail. If by some chance the materials don't show up or I overlook them, there are usually no routine reminders to vote my shares. Much of the "disclosure" is repetitive boilerplate and arcana of little relevance to the decisions I need to make as a shareholder regarding the vote at hand.[2]

The net result is a clunky voting process in which much time is spent on dealing with process and arcana, which takes away from the time available to evaluate substantive issues. This effectively becomes a poll tax that deters investors from fully participating in corporate governance. Creating a proxy voting system that makes it easy to get the right information and to cast votes will improve the quality and quantity of shareholder participation.

EBIPs will improve participation.

My account with Folio Investing (www.folioinvesting.com) has an Enhanced Broker's Internet Platform ("EBIP") that allows me to vote my shares without having to go to a separate web site. I just click on the name of the firm, and up comes a screen with links to the proxy statement, the 10-K, and other information. I can vote quickly and easily without having to fuss with control numbers. It is a really cool system.

[2] The SEC should seek to improve the quality of disclosure to make it more it more useful by reducing repetitive boilerplate. Longer 10-Ks and DEF14s are not necessarily better 10-Ks and DEF14s. One way to reduce the repetition is to put many of the standard disclosures into a standard disclosure form such as the option disclosure document. In this way, investors would not have to wade through the same old stuff each time, making the remaining disclosure much more relevant.

I like the fact that all of my holdings at Folio Investing can be voted from one web site with one consistent user interface. This is the main reason why I do not support proposals to reduce the role of brokers in the voting process by giving shareholder lists directly to issuers and letting the issuers pick their own vendors for contacting shareholders and soliciting voting instructions. It would be a much more confusing and time consuming process to get individual communications from dozens of different issuers with different means of submitting votes.

However, an EBIP should be more than just an easy voting tool. It can also be a portal for more information. For example, an EBIP could also alert shareholders that some elections are controversial so that more attention can be paid to those particular elections. An EBIP could also provide a portal to other sites that may contain useful information relative to the firm.

Incentive fees for EBIPs should apply to all EBIPs, not just new ones. This will create incentives for brokerage firms to develop EBIPs in advance of any final rule proposal.

Please restore my franchise by allowing me to leave standing instructions with my broker.

I don't own stocks that I think are badly managed, so I usually (but not always) vote with management. In the old days of the broker vote, I didn't have to do anything and the broker would vote my shares along with management. Now, I am forced to go to a lot of extra work in order to enter votes even when all I am doing is voting with management. Permitting client-directed voting would restore this simplicity to voting and reduce the time wasted on routine repetitive actions. Clients should be allowed to leave a variety of standing instructions on how they want to vote. However, the system should not be set up to allow complete delegation to third parties, which would facilitate vote buying and empty voting.

There is no need to regulate EBIP formats for now.

Some of the commenters have expressed concerns about the wording and format of online voting instruction materials and called for regulation. I think it is premature to micromanage this area as it is still quite new. Companies should be free to experiment with different types of platforms. The SEC should let firms do what they think is best, and reserve the right to step in later if needed.

Proxy regulation should be a FINRA or SEC proceeding, not a stock exchange proceeding.

The NYSE is a for-profit stock exchange that competes in the very competitive U.S. cash equity market against dozens of competitors. Although its listed firms comprise approximately 3/4ths of the market capitalization in the U.S., its regulation of proxy voting is a holdover from the *ancien regime*. It no longer makes sense to assign this task to the NYSE, as it no longer does significant broker-dealer regulation. Proxy voting has little to do with operating a trading platform. This area should be regulated either by FINRA or directly by the SEC.

Some managed account holders retain voting rights and should receive voting materials.

The definition of managed account in the proposal assumes that the account holder has also delegated voting rights to the manager. This is not necessarily the case. If the account holder retains voting rights, then the broker incurs the same costs as if the account was not a managed account, and the same fees should apply. If the account holders have delegated voting rights to the manager, then there is no need to distribute any voting materials to the account holders and no need to charge any fees. The voting material should be sent only to the manager who is doing the voting. If the account holder retains voting rights and thus receives voting materials, then the usual fees should apply regardless of how many shares - or fractions of shares - the shareholder actually owns.

Respectfully submitted,

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