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September 12, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: *Notice of Filing of Proposed Rule Change Adopting Maximum Fees Member Organizations may Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission* (File Number SR-NYSE-2016-55)

Dear Mr. Fields:

The Investment Company Institute¹ strongly supports approval of the New York Stock Exchange's proposed rule change that would set the maximum (and in practice, the standard) processing fee rates that brokers could charge funds² for online delivery of shareholder reports pursuant to the Securities and Exchange Commission's proposed rule 30e-3.³ The rule change will ensure that the Commission's online delivery proposal, if adopted, will achieve an important benefit the Commission specifically contemplated: significant cost savings for fund shareholders.⁴

¹ The Investment Company Institute (ICI) is a leading global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$18.4 trillion and serve more than 90 million U.S. shareholders.

² We refer to registered investment companies as "funds" throughout this letter.

³ *Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting Maximum Fees Member Organizations may Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission*, SEC Rel. No. 34-78589 (Aug. 16, 2016), available at <https://www.sec.gov/rules/sro/nyse/2016/34-78589.pdf> ("NYSE Proposal").

⁴ *Investment Company Reporting Modernization*, 80 Fed. Reg. 33590 (June 12, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12779.pdf> (proposing new rule 30e-3 under the Investment Company Act of 1940). The Commission stated that "[f]unds and their shareholders would benefit from the reductions in related printing and mailing costs." *Id.* at 33626.

NYSE's existing fee schedule was designed before the Commission proposed rule 30e-3, and it does not contemplate the online delivery mechanism that the SEC's proposed rule 30e-3 would permit for fund shareholder reports. NYSE's proposal would amend rule 451 to clarify exactly how these processing fees would apply if the SEC adopts online delivery. These proposed amendments would implement three recommendations from ICI's March 2016 comment letter on the SEC's proposed rule 30e-3.⁵ First, the current Notice and Access tiered fee (originally put in place for delivery of proxy materials under the SEC's "notice and access" model) would apply to accounts receiving delivery via the rule 30e-3 delivery mechanism. Second, the Notice and Access fee would apply *only* to accounts receiving an actual rule 30e-3 Notice mailing and would not apply to suppressed accounts (such as householded accounts). Third, the Notice and Access fee breakpoints would apply at the fund level, not at the share class level. These three changes would resolve ambiguity in the fee schedule as it would apply to the proposed online delivery mechanism, paving the way for the SEC to move forward with adoption and implementation.

More importantly, by clarifying how the fees are to be applied, NYSE's proposed changes will ensure significant cost savings for fund shareholders in the event that the SEC adopts proposed rule 30e-3. Shareholder report production and delivery is a fund expense that mutual fund shareholders bear. Absent these rule changes, production and delivery costs potentially could erase the savings that logically would be associated with a decrease in the number of paper shareholder reports that funds, or broker-dealers, must print and mail.

NYSE states in its filing that it "may not be best positioned to take on the regulatory role in setting fees for mutual funds."⁶ We agree. We continue to believe that the Financial Industry Regulatory Authority is the most appropriate self-regulatory organization for developing and administering these fees in the long-term, and are pleased that NYSE in its rule filing supports consideration of this change. FINRA is the primary self-regulatory organization for broker-dealer oversight and investor protection is integral to its mandate. We urge FINRA to take on this responsibility, with the Commission's oversight, and to revise the regulatory approach to these fees in a way that takes into account the interests of fund shareholders, who bear this expense.⁷

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⁵ See Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, to Brent J. Fields, Secretary, US Securities and Exchange Commission, dated March 14, 2016, available at <https://www.sec.gov/comments/s7-08-15/s70815-581.pdf>.

⁶ NYSE Proposal, *supra* note 3, at p. 4.

⁷ For example, we would expect FINRA to scrutinize carefully the appropriate application of the NYSE's Interim Report fee in connection with delivery of Notices under any final rule 30e-3 as well as delivery of paper shareholder reports.

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We appreciate the opportunity to comment on the proposed rule change. If you have any questions regarding our comments or would like additional information, please contact me at [REDACTED], or [REDACTED], or Dorothy Donohue, Deputy General Counsel—Securities Regulation, at [REDACTED] or [REDACTED].

Sincerely,

/s/David W. Blass

David W. Blass
General Counsel

cc: The Honorable Mary Jo White, Chair
The Honorable Michael S. Piwowar
The Honorable Kara M. Stein
Rick A. Fleming, Investor Advocate
David W. Grim, Director, Division of Investment Management
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