

September 12, 2016

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Charles V. Callan
SVP Regulatory Affairs
Broadridge Financial Solutions, Inc.
51 Mercedes Way
Edgewood, NY 11717

September 12, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

File Number SR-NYSE-2016-55

Dear Mr. Fields:

We appreciate the opportunity to comment on the NYSE's proposed rule to adopt maximum fees that member firms may charge for the distribution of investment company annual and semiannual shareholder reports ("fund reports").¹ We understand that the proposal is contingent upon approval of SEC proposed rule 30e-3 which, if adopted, would give investment companies the option, generally, of mailing notices of fund report availability instead of the actual fund reports. We will not repeat here the details of our policy concerns with rule 30e-3. In that regard, the data we provided is incontrovertible: greater levels of cost savings, transparency, and investor engagement will be achieved *without* proposed rule 30e-3.²

As a practical matter, we believe the NYSE's proposal would generally support the development and provision of notice and access services for annual and semiannual fund reports for funds held in street name. The services would be available within a reasonable period of time of the adoption of final rules for 30e-3. We note, however, that the final requirements of proposed

¹ As the largest provider of shareholder communications services, Broadridge has regularly given the SEC and other interested parties factual information on the technology and processing implications of potential regulatory changes. Our business model is based on increasing levels of participation and efficiency in serving broker-dealers, custodian banks, investment companies, corporate issuers, and individual and institutional investors. Thus, Broadridge seeks to pursue innovations and implement changes in ways that provide more efficiency, more technology, and more participation.

² Broadridge seeks to be scrupulously objective in our comments, which are driven by data we possess as the largest shareholder communications services provider in the United States. We have relied on SEC surveys as well as commissioned studies, as described in our August 11, 2015 and January 13, 2016 comment letters. Our comments on proposed rule 30e-3 were consistent with our comments on the proposed rule for proxy notice and access. Our comments on the likely impact of the proxy notice and access proposal on investor participation were born out by the actual results. In both cases, Broadridge stated that notice and access would have a neutral to positive economic impact on Broadridge's business.

rule 30e-3 could have an impact on the work to be performed and, therefore, on the costs involved.

In order to estimate the cost savings of proposed rule 30e-3 we analyzed the data from the 10,428 fund report “jobs” that Broadridge processed in its fiscal year ending June 30, 2015. The jobs were for processing and distribution of annual and semiannual fund reports to investors holding funds in street name. In developing these estimates, we applied the following assumptions which include using the tiered rates for proxy notice and access:³

- “Specifically, the Notice and Access fee will not be charged for any account with respect to which the investment company pays a Preference Management Fee.”
- “In calculating the rates at which the issuer will be charged notice and access fees for investment company shareholder report distributions, all accounts holding shares of any class of share of the applicable issuer eligible to receive an identical distribution will be aggregated in determining the appropriate pricing tier.”⁴

We found that a majority of the jobs would have had little if any total cost savings from a notice and access approach (i.e., the savings were less than \$100). Generally, the mailed notice distribution method provides the most meaningful cost savings to a segment of jobs that mails out a very high volume of fund reports in “book” form. Approximately 1.5% of the jobs (i.e., 161 jobs out of 10,428) would have had total cost savings of \$100,000 or more.

We note that the potential cost savings of a mailed notice delivery option are quickly eclipsed by growing rates of adoption to e-delivery under the SEC’s existing guidance for e-delivery and under SEC/NYSE rules for “EBIPs” (enhanced broker Internet platforms). The cost of an e-delivery under existing rules (including fees and out-of-pocket expenses) is lower than the postage cost alone of mailing a notice.

Processing for fund report notice and access is functionally similar in many respects to proxy notice and access, although many of the underlying systems and production operations would be different. We would expect the volumes to be different as well.

In some respects, fund report notice and access is more complex to process than proxy notice and access, and in other ways it is less complex. For example, it is more complex to process because it introduces a new consent type (the “implied” consent) which is not a functional requirement of proxy notice and access. On the other hand, it is less complex to process

³ Other assumptions are consistent with those provided in our previous comment letters on 30e-3.

⁴ The tiers in our analysis reflect the aggregate number of accounts that receive mailed notices across all of the broker-dealers and custodian banks on whose behalf Broadridge acts as a processing agent. It is our understanding that funds would determine whether a notice relates to a series or to one or more share classes, since they decide whether a fund report is the same for all series and all investor classes. Parenthetically, this is consistent with Broadridge’s existing practice of acting on job instructions provided by funds.

because it does not contemplate a provision for stratified mailings, by which an issuer can send a complete report to some segments of investors and a notice to others (as is the case with proxy materials). Moreover, under the SEC's proposal, fund companies would retain the fulfillment risk associated with an unknown number of investor requests for fund reports by mail. In the case of proxy notice and access rules, the risk is transferred to intermediaries and their processing agents.

We assume that the development and provision of notice and access services for funds held in street name would be based on the following processing and functional requirements of proposed rule 30e-3 (which could understandably change based on any final rules):

- Every job that would have at least some total cost savings would choose to use the fund report notice and access method.
- Each job would have multiple production streams including mailed notices, mailed fund reports, and reports sent electronically.
- On average in each job, 90% of mailed distributions would be notices and 10% percent of mailed distributions would be fund reports. The proportion of fund report sent as digests or books reflects the actual mix in our fiscal year 2015, and the actual postage.
- As is the case with proxy notice and access, investor preferences would be maintained at the brokerage account level. They would be applied to fund holdings in a client's brokerage account. (We note that this requirement was not explicit in proposed rule 30e-3.)
- Existing affirmative consents to e-delivery would continue to be applied at the brokerage account level in order to eliminate mailings of notices and fund reports, as would future affirmative consents to e-delivery, consistent with the SEC's existing guidance for e-delivery.
- Unlike proxy notice and access, fund report notice and access would include the capture and processing of "implied consent." The systems and processing in this regard are more complex than they are for proxy notice and access. "Implied consent" to receiving a notice would result from an Initial Statement mailing, upon which a request for a fund report is not made.⁵
- Several options would be provided to investors for purposes of requesting mailed copies of fund reports. The methods would include: by return postage-paid mail, a toll-free

⁵ "Under the proposed rule, each series of a registrant offer would need to obtain separate consent as to shareholder, regardless of whether consent was obtained from that shareholder by other series offered by that registrant." Refer to SEC File No. S7-08-15, p. 161.

number, Internet, and email. Fulfillment requests would be processed within three days of receipt. Funds would provide sufficient quantities of materials to brokers to enable them to meet turnaround times.

- Investors holding funds in street name would be able to access fund reports, make request for mailed copies of reports, and enroll in e-delivery through a “cookie free” centralized site provided on behalf of broker-dealers and funds.
 - The centralized site would utilize a control number (or similar process) in order to validate and safeguard the identity of a broker’s client account holder information (which includes account name, address, fund CUSIP, and share amount).
 - The centralized site would ensure that each investor could directly access the current fund report for that specific CUSIP with a minimal number of “clicks” and navigational effort.
 - The process would provide reporting, including usage statistics and operational measurements.

How much work financial intermediaries or their processing agents would perform and what its costs are depend, ultimately, upon a number of factors including, among others: the final requirements of proposed rule 30e-3; the number and size of fund distributions that choose to use the notice method; and, the number and mode of investor requests for hard copy reports.

In this regard, we note that the NYSE Proxy Working Group (April, 2005 – August, 2007) acknowledged the difficulties of determining fees for proxy notice and access before final requirements were clarified and without empirical information on usage and activity levels.⁶

The Proxy Working Group and its Cost and Pricing Sub-committee heard from a number of participants in the proxy system concerning various possible ways to amend Rule 465 to establish fees for the new e-proxy rules. The Proxy Working Group also considered the information available to it with regard to the likely costs of implementing the e-proxy system, including the difficulties in determining such costs. After extensive debate and discussion, a majority of Proxy Working Group voted to recommend that the NYSE not amend or extend Rule 465 to cover any of the new possible fees or costs involved in the e-proxy rules at this time.

We note, too, that the NYSE Proxy Fee Advisory Committee (the “PFAC”), in its later review of fees (2010 – 2012), subsequently considered several years of empirical data on proxy notice

⁶ Refer to the “August 27, 2007, Addendum to the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, dated June 5, 2006,” pages 7-8.)

and access before recommending that market-based fees be codified, with only minor modification, into NYSE rules effective January, 2014. In making this recommendation, the PFAC determined that the structure and level of fees for proxy notice and access were fair and reasonable in light of the work involved.⁷

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Broadridge appreciates the opportunity to submit comments on the NYSE's proposal. Despite our concerns about proposed rule 30e-3, Broadridge wishes to reiterate a point we made in our comment letters, namely: if a rule is adopted, we will implement it in an efficient, effective and secure manner. We welcome constructive dialog with the SEC and others on the necessary functional requirements, and any questions you may have.

Sincerely,



cc:

Mary Jo White, Chair, U.S. Securities and Exchange Commission
Michael Piwowar, Commissioner
Kara Stein, Commissioner
David Grim, Director, Division of Investment Management
Diane Blizzard, Associate Director, Division of Investment Management
Sara Cortes, Senior Special Counsel, Division of Investment Management
Jennifer McHugh, Senior Advisor to the Director, Division of Investment Management
Andrew Donohue, Chief of Staff to the Chair
Elizabeth King, General Counsel, NYSE Regulation
John Carey, Senior Director, NYSE Regulation

⁷ Refer to "Recommendations of the Proxy Fee Advisory Committee to the New York Stock Exchange, May 16, 2012," pages 19-20. Rules for Internet Availability of Proxy Materials went into effect on July 1, 2007.