Computershare

Computershare
1290 Avenue of the Americas 9th Floor
New York New York 10104
Telephone 1 212 805 7100
www.computershare.com

January 11th, 2021

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street
NE Washington, DC 20549

Re: Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending its Rules Establishing Maximum Fee Rates to be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners Reporting Threshold for Institutional Investment Managers (File No. SR-NYSE-2020-96)

Dear Ms. Countryman,

Computershare (ASX: CPU) is a global leader in transfer agency, employee equity plans, proxy solicitation and other specialized financial communications. Founded in 1978, Computershare is represented in all major global financial markets and has over 12,000 employees. Computershare is renowned for its expertise in high integrity data management, high volume transaction processing and reconciliations, payments and stakeholder engagement. We also specialize in corporate trust, bankruptcy, class action and a range of other diversified financial and governance services. We provide services to over 25,000 corporations and 75 million shareholders in 21 countries[1].

We appreciate the opportunity to provide comments on this filing, regarding the NYSE rules establishing maximum reimbursement fee rates to be charged by member organizations to issuers for forwarding proxy materials to beneficial owners (referred to hereafter as 'the reimbursement fees'). In short, the effect of NYSE's proposed changes to these rules would be to remove NYSE from its current role in establishing these maximum fee rates and transferring this responsibility to FINRA. We also note the separate but relevant NYSE rule filing SR-NYSE-2020-98.

As the SEC would be aware, these reimbursement fees were subject to extensive stakeholder discussion in the early 2000's and leading up to the 2010 SEC Concept Release on proxy reform, with continued efforts thereafter resulting in the establishment of NYSE's Proxy Fee Advisory Committee ('PFAC'). The PFAC completed its work in 2012, enabling changes to the reimbursement fees that were made effective in 2013. There have been no further changes to the fees in the past seven years. While the NYSE fees are not directly applicable to issuers and member organizations that are not affiliated with NYSE, these fee rates are generally adopted and reflected in the rules of various other relevant bodies, such as NASDAQ and other exchanges, in addition to FINRA. In practice, the fees are paid directly by issuers to the brokers' appointed proxy service providers.

Over the years, and currently, stakeholder discussions have focused on two key aspects of the fees:

[1] For more information, please visit www.Computershare.com.

- As a matter of economic analysis and policy, whether the fees as set by NYSE are the 'right' amount for reimbursement of the cost of various components of proxy communications including vote instructions; and
- Structurally, whether it is in fact appropriate for NYSE (or any other entity) to set such fees payable by issuers for communications that the issuer cannot direct or control, or whether instead issuers should be able to directly appoint their chosen service provider to manage proxy communications for street-name holders, by requiring brokers to provide certain data to facilitate this, thus allowing distribution and solicitation fees to be set by market forces.

We understand and appreciate the reasons cited by NYSE in Filing SR-NYSE-2020-96 for removing itself from setting the maximum reimbursement fees. We are, however, somewhat surprised by the timing of this filing, given that (i) no changes have been made to the current fee rates for seven years, and (ii) extensive stakeholder discussion is currently underway on various aspects of the proxy process and potential reforms. The stakeholder discussions are structured through several Working Groups established under the auspices of the SEC, including the Proxy Distribution Fees Working Group, addressing the reimbursement fees. While we understand the NYSE has for some time now informally indicated that it does not want to set fees for services between its key customers (brokers and issuers), we had anticipated its exit would be accompanied by broader reform of the reimbursement fee process, rather than midstream of industry discussions.

Computershare has a longstanding view that the current structure of proxy reimbursement fees is inappropriate and leads to unfair outcomes for issuers, with issuers bearing the cost of regulated fees for an intermediated service that they have absolutely no control over. In our view, technology will continue to drive significant change the value and cost for e-communications in particular, and issuers should be permitted to directly manage communications with their street-name holders. We appreciate that direct issuer communications with Objecting Beneficial Owners (OBO) is a controversial topic. However, we have formulated a roadmap for facilitating direct issuer communications with Non-Objecting Beneficial Owners (NOBO) in the near-term, while allowing scope for further stakeholder discussion on handling OBO communications, including consideration of requiring broker nominee and OBO holders to bear their own costs of proxy communications. This approach would potentially also create an incentive for investors to facilitate direct communications by issuers, or to accept that a fee for e-communications may be charged by their brokers as part of an account keeping arrangement (which among other things would shield the identity of the holder from the issuer). This roadmap was laid out in our submission on proxy reform to the SEC on File No. 4-725.

Such changes would produce significant cost savings for issuers and provide an incentive for issuers (for NOBO communications) and brokers (for OBO communications) to seek the most cost-effective solutions. Most importantly, for the first time it would align the obligation to pay for services with the right to choose the service provider. The separate debate regarding whether the street-name system should retain the NOBO/OBO structure could continue without being a pre-condition to creating costs savings for issuers.

As noted, NYSE has in parallel issued rule filing SR-NYSE-2020-98, which would prevent brokers from claiming the reimbursement fees from issuers in certain specific circumstances, where customers have been 'gifted' securities. The recent broker practice of gifting small amounts of securities to retail brokerage clients as a promotional measure has caused significant increases in proxy costs for some issuers, and we are very supportive of the rule amendments under SR-NYSE-2020-98. While we understand that these

accounts are generally set for electronic communications, as a technical matter it should be noted that if a street-name holder of gifted securities receives hardcopy proxy communications rather than e-delivery, the issuer will still bear increased costs from printing the materials to be disseminated by the broker. However, the rule filing will alleviate much of the cost impact to issuers from this broker practice, particularly for accounts defaulted to e-delivery.

While we support the changes proposed in SR-NYSE-2020-98, we are disappointed to see that only this relatively small (but nonetheless important) aspect of the impact of the regulated reimbursement fees has been addressed prior to NYSE removing itself from the fee-setting role, especially given that the industry Working Group has been charged with reviewing the rules. We believe this rule should be adopted regardless of the decision and not be held up by any deliberations on NYSE's plan to exit the governance role of establishing appropriate fees for proxy purposes.

In addition, we query whether FINRA is the appropriate authority to assume the responsibility for setting maximum proxy reimbursement fees, for so long as the current structure of fee-setting continues. We understand the argument that all brokers that hold securities on behalf of beneficial owners are members of FINRA, whereas only a subset of such brokers are members of NYSE. Thus, FINRA is comprehensively representative of all brokers that are subject to the rules on proxy communications and the reimbursement fees. The FINRA rules on reimbursement fees are largely equivalent to NYSE's. However, FINRA does not represent the vast majority of issuers who are mandated to pay these fees[2]. It therefore seems anomalous that the entity responsible for brokers will hereafter set and govern mandatory fees payable to its constituents by issuers, to whom FINRA is not accountable.

We also acknowledge NYSE's comments that it does not represent all issuers affected by the reimbursement fees. Other exchanges, FINRA and other product issuers, such as mutual funds, in effect follow the NYSE-set fees. We understand that, despite not being NYSE-listed, mutual fund issuers currently reimburse proxy communication costs in accordance with the NYSE fee rates, although they consider that changes to the fees are necessary. However, these issuers cannot influence the fees set via the PFAC. We therefore appreciate that there is a difficult balance at issue here, between two imperfect systems:

- the current system, where fees are set by a body that represents both issuers and brokers but is not fully representative of either; and

- the proposed future state, where fees will be set by a body that is wholly representative of one stakeholder, brokers, but not of the other, issuers.

In our view, this highlights the inherent conflict in the current proxy structure and the management of proxy communication fees. Indeed, we consider it highly unlikely that any entity (whether NYSE, FINRA or others) can entirely appropriately balance the pressures and challenges that arise from mandating fees payable by one party for services provided at the direction of the other party, let alone determine effectively what that fee should be in all possible circumstances, and especially when the communications are wholly electronic. We note that the fee-setting process tends to be highly contested and discussions can take 12 months before rule changes are proposed, resulting in a 12-18 month process overall to comprehensively review the fees. It is not surprising therefore that NYSE is seeking to remove itself from

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[2] We note that FINRA will represent those issuers that are also financial institutions regulated by FINRA, albeit that its relationship with such issuers related to financial services not to their capacity as issuers.

this role. However, while we consider that the need to balance competing interests of issuers and brokers must have been incredibly challenging for NYSE, it's strong relationships with both has, in our view, enabled NYSE to consider the respective perspectives and, with the input of a broad range of expert stakeholders in the PFAC, review the relevant fees in a balanced way.

Although the general expectation in the industry was that the fees would be reviewed every 3-5 years, or whenever there is a significant breakthrough in technology, the last PFAC review was in 2012, with changes to the fees effective 2013. It is also worth noting that the 2006 Proxy Working Group, chaired by Larry Sonsini, recommended that a study and plan be completed to evolve the current system into a free-market model with unregulated fees, enabling Rule 465 to be deleted and market forces to drive the cost of communications services for issuers or brokers (e.g. should brokers be expected to take on the cost of OBO communications). To our knowledge, this review has not been conducted.

At present, most invoices sent to issuers claim reimbursement at the maximum rate, regardless of the actual cost of the communications. Yet, as we continue the transformation into a digital environment, the cost of communications is changing significantly. We anticipate that initiatives such as the Discussion Paper[3] recently issued by SIFMA (and its partners), calling for the SEC to default a range of investor communications, including proxy, to e-delivery will accelerate this transformation. We are very supportive of this movement and SIFMA's recommendations, although we note that the Paper does not address the delivery of cost benefits for issuers, who pay for proxy communications.

It is for these reasons that we believe a market-driven system should be implemented. Rather than have an industry committee review fees for a 12-18 month period, a competitive market system will continually reset the cost of services. Competing service providers would bid to fulfill issuers' communications needs, at least in relation to a subset of holders where the industry can agree to direct communications (e.g. NOBO holders). This would enable the market to deliver significant costs savings to issuers where the actual cost of communications (e.g. e-communications) is significantly lower than the maximum reimbursement fees. In our April 2019 roadmap, referred to above, we suggested that consideration might also be given to whether issuers should bear the communication costs for investors that insist on OBO privacy. Instead, this could be borne between the broker and its investor. There are many international precedents to support this – in fact, outside US and Canada, it is the norm in markets around the world. Modernizing the decision regarding 'who pays' for each form of beneficial owner communication will deliver significant benefits including to issuers, and these, in our view, can be implemented without causing harm to the proxy system.

While, again, we entirely appreciate NYSE's arguments for removing itself from the fee-setting process, in our view the most appropriate approach is to retain NYSE in the role and accelerate discussions about fundamental reform of the proxy communication process, abolishing the need for reimbursement fees and facilitating issuer-directed communications. NYSE has played a longstanding, central role in the industry dialogue on proxy reform and the fee-setting process, given its representation of both issuers and brokers. We continue to believe its leadership will be critical to any transition to new arrangements for proxy communications and associated fees.

[3] https://www.sifma.org/wp-content/uploads/2020/09/E-Delivery-Paper.pdf

It is not completely clear what the various drivers are for these changes, and why these are appropriate now, in light of the considerations that we have addressed above. In our view, both the current system and the proposed future state for fee-setting are imperfect solutions. Removing NYSE from the fee process may have the benefit of enabling it to advocate for its issuer clients on this topic in future, potentially resulting in an environment where FINRA represents brokers and the various exchanges represent issuers. However, we are uncertain whether this change will improve the position for mutual fund issuers and in our view, it is unlikely to put US and non-US companies, as a whole, in a better or stronger position than they are today.

We fully recognize and respect this is policy matter and a decision for NYSE, FINRA and the Commission, and we trust that you will find our principles-based approach and comments relevant to the Commission's consideration. Regardless of the decision made, the consequences of it will have significant ramifications. This is not just a simple administrative change, in our opinion. In the absence of broader reform, this change could further entrench the existing core infrastructure and communications systems for proxy, for the next decade, and perhaps more.

We appreciate the opportunity to submit these comments. Please contact me, Paul Conn [redacted] or Claire Corney [redacted] if you would like to discuss our above comments further.

Yours sincerely,

Paul Conn
President, Global Capital Markets