



400 NORTH CAPITOL STREET, NW • SUITE 585 • WASHINGTON, DC 20001  
TELEPHONE: (202) 624-1460 • FACSIMILE: (202) 393-5218  
WWW.SHAREHOLDERCOALITION.COM

January 20, 2021

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

VIA ELECTRONIC MAIL  
([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

Subject: New York Stock Exchange Proposed Rule, SEC File No. SR-NYSE-2020-96

Dear Ms. Countryman:

The Shareholder Communications Coalition (“Coalition”)<sup>1</sup> appreciates the opportunity to provide its comments to the Securities and Exchange Commission (“SEC”) in response to New York Stock Exchange (“NYSE”) Proposed Rule SR-NYSE-2020-96. This proposal, if adopted, would significantly change the regulatory framework for overseeing and approving the fees to be charged by broker-dealers and banks for distributing proxy materials to beneficial owners holding securities in street name.<sup>2</sup>

The NYSE seeks to withdraw from its historical role of overseeing the reimbursement rates for proxy services by broker-dealers and banks, pursuant to SEC Rules 14b-1 and 14b-2. In its place, this primary regulatory role would be assumed by the Financial Industry Regulatory Authority (“FINRA”).

The Coalition opposes this proposal for the following reasons:

**1. Public Companies Seek a Market-Based Framework for Establishing Proxy Fees.**

As the SEC is aware, public companies have been frustrated with the current proxy processing system for decades. The current regulatory framework has been in place since 1983—more than 37 years—despite significant advances in brokerage firm back office

---

<sup>1</sup> The Shareholder Communications Coalition (“Coalition”) comprises the Society for Corporate Governance ([www.societycorpgov.org](http://www.societycorpgov.org)) and the National Investor Relations Institute ([www.niri.org](http://www.niri.org)). Together, these associations represent senior executives at more than 1,600 public companies.

<sup>2</sup> NYSE Proposed Rule SR-NYSE-2020-96, 85 Fed. Reg. 83,119 (December 21, 2020).

capabilities, exponential changes in electronic communications technologies, and the growth of the Internet. Substantial changes over this period have also occurred in corporate governance standards, increasing the need for companies to know who their shareholders are and to engage in direct communications with them.

As discussed in the SEC's 2010 Concept Release on the U.S. Proxy System ("2010 Concept Release"), the Commission's rules place control of proxy distribution and communications involving beneficial owners with broker-dealers and banks.<sup>3</sup> Under this framework, public companies and other issuers of securities do not choose which service providers they may use to distribute proxy materials to beneficial owners and, subsequently, to communicate with these owners. The compilation of the list of beneficial owners for a shareholder meeting, the distribution of proxy materials to these owners, and any related communications about proxy matters with these owners are all bundled together and handled through one service provider. This service provider then invoices each issuer for the services provided, pursuant to fees that are approved by the NYSE and other Self-Regulatory Organizations ("SROs").

In previous approvals of NYSE proxy fee proposals, the SEC has expressed its view that market competition should eventually replace the current system. Specifically, in 1997, 1999, and 2002, the SEC stated the following:

- "The Commission believes that ultimately market competition should determine 'reasonable expenses' and recommends that issuers, broker-dealers and the NYSE develop an approach that may foster competition in this area. Rather than having the rates of reimbursement set by the SROs, the Commission suggests that the NYSE and other SROs explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards."<sup>4</sup>
- "In general, the Commission believes that free market forces, rather than governmental or quasi-governmental authorities, should determine what fees are reasonable for the services provided, especially during this age of rapid technological developments that facilitate the electronic delivery of proxy materials. ... [T]he Commission in the future will consider ways to increase

---

<sup>3</sup> Concept Release on the U.S. Proxy System, 75 Fed. Reg. 42,982, at 42,995 (July 22, 2010) (hereinafter "2010 Concept Release").

<sup>4</sup> Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other Shareholder Communications, 62 Fed. Reg. 13,922, at 13,930 (March 24, 1997).



competition in this area, including whether it would be appropriate to remove itself and the [Self-Regulatory Organizations] from the rate-setting process.”<sup>5</sup>

- “[T]he Commission continues to believe that ultimately market competition should determine reasonable rates and expects the NYSE to continue its ongoing review of the proxy fee process, including considering alternatives to [Self-Regulatory Organization (SRO)] standards that would provide a more efficient, competitive, and fair process.”<sup>6</sup>

The NYSE has also expressed its support for the development of a market-based framework for establishing proxy fees. In its comment letter to the SEC responding to the Commission’s 2010 Concept Release, the NYSE stated the following:

Our comments will reflect what we believe should be guiding principles in assessing how to reform proxy regulation:

- Remove self-regulatory organizations from the role of specifying the fees to be paid for proxy distribution services.
- Provide for competition among service providers, to the extent possible, while at the same time insuring that rules maximize the opportunity to have service that is efficient and reliable.
- Provide transparency to the public regarding how various processes work, so that pricing and efficacy can be knowledgably evaluated.<sup>7</sup>

Despite this interest by the SEC (and within the NYSE) to examine market-based alternatives to the current regulatory system, there has been only limited attention devoted to developing a new framework that: (a) provides public companies and other issuers with a choice in selecting among different providers for proxy services, and (b) establishes proxy fees through free market competition.

---

<sup>5</sup> Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material, 64 Fed. Reg. 14,294, at 14,299 (March 24, 1999).

<sup>6</sup> Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines, 67 Fed. Reg. 15,440, at 15,443-15,444 (April 1, 2002).

<sup>7</sup> Letter from NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, at 1-2 (October 20, 2010) (hereinafter “2010 Euronext Letter”).

In August of 2009, the Coalition developed a Discussion Draft on Public Company Proxy Voting, with recommendations for modernizing and reforming the current framework.<sup>8</sup> This Discussion Draft was included in the SEC's 2010 Concept Release and it has received widespread support within the issuer community.<sup>9</sup>

More recently, the Coalition presented its recommendations to the SEC for interim improvements to the proxy system, focusing on steps that can be taken to: (a) expand the use of the Non-Objecting Beneficial Owner ("NOBO") list, and (b) permit market forces to establish the fees for distributing proxy materials to shareholders on the NOBO list.<sup>10</sup>

Instead of approving a rule proposal that transfers regulatory oversight of proxy fees from one Self-Regulatory Organization to another, the Coalition urges the SEC to formally begin the process of reforming the proxy processing system. The Commission should follow through with its stated goal—expressed as far back as 1997—of replacing the current regulatory framework with one in which market forces determine fees for proxy distribution and other services.

## **2. Regulatory Authority Over Proxy Fees Should Not Be Transferred to FINRA.**

The SEC has historically relied on stock exchange rules to specify reimbursement rates for proxy services, and the rules of the NYSE have been relied on since 1937 to establish the industry standards for proxy fee reimbursements.<sup>11</sup>

The SEC has supported this framework because the stock exchanges have relationships with both broker-dealers and public companies. In its 1983 approval of the shareholder communications rules, the SEC expressed its view that "... because [these] self-regulatory organizations represent the interests of both issuers and brokers, they are in the best position to make a fair allocation of all the costs associated with the [rule] amendments, including start-up and overhead costs."<sup>12</sup>

---

<sup>8</sup> Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, August 4, 2009, *available at* <https://www.sec.gov/comments/s7-14-10/s71410-3.pdf>.

<sup>9</sup> 2010 Concept Release at 42,997-42,998; *see also* Comments on Concept Release on the U.S. Proxy System, SEC File No. S7-14-10, *available at* <https://www.sec.gov/comments/s7-14-10/s71410.shtml>.

<sup>10</sup> Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, April 8, 2019, *available at* <https://www.sec.gov/comments/4-725/4725-5335206-184008.pdf>.

<sup>11</sup> 2010 Euronext Letter at 2.

<sup>12</sup> Facilitating Shareholder Communications Provisions, 48 Fed. Reg. 35,082, at 35,085 (August 3, 1983); *see also* Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines, 67 Fed. Reg. 15,440, at footnote 8 (April 1, 2002).



While FINRA is also a Self-Regulatory Organization, its primary responsibility is to license and regulate broker-dealers, capital acquisition brokers, and funding portals.<sup>13</sup> Unlike the stock exchanges, FINRA has no regulatory relationship with public companies, or other issuers of securities, and certainly cannot represent their interests or provide a mechanism for a balanced oversight process.

It would be a step in the wrong direction to transfer regulatory oversight of proxy fees—which primarily involve reimbursements to broker-dealers for proxy costs—to the primary regulator of the brokerage industry.

**3. In the Absence of a Market-Based Solution, the SEC Should Provide Ongoing Oversight of Proxy Fees.**

Except for periodic reviews of the NYSE proxy fee schedule, there is no ongoing regulatory oversight of the proxy fees charged to public companies and the proxy distribution practices utilized within the brokerage industry.<sup>14</sup> Public companies are not permitted to distribute proxy materials or other shareholder communications to their street name shareholders and are not able to select their own service providers. Proxy processors charge the maximum fees permitted by the NYSE fee schedule and issuers have no choice but to pay the proxy fee invoices as presented.

Currently, there is no regulatory process or mechanism available to public companies to raise proxy fee concerns outside of the periodic NYSE proxy fee reviews. These reviews typically occur only every decade or so and it has been 8 years since the last review. It is now time for a new review of the fee structure.

Given the changes in the broker-dealer business particularly with respect to managed accounts, and the technology changes that have occurred in the last decade, the proxy fee schedule and the regulatory role of Self-Regulatory Organizations should be reviewed immediately in the hopes that the rising costs to public companies (and ultimately their

---

<sup>13</sup> See Financial Industry Regulatory Authority, *Firms We Regulate*, available at <https://finra.org/about/firms-we-regulate>. Broker-Dealers are in the business of buying or selling securities on behalf of their customers, or their own accounts, or both. Capital Acquisition Brokers are Broker-Dealers subject to a narrower rule book. Funding Portals are crowd funding intermediaries.

<sup>14</sup> The Coalition acknowledges, and is supportive of, NYSE Proposed Rule SR-NYSE-2020-98, published in the *Federal Register* on December 18, 2020. This NYSE rule proposal would prohibit broker-dealer reimbursements for proxy services in circumstances where a broker-dealer has provided to a customer a small number of shares of a public company at no cost, or at a substantial discount to market price, in connection with a promotion. The NYSE has proposed this change to its fee schedule because these types of promotions provide commercial benefits to broker-dealers without providing any parallel benefits to public companies. A review of all NYSE filings with the SEC on proxy fees indicates that this is the first instance since 1983 that a specific broker-dealer practice has been prohibited in the NYSE proxy fee schedule. See Notice of Filing of Proposed Rule Change To Amend Its Rules To Prohibit Member Organizations From Seeking Reimbursement, in Certain Circumstances, From Issuers for Forwarding Proxy and Other Materials to Beneficial Owners, 85 Fed. Reg. 82,539 (December 18, 2020).

shareholders) for these services can be decreased. We respectfully request that the Commission undertake such a review.

### Conclusion

The SEC should reject the proposal by the NYSE to transfer its proxy fee oversight responsibilities to FINRA. As the primary regulator of broker-dealers, FINRA does not have a regulatory relationship with public companies and should not be substituted for the stock exchanges that do work with listed companies on a daily basis.

The Coalition urges the SEC, instead, to undertake and empanel a new Proxy Fee Working Group under its auspices, and further initiate a rulemaking to reform the proxy processing system and replace it with a more competitive framework that permits public companies to choose their own proxy service providers and establish proxy fees based on market forces.

The Coalition appreciates the opportunity to present its views on this NYSE rule proposal. If you have questions, or need additional information, please contact me at [REDACTED], or via email at [REDACTED].

Sincerely,



Niels Holch  
Executive Director  
Shareholder Communications Coalition

cc: The Honorable Elad L. Roisman  
The Honorable Hester M. Peirce  
The Honorable Allison Herren Lee  
The Honorable Caroline A. Crenshaw  
Christian Sabella, Acting Director, Division of Trading and Markets  
Shelley Parratt, Acting Director, Division of Corporation Finance  
Sarah ten Siethoff, Acting Director, Division of Investment Management