SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68936; File No. SR-NYSE-2013-07)

February 15, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of 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

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on February 1, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend 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. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proxy distribution fees have been part of the New York Stock Exchange's rules for many years, and have been reviewed and changed periodically over that time. The Exchange has long operated under the assumption that these fees should represent a consensus view of the issuers and the broker-dealers involved. In September 2010 the Exchange formed the Proxy Fee Advisory Committee ("PFAC" or the "Committee") to review the existing fee structure and make such recommendations for change as the PFAC believed appropriate.

BACKGROUND

The Exchange has been mindful for several years that a further review of the proxy fee rules would be useful. The Exchange's Proxy Working Group in 2007 noted a variety of fee-related issues, and the Exchange was aware of concerns expressed by various parties with an interest in the proxy distribution process. However, when the Exchange became aware that the Securities and Exchange Commission ("SEC") was preparing a study of proxy-related issues, it judged it advisable to await the SEC's publication prior to initiating a formal review of the fees.

On July 14, 2010 the Securities and Exchange Commission issued its Concept Release on the U.S. Proxy System, which has come to be known as the "Proxy Plumbing Release". Among the many issues discussed in that Release were proxy distribution fees, and the SEC stated that "it appears to be an appropriate time for SROs to review their existing fee schedules to determine whether they continue to be reasonably related to the actual costs of proxy solicitation."[4]

As the SEC explained in the Proxy Plumbing Release,

> "there are two types of security holders in the U.S. – registered owners and beneficial owners.
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> Registered owners (also known as 'record holders') have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent.
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> The vast majority of investors in shares issued by U.S. companies today are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker-dealer or bank. This is often referred to as owning in 'street name.' A beneficial owner does not own the securities directly. Instead, as a customer of the securities intermediary, the beneficial owner has an entitlement to the rights associated with ownership of the securities.[5]"

As further noted in the Proxy Plumbing Release, SEC rules require broker-dealers and banks to distribute proxy material to beneficial owners, but the obligation is conditioned on their being asured [sic] of reimbursement of their reasonable expenses. The SEC has relied on stock

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[4] SEC Release No. 34-62495; File No. S7-14-10, 75 Fed. Reg. 42982 (July 22, 2010) at text following note 138.

[5] Id. at text accompanying notes 23 to 31; footnotes omitted.

exchange rules to specify the reimbursement rates,[6] and it has been the rules of the NYSE that have established the standard used in the industry.

Since the 1980's, street name shareholding has proliferated, with estimates today that over 80% of publicly held securities are in street name.[7] Over this time, banks and brokers have increasingly turned to third party service providers to coordinate most aspects of this process, from coordinating the beneficial owner search to arranging the delivery of proxy materials to the beneficial owners. In the lexicon of proxy distribution, the banks and brokers are referred to as "nominees", and the third party service providers that coordinate the distributions for multiple nominees are referred to as "intermediaries". At the present time, almost all proxy processing in the U.S. is handled by a single intermediary, Broadridge Financial Solutions, Inc. ("Broadridge").[8] Broadridge reported that during the year ended April 30, 2012 it processed over 12,000 proxy distribution jobs involving over 638 billion shares.[9] Broadridge has estimated

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6 Id. at text accompanying notes 104-105. Note that although the rules of NYSE or any other exchange or FINRA apply only to members, who are all broker-dealers, the SEC has indicted [sic] that the fees provided in these self-regulatory organization rules should also be considered as appropriate reimbursement to banks for their distribution of proxy materials to their customers who are beneficial owners. See SEC Rule 14b-2(c)(3), and discussion in the SEC's 1986 adopting release, No. 33-15435 [sic], at text accompanying note 52. For this reason, when discussing proxy fees herein, we will at times refer to both banks and brokers, notwithstanding that NYSE rules do not apply to any entity not a member of the NYSE.

7 See, e.g., Briefing Paper for 2007 SEC Roundtable on Proxy Voting Mechanics, available at www.sec.gov/spotlight/proxyprocess/proxyvotingbrief.htm.

8 Other intermediaries competing with Broadridge are Proxy Trust (focuses on nominees that are trust companies), Mediant Communications and Inveshare, but their market share is relatively small. The Exchange is aware of one broker-dealer, FOLIOfn Investments, Inc., that provides proxy distribution to its accounts itself, without using the services of an intermediary.

9 Broadridge 2012 Proxy Season Key Statistics & Performance Rating, available at www.broadridge.com/Content.aspx?DocID-1498. The Commission notes the link is http://media.broadridge.com/documents/Broadridge_2012_Proxy_Season_Stats_Presentation.pdf.

that in recent years it handles distributions to some 90 million beneficial owners with accounts at over 900 custodian banks and brokers.[10]

Based on information from Broadridge, the PFAC estimated that issuers spend approximately $200 million in aggregate on fees for proxy distribution to street name shareholders during a year. This does not count the amounts spent on printing and postage for those street name distributions that are not made electronically – the PFAC observed that those costs are typically estimated to be more than double the amount spent on proxy fees, demonstrating why efforts to suppress physical mailings are so important from a cost perspective. The cost incurred by any given issuer varies widely depending on how broadly its stock is held, and the extent to which physical mailings to its shareholders have been eliminated. Again based on information from Broadridge, among the issuers represented on the PFAC, the smallest spent some $8,500 on proxy fees in the most recent (2012) proxy season, while the largest spent approximately $1.1 million. Among another representative group of issuers used by the PFAC for study purposes, the smallest paid approximately $10,000 in proxy fees this year, while the largest spent approximately $2 million. Overall Broadridge estimated that in its most recent fiscal year issuers owned by 100,000 or fewer street name accounts paid approximately 38% of all street name fees, issuers owned by 100,001 to 500,000 accounts paid approximately 30% of such fees, with 32% paid by issuers owned by more than 500,000 street name accounts.

Since 1937 the NYSE has specified the level of reimbursement which, if provided to the member broker-dealers, would obligate them to effect the distribution of proxy materials to street name holders, and those rates have been revised periodically since then. The last, and most far-reaching, revision was finalized in 2002. It was the culmination of a multi-year, multi-task force

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[10] Comment letter on Proxy Plumbing Release from Charles V. Callan, Broadridge, October 14, 2010.

effort that began in 1995, and attempted to both recognize and encourage significant changes in computer technology that permitted more efficient, and increasingly paperless, distribution of proxy material.

The proxy distribution fees that emerged from that effort and remain in effect include:

- A basic processing fee of 40 cents for each account beneficially owning shares in the issuer that is distributing proxy material.
- A flat nominee fee of $20 per nominee served by an intermediary.[11]
- An additional fee to compensate the intermediary based on the number of accounts at nominees served by the intermediary that beneficially own shares in the issuer.
    - 5 cents per account for issuers owned by 200,000 or more street name accounts.
    - 10 cents per account for issuers owned by fewer than 200,000 street name accounts.
- An incentive fee that applies whenever the need to mail materials in paper format to an account has been eliminated.
    - 25 cents per account for issuers owned by 200,000 or more street name accounts.
    - 50 cents per account for issuers owned by fewer than 200,000 street name accounts.[12]

The creation of a nominee fee, of an incentive fee for mailing suppression, and of fee differentiation between large and small issuers to recognize the economies of scale available in

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[11] As noted above, a "nominee" is a bank or broker in which a beneficial owner has an account, and an "intermediary" is a third party that coordinates proxy distributions for multiple nominees.

[12] The incentive fee is in addition to the other fees, so that even if a paper mailing is suppressed, the basic processing fee and all the intermediary fees still apply. This is explained in the SEC's Proxy Plumbing Release (see note 4, <u>supra</u>) at footnote 120. Suppression of mailing eliminates the postage costs for the issuer, but not these processing-related fees. The rules proposed in this filing will rename "incentive fees" as "preference management fees," but the concept remains the same as today and the preference management fees are in addition to, and not in lieu of, the other processing and intermediary fees.

serving the former, are all elements that emerged from the review process that began in 1995 and culminated in 2002.[13]

The proxy fees were also the subject of a partial review in the middle of this last decade, although no change was made at that time. A Proxy Working Group ("PWG") was created by the NYSE in 2005, composed of a diverse group of individuals from issuers, broker-dealers, the legal community and investors. It focused on several different aspects of the proxy process, particularly the NYSE rules on when brokers may vote shares for which no voting instructions were received from the beneficial owner. However, the PWG also looked at whether the NYSE rules on proxy distribution fees should be made applicable to the SEC's then new "e-proxy" system (today referred to as "notice and access"), and concluded that as an initial matter, they should not. In part, the PWG believed it was appropriate to allow some time during which market forces might create a consensus regarding the appropriate kind and level of fees under the new e-proxy rules.

The PWG Reports are referenced in the Concept Release, and the general concerns over proxy distribution fees that were voiced to the PWG are similar to those outlined in the Concept Release.[14]

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13 For many years the NYSE proxy fee rules subjected all issuers to the same rates. However, when the last changes were approved in 2002, the rules began to differentiate between "Large Issuers" and "Small Issuers." This was because it was determined that economies of scale existed for many of the tasks of processing material for distribution, and for collecting voting instructions. Those analyzing the situation at that time found that the actual cost of proxy distribution incurred with respect to large issuers was lower than the specified fees, whereas the actual cost for handling small issuers far exceeded the fees provided in the NYSE rules. SEC Release 34-45644 (SR-NYSE-2001-53, March 25, 2002).

14 It is important to understand that some of the concerns expressed about the proxy distribution process are not within the purview of the Exchange to address. Issues have been raised as to whether beneficial owners should continue to be able to be Objecting Beneficial Owners, or OBOs, and whether there should be a central data aggregator for

The Exchange brought together the Proxy Fee Advisory Committee composed of representatives of issuers, broker dealers and investors to review the current rules and how they are applied, and the Committee met with a wide variety of participants in the proxy process to gather information on what is necessary to efficiently and effectively distribute proxy material to street name shareholders and collect their votes. The Committee began its work in October, 2010, and provided its Report and recommendations to the NYSE on May 16, 2012. The Committee's Report may be found at https://usequities.nyx.com/sites/usequities.nyx.com/files/final_pfac_report.pdf.[15]

ANALYSIS AND RECOMMENDATIONS

As noted above, the obligation of brokers and banks to distribute proxy material to beneficial owners is conditioned on their being assured of reimbursement of their reasonable expenses, and the SEC relies on exchange rules to specify those reimbursement rates. NYSE Rule 451 states that "The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465." As the Committee noted in its

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beneficial owner information that would enable issuers to distribute proxy materials directly to beneficial owners rather than through the bank and broker nominees. However, today's distribution regimen is established by the securities laws and the SEC, and the Exchange does not have the power to alter it.

The Exchange notes also that, in its comment letter on the Proxy Plumbing Release, the Exchange stated that it would welcome a movement away from utilizing SRO rules to set the default proxy distribution fees. While NYSE has had a long history as an innovator and important source of rules for the U.S. proxy process, the SEC has long since taken over the field as the source of regulation for that process. The Exchange believes that the much reduced role of exchanges in proxy regulation means that they may no longer be the best source of rulemaking in the proxy fee area.

15 The members of the Committee are listed in its Report.

report, for at least the last 30 years, the NYSE has dealt with this issue by convening advisory panels of industry participants – brokers, issuers and investors – to advise on what should be considered "fair and reasonable rates of reimbursement," and then subjecting the proposals to review and approval by the SEC.[16]

Although the NYSE rules speak in terms of reimbursing brokers for their reasonable expenses, it appears self-evident that this was never feasible on an individual brokerage firm basis given that the rules provided one price to be used by a multiplicity of firms providing services, each with presumably different costs. That issue continued even after services were almost all centralized in one outsourced service provider, Broadridge. This is so because each firm continued to have some workload of its own, and each firm negotiated its own, arms-length agreement with Broadridge, and so had outsourcing costs that differed from firm to firm. In addition, the introduction of incentive fees in the late 1990's established that "fair and reasonable rates of reimbursement" encompassed rates that were not associated with a specified level of costs, but rather were considered adequate to encourage the development of systems that would lead to the elimination of physical delivery.

Given this state of facts, the Committee took the view that the NYSE proxy fee rules do not lend themselves to "utility rate-making," where the specific costs of a process are analyzed and rates revised periodically to permit a specified "rate of return."

However, the Committee did what it could to engage in a review that would in certain ways approximate such a process. It looked first at publicly available financial information on Broadridge, which is a public SEC-reporting company. Unfortunately for this analytical

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16 See, for example, SEC Release No. 34-45644, March 25, 2002 (SR-NYSE-2001-53); SEC Release No. 34-38406, March 24, 1997 (SR-NYSE-96-36); and SEC Release No. 34-21900, March 28, 1985 (SR-NYSE-85-2).

purpose, Broadridge has several business lines other than street name proxy distribution, and it does not isolate costs and revenues from the street name proxy distribution business in any of its publicly reported numbers. There were several analyst reports available on Broadridge that discussed the segment in which Broadridge includes this activity, which Broadridge refers to as its Investor Communications Solutions segment, or ICS.[17] Broadridge has reported flat to declining margin in this segment over the last four years, from 16% in fiscal 2008 to 14.9% for fiscal 2012.

The Committee also took note of the fact that since the fees were last changed in 2002, there has been an effective decline in the fees of approximately 20%, given the impact of inflation. Indeed, the nominee coordination fee dates from 1997, and so has been eroded approximately 29% by inflation since that time.[18] Broadridge pointed out to the PFAC that while the fees paid to nominees for proxy distribution have remained unchanged, other costs incurred by various entities in activities related to proxy distribution have increased by various amounts over approximately the same period – bulk rate postage by an estimated 38%, printing costs 12%, electricity 60%, and overall IT expenditures by financial services entities, 59%.[19]

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17 Broadridge's ICS revenues combine the street name and registered proxy businesses. This also includes both U.S. and non-U.S. public companies, but we assume that the non-U.S. company income is a relatively small part of the whole. Broadridge separately reports its fee revenue from mutual fund proxy statement and report distribution.

18 Based on the Bureau of Labor Statistics Consumer Price Index All Urban Consumers (CPI-U), U.S. city average, all items, 1982-84=100, annual average figures for 2011 (224.939), 2002 (179.9) and 1997 (160.5). Available at ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.

19 Data cited by Broadridge in support of these figures are: For postage – Effective 6/30/02: standard A "bulk" flat @$0.552; first class letter @$0.37. Effective 4/17/11: standard A "bulk" flat @$0.761 and first class letter @$0.44. For printing – NIRI biennial surveys; median cost @$4.32 (2004) and $4.82 (2010). For electricity – Bureau of Labor Statistics, Consumer Price Index – Average Price Data, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, Electricity per KWH, 2002 to 2011. For overall IT expenditures – Gartner Group, "Financial Services Market Regains Momentum: Forecast

After fact gathering and analysis, the Committee focused on a set of recommendations intended to serve several basic goals:

- To support the current proxy distribution system, given that it provides a reliable, accurate and secure process for distributing proxy materials to street name stockholders. It is also important that the fee structure continues to encourage cost savings through reducing printing, postage and physical handling of proxy materials.

- To encourage and facilitate active voting participation by retail street name shareholders.

- To improve the transparency of the fee structure, so that it is not only clearer to issuers what services they are paying for, but also that fees are consistent with the type and amount of work involved. Updating the terminology used in the rule will be a part of this effort. For example, "incentive fees" will be called "preference management fees," to better describe the work involved. It is also important for transparency that the rules be structured to avoid undue complexity.

- To ensure the fees are as fair as possible, reflecting to the extent possible both economies of scale in processing, and sensitivity to who (issuer or broker) benefits from the processing being paid for. In the course of its review the Committee addressed several of the issues that were singled out in the SEC's Proxy Plumbing Concept Release, notably the fees charged in connection with managed accounts, and the fees charged for utilizing notice and access.

The changes proposed herein reduce some fees and increase others, and Broadridge estimated for the PFAC that overall fees paid by issuers will decrease by approximately four percent. The Committee also focused on whether the new recommended fees appear to be aligned with the work effort to which the fees relate. At the Committee's request, Broadridge analyzed the work effort across the several tasks involved in proxy distribution. The Committee observed that this analysis confirmed that fees and work effort appeared to be roughly in line.

Through 2006", February 2003. Gartner Group, "Forecast: Enterprise IT Spending for the Banking and Securities Market, Worldwide, 2009-2015, 3Q11 Update, October 2011.

The following is an outline description of the various recommendations and the rationale for the changes proposed.

Basic Fees

This category includes both a per-nominee fee and two separate per-account fees.

Nominee Fee: The nominee fee is currently $20 per nominee (bank or broker) served by an intermediary (e.g., Broadridge). As noted earlier, this $20 fee has not changed since its implementation in 1997, and has been eroded by some 29% by inflation since that time. In addition, while not required under the current rule, it has been Broadridge's longstanding practice to only charge this amount for a nominee that responds to a search request with an indication that it does have at least one account holding the issuer's stock. This is so notwithstanding that for each meeting or distribution Broadridge makes inquiry of all nominees whether they hold any of the particular security involved. Broadridge notes that while they serve some 900 nominees, the average issuer is held by approximately 100 nominees.

In order to compensate for the impact of inflation and to better align this fee with what the PFAC understood to be the work involved, it is recommended that the basic per-nominee fee be increased to $22, but that the rule specify that it applies only to nominees with at least one account holding the issuer's stock.

The PFAC Report had recommended that the rule also provide for a charge of 50 cents per nominee for those solicited who indicated no holdings of the stock involved, with a cap of $100 for the smallest issuers. Subsequent to publication of the PFAC Report, figures from the 2012 proxy season became available from Broadridge. Given changes to the issuer population between 2011 and 2012 seasons it became necessary to reduce certain of the PFAC-proposed fees to keep the overall financial impact of the proposed changes at approximately the same level as proposed in the PFAC Report. Accordingly, the additional 50 cents charge for each nominee reporting zero positions has been eliminated. In addition, the basic processing fees are reduced somewhat from those proposed in the PFAC Report.

Per-account Fees: The two separate per-account fees are the basic processing fee, and the "intermediary unit fee", which is, in addition to the nominee fee described above, intended as compensation to the intermediary for its work in coordinating among multiple nominees.

As did its predecessor Committee in the 1990's, the PFAC believed that economies of scale exist when handling distributions for more widely held issuers. While the current fees attempt to reflect this in the intermediary unit fee, they do not in the basic processing fee, and the PFAC believed both fees should be structured to recognize the existence of economies of scale.

However, the PFAC was also concerned with the way the current fees approach this issue, with a simple binary distinction between Large and Small Issuers, where the Large Issuer pays a reduced rate on all accounts holding its securities, not just those over a specified number. This "cliff" pricing schedule means that there can be a significant difference in the overall price paid by issuers held by 199,000 street name accounts versus those held by 201,000 accounts. Furthermore, companies that are close to this line may find themselves on different sides of it from one year to the next, creating undesirable volatility in the prices paid for proxy distribution from year to year.

It is primarily for this reason that the Committee recommended moving away from the binary Large/Small Issuer distinction, and utilizing a group of five true tiers for the basic per-account fees. In this way, every issuer will pay the tier one rate for the first 10,000 accounts, for example, with decreasing rates calculated only on additional accounts in the additional tiers. Modest changes in shareholder population will no longer have the possibility of producing material changes in overall costs, and the sliding scale of rates will better approximate the sliding impact of economies of scale. The creation of true tiers in the pricing schedule will continue to recognize the existence of economies of scale in processing distributions for issuers with numerous accounts holding their securities in street name, but do it in a way that is more nuanced and thus fairer to all than the current approach.[20]

The tiers and the pricing for each tier were organized in a way that is intended to spread the fees as fairly as possible across the spectrum of issuers, and to spread the fees among issuers in three size ranges similar to that which pertains under the current fee rule, which is described above. In determining the fees applicable to each tier, however, the Committee was sensitive to the fact that an attempt to fully reflect the economies of scale would result in excessive increases in the rates paid by the smallest issuers, and the Committee considered such an outcome inappropriate. Indeed, it was an operating principle for the Committee that it wished to avoid

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[20] We note that even under the current "Large/Small issuer" distinction, a question has been raised whether brokers that do not use an intermediary, or that use an intermediary other than Broadridge, are entitled to bill at the "Small issuer" rate when they serve fewer than 200,000 accounts holding the issuer's stock, even though the issuer is held by far more than 200,000 accounts when all street name accounts at all nominees are considered. Given that the rates are based on the cost effectiveness of serving large numbers of accounts, logically the rate applied should be based on the number of accounts served by the particular intermediary (or nominee, if it does not use an intermediary). Because Broadridge serves such a large portion of the whole, the impact of allowing the smaller providers to bill at the higher rates is minimal, both overall and for any given issuer. For this reason the Committee was content to have the rules interpreted in this fashion. The Committee noted that this would bear re-examination if the processing task should come to be spread more evenly among a number of intermediaries.

Accordingly, the fee charged a particular issuer by an intermediary (or a nominee not using an intermediary) will depend on the number of accounts holding shares in that issuer that are served by the intermediary (or nominee) involved. For example, an issuer with a large number of beneficial shareholders might pay charges to Broadridge that reflect the progressive application of the rates in all five tiers, while its invoice from another intermediary serving a comparatively small number of accounts might charge for all those accounts at the tier one rate.

recommendations that would generate large and potentially dislocating changes in the fees or in the impact of the fees on broad categories of brokers or issuers.

In addition to being tiered to better reflect economies of scale in processing issuers with a larger number of accounts, both the basic processing fee and the intermediary unit fee would be increased slightly to better align fees and work effort, to reflect increased sophistication in proxy distribution processing, and to reflect the impact of inflation since the fees were last adjusted. Especially relevant to the intermediary unit fee, the work of the intermediary has been enhanced over time, responding to the needs of all participants – issuers, banks and brokers, and investors – in addition to responding to changing regulatory requests.[21]

While the rules will continue to differentiate between these two types of per-account processing fees, the Committee recommended that issuers be invoiced in a way that combines these two per-account processing fees for ease of understanding. The increases to these processing fees are estimated to add approximately $9-10 million to overall proxy distribution fees, although that should be considered in connection with the estimated $15 million reduction in fees associated with the proposal to charge preference management fees related to managed accounts at half the regular rate, which is discussed below.

The new proposed basic processing and intermediary unit fees are as follows:

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21 An example is the work required to accommodate the four voting choices necessitated by the Dodd-Frank requirements for say-when-on-pay votes. See SEC Release No. 33-9178, January 25, 2011, at text accompanying note 127, and Broadridge's November 19, 2010 comment letter on the related proposing release, available at http://www.sec.gov/comments/s7-31-10/s73110-55.pdf. Another example is the significant work already done on end-to-end vote confirmation. See descriptions in Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation, available at http://www.sec.gov/comments/s7-14-10/s71410-300.pdf. See also description in Broadridge's October 6, 2010 comment letter on the Proxy Plumbing Release, available at http://www.sec.gov/comments/s7-14-10/s71410-62.pdf.

(a) Definitions: For purposes of this rule

(i) The term "nominee" shall mean a broker or bank subject to SEC Rule 14b-1 or 14b-2, respectively.

(ii) The term "intermediary" shall mean a proxy service provider that coordinates the distribution of proxy or other materials for multiple nominees.

(b) (i) For each set of proxy material, i.e., proxy statement, form of proxy and annual report when processed as a unit, a Processing Unit Fee based on the following schedule according to the number of nominee accounts through which the issuer's securities are beneficially owned:

50 cents for each account up to 10,000 accounts;
47 cents for each account above 10,000 accounts, up to 100,000 accounts;
39 cents for each account above 100,000 accounts, up to 300,000 accounts;
34 cents for each account above 300,000 accounts, up to 500,000 accounts;
32 cents for each account above 500,000 accounts.

To clarify, under this schedule, every issuer will pay the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers. References in this Rule 451 to the number of accounts means the number of accounts in the issuer at any nominee that is providing distribution services without the services of an intermediary, or when an intermediary is involved, the aggregate number of nominee accounts with beneficial ownership in the issuer served by the intermediary.

(ii) In the case of a meeting for which an opposition proxy has been furnished to security holders, the Processing Unit Fee shall be $1.00 per account, in lieu of the fees in the above schedule.

(c) The following are supplemental fees for intermediaries :

(i) $22.00 for each nominee served by the intermediary that has at least one account beneficially owning shares in the issuer;

(ii) an Intermediary Unit Fee for each set of proxy material, based on the following schedule according to the number of nominee accounts through which the issuer's securities are beneficially owned:

14 cents for each account up to 10,000 accounts;
13 cents for each account above 10,000 accounts, up to 100,000 accounts;
11 cents for each account above 100,000 accounts, up to 300,000 accounts;
9 cents for each account above 300,000 accounts, up to 500,000 accounts;
7 cents for each account above 500,000 accounts.

To clarify, under this schedule, every issuer will pay the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers.

(iii) For special meetings, the Intermediary Unit Fee shall be based on the following schedule, in lieu of the fees described in (ii) above:

19 cents for each account up to 10,000 accounts;
18 cents for each account above 10,000 accounts, up to 100,000 accounts;
16 cents for each account above 100,000 accounts, up to 300,000 accounts;
14 cents for each account above 300,000 accounts, up to 500,000 accounts;
12 cents for each account above 500,000 accounts.

To clarify, under this schedule, every issuer will pay the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers. For purposes of this subsection (iii), a special meeting is a meeting other than the issuer's meeting for the election of directors.

(iv) In the case of a meeting for which an opposition proxy has been furnished to security holders, the Intermediary Unit Fee shall be 25 cents per account, with a minimum fee of $5,000.00 per soliciting entity, in lieu of the fees described in (ii) or (iii) above, as the case may be. Where there are separate solicitations by management and an opponent, the opponent is to be separately billed for the costs of its solicitation.

Incentive (Preference Management) Fees

The incentive fees generally appear to have been quite worthwhile for the issuers who pay the proxy distribution fees.[22] Broadridge reports that the percent of mailings eliminated has grown steadily since incentive fees were first instituted in 1998, reaching 60% of all accounts processed in the 2012 proxy season.[23] In contrast, only 8% of mailings were eliminated in 1998, growing to 27% for the 2002 season.[24] Broadridge estimates that corporate issuers saved over $522 million in postage and printing costs in the 2012 season.[25]

In addition to considering what the amount of this fee should be, the Committee examined two specific issues that have engendered comment regarding how the incentive fee has been applied.

The first is the "evergreen" nature of the fee. As noted in the SEC's Proxy Plumbing Release, questions have been raised as to whether it is appropriate to charge an incentive fee not only in the year when electronic delivery is first elected, but also in each year thereafter. In its Proxy Plumbing Release the SEC posits that "the continuing role of the securities intermediary, or its agent, in eliminating these paper mailings is limited to keeping track of the shareholder's

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22 As noted in footnote 12 above, these fees, both currently and as proposed to be amended, are in addition to, and not in lieu of, the other proxy distribution fees.

23 Broadridge 2012 Proxy Season Key Statistics & Performance Rating, available at www.broadridge.com/Content.aspx?DocID=1498. The Commission notes the link is http://media.broadridge.com/documents/Broadridge_2012_Proxy_Season_Stats_Presentation.pdf.

24 Estimates provided by Broadridge to the Committee.

25 See report cited in note 23, supra.

election."[26]

In discussing this issue with brokerage firms and with Broadridge, the Committee was persuaded that there was in fact significant processing work involved in "keeping track of the shareholder's election," especially given that the shareholder is entitled to change that election from time to time. Although few do change their election, data processing has to look at each position relative to each meeting or distribution event to determine how the "switch" should be set. Data management requires ongoing technology support, services and maintenance, and is a significant part of the total cost of eliminating paper proxy materials. Even if there is some additional effort involved in the year an election is actually made (or changed), the Committee did not find a simple, rational way to construct different prices for "change" versus "maintenance" of elections.[27]

The Committee found that a significant part of the work involved was in "maintaining" or "managing" the preferences attached to each account position regarding distribution, both for householding and eliminating paper delivery entirely. Thus the name used for the fee under the current rules – "incentive fee" – was part of the problem, since it implied that the work was finished once an election had been made. This is why the Committee believes that transparency and understanding will be served by identifying this kind of fee as a "preference management" fee.

The other issue to which the Committee devoted considerable time is how this fee is

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26 Proxy Plumbing Release at text accompanying note 134.

27 For example, a choice to eliminate mailings is often made by an investor for a number of different holdings in the account. How to fairly apportion a front-loaded fee among different issuers, who may have different numbers or types of distributions in the year the election is made, was one of the challenges presented. And clearly, a change to a one-time fee would radically impact the overall revenue produced by the proxy fees, presumably requiring at least some compensating increases to the "one-time" fee or to other proxy fees.

applied to positions that are part of managed accounts. At least in recent years this appears to be the most contentious of all the issues raised by those critical of the current fees.[28]

While, as noted above, mailing eliminations have steadily increased since the incentive fees were implemented, eliminations resulting from elections made by investors holding an issuer's securities through managed accounts have consistently represented a significant portion of the whole. Figures supplied by Broadridge indicate that managed accounts have accounted for about 60% of eliminations for most years since 2002, falling a bit after 2008 to be some 49% of all eliminations in 2012.[29]

Eliminations in the managed account context occur not because an investor has consented to have distributions come to him or her electronically, but because the investor has elected to delegate the voting of shares (and typically, the receipt of materials) to a broker or investment manager, and the broker or manager quite naturally prefers to manage the process electronically rather than by receiving multiple paper proxy statements and voting instructions. That the investor makes this election is often described as a rational result of the fact that in a managed account the investments are selected by the manager rather than the investor, and the investor looks to the manager not only to know whether or when to buy or sell a stock, but how to vote the shares as well.[30]

Here the fact that the fee has been described as an "incentive" fee has probably impacted

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[28] Proxy Plumbing Release at text accompanying note 135. See also STA/SSA Petition to the SEC re Managed Account Fees, March 12, 2012, www.stai.org/pdfs/2012-03-12-sta-ssa-joint-letter.pdf.

[29] Based on information supplied by Broadridge, the most steadily growing category of eliminations over the years has been consents to electronic delivery.

[30] See, for example, discussion in SEC Release No. 34-34596, August 31, 1994, approving NYSE rule change allowing delivery of proxy material to investment advisers that have been delegated the authority to vote securities in the account.

the view on whether application of the fee in this context is appropriate. Once the investor determines to open a managed account, the incentive to delegate voting flows naturally from the nature of the account, rather than from any specific effort made by an intermediary or its agent.

However, the maintenance of the preference is as necessary here as it is in any other election, such as consent to e-delivery. SEC rules applicable to managed accounts require that each beneficial owner be treated as the individual owner of the shares attributed to his or her account, and that includes having the ability to elect to vote those shares and receive proxy materials.[31] Accordingly, each beneficial owner's election must be tracked – just as is the case with an investor in a non-managed account.

As a general matter then, the elimination of preference management fees for all managed accounts appeared unreasonable. However, the Committee did conclude that making some distinctions between managed accounts and non-managed accounts for fee purposes was appropriate.

Literature on managed accounts indicates they are intended to offer professional portfolio management services with more investment, tax management and fee customization than is available in comingled products such as mutual funds. They have existed since at least the 1970s, and have been growing significantly as an investment style since at least the early 1990s.[32] They are a product class that is followed, studied, analyzed broadly and popularized by many different brokerage firms and investment advisors.[33]

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31 Investment Company Act Rule 3a-4(a)(5)(ii).

32 See "The History of Separately Managed Accounts," www.mminst.org/archive/multimedia/Timeline.pdf. The Commission notes the link is http://www.moneyinstitute.com/downloads/2008/02/connections-mmi_5-01-07-1.pdf.

33 See, for example, "Understanding Separately Managed Accounts," Madison Investment Advisors, Inc., www.concordinvestment.com/docs/SMA.pdf.

Their increasing popularity demonstrates that the managed account is a product that offers significant advantages both to investors, and to the brokerage firms offering this kind of account.

At the same time, it seems clear that issuers also reap some benefit from inclusion in managed account portfolios. Most obviously, of course, the issuer benefits from the added investment in the company's stock. In addition, the fact that almost all managed account investors delegate voting to the investment manager results in those stocks being voted at a rate far higher than is stock that is held in ordinary retail accounts. This simplifies obtaining a quorum for stockholder meetings, reducing proxy solicitation expenses.

Interestingly, then, this is the one source of mailing eliminations that is a benefit to both the issuer and the brokerage firm – in contrast to ordinary consents to e-delivery or householding, which appear to benefit only the issuer.

It is this unique attribute of the managed account that suggested to the Committee that it would be most fair, and most reasonable, for issuers and brokers to share the cost of the admittedly real processing work that is done to track and maintain the voting and distribution elections made by the beneficial owners of the stock positions in the managed account. It is for this reason that the Committee recommended and the Exchange is proposing that preference management fees for managed accounts be charged to issuers at a rate that is half that of other preference management fees.

Beyond this, however, there is another phenomenon that has emerged from the trend towards managed accounts that the Committee believed must be addressed – and this is the proliferation of accounts containing a very small number of an issuer's shares that can be found when a managed account is offered with a relatively low investment minimum.

Most managed accounts are targeted to wealthy investors, with minimum investment requirements of at least $100,000, up to $1 million or more for certain of these accounts. However, as managed accounts became increasingly popular, and data processing became more sophisticated, some firms have found it feasible, and presumably profitable, to offer a managed account product to a class of investor with a more modest amount of money to invest. Obviously, if you spread, say, $25,000 over a large portfolio of investments, some of those positions, especially holdings in the companies with modest weightings in the portfolio, will contain relatively few shares, or even fractional share positions. In recent years firms with offerings of this nature have become more popular, with the result that some issuers have noted significant increases in the incentive fees attributable to firms with very small aggregate holdings of their shares.

The Exchange understands that this kind of issue had in fact been considered in the mid-1990s when the incentive fees were being formulated. While the managed account product was not as widespread as it is today, one firm did market a managed account product with a relatively low minimum investment which the firm called a "Wrap Account". It was the tendency of these accounts to have many very small, even fractional share positions that led to the practice followed by Broadridge to process "Wrap Account" positions without any charge – either for basic processing or incentive fees. However, Broadridge relied on its client firms to specify whether or not an account should be treated as a "Wrap Account" for this purpose, and positions in small minimum investment managed accounts which were not marketed with that appellation were subjected to ordinary fees, including incentive fees. This has produced the anomalous results, and issuer concerns, described above.

In the view of the Committee, the question was what is fair and reasonable in this context. The Committee noted one issuer that reportedly found its total number of investor accounts more than doubled when it was included in the portfolios managed by one of these firms offering low-minimum investment accounts. This was despite the fact that these additional accounts held in the aggregate only .017% of the issuer's outstanding stock – an amount of stock that was in the aggregate less than one share for each account at the firm. Nonetheless, because of the incentive fees charged for these tiny stock positions, the issuer's total bill for street name proxy distribution more than doubled.

Clearly in such a situation the benefits of increased stock ownership and increased voting participation were as a practical matter nonexistent for the issuer, while the added expense on a relative basis was extraordinary.

Accordingly, the Committee considered it most appropriate to preclude the charging of proxy processing fees for managed accounts holding very small numbers of shares in the issuer involved.

To determine where to set the limit, the Committee first looked at information supplied by Broadridge showing that among managed account positions between 1 and 500 shares (89% of all managed account positions), the average position size was 91 shares, and the median position size was approximately 50 shares.

While the benefit to an issuer is obviously on a continuum – more for larger holders, less for smaller holders - the Committee looked for an appropriate break point. Because one of its goals was to avoid severe impacts on proxy distribution in the U.S., the Committee looked at the estimated financial impact of eliminating proxy fees for managed accounts holding less than a certain number of shares. Based on information supplied by Broadridge from the 2011 proxy season, the overall impact varied from approximately $2.6 million at the fractional (less than one) share level, up to approximately $16 million if the proscription applied to accounts holding 25 shares or less.

After due consideration, the Committee determined that managed account holdings of five shares or less was an appropriate level at which to draw the line. The overall impact on proxy revenue was modest (approximately $4.2 million), and the benefit to issuers of holdings of five or fewer shares in a managed account is limited.[34] Put another way, the Committee was comfortable with the position that, given the relative benefit/burden on issuers and brokerage firms, it is not reasonable to make issuers reimburse the cost of proxy distribution to managed accounts holding five shares or less.[35]

As a natural corollary to the proscription against fees relative to very small holdings in managed accounts, no fee distinction will be based on whether or not a managed account is referred to as a "wrap account."

The Exchange appreciates that it will be necessary to provide a definition of "managed account" in the rules so that the fees can be applied appropriately. Unfortunately, the term is not comprehensively defined for any other purpose in SEC rules. The Exchange believes that for purposes of the fee provisions, it would be appropriate to define a "managed account" as an account at a nominee which is invested in a portfolio of securities selected by a professional advisor, and for which the account holder is charged a separate asset-based fee for a range of services which may include ongoing advice, custody and execution services. The advisor can be

34 Five shares or less will also represent a very modest monetary investment in almost any public company, with the exception of a stock with an extraordinarily high price, such as Berkshire Hathaway A.

35 Estimates supplied by Broadridge also demonstrated that a model that included this proscription would reduce by some 42% the fees paid by the issuer whose fees had doubled when it entered the portfolios of the low minimum investment managed account provider described above. This suggests that this level is appropriate to address the unacceptable impact produced by low minimum investment managed accounts.

either employed by or affiliated with the nominee, or a separate investment advisor contracted for the purpose of selecting investment portfolios for the managed account. Requiring that investments or changes to the account be approved by the client would not preclude an account from being a "managed account" for this purpose, nor would the fact that commissions or transaction-based charges are imposed in addition to the asset-based fee.

Having addressed the "evergreen" and managed account issues, the Committee focused on the amount of the preference management fee, and whether it should be tiered among issuers based on their size.

The current incentive fee differentiates between Large Issuers and Small Issuers. As described above in the discussion of the basic per-account fees, the Committee did not favor this "cliff" differentiation. In the case of the preference management fee, the Committee determined not to tier the fee according to the size of the issuer. This conclusion was based on two other core principles that the Committee used to guide its work. One is a desire to improve transparency and understanding by avoiding unnecessary complexity. Having tiered the basic processing/intermediary fees, it appeared overly complex to have additional tiers for the preference management fee. Another principle was the desire to align the fees with the work done. The Committee was of the view that the processing involved in managing preferences was less susceptible to economies of scale by size of issuer because it is, of necessity, an account by account task, requiring the tracking of the different (and sometimes changing) preferences of street name shareholders across all their company holdings.

The new preference management fee recommended by the Committee is 32 cents per position affected (16 cents for positions in managed accounts). The 32 cents rate would be a reduction for companies that have been characterized under current rules as Small Issuers, and an increase for those that have been categorized as Large Issuers, but the fee as applied would result in an overall savings to issuers taken as a whole.

As discussed earlier, inflation has effectively eroded the existing proxy fees over the last decade and more since they were implemented or last changed. However, the Committee observed that the impact of inflation on Broadridge's overall proxy distribution revenue has been mitigated by the increased revenue it has obtained from incentive fees. Issuers have saved money on a net basis since the elimination of mailings has reduced postage and printing costs by far more than it has increased incentive fees, but this increased revenue stream to Broadridge has countered to some extent the impact of inflation on the basic processing fee. This is why the Committee saw fit to offset its recommended reduction in managed account preference management fees by increases to the basic processing and intermediary fees.

The Exchange notes that there is also a small incentive (preference management) fee (10 cents per account) for "interim" distributions. The PFAC did not propose to alter this fee as it is applied to managed accounts, except, of course, for the fact that it will not apply to managed accounts holding five shares or less.

Notice and Access Fees

As described above, based on the recommendations of its Proxy Working Group in 2007, the NYSE initially elected to leave fees for notice and access unregulated.[36]

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[36] The PWG's Report states: "The majority of the Proxy Working Group came to this conclusion after considering several factors. First, the Working Group decided that in light of the novelty of the [e-proxy] system, as well as the fact that the system was still optional and had not been implemented by many issuers, that market forces should be allowed to determine the appropriate pricing structure for this system. The Working Group was also aware of the role of Broadridge in this system, but concluded that at this stage it was reasonable to allow the participants in the current system, including Broadridge, the brokers and issuers, to negotiate a fee structure for mailings and other matters associated with the new e-proxy rules." August 27, 2007 Addendum to the

The PFAC found that from an overall financial point of view, the notice and access system has been a great success. (Concerns have been expressed that there may be a decrease in retail voting participation when issuers use notice and access,[37] but that is unrelated to the fees involved.) Broadridge estimates that in the most recent proxy season issuers in the aggregate saved $241 million, net of fees, through the use of notice and access, an amount that is actually more than the total fees paid annually by all issuers for annual meeting street name proxy processing. The Committee understood that issuers of all sizes have adopted notice and access, and that the re-use of notice and access by adopting issuers is close to 100%.

The first decision for the Committee was whether notice and access fees should remain unregulated as they are today. It was noted that an unregulated system is more flexible and can respond quickly to changes in technology and investor behavior, whereas change and new investment could be delayed when fees are regulated and more difficult to change. However, issuers were concerned about leaving notice and access vulnerable to fee increases without regulatory oversight, especially in a context where other fees were changing, and in some cases being reduced. Accordingly the Committee concluded that notice and access fees should now be regulated. More difficult was the question of what those regulated fees should be.

The present charges imposed by Broadridge for use of notice and access were not the subject of the formal rule-setting process, but they were the product of market forces, as intended by the Proxy Working Group. Broadridge indicates that when the notice and access alternative was introduced, they had to build and maintain the necessary functionality regardless of issuer adoption, but also realized that they had to put forth a fee schedule that would provide issuers

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Report and Recommendations of the Proxy Working Group to the New York Stock Exchange dated June 5, 2006, at 8.

37 See Proxy Plumbing Release at text accompanying notes 196-197.

with predictable costs that were at a level that would encourage them to use (or at least not dissuade them from using) notice and access. Based on the most recent statistics from Broadridge, 69% of all account positions are in issuers using notice and access, notice and access is used by issuers of all sizes, and issuers realize substantial savings through the use of notice and access, with an aggregate $282 million in savings estimated for the most recent fiscal year.[38]

In fact, among issuers represented on the Committee there was general satisfaction with the overall cost of notice and access. At the same time there was concern with the way Broadridge has structured its notice and access fees. Broadridge charges notice and access fees for all accounts holding an issuer's shares, even though mailings to some of those accounts are already suppressed by e-delivery, householding, etc. Indeed, when an issuer stratifies its approach, electing to utilize notice and access only for account holdings below a certain size, for example, Broadridge still applies its notice and access fees to all accounts beneficially holding that issuer's stock. Broadridge explains that from a processing point of view they have to identify each account as subject to notice and access or not, justifying the application of a fee to all accounts once an issuer determines to use notice and access. Nonetheless, some issuers have a concern that under this approach they are being charged for something they are not receiving.

Given the general satisfaction with the overall level of notice and access fees, Broadridge was asked to suggest an alternative approach that would net Broadridge a similar amount of fee revenue from notice and access but avoid the application of a fee to all accounts. In response, Broadridge suggested that it could apply a preference management fee to each account that was

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38 See http://www.broadridge.com/Content.aspx?DocID=1441, at slide 3. The Commission notes the link is http://media.broadridge.com/documents/Broadridge+Notice+Access+Statistical+Overview+Presentation+2012.pdf.

in fact subjected to notice and access, but no fee to those accounts that were not. In this way, notice and access would be treated as simply another mailing elimination factor, like e-delivery or householding.

This was attractive to the Committee from a design point of view, and at the Committee's request Broadridge prepared estimates of how such a notice and access fee would impact issuers. Two models were prepared, one utilizing a flat preference management fee, and the other using a tiered model, but in each case applied only to those accounts receiving a notice.

The impact analysis showed that either of those options had a disproportionate impact on certain issuers (doubling notice and access fees in some cases), and the Committee was concerned this could discourage issuers from using notice and access, or incent them to stratify rather than applying notice and access to all holders.

Accordingly, the majority of Committee members decided that, while perhaps not ideal, simply bringing notice and access under the regulatory tent with the current rate schedule would be the better approach, and would be consistent with the principle of avoiding large and unanticipated consequences from a fee change.[39]

The Committee noted that if future developments in proxy regulation or use of notice and access suggested that further change in the fees was appropriate, the issue of notice and access fees could be reconsidered by the industry.

The Exchange notes that one aspect of the current Broadridge fees merits some adjustment. For issuers held by up to 10,000 accounts there is a minimum fee of $1500. If a small issuer using notice and access were billed by several intermediaries on this basis, the aggregate minimum charge would be unfairly high, in the Exchange's view. Accordingly, in the

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[39] The Committee also understood that fewer users of notice and access are now electing to stratify.

notice and access fee as proposed, the first tier of incremental notice and access fees will be 25 cents/account, without a minimum charge.

A note on terminology. In its current price list for notice and access, Broadridge uses the term “position” to refer to an account beneficially owning shares in an issuer. The PFAC, in its Report and in the fee proposals contained therein, used the same terminology throughout the proposed amendments. In subsequent discussions, however, the SEC staff expressed a preference for the term “account” rather than “position.” Accordingly, the Exchange has adjusted the terminology used in this proposal. The intent and meaning, however, is the same as in the PFAC Report.

The notice and access fees, as proposed to be codified, would be as follows:

When an issuer elects to utilize Notice and Access for a proxy distribution, there is an incremental fee based on all nominee accounts through which the issuer’s securities are beneficially owned as follows:

25 cents for each account up to 10,000 accounts;
20 cents for each account over 10,000 accounts, up to 100,000 accounts;
15 cents for each account over 100,000 accounts, up to 200,000 accounts;
10 cents for each account over 200,000 accounts, up to 500,000 accounts;
5 cents for each account over 500,000 accounts.

To clarify, under this schedule, every issuer will pay the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers.

Follow up notices will not incur an incremental fee for Notice and Access.

No incremental fee will be imposed for fulfillment transactions (i.e., a full package sent to a notice recipient at the recipient’s request), although out of pocket costs such as postage will be passed on as in ordinary distributions.

Other Fees

Reminder mailings: The reminder mailing fee for annual equity meetings is recommended to be reduced by half. Issuers have a choice whether or not to use reminder mailings, and their choice might in some cases be influenced by cost considerations. The reduced fee may induce more issuers to use reminder mailings, which could increase investor participation, particularly among retail investors.

Special meetings: The intermediary fee for special equity meetings would be increased by 5 cents per account in each tier. This acknowledges the additional work required of the intermediary for these meetings. Special meetings occur in an unpredictable pattern, yet the capacity and ability to respond to these meetings must be maintained. Issuers conducting special meetings can be characterized as using the capacity of the system maintained for annual meetings without incurring any additional fee. Special meetings often require faster turnaround and more frequent vote tabulation, analytics and reporting because of the need for approval and concerns about quorum. The PFAC believed that it is only fair for issuers to pay for any unique services that they require. A special meeting will be defined as a meeting other than one for the election of directors.

Contested meetings: In the 1990s a higher processing fee was created for contested meetings, reflecting the additional work involved in those events. It is now proposed that for contests the intermediary fee be increased as well, to a flat 25 cents per account, with a minimum fee of $5,000 per soliciting entity. Contests present similar issues to those described above for specials meetings, although generally at a more intense level. Parties are provided with enhanced turnaround time between receipt of materials and distribution to shareholders, and requirements of ballot customization, vote tabulations and reporting are more demanding, involving more stringent audit controls, more voting analytics, multiple daily reporting and the need to deal with a generally higher level of votes returned by fax.

Accounts containing only fractional shares

Subsequent to the PFAC Report, in conversation with Broadridge it was determined that it would be desirable to eliminate both processing and preference management fees for all accounts containing less than one share of an issuer's stock. Making this change for accounts outside the managed account context (charges for holdings of less than one share in managed accounts are already eliminated by the rule regarding managed account positions of five shares or less) would have a very modest impact on overall annual proxy fees (approximately $500,000), and would eliminate a charge that has been a source of issuer complaints to Broadridge.

Methodology used in formulating the amended rule text

The following is an explanation of the approach the Exchange has taken to the presentation of the amended rules set forth in Exhibit 5. The amendment eliminates duplication found in the existing rules (for example, multiple references to the fee for delivery of annual reports separately from proxy material, now contained in the section regarding charges for interim reports and other distributions, and multiple references to the reimbursement for postage, envelopes, and communications expenses relative to voting returns, now contained in the first paragraph of section .90). It also eliminates the now unnecessary references to the effective dates of various changes made in the past, as well as obsolete rule language describing the amount of a surcharge that was temporarily applicable in the mid 1980's. In addition, the same proxy fees were presented multiple times in different rules (Rule 451, Rule 465 and Section 402.01 of the NYSE Listed Company Manual). To clarify matters, Rule 465 will now simply cross-reference to Rule 451, and the Listed Company Manual will now use the same text as Rule 451.

In addition, in the rules several references to "mailings" have been eliminated, given that the processing fees apply even where physical mailings are suppressed. In addition, several very minor minimum fees of $5 or less were simply eliminated as irrelevant to the overall fees imposed or collected.

Additional Matters Addressed in these Proposals

NOBO fees: Since 1986 NYSE rules have provided for fees which issuers must pay to brokers and their intermediaries for obtaining a list of the non-objecting beneficial owners holding the issuer's stock. Such a list is commonly referred to as a NOBO list, and the fees are charged per name in the NOBO list.

Interestingly, while the rule has always specified the amount of the basic fee – 6.5 cents per name – it states that where there is an agent processing this data for the broker, the issuer will also be expected to pay the reasonable expenses of the agent, but without specifying what that amount would be. It is our understanding that Broadridge has long charged a tiered amount per name in the NOBO list, namely 10 cents per name for the first 10,000 names in the NOBO list, 5 cents per name from 10,001 to 100,000 names, and 4 cents per name above that. There is also a $100 minimum per requested list.

The Proxy Plumbing Release contains a discussion of the concern that existing proxy regulations – particularly the fact that beneficial owners can hide their identity from an issuer in which they own stock – impedes an issuer's ability to effectively communicate with its shareholders. As noted in the PFAC Report, these issues are generally beyond the purview of NYSE rules.

There is one respect in which the PFAC thought that it might have a modest beneficial effect on the costs of communicating with shareholders, and this involves the way that the NYSE rule on NOBO list fees has been applied in practice.

Although the NYSE rule is silent on this issue, it has been customary for brokers, through their intermediary, to require that issuers desiring a NOBO list take (and pay for) a list of <u>all</u> holders who are NOBOs, even in circumstances where an issuer would consider it more cost-effective to limit its communication to NOBOs having more than a certain number of shares, or to those that have not yet voted on a solicitation.

In an attempt to provide some modest cost relief to issuers seeking to communicate with NOBOs, the PFAC recommended that the NYSE rules should specify that issuers be allowed to request a stratified NOBO list when the request is made in connection with an annual or special meeting of shareholders. The PFAC also considered it appropriate to limit such stratification to requests based on the number of shares held or whether the investor has or has not already voted a proxy, rather than some other characteristic or affiliation (such as geographic location or brokerage firm holding the account, etc.).

The PFAC noted that it limited its recommendation to record date lists because such lists are more likely to be used by issuers for communications with shareholders about voting at the meeting, a type of shareholder communication which the PFAC said was most deserving of facilitation. The NYSE notes that there is also a cost-related reason to so limit the proposal.

In connection with every shareholder action for which a record date is established, brokers and their intermediaries must engage in the work necessary to create the list of record date beneficial shareholders, and it is the NYSE's understanding that in such process it is also determined which holders are NOBOs and which holders are OBOs. Accordingly, if an issuer later asks for a NOBO list as of that record date, the compilation work has effectively already been done. It is true that some additional processing would be required to eliminate the names that hold more or less than a specified number of shares, or who have already voted, but the NYSE assumes that this additional processing is relatively minimal compared with the cost of maintaining and constructing the original list.

Broadridge estimated that issuers spent some $6.7 million in calendar 2011 on NOBO lists, with some $4.7 million of that related to record date requests. These amounts are inclusive of both the broker fee of 6.5 cents per name specified in the NYSE rule, and the intermediary fee authorized but not specified in the rule. What is more difficult to estimate is the impact of specifying in the rule that issuers can stratify their NOBO list requests and avoid paying for those names eliminated in the stratification. We cannot know how many issuers would in fact stratify NOBO lists, and at what level, nor do we know the extent to which the cost reduction would increase the number of record date NOBO lists requested. Broadridge has estimated that if permitted to stratify, issuers would typically eliminate all names below the 1000 share level, and that doing so would eliminate some 85% of the names in the lists, and hence overall some 85% of the revenue from these NOBO list fees. However, this is speculation at this point, and is not offset by any estimation (admittedly also speculative) that use of NOBO lists would increase. In addition, Broadridge's argument suggests that they believe that issuers are currently having to pay for a list that they consider to be 85% irrelevant, which itself would seem to call into question whether the current approach is reasonable.

Accordingly, the NYSE proposes to revise the rule to specify that issuers can stratify record date requests to eliminate positions above or below a certain level, or those that have already voted. It recognizes, however, that should this change reduce proxy fee revenues significantly, it may be appropriate, for the health of the overall system, to promptly revisit the amount of this fee or how it is applied. This codification will also confirm that for all other requested lists, the issuers will be required to take and pay for complete lists, consistent with the practice that has been historically followed for all requested lists. This will provide transparency that has previously been lacking in this rule.

The fact that the rule does not currently specify the amount of the intermediary fee makes it difficult to apply this approach to stratification effectively, since the intermediary could simply raise the per-name amount charged for stratified lists to compensate. This is similar to the concern which the PFAC had with respect to the Notice and Access fees, which led to the PFAC recommendation to codify those fees at the level currently charged by Broadridge. Accordingly, the NYSE proposes to codify in the rule the intermediary fee which has historically been charged by Broadridge for NOBO lists, with the understanding that these per-name amounts also may not be charged for names eliminated in permitted stratifications.

<u>Enhanced Broker's Internet Platform</u>

In its Proxy Plumbing Release the SEC discussed whether retail investors might be encouraged to vote if they received notices of upcoming corporate votes, and had the ability to access proxy materials and vote, through their own broker's web site – something the Release referred to as enhanced brokers' internet platforms ("EBIP").

In the course of the review of proxy fees by the PFAC, Broadridge discussed with PFAC representatives a service of this type that they call "Investor Mailbox". Broadridge maintained that while some brokerage firms have already implemented such "mailboxes", it appeared likely that some financial incentive would be necessary to achieve widespread adoption, given the competing demands at firms for development resources.

The PFAC was supportive in concept of a program that would enhance retail shareholder participation in proxy voting while being structured to impose a fee only on issuers that actually benefit from the program. Broadridge brought forward a proposal to the PFAC that was developed in consultation with Broadridge's Independent Steering Committee, which established for the purpose a Subcommittee consisting of issuers, brokers and outside experts. It is a "success fee" approach, payable only out of actual savings realized by an issuer. Specifically, issuers would pay each broker who has beneficial owner accounts with shares in that issuer a one-time 99-cent fee for each full package recipient among those accounts that converts to e-delivery while having access to an investor mailbox. The arrangement was proposed to be limited to a three-year pilot period. The rationale is that the savings to the typical issuer from the elimination of even one full-package mailing would be significantly greater than the one-time 99-cent fee paid.[40]

The PFAC was supportive of the EBIP fee proposal; however the detailed proposal was brought forward after the PFAC had largely concluded its deliberations, and the PFAC did not have an opportunity to carefully consider whether 99 cents was the appropriate level at which to set the fee. Accordingly, the PFAC recommended that the NYSE discuss the proposal with additional industry representatives, and propose to the SEC an EBIP fee in an amount that it determined most appropriate.

Following the issuance of the PFAC Report, the Exchange engaged in discussions with a variety of industry participants regarding EBIPs and the "success fee" proposal. Although no one had firm data or support for definitive conclusions, there appeared to be a consensus view that an EBIP could help to generate greater proxy voting participation by retail holders.

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40 Although the proposal was brought forward by Broadridge, an EBIP may be implemented by a firm either with or without the assistance of any third party.

SIFMA stated its view that "streamlining the investor voting process and providing easy access to proxy materials would encourage a greater percentage of retail customers to exercise their right to vote . . . ." SIFMA added that this "is a logical means to reverse declining retail shareholder participation in proxy voting over the past five years."[41]

The Society of Corporate Secretaries & Governance Professionals has also written the NYSE to express its strong support for the EBIP success fee proposal. "We believe that broker's websites, which individual shareholders increasingly look to as 'one-stop shopping' portals for their investment needs, offer the best and most readily available hope for re-engaging individual shareholders in the voting process."[42] The Society cited an analysis by Broadridge of a brokerage firm's experience during the past proxy season. The firm's clients made 317,669 unique visits to the online investor mailbox and cast 247,067 votes. This is contrasted with Broadridge's observations that among all retail holders in the 12 months ended June 30, 2012, the voting rate was 4.7% for mailed notices and 10.2% for e-deliveries.

The National Association of Corporate Directors has similarly expressed its support, noting that "broker's websites seemingly offer an efficient and effective way for re-engaging individual shareholders."[43] In addition, the National Investor Relations Institute has expressed its support for EBIP in conversation with NYSE staff, and we understand that the American Business Conference and the Center for Capital Markets Competitiveness have expressed their support as well in letters to the SEC.

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41 Letter dated November 29, 2012 from Thomas Price, Managing Director, SIFMA, to Scott Cutler, EVP & Head of Global Listings, NYSE Euronext.

42 Letter dated October 9, 2012 from Kenneth Bertsch, President and CEO, Society of Corporate Secretaries & Governance Professionals, to Scott, [sic] Cutler, EVP & Head of Global Listings, NYSE Euronext.

43 Letter dated November 15, 2012 from Ken Daly, President & CEO, National Association of Corporate Directors, to Scott Cutler, EVP & Head of Global Listings, NYSE Euronext.

Representatives from brokerage firms generally thought that having an EBIP fee may help persuade their firm to move ahead with an EBIP, with the caveat that firm administrators are faced with difficult decisions regarding the allocation of limited resources. Several noted that there does not seem to be an actual demand for this from investors, and that resources are often consumed by developments that are required by regulation. It was also noted, however, that a success fee might persuade brokers not only to implement an EBIP where none was previously available, but also to promote use of the EBIP among its customer population. In its letter to the NYSE, SIFMA said that while they have no statistical data to support it, their members "strongly believe that by providing a success fee incentive, broker dealers will have a meaningful impetus to invest in techniques to allow their customers to vote on proxy matters directly from their brokerage account." SIFMA described information from one of its members with an EBIP that the e-delivery adoption rate among its account holders increased from under 10% to over 39% in just a few years, and that along with creating a positive client experience the firm has seen real cost savings while continuing its efforts to promote an eco-friendly business environment.

The NYSE was not provided any specific cost analysis regarding the amount of the proposed EBIP fee. It is impossible to know at this point what it would cost a firm to implement an EBIP – it appears self-evident that it would differ from firm to firm. The NYSE does understand that the Broadridge committee that developed the proposal did vet both higher and lower amounts than 99 cents, finding that issuer representatives were not comfortable with a fee much higher than 99 cents, while brokers felt that a lower fee would not provide a real incentive.

Discussions with industry participants also surfaced some issues that had not been previously addressed. It was noted that the proposed length of the program – three years – might not give sufficient time for brokerage firms to plan for and implement a program in time to take advantage of the new fee. By the latter part of 2012 the development program for 2013 is often set, so that firms without existing facilities might not be able to implement an EBIP before late 2014 at best, leaving perhaps only one proxy season during which the fee would be applicable. Given that this would dilute the value of the fee to the brokerage firms, the firms preferred a five-year rather than a three-year term.

Issuer representatives understood and agreed that a five-year program was sensible, but were concerned that characterizing the program as a “pilot” suggested that it was something that was contemplated to be made permanent, which was not their view. Accordingly, the fee will be proposed for a five-year period, but will not be described as a “pilot”.

There was discussion of whether the fee could be earned by firms that already had EBIP facilities, or who made EBIPs available only to a segment of their account population (such as private clients, for example). The consensus appeared to be that there was value in making the fee available in all these circumstances, as even a firm that already has an EBIP can be incented to engage in marketing efforts to persuade its account holders to utilize the EBIP. It was recognized, however, that a firm making an EBIP available to only a limited segment of its account holders could not earn the success fee from an e-delivery election by an account that was not within the segment having access to the EBIP.

Notwithstanding the consensus to implement the fee for a five-year period, it was considered useful to study the impact of the program after three years, to determine how many firms had implemented an EBIP or were in the process of doing so, and what firms had experienced in terms of conversions to e-delivery and retail voting participation among account populations with access to an EBIP. SIFMA indicated a willingness to assist the NYSE is [sic] coordinating the effort to obtain such information from its member firms. Issuers felt strongly that brokers should keep track of conversions and be prepared to report on the success of the EBIP program as well as any marketing efforts undertaken by the brokers to encourage utilization of an EBIP by investors.

It was also clarified that accounts receiving a notice pursuant to the use of notice and access by the issuer, and accounts to which mailing is suppressed by householding, will not trigger the EBIP fee.

There was also discussion of whether the fee should be triggered when a new account elects e-delivery immediately, since this does not involve a "conversion" to e-delivery. Given that it is impossible to know whether the availability of an EBIP influenced the decision, and that absent the election the alternative would be full package delivery, it appeared appropriate to apply the fee, except for accounts subject to notice and access or householding as described above.

Finally, there was discussion of when the fee should be assessed. There appeared to be consensus that the one-time fee should be invoiced in connection with the next proxy or consent solicitation by the particular issuer following the triggering of the fee. It was noted that a mere report distribution without a meeting would not be an appropriate time for such an invoice.

The NYSE notes that in its discussions with interested parties regarding an EBIP fee, representatives of mutual funds did not value the proposal to the extent that other issuer representatives did. They doubted that fund investors would be as actively involved with a broker's EBIP as would an investor in individual equities, and thus doubted they would see a meaningful increase in retail proxy voting as a result of a broker's offering of an EBIP to account holders. Of course, the relative utility of the EBIP to different holders is difficult to quantify at this stage, and differentiating among issuers for imposition of the fee would add complexity to the proposal.

The Exchange has drafted rule text that would implement a one-time “success fee” for a limited five-year period. As noted in the PFAC Report, this fee would not apply to certain conversions to e-delivery that can be attributed to factors other than implementation of an EBIP. Specifically, it would not apply to electronic delivery consents captured by issuers (for example, through an open-enrollment program), nor to positions held in managed accounts [44] nor to accounts voted by investment managers using electronic voting platforms, such as Proxy Edge. For the avoidance of doubt, the NYSE notes that this one-time success fee is in addition to, and not in lieu of, the preference management fee that applies when a mailing is suppressed by, inter alia, an account’s consent to receive electronic delivery.

To qualify for the “success fee”, an EBIP must provide notices of upcoming corporate votes, including record and meeting dates for shareholder meetings, and the ability to access proxy materials and a voting instruction form, and cast the vote, through the investor’s account page on the firm’s website without an additional log-in. Any brokerage firm that has or implements a qualifying EBIP must provide notice thereof to the Exchange, including the date such EBIP became operational, and if limited in availability to only certain of the firms accounts, the details thereof.

As discussed above, some firms already provide account holders with notices of upcoming votes and the ability to view proxy-related material and to vote their proxies on-line. The Exchange believes that this is an important element of improving the account holder’s experience, and it applauds those firms that have taken this step in the absence of any kind of

[44] The term “managed account” will be used as defined in the rule regarding preference management fees. See discussion above.

specific EBIP fee. While this EBIP success fee proposal was brought forward in the course of the PFAC examination of proxy fees generally, it is functionally different from the existing fees that are intended to reimburse banks and brokers for the reasonable costs of delivering proxy materials to beneficial owners, and its proposal by the NYSE is not a suggestion that all firms are entitled to reimbursement for the costs of providing an EBIP facility. Rather, it is an additional, limited duration, one-time fee that is intended to persuade firms to develop and encourage the use of EBIPs by their customers, providing a benefit to investors and to corporate governance generally, while being funded by only a small portion of the amounts a typical issuer will save from one account holder switching from full-package physical to electronic delivery of proxy materials.

OTHER ISSUES

Cost Recovery Payments

The Committee was mindful of the questions that have been raised about the "cost recovery payments" that are made by Broadridge to certain of its broker-dealer customers. The Committee was persuaded that the existence of these payments is not any indicator of unfairness or impropriety. Firms have to maintain internal data systems that are involved in the proxy distribution process, but firms differ in the make-up and size of their beneficial owner populations, and consequently in the size of the proxy distribution effort they are required to undertake beyond that which is outsourced to Broadridge. By the same token, differences in economies of scale mean that Broadridge's cost to provide service differs from firm to firm. Again, the fact that the fees are fixed at "one size" that has to "fit all," means that even if on an overall basis the fee revenue is appropriate given overall distribution expenses, there will be "winners and losers" along the spectrum. And since Broadridge and the various firms negotiate at arm's length over the price to be paid by the firm to Broadridge, it is rational that the set prices may leave some room for the largest firms to negotiate a better rate from Broadridge, and therefore find themselves in a situation where they are able to obtain a payment from Broadridge out of the proxy fees collected by Broadridge from issuers at the specified rate. At the other end of the spectrum, of course, the amount charged to the brokerage firm by Broadridge would exceed the proxy fees collected from the issuers.

To supplement the Committee's analysis, at the Exchange's request SIFMA sought to obtain from its members additional information relating to the costs of proxy processing.

In reporting to the Exchange on its efforts, SIFMA noted the difficulties in obtaining data on this subject: "Broker-dealer proxy economics vary greatly among firms, by size, client mix, product mix, service level, degree of automated services and/or personal service, and geographic location. Each firm, moreover, must develop an objective means to collect and organize the data, insofar as firms typically do not have cost accounting systems that separately report the costs of proxy activity. This activity often involves estimates and allocations from a number of departments and functions within a firm, including operations, information technology, finance, audit, legal and client services."[45]

Given these issues, as well as the logistics of attempting to obtain information from large numbers of firms, SIFMA conducted a representative survey. While recognizing the limitations of the approach, SIFMA was able to say that the findings from the survey "support our view that proxy fees are reasonably in line with costs" incurred by nominees.[46]

SIFMA's approach was to obtain cost information from a sample of 15 firms, covering

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45 Letter dated May 30, 2012 from Thomas Price, Managing Director, SIFMA, to Judy McLevey, Vice President, NYSE Euronext, p. 2-3.

46 Id. at p. 3.

six size tiers based on number of equity (i.e., account) positions processed.[47] Based on cost data collected from the surveyed firms, as well as information from Broadridge on the aggregate amount invoiced to its client firms for proxy processing services, SIFMA projected a figure for aggregate costs over a total of 855 banks and brokers, in a range from $136 million to $153 million annually. By comparison, Broadridge reported that total proxy processing fees collected from issuers for the fiscal year ending June 30, 2011 were approximately $143 million, not including proxy fees (nominee fee and intermediary unit fee) specifically intended to compensate intermediaries such as Broadridge. SIFMA believes that this result is evidence that proxy fees are reasonably in line with costs incurred by brokers and other nominees.

SIFMA observed that the range of costs reported by firms in each tier varied significantly, with the greatest variation in the lowest tiers, noting that the differences may be due to different business models and cost structures, as well as to different methodologies of estimating or allocating costs associated with proxy processing. SIFMA also observed that the survey indicated that most firms report costs which exceed proxy reimbursement payments, although overall industry-wide costs appeared to be generally in line with overall payments by issuers.

Additional Matters which May be Addressed in Subsequent Rule Filings

There were two other PFAC recommendations which required additional work by the Exchange.

Mutual Funds: Proxy fees tend to be discussed with respect to business corporations – those that have annual meetings and thus deal with proxy solicitations at least once each year.

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47 Data was requested from ten SIFMA member firms of varying sizes, and through Broadridge SIFMA obtained data from five additional non-SIFMA firms for the two lowest tiers, so that each tier would include two or three firms.

The PFAC was formed with this kind of issuer in mind, and that is reflected in the backgrounds of the members who served on the Committee.

However, the NYSE proxy fees are used in the context of distributions to street name holders of mutual fund shares as well. But the fee picture for mutual funds is somewhat different. Mutual funds typically do not have to elect directors every year, and for this reason tend not to have shareholder meetings every year. While mutual funds can be found in managed accounts, their inclusion is not necessarily as widespread as with operating companies. While some mutual funds may utilize notice and access for the meetings they do have, it is less common among mutual funds than operating companies. But every mutual fund is required to distribute each year both an annual and a semi-annual report to its shareholders, and so mutual funds pay the interim report fee (15 cents basic processing; 10 cents incentive fee) much more frequently than operating companies do.

Representatives of the Committee spoke to representatives of selected mutual funds for their views on the current proxy fees, and these informal conversations suggested that there are fee issues that mutual funds would like to discuss. The PFAC's recommended changes should have a relatively modest impact on mutual funds, and the PFAC did not recommend changes to the interim report fees, which are the ones most applicable to mutual funds.

As recommended by the Committee, the Exchange, with industry participation, is reviewing the fees provided in the NYSE rules as they impact mutual funds, to determine whether additional changes are appropriate. Any recommendations for rule changes that emerge from this examination would be the subject of a separate rule filing by the Exchange.

<u>Future Review of Proxy Fees</u>: While the NYSE rules do not prescribe how frequently the fees should be reviewed, the Committee believed that it would be wise for the NYSE to involve a

participant group similar to the PFAC in an essentially ongoing vetting of process developments and associated costs. The Committee suggested that this group could also undertake a more comprehensive review periodically, perhaps every three years, thereby ensuring that fees are evaluated in step with new regulations and/or process innovations in the proxy area.

The Exchange will evaluate this issue in the light of future discussions on how proxy fees should be regulated, and will bring forward any necessary rule changes in a separate rule filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act") generally.[48] Section 6(b)(4)[49] requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5)[50] requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers. Section 6(b)(8)[51] prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) because it represents an equitable allocation of the reasonable costs of proxy solicitation and similar expenses between and among issuers and brokers.[52] The PFAC included among its

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48 15 U.S.C. 78f(b).

49 15 U.S.C. 78f(b)(4).

50 15 U.S.C. 78f(b)(5).

51 15 U.S.C. 78f(b)(8).

52 The Exchange notes that the rules in this proposal do not involve dues, fees or other charges paid to the Exchange. Rather these Exchange rules are part of a statutory scheme in which self-regulatory organizations are used to facilitate a requirement under SEC Rules 14b-1 and 14b-2 that brokers and banks distribute proxy material so long as their

members a cross-section of both the issuer and broker communities and its mandate was to determine how to equitably address the standard that calls for issuers to reimburse the reasonable costs incurred by banks and brokers in distributing public company proxies and related material. The Committee agreed unanimously that the proposed fees were reasonable in light of the information the Committee had gathered about the costs incurred by brokers. The Exchange notes that, given the different sizes and cost structures of the various brokers, it is impossible to set fees that are tied directly to the individual broker's costs.[53] Accordingly, the Committee sought to achieve the best possible understanding of the overall costs of today's proxy processing and propose updated fees on that basis. Most banks and brokers have elected to outsource many of the related proxy distribution functions to a third-party intermediary, and they have negotiated individual contracts with the intermediary to do so. However, banks and brokers have processes and costs beyond those covered under the agreements with the intermediary, and the Committee became comfortable with the reasonableness of the overall fees when considered in light of the overall costs involved. The Exchange notes that where, in the case of managed accounts, the fees paid by issuers appeared to be unreasonable, the Committee proposed and the Exchange included in its proposed amendment, limitations on fees payable in relation to shares held in managed accounts. For the foregoing reasons, the Exchange also believes that the proposal is consistent with the requirements of SEC Rule 14b-1(c)(2) concerning the reimbursement of a broker's reasonable expenses incurred in connection with forwarding proxy and other material to beneficial owners of an issuer's securities.

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reasonable costs are covered by the issuers whose material they are distributing. Nonetheless, to the extent a Section 6(b)(4) analysis is appropriate, the Exchange has included one herein.

53 See discussion at text following note 16, supra.

The proposal to codify the existing Broadridge charges for notice and access followed careful consideration by the Committee and reflected their view that the existing fees were shaped in part by market forces and were on an overall basis at an acceptable level. The Committee believed it important to codify these fees so that subsequent changes would be subject to the rule change process, and that codifying the current fees was a better approach than moving to any of the alternative pricing models that the Committee considered.[54]

The Exchange notes that the proposal which will codify the charges imposed by intermediaries for NOBO lists, together with the specification that issuers shall not be charged for names eliminated in certain circumstances, is an attempt to balance the reasonable needs of issuers and nominees in this context. The utility and economic impact of this proposal is speculative at this point, which is why the Exchange has undertaken to monitor its impact and take remedial action if needed.

The "success fee" proposal related to EBIPs is different in character from other fees in this area, because it is temporary, it is a "one-time" fee, and most notably because it is intended not as a reimbursement of costs, but rather is put forward with the hope that it will encourage the implementation and use of EBIPs, which in turn are hoped to increase participation in corporate governance by non-institutional investors. However, in common with the other proposals here, the Exchange believes that it does represent an equitable allocation of costs between issuers and nominees, whereby issuers should pay a fee which is less than the expected economic benefit that will accrue to them from the additional suppression of a paper mailing, while brokers will obtain some additional revenue which will hopefully encourage them to provide this meaningful benefit to their account holders.

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[54] See discussion at text accompanying notes 36-39, supra.

The Exchange believes that the proposed amendment represents a reasonable allocation of fees among issuers as required by Section 6(b)(4) and is not designed to permit unfair discrimination within the meaning of Section 6(b)(5), as all issuers are subject to the same fee schedule and the Committee thoroughly examined the impact of the current fee structure on different categories of issuers. As a consequence, the Exchange's proposal: (i) limits the disparate impact of fees on issuers whose shares are held in managed accounts; and (ii) modifies the approach of charging 5 cents per account for issuers beneficially owned by 200,000 or more accounts and 10 cents per account for issuers beneficially owned by fewer than 200,000 accounts, by putting in place a tiering approach that will avoid the anomalous effects of the current "cliff" pricing on issuers whose numbers of street name accounts are slightly higher or lower than 200,000.

As described above,[55] the tiers and the pricing for each tier were intended to spread the fees as fairly as possible across the spectrum of issuers. However, the Committee also avoided fully reflecting economies of scale in the tier prices, to avoid what it believed would be an excessive increase in the fees paid by the smallest issuers.

The Exchange believes that the proposed amendment does not impose any unnecessary burden on competition within the meaning of Section 6(b)(8). Under the SEC's proxy rules, issuers are unable to make distributions themselves to "street name" account holders, but must instead rely on the brokers that are record holders to make those distributions. In considering revisions to the fees, the PFAC and the Exchange, working within current SEC rules, were careful not to create either any barriers to brokers being able to make their own distributions without an intermediary or any impediments to other intermediaries being able enter the market.

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[55] See discussion above.

For some time now a single intermediary has come to have a predominant role in the distribution of proxy material. Nonetheless, the Committee believed that the current structure has produced a proxy distribution system which is generally viewed as reliable and effective, as well as being a system which has reduced costs to issuers through technological advances made possible by economies of scale and, particularly, by the elimination of a large number of mailings. For the foregoing reasons, the Exchange believes that its proposed fee schedule does not place any unnecessary burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that Rules 451 and 465 as amended by the proposed amendments do not impose any burdens on competition. Under the SEC's proxy rules, issuers are unable to make distributions themselves to "street name" account holders, but must instead rely on the brokers that are record holders to make those distributions. SEC Rule 14b-1(c)(2) provides that a broker is required to forward proxy and other material to beneficial owners of an issuer's securities only if the issuer reimburses it for its reasonable expenses incurred in connection with these distributions. Consequently, in revising the fees set forth in Rules 451 and 465, the PFAC and the Exchange intended to establish fees which represented a reasonable level of reimbursement and the Exchange believes that the proposed amendments are successful in this regard. As the Exchange was limited to establishing fees that reflected a reasonable expense reimbursement level, it would not have been possible for the Exchange to propose amended fees with the intention or the effect of providing a competitive advantage to any particular broker or existing intermediary or creating any barriers to entry for potential new intermediaries. For some time now a single intermediary has come to have a predominant role in the distribution of proxy material. Nonetheless, the Committee believed that the current structure has produced a proxy distribution system which is generally viewed as reliable and effective, as well as being a system which has reduced costs to issuers through technological advances made possible by economies of scale and, particularly, by the elimination of a large number of mailings. The Exchange does not believe that the predominance of this existing single intermediary results from the level of the existing fees or that the proposed amended fees will change its competitive position or create any additional barriers to entry for potential new intermediaries. Moreover, brokers have the ultimate choice to use an intermediary of their choice, or perform the work the work [sic] themselves. Competitors are also free to establish relationships with brokers, and the proposed fees would not operate as a barrier to entry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change. The Exchange has neither solicited nor received written comments on the proposed rule change. The Exchange did receive a letter from SIFMA, dated May 30, 2012, in response to the publication of the PFAC Report on May 16, 2012. The letter noted the Committee proposal to eliminate proxy fees with respect to positions of five shares or less in managed accounts. It stated that because there are proxy processing costs associated with such accounts, SIFMA did not support the establishment of a threshold that would eliminate reimbursement for such costs.

The Securities Transfer Association ("STA") provided the Exchange with a copy of an analysis it did of the proposed proxy fee schedule contained in the PFAC Report. This analysis was publicized by the STA on July 11, 2012, and may be found on the STA's website at www.stai.org.

The STA states that it analyzed 33 public company invoices for proxy distribution services, applying the PFAC proposed fee schedule. The STA claims that the 33 issuers would experience, on average, a 7.43% increase in proxy distribution costs under the proposed schedule. The STA also claims that membership of the PFAC was over-representative of financial services companies, notes disappointment that the PFAC did not use an independent third party to analyze data provided by Broadridge and conduct an independent cost analysis, and also notes disappointment that the PFAC did not recommend the elimination of all proxy fees for positions held in managed accounts.

The STA analysis does not explain how STA arrived at the 7.43% number. The STA also does not identify the 33 issuers surveyed. The Exchange has noted that the experience of any individual issuer under the proposed fee schedule will vary depending on its circumstances. Furthermore, the estimate contained in both the PFAC Report and in this rule filing that there would be an approximate 4% overall decrease in fees paid by issuers under the proposed schedule is one that looks at fees paid by a universe of some 8,000 issuers whose proxy material distributions to street name holders are processed by Broadridge. We can only assume that the STA group of 33 issuers is not adequately representative of all the issuers in the proxy distribution universe. We do note that the three size tiers represented in the STA sample are not in fact representative of the overall population.[56]

The STA's analysis of the make-up of the PFAC is flawed. The Committee was created to represent the views of issuers, brokers and investors, given their disparate interests in the fees, which are paid by the issuers to the banks and brokers. The Committee members affiliated with REITs, for example, while classified by the STA as in the financial services sector, represent the

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[56] The STA notes that one-third of their sample are issuers with between 110 and 10,000 street name positions, 42% of their sample issuers have between 10,000 and 200,000 positions, and 24% have between 200,000 and 2.4 million positions. In contrast, among the 8,000 issuers processed by Broadridge, the numbers falling in each of those size categories are 75% (with only 5% of the aggregate positions), 22% (with 38% of the aggregate positions) and 2% (with 57% of the aggregate positions).

issuer side in this dichotomy. The mutual fund company on the PFAC was intended to represent the interest of investors in the proxy process. Only two of the PFAC representatives were with companies containing broker-dealers with a public customer business.

The Committee and the Exchange have explained that the proxy fees do not lend themselves to "utility rate making" in which costs are accounted for in a uniform and specified way and subject to audit regarding whether the provider is obtaining a permitted rate of return. The costs involved are incurred by a large number of brokerage firms, who record their costs in different ways. The Committee and the Exchange judged that it would likely be impossible and certainly not cost effective, to engage an auditing firm to review industry data for purposes of the Committee's work. Both believe that the result produced by the diligent work of the multi-constituent Committee is an appropriate way to update the schedule of fees which serves the SEC mandate that the reasonable costs of brokers in distributing proxy materials be reimbursed by the issuers involved.

As noted earlier, the proper treatment of managed accounts in the proxy fee context has been a focus of STA comments. The PFAC view was that there should be a sharing of costs in this area, given that managed accounts, at least those above 5 shares or less, benefitted both issuers and brokers. The Exchange notes that the PFAC proposal regarding managed accounts has not satisfied either SIFMA or the STA, which may be an indication that it is a suitable compromise.

As also noted earlier, the PFAC wished to avoid recommendations that would generate large and potentially dislocating changes in the fees. It was also important to the PFAC that the fees continue to support reliable, accurate and secure proxy distribution process. Eliminating virtually all charges for managed account positions, as urged by the STA, would have a very significant impact on proxy fees, and presumably would require additional very significant increases in the basic processing fees to continue to support the proxy distribution process. That was not an approach favored by the PFAC.

The Exchange also received several letters expressing support for the EBIP success fee. Those letters are described in the EBIP discussion above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2013-07 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2013-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2013-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Kevin M. O'Neill
Deputy Secretary

[57] 17 CFR 200.30-3(a)(12).