SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78589: File No. SR-NYSE-2016-55)

August 16, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting Maximum Fees Member Organizations may Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission

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 August 15, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "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 adopt maximum fees member organizations may charge in connection with the distribution of investment company shareholder reports pursuant to any electronic delivery rules adopted by the Securities and Exchange Commission. 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 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 2015, the SEC proposed new rules that would expand the information that registered investment companies are required to report (the "Investment Company Proposal").[4] In addition to the expanded reporting requirements, the Investment Company Proposal includes proposed new Rule 30(e)-3, which would permit, but not require, investment companies to satisfy their annual and semiannual shareholder report delivery obligations under the Investment Company Act by making shareholder reports available on the investment company's website. Investment companies relying on this provision would be required to meet conditions relating to, among other things, prior shareholder consent to electronic access rather than paper delivery of reports and notice to shareholders of the availability of shareholder reports.

Specifically, proposed Rule 30e-3 would require an investment company intending to rely on electronic access to reports to: (i) transmit a statement to the shareholder at least 60 days prior to its reliance on proposed Rule 30e- 3, notifying the shareholder of the issuer's intent to make future shareholder reports available on the issuer's website until the shareholder revokes consent; and (ii) send a notice within 60 days of the close of the fiscal period to shareholders who have consented to electronic transmission informing them that the report is available online.

[4] 80 FR 33590 (June 12, 2015); Investment Company Reporting Modernization, Securities Act Release No. 33-9776, Exchange Act Release No. 34-75002, Investment Company Act Release No. IC-31610 (May 20, 2015).

Proposed Rule 30e-3 would also require investment companies to send, at no cost to the requestor, a paper copy of any shareholder reports to any shareholder requesting such a copy.

NYSE Rule 451 requires NYSE member organizations to distribute proxy and other materials on behalf of issuers to the beneficial owners of the issuers' securities on whose behalf member organizations hold securities in "street name" accounts. This obligation is conditioned on the member organization's receipt from the issuer of reimbursement of all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such distribution. Rule 451 establishes maximum fees which member organizations may charge for handling distributions required under the rule.

Rule 451 also establishes maximum fees paid by issuers using the SEC's Notice and Access provisions pursuant to Rule 14a-16 under the proxy rules.[5] 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.[6]

While mutual funds are not listed on the NYSE, the fees set forth in Rule 451 are applied by NYSE members in relation to distributions to "street name" holders of mutual fund and operating company shares. Mutual funds typically do not have to elect directors every year, and

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5 17 CFR 240.14a-16.

6 To clarify, under this schedule, every issuer pays 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 this reason tend not to have shareholder meetings every year. However, every mutual fund is required by SEC rules to distribute each year both an annual and a semi-annual report to its shareholders, and so mutual funds pay the interim report fee set forth in Rule 451 of 15 cents per account each time they distribute materials to shareholders who hold mutual fund shares in "street name." In addition, mutual funds pay a Preference Management Fee of 10 cents for every account with respect to which a member organization has eliminated the need to send paper materials. Under the current rule, the Preference Management Fee is in addition to, and not in lieu of, the interim report fee.

Under the rule as currently in effect, the Notice and Access fees in Rule 451 were intended to apply specifically to Notice and Access distributions under the SEC's proxy rules and they would not apply to electronic distributions under proposed Rule 30e-3 without a rule amendment. There have been a number of comment letters filed in relation to the Investment Company Proposal addressing the question of how the fees set forth in Rule 451 would apply to electronic distributions under proposed Rule 30e-3. The Investment Company Institute ("ICI") submitted a comment letter on the Investment Company Proposal in which it noted that the NYSE "appears to have little regulatory interest in fees brokers charge for delivery of fund materials" and recommends that responsibility for the fees in relation to mutual fund distributions should be given instead to FINRA. As noted above, the Exchange has no involvement in the mutual fund industry and we therefore agree with the ICI that we may not be best positioned to take on the regulatory role in setting fees for mutual funds. To that end, we

welcome the idea of considering whether FINRA should assume this role in the near future.[7] However, we also understand that the success of the electronic delivery system in proposed Rule 30e-3 is significantly dependent on the establishment of reasonable and transparent levels of reimbursement to brokers for their role in the process. Given the potential immediacy of this need, the Exchange has agreed to a request from the SEC that we adopt fees specific to electronic distributions of investment company materials.[8] We are doing so because the NYSE's historical role as the fee setter enables it to meet this need more efficiently in the short term than would be possible if that role were assumed by FINRA at this time.

The electronic delivery process under proposed Rule 30e-3 would require additional work on the part of the member organizations and their agents. As the proposed process is very similar to the existing Notice and Access process for which the Exchange has already adopted a fee schedule in Rule 451, the Exchange believes that it is appropriate to apply the existing Notice and Access fees to distributions under the SEC's proposed new rule. As such, the Exchange proposes to amend Section 5 of Rule 451.90 to specify that the Notice and Access fees set forth therein would also be charged with respect to the distribution of investment company shareholder reports pursuant to any "notice and access" rules adopted by the SEC in relation to such distributions.

In applying the Notice and Access fees to deliveries under proposed Rule 30e-3, the Exchange proposes to modify their application in one significant respect. Specifically, the Notice and Access fee will not be charged for any account with respect to which the investment company pays a Preference Management Fee. A Preference Management Fee is paid whenever

7 The Exchange believes that consideration should be given to the question of whether it would be more appropriate for FINRA to become the primary regulator of all fees charged by brokers in connection with distributions (i.e., including operating company distributions and not just those of investment companies).

8 These proposed fees would be effective only if the SEC adopts Rule 30e-3.

a broker or its agent is able to suppress the need to send a physical mailing to an account, for example through "householding" of accounts (i.e., the elimination of duplicative mailings to multiple accounts at the same address) or by getting account holders to agree to access materials through the broker's own enhanced broker's internet platform (or "EBIP"). Under the current rule, an issuer utilizing Notice and Access pays Notice and Access fees with respect to all accounts, including those with respect to which it is paying a Preference Management Fee (and to which it is therefore not sending a notice). The Exchange proposes to amend Rule 451 to provide that investment companies utilizing any notice and access process established by the SEC will not be charged a Notice and Access fee for any account with respect to which they are being charged a Preference Management Fee. As such, funds will only pay Notice and Access fees with respect to accounts that actually receive Notice and Access mailings.[9]

Mutual funds often issue multiple classes of shares, so it is necessary to be clear how the pricing tiers in the Notice and Access fees would be applied to investment company shareholder report distributions. Therefore, the Exchange proposes to amend the rule to clarify that, in calculating the rates at which the issuer will be charged Notice and Access fees for investment company shareholder report distributions, all accounts holding shares of any class of share of the applicable issuer eligible to receive an identical distribution will be aggregated in determining the appropriate pricing tier.

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.[10] Section 6(b)(4)[11] requires that exchange rules

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9 The Exchange is not proposing any modifications to the amount or application of the Preference Management Fee at this time.

10 15 U.S.C. 78f(b).

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)[12] 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)[13] 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 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.[14]

The Exchange believes that the proposed amendment does not impose any unnecessary burden on competition within the meaning of Section 6(b)(8). 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 the Exchange's view, the proposed amendment does not 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. For some time now a single intermediary has come to have a predominant role in the distribution of proxy material. 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

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11 15 U.S.C. 78f(b)(4).

12 15 U.S.C. 78f(b)(5).

13 15 U.S.C. 78f(b)(8).

14 The Exchange notes that the rules in this proposal do not involve dues, fees or other charges paid to the Exchange. Nonetheless, to the extent a Section 6(b)(4) analysis is appropriate, the Exchange has included one herein.

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 themselves. Competitors are also free to establish relationships with brokers, and the proposed fees would not operate as a barrier to entry. 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 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that Rule 451 as amended by the proposed amendments does not impose any burdens on competition. Under Rule 451, a member organization 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 amending Rule 451 to establish fees to be charged in connection with the SEC's proposed rule permitting the electronic distribution of investment company shareholder reports, the Exchange intended to establish fees which represented a reasonable level of reimbursement. As the Exchange's purpose was to establish fees that reflected a reasonable expense reimbursement level, the Exchange does not believe that the proposed amended fees will have 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. 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 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

The Exchange received one written comment relevant to the proposal prior to its filing. This letter was from the ICI, in which it argued that the Exchange should interpret its existing rules as providing for the following:

- investment companies should only have to pay interim report fees once per year rather than each time a report is delivered to shareholders;
- the Preference Management Fee should be charged only on a one-time basis in relation to any specific account;
- brokers should not be permitted to collect any fees whatsoever from investment companies in relation to fund shares held in managed accounts;
- brokers should not be allowed to receive any portion of the regulated fees collected by intermediaries conducting distributions on their behalf;
- the current rule should be interpreted as applying the Notice and Access fees to electronic deliveries under proposed Rule 30e-3; and
- the Notice and Access Fees should not be payable in relation to any account that does not actually receive a Notice and Access delivery under proposed Rule 30e-3.

The Exchange does not agree that there is any justification in the text of Rule 451 for regarding any of these positions as accurate interpretations of Rule 451 in its current form. The

purpose of the current proposal is solely to amend Rule 451 to facilitate the SEC's potential finalization of proposed Rule 30e-3. Accordingly, and consistent with certain of ICI's recommendations, the Exchange is proposing changes to its rules to apply the Notice and Access fees with respect to the distribution of investment company shareholder reports pursuant to any "notice and access" rules adopted by the SEC in relation to such distributions. In addition, and also as recommended by the ICI in its letter, the Exchange's proposal would provide that the Notice and Access fee would only apply to accounts that actually receive Notice and Access deliveries under proposed Rule 30e-3 and not to accounts with respect to which investment companies are charged a Preference Management fee. The Exchange does not believe that the other, more substantial changes to the application of Rule 451 suggested by the ICI are necessary to implementation of Rule 30e-3 if the SEC were to finalize its proposal and, thus the Exchange believes those proposals should be given separate consideration.

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 up to 90 days (i) as the Commission may designate 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-2016-55 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2016-55. 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-2016-55 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.[15]

Robert W. Errett
Deputy Secretary

[15] 17 CFR 200.30-3(a)(12).