

MEMO# 27850

January 17, 2014

SEC Approves NYSE Proposal Regarding Proxy Distribution Fees

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TO: SECURITIES OPERATIONS ADVISORY GROUP RE: SEC APPROVES NYSE PROPOSAL REGARDING PROXY DISTRIBUTION FEES

The Securities and Exchange Commission has issued an order (“Approval Order”) [\[1\]](#) approving a New York Stock Exchange (“NYSE”) proposed rule change (“Proposal”) [\[2\]](#) concerning “proxy distribution fees,” i.e., the fees that issuers pay to banks and broker-dealers for the distribution of proxy materials to shareholders who invest in “street name.” The Proposal is based, in large part, on recommendations issued last year by an industry working group formed by the NYSE: the Proxy Fee Advisory Committee (“PFAC”). The Approval Order is discussed further below.

The details of the proxy distribution fee changes are discussed at pp. 8-27 of the Approval Order. We understand that the NYSE plans to issue a notice concerning the changes. That notice likely will include, among other things, information about when the changes will go into effect. We will keep you apprised of developments.

The Commission issued the Approval Order following two rounds of public comment—first, on the Proposal itself and second, on an SEC order instituting proceedings to determine whether to disapprove the Proposal (“Order Instituting Proceedings”). [\[3\]](#) As we informed you previously, ICI filed a comment letter at each opportunity. [\[4\]](#) In our letters, we expressed the view that there is a continuing need for a rigorous, independent review of the current proxy distribution fee system and that, at a minimum, there should be further analysis of the proxy distribution fees paid by funds and how the proposed changes would affect those fees.

Notwithstanding the concerns raised by ICI and other commenters, as well as the Commission itself, the Approval Order indicates that the “NYSE responded to the comments received and the issues identified in the Order Instituting Proceedings, and no comments otherwise convinced us that the [Proposal] was not consistent with the Act and the applicable rules and regulations thereunder.” [\[5\]](#) Accordingly, the Commission ultimately concluded that “on balance, the [Proposal] is consistent with the [Securities Exchange] Act and therefore must be approved.” [\[6\]](#)

The Approval Order states that the Commission “views the [Proposal] as an overall package of changes and fees that is, on balance, an improvement to the NYSE’s existing reimbursement rate structure.” [7] It further states:

In approving the [Proposal], the Commission notes that the proxy system need not be reformed in a single step, and the Commission welcomes improvements to the current system, even incremental ones. In this regard, the Commission emphasizes that it continues to review the issues raised in the Proxy Concept Release, [8] including ways to encourage competition in the proxy distribution process, so that more reliance can be placed on market forces to determine reasonable rates of reimbursement. [9]

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endnotes

[1] Securities and Exchange Commission, Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to 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, SEC Release No. 34-70720 (October 18, 2013), available at <http://www.sec.gov/rules/sro/nyse/2013/34-70720.pdf>.

[2] Securities and Exchange Commission, 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, SEC Release No. 34-68936 (Feb. 15, 2013), available at <http://www.sec.gov/rules/sro/nyse/2013/34-68936.pdf>.

[3] Securities and Exchange Commission, Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Disapprove 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, SEC Release No. 34-69622 (May 23, 2013), available at <http://www.sec.gov/rules/sro/nyse/2013/34-69622.pdf>.

[4] See ICI [Memorandum](#) No. 27124 (March 22, 2013) (describing ICI’s comment letter on the Proposal) and ICI Memorandum No. 27325 (June 20, 2013) (describing ICI’s comment letter in response to the Order Instituting Proceedings).

[\[5\]](#) Approval Order at 61.

[\[6\]](#) Id. (footnote omitted).

[\[7\]](#) Id. at 70.

[\[8\]](#) Concept Release on the U.S. Proxy System, SEC Release No. 34-62495 (July 14, 2010), 75 Fed. Reg. 42982 (July 22, 2010).

[\[9\]](#) Approval Order at 70.

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