

MEMO# 30142

August 17, 2016

SEC Seeks Comment on NYSE Proposed Amendment to Fees for Shareholder Report Delivery; Member Call Scheduled for August 25 at 2:00 p.m. (ET)

[30142]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 15-16
SEC RULES COMMITTEE No. 36-16
SMALL FUNDS COMMITTEE No. 22-16
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 16-16 RE: SEC SEEKS COMMENT ON NYSE PROPOSED AMENDMENT TO FEES FOR SHAREHOLDER REPORT DELIVERY; MEMBER CALL SCHEDULED FOR AUGUST 25 AT 2:00 P.M. (ET)

The Securities and Exchange Commission has published a notice seeking comment on a NYSE proposal to amend the schedule governing fees for delivering fund shareholder reports to accounts held through intermediaries. [\[1\]](#) The NYSE proposal would apply only if the SEC adopts its proposed rule 30e-3 which, as discussed below, would permit online shareholder report delivery. The comment period on the NYSE proposal will close 21 days after publication in the Federal Register, which is expected soon. We intend to comment on the proposal and encourage members to comment as well.

We will hold a conference call on Thursday, August 25, at 2:00 p.m. ET, to discuss the proposal. If you plan to participate in the call, please contact Jennifer Odom (jodom@ici.org) to ensure that we have sufficient telephone lines available. The dial-in number for the call is (888) 566-5914 and the passcode is 41013.

Background

NYSE is proposing these fee amendments to facilitate the SEC's adoption of rule 30e-3—a rule the SEC proposed in May 2015 to modernize fund shareholder report delivery. [\[2\]](#) Proposed rule 30e-3 would give each fund the option to switch its default delivery mechanism from paper report delivery via U.S. mail to online report delivery via the fund's website, subject to certain conditions. These conditions include a requirement that funds mail a twice-yearly notice indicating where the report is available online, along with a toll-free number that shareholders could call to request a paper report.

ICI's August 2015 comment letter strongly supported the SEC's proposal, and recommended modifications to make it more workable and to increase cost savings for fund shareholders. [3] We later learned, however, that Broadridge Financial Solutions—the dominant vendor in this space—would seek to apply NYSE-regulated “processing fees” to fund shareholder accounts held through intermediaries in a way that would eliminate shareholder cost savings from the new rule 30e-3 delivery mechanism. ICI filed a supplemental letter with the SEC in response to this issue, emphasizing the need to interpret these NYSE fees in a way that would preserve shareholder cost savings. [4] Our letter also urged the Commission to direct NYSE, which has little regulatory interest in this area, to work with FINRA to transfer the rules regarding these fees to FINRA.

ICI submitted a letter directly to NYSE in early July requesting that it take immediate action to interpret its rules that govern fees for delivering shareholder reports to accounts held through intermediaries. As described below, the NYSE's proposal incorporates some but not all of those recommendations. A copy of our July letter is attached.

Proposal

As indicated in the SEC's notice, NYSE filed a proposed rule amendment with the SEC on August 16 that incorporated certain of ICI's recommended changes to its fee schedule. The amended fee schedule would apply specifically to delivery of notices under any final rule 30e-3. NYSE's proposed rule amendment incorporates the following provisions:

1. The current Notice and Access tiered fee (originally put in place for delivery of proxy materials under the SEC's “notice and access” model) would apply to accounts receiving delivery via the rule 30e-3 delivery mechanism;
2. The Notice and Access fee would apply only to accounts receiving an actual rule 30e-3 notice mailing and would not apply to suppressed accounts (such as householded accounts); and
3. The Notice and Access fee breakpoints would apply at the fund level, not at the share class level.

NYSE also noted its agreement with ICI's view that it may not be best positioned to continue overseeing these fees. NYSE also welcomed consideration of ICI's recommendation that FINRA take over responsibility for these fees.

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

Frances M. Stadler
Associate General Counsel

Linda M. French
Counsel

[Attachment](#)

endnotes

[1] 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, SR-NYSE-2016-55 (Aug. 16, 2016), available at <https://www.sec.gov/rules/sro/nyse/2016/34-78589.pdf>.

[2] See ICI Memorandum No. 29036 (May 28, 2015), available at http://www.ici.org/my_ici/memorandum/memo29036.

[3] See Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated August 11, 2015, available at <http://www.sec.gov/comments/s7-08-15/s70815-315.pdf>.

[4] See Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated March 14, 2016, available at <https://www.sec.gov/comments/s7-08-15/s70815-581.pdf>.

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