

MEMO# 33026

January 7, 2021

Request to Consider Filing a Letter Similar to Draft ICI Letter on NYSE Proposal to Eliminate Processing Fee Schedule

[33026]

January 7, 2021 TO: SEC Rules Committee

Transfer Agent Advisory Committee RE: Request to Consider Filing a Letter Similar to Draft ICI Letter on NYSE Proposal to Eliminate Processing Fee Schedule

Attached for your review is a draft letter that the ICI plans on filing this Friday, January 8 with the SEC. Comments on the proposal are due to the SEC on Monday, January 11. Please consider filing a similar letter on behalf of your firm. Doing so will build a strong administrative record to support our advocacy with the SEC to reform the system that governs the processing fees associated with intermediaries delivering certain regulatory materials on behalf of funds. Also, keep in mind that the SEC has a longstanding practice of considering all letters filed, even if received after the comment period ends. The ICI's draft letter is summarized immediately below.

The draft letter comments on the New York Stock Exchange's proposed rule change that would direct NYSE member firms that also are FINRA member firms to comply with FINRA Rule 2251's fee schedule that sets forth the maximum amount that NYSE member organizations may charge registered investment companies^[1] for delivering proxy and other disclosure materials, such as shareholder reports and prospectuses ("fund materials") to any shareholder who holds shares in nominee name through an intermediary.^[2] The NYSE proposal also would eliminate the existing NYSE fee schedule that is the corollary of the FINRA fee schedule.

The FINRA fee schedule is substantively identical to the NYSE's current fee schedule. According to the NYSE Proposal, the technical effect of the proposal therefore would not result in any "substantive change in the maximum rates NYSE member organizations may charge because all NYSE member organizations subject to these rules are also members of FINRA and, consequently, will be subject to the fee schedule set forth in FINRA Rule 2251."

The draft letter states that given the technical nature of the change and NYSE's lack of interest in reforming, or even examining, the current fee system, we support the SEC

approving the proposed rule change.^[3] The draft letter goes on to state that it is imperative that the Commission not stop there. The Commission's review must consider that FINRA is the brokerage industry's self-regulatory organization, and it will be essential for the Commission to independently arbitrate the differences between funds and intermediaries' viewpoints on how to reform the current processing fee system.

The draft letter provides the Commission with two distinct paths forward, consistent with ICI's prior recommendations for reforming processing fees. We summarize those recommendations immediately below.

The SEC should facilitate greater competition. The SEC should permit funds (rather than intermediaries) to select who will deliver fund materials on their behalf and negotiate the price for their distribution. This will realign incentives and reintroduce market competition, eliminating the need for a regulator-set fee schedule and allowing vendors to compete for funds' business.

If the SEC is unwilling to do so, it should reform the processing fee schedule, including:

- Creating a fee schedule tailored to fund disclosure delivery obligations;
- Replacing the existing layered fees with simple flat fees that reflect actual costs, using cost for direct-held accounts as a guide;
- Creating a robust regulatory oversight framework; and
- Mandating regular independent review of fee rates and vendor billing practices.

If you have any questions or comments on the draft letter, please contact Dorothy Donohue at ddonohue@ici.org or Joanne Kane at joanne.kane@ici.org.

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

Joanne Kane
Senior Director, Operations & Transfer Agency

[Attachment](#)

endnotes

^[1] For the sake of simplicity, we use "investment company" and "fund" interchangeably to refer to registered investment companies and their affiliated transfer agents and advisers throughout this letter.

^[2] *Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Rules Establishing Maximum Fee Rates To Be Charged By Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners* (File No. SR-NYSE-2020-96) (Release No. 34-90677); December 15, 2020), available at <https://www.sec.gov/rules/sro/nyse/2020/34-90677.pdf> ("NYSE Proposal"). 85 FR 83119

(December 21, 2020), available at

<https://www.govinfo.gov/content/pkg/FR-2020-12-21/pdf/2020-28010.pdf>

[3] See *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*, SEC Rel. No. 34- 78589 (Aug. 16, 2016), available at

<https://www.sec.gov/rules/sro/nyse/2016/34-78589.pdf> (where the NYSE stated that it “may not be best positioned to take on the regulatory role in setting fees for mutual funds.”); NYSE Proposal at 4 (“[g]iven the significant evolution of the securities industry during the period in which the NYSE has taken the lead in establishing proxy distribution reimbursement rates, the NYSE does not believe that it is best positioned to retain this responsibility going forward.”)

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