

MEMO# 30421

November 23, 2016

SEC Approves NYSE Amendments to Processing Fees for Shareholder Report Delivery

[30421]

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TO: ICI Members

Investment Company Directors

ICI Global Members SUBJECTS: Fees and Expenses

Fund Governance

Operations RE: SEC Approves NYSE Amendments to Processing Fees for Shareholder Report Delivery

The Securities and Exchange Commission recently approved a New York Stock Exchange proposal to amend the schedule governing fees for delivering fund shareholder reports to accounts held through intermediaries that are NYSE members.[\[1\]](#) The amendments would apply only if the SEC adopts its proposed rule 30e-3 which, as discussed below, would permit online shareholder report delivery.[\[2\]](#)

NYSE originally proposed these amendments in August 2016, and we submitted a comment letter expressing strong support.[\[3\]](#)

NYSE had proposed 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. 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.

NYSE's amended fee schedule adopts maximum fees NYSE member organizations may charge for online delivery of fund shareholder reports. The amended fee schedule would apply specifically to delivery of notices under any final rule 30e-3 and 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;^[4]

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);^[5] and
3. The Notice and Access fee breakpoints would apply at the fund level, not at the share class level.^[6]

The final amendments resolve ambiguity in the fee schedule as it would apply to proposed rule 30e-3, paving the way for the SEC to move forward with adoption and implementation of online delivery. More importantly, by clarifying how the fees are to be applied, NYSE's proposed changes will ensure significant cost savings for fund shareholders in the event that the SEC adopts proposed rule 30e-3.

The SEC's order also mentioned comments from ICI and other members that questioned more generally the reasonableness of the current fee structure and supported the transition of responsibility for setting shareholder distribution fees from NYSE to FINRA. The order noted, however, that issues concerning the reasonableness of the fees and NYSE's role in setting those fees are outside of the scope of this particular review.^[7]

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endnotes

^[1] *Order Granting Approval 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 (Nov. 18, 2016), available at <https://www.sec.gov/rules/sro/nyse/2016/34-79355.pdf> ("SEC Order").

^[2] For a summary of the NYSE proposal, please see ICI Memorandum No. 30142 (Aug. 17, 2016), available at https://www.ici.org/my_ici/memorandum/memo30142. For a summary of SEC proposed rule 30e-3, please 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, US Securities and Exchange Commission, dated September 12, 2016, available at <https://www.sec.gov/comments/sr-nyse-2016-55/nyse201655-4.pdf>.

^[4] See SEC Order at 6.

^[5] *Id.* at 6-7.

^[6] *Id.* at 7.

[\[7\]](#) See SEC Order at 13, n.52.

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