

**MEMO# 33345**

March 23, 2021

# **SEC Institutes Proceedings to Determine Whether to Approve or Disapprove NYSE's Proposed Rule Change to Move Responsibility to FINRA for Processing Fee Schedule**

[33345]

March 23, 2021 TO: ICI Members SUBJECTS: Compliance  
Disclosure

Transfer Agency RE: SEC Institutes Proceedings to Determine Whether to Approve or Disapprove NYSE's Proposed Rule Change to Move Responsibility to FINRA for Processing Fee Schedule

As we previously reported to you, late last year, ICI filed a letter with the SEC supporting the NYSE's proposed rule change to delete the maximum fee rates for forwarding proxy and other materials to beneficial owners that appear in NYSE Rules 451 and 465 and Section 402.10 of the NYSE Listed Company Manual, and establish in their place a requirement for member organizations to comply with FINRA Rule 2251's fee schedule.[\[1\]](#)

In short, the ICI letter expressed support for the SEC approving the proposed rule change given the technical nature of the change and NYSE's lack of interest in reforming, or even examining, the current fee system. The 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.

FINRA filed a comment letter opposing the NYSE proposed rule change reasoning that: it was incorrectly predicated on FINRA assuming primary responsibility for a regulatory regime that it has never led; and it is not best equipped to lead the regime because it does not have a listing relationship with many issuers. Given this, FINRA indicated that it would strongly consider rescinding its fee schedule if the Commission were to approve NYSE's proposal. FINRA recommended that before approving or disapproving the NYSE proposal, the Commission organize a public dialogue on the appropriate regulation of reimbursement of broker-dealer expenses for forwarding proxy and other materials.

Most recently, the Commission instituted proceedings to determine whether the NYSE's proposed rule change should be approved or disapproved in view of the legal and policy issues raised.<sup>[2]</sup> The Commission pointed out that under the Commission's Rules of Practice, the burden to demonstrate that a proposed rule change is consistent with the Exchange Act is on the NYSE. It then recited several of FINRA's comments, including that the NYSE does not explain why in the absence of a relationship with issuers, FINRA is in a better position than NYSE to assume the leadership role in this area; or why all broker-dealers being FINRA members puts FINRA in a materially better position to lead this area.

Comments are due to the Commission on April 13. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal no later than April 27. The Institute is considering whether to file a comment letter. Please contact Dorothy Donohue at [ddonohue@ici.org](mailto:ddonohue@ici.org) or Joanne Kane at [joanne.kane@ici.org](mailto:joanne.kane@ici.org) if you have any views you would like us to consider providing to the Commission.

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#### **endnotes**

<sup>[1]</sup> See ICI Memorandum No. 33036 (January 12, 2021), *available at* [https://www.ici.org/my\\_ici/memorandum/memo33036](https://www.ici.org/my_ici/memorandum/memo33036).

<sup>[2]</sup> Importantly, the SEC instituting disapproval proceedings does not indicate that it has reached any conclusions with respect to any of the issues involved. See Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend its Rules Establishing Maximum Fee Rates to be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners SEC Rel. No. 34- 91359 (March 18, 2021), *available at* <https://www.sec.gov/rules/sro/nyse/2021/34-91359.pdf>; 86 FR 15536 *available at* <https://www.govinfo.gov/content/pkg/FR-2021-03-23/pdf/2021-05918.pdf>