

MEMO# 33531

May 13, 2021

ICI Files Comment Letter Urging SEC to Reform Processing Fee Framework

[33531]

May 13, 2021

TO: ICI Members
Operations Committee
Proxy Working Group
SEC Rules Committee SUBJECTS: Compliance
Disclosure
Distribution
Fees and Expenses
Operations
Transfer Agency RE: ICI Files Comment Letter Urging SEC to Reform Processing Fee Framework

On May 13, ICI filed the attached letter urging the SEC to reform the processing fee framework that governs the fees that intermediaries may charge funds for delivering proxy and other disclosure materials to fund shareholders who hold shares through such intermediaries. ICI's letter responds to the March order issued by the SEC instituting proceedings regarding the New York Stock Exchange's (NYSE) proposed rule change on maximum fees to be charged by member organizations for forwarding proxy and other materials to beneficial owners.[\[1\]](#) ICI had filed a letter with the Commission in January recommending that the Commission approve the NYSE's proposed rule change.[\[2\]](#) We made that recommendation because under the proposed rule change FINRA (instead of the NYSE) would assume oversight of processing fees. Since then, however, FINRA has indicated that it has no interest in taking on this responsibility.

ICI's letter asserts that the fact that neither self-regulatory organization wants the responsibility for determining what constitutes reasonable fees illustrates that the existing processing fee framework is fundamentally flawed. We explain that it is clear at this point that the only option is for the SEC, under Chair Gensler's leadership, to reform the broken, outdated processing fee framework. This action will benefit investment company shareholders, potentially saving them hundreds of millions of dollars.

ICI recommends that, in the near term, the Commission issue a statement reminding broker-dealers and their agents that the Securities Exchange Act of 1934 requires processing fees to be "reasonable" and that the mere existence of a fee schedule does not

eliminate this overarching Commission requirement (i.e., brokers and their agents may not charge funds the schedule's maximum fees if those fees are not "reasonable"). For example, we do not believe that it is reasonable for funds to be charged three to five times as much in processing fees for mailing the same shareholder report to an intermediary-held fund account as to a direct-held fund account.

We also urge the Commission to reform the processing fee framework and more broadly the system for distributing fund materials to beneficial owners. We emphasize that only the Commission can independently assess, and make the judgments necessary to reform, the current system consistent with the public interest and investor protection. To facilitate greater competition with respect to processing fees, we recommend that the Commission permit funds to negotiate with vendors and eliminate the need for a fee schedule by either:

- Making clear that Section 14 rules under the 1934 Act permit funds to choose how to deliver fund regulatory materials and require intermediaries to provide to funds or their selected agent (i.e., vendor), upon request, a data file with only the shareholder information necessary for delivering these materials; or
- Allowing funds to choose how to deliver fund regulatory materials by not applying the objecting beneficial owner (OBO)/non-objecting beneficial owner (NOBO) distinction for the purpose of distributing fund regulatory materials.

If the Commission is unwilling to take either of these measures, we recommend that it reform the processing fee schedule itself by:

- Creating a fee schedule tailored to fund disclosure delivery obligations;
- Replacing the existing layered fees with simple flat fees that reflect actual costs, using costs for direct-held fund accounts as a guide;
- Eliminating unreasonable billing practices, such as remittances and suppression fees, that maximize intermediary and vendor profit at fund shareholder expense;
- Creating a robust regulatory oversight framework; and
- Mandating a regular independent review of fee rates and vendor billing practices.

Sarah A. Bessin
Associate General Counsel

Joanne Kane
Senior Director, Operations & Transfer Agency

endnotes

[1] 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 (File No. SR-NYSE-2020-96) (Release No. 34-91359); (March 18, 2021), available at <https://www.sec.gov/rules/sro/nyse/2021/34-91359.pdf>; 86 Fed. Reg. 15734 (March 24, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-03-24/pdf/2021-06000.pdf>.

[2] See Letter to Ms. Vanessa A. Countryman, Secretary, US Securities and Exchange Commission, from Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, and Joanne Kane, Senior Director, Operations and Transfer Agency, Investment Company Institute, dated January 8, 2021, available at <https://www.sec.gov/comments/sr-nyse-2020-96/srnyse202096-8221270-227699.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.