

COMMENT LETTER

January 17, 2019

ICI Supplemental Letter on NYSE Processing Fees (pdf)

January 17, 2019 Mr. Brent J. Fields Secretary US Securities and Exchange Commission 100 F Street, NE Washington D.C. 20549 Re: Supplemental Letter Responding to SEC Request for Comments on the Processing Fees Charged by Intermediaries for Distributing Materials Other Than Proxy Materials to Fund Investors (File No. S7-13-18) Dear Mr. Fields: The Investment Company Institute (“ICI”)¹ is writing to provide supplemental information related to the processing fee cost information included in ICI’s October 31 comment letter and the economic analysis of Compass Lexecon included in Broadridge Financial Solutions Inc.’s October 31 comment letter.² Both organizations submitted their comment letters in response to the Commission’s request for comment on the framework for regulating fees that intermediaries charge funds for distributing certain disclosure materials to fund investors.³

¹ The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$21.9 trillion in the United States, serving more than 100 million US shareholders, and US\$7.0 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

² Letter to Brent J. Fields, Secretary, US Securities and Exchange Commission from Susan Olson, General Counsel, Investment Company Institute, dated October 31, 2018, (“October Letter”), available at https://www.ici.org/pdf/18_ici_processing_fees_ltr.pdf; and Letter from Charles V. Callan, Senior Vice President, Regulatory Affairs, Broadridge Financial Solutions, Inc. to Brett J. Fields, Secretary, US Securities and Exchange Commission (October 31, 2018), available at <https://www.sec.gov/comments/s7-13-18/s71318-4593946-176328.pdf>.

³ Request for Comments on the Processing Fees Charged by Intermediaries for Distributing Materials Other Than Proxy Materials to Fund Investors, SEC Release Nos. 33-10505; 34-83379; IC-33114 (June 5, 2018), available at <https://www.sec.gov/rules/other/2018/33-10505.pdf>.

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.

Mr. Brent J. Fields January 17, 2019 Page 2 of 8

The cost information in both submissions confirms that the NYSE fee schedule results in funds and their shareholders paying significantly higher processing fees for delivery of fund materials than funds pay when they select their delivery vendor and negotiate the related processing fees. Both submissions demonstrate that funds and their shareholders could be paying far less in processing fees than those assessed under the current NYSE fee schedule. As we explain in

detail below, Compass Lexecon's analysis bundles all costs (paper, printing, postage, and processing fees). This approach allows for no direct comparison of the processing fees assessed for intermediary-held or beneficial accounts versus direct accounts and offers no way for the Commission to evaluate whether the NYSE-permitted processing fees are reasonable in relation to the services provided to funds and their shareholders.⁴ Compass Lexecon's analysis shows that a higher suppression rate for beneficial accounts may lead to lower overall costs, but it provides no insight into whether NYSE-permitted processing fees reflect "fair and reasonable" reimbursement for services.⁵ We urge the Commission to act to facilitate greater competition and reform the NYSE fee schedule and framework. Fund shareholders should reap the full cost-saving benefits of the many Commission actions that were intended to deliver such savings, including from regulatory actions permitting electronic delivery, householding, and, most recently, notices of mutual fund shareholder report availability under Rule 30e-3. ICI's Comment Letter and Member Survey Data In support of our October 31 comment letter in response to the Release, ICI included the results of a member survey on processing costs from 1,704 mutual funds. Specifically, to respond to the Commission's various questions regarding how processing fees charged for delivering fund materials to beneficial accounts compared to fees negotiated for direct accounts, we collected data on the amount that funds pay in processing fees for shareholder report delivery per beneficial account and the amount paid per direct account.⁶

⁴ In intermediary-held or beneficial accounts, fund shareholders invest in the fund through intermediaries; whereas, in direct accounts, fund shareholders purchase fund shares directly from the fund. ⁵ We refer to suppressed accounts to mean those accounts that do not receive mailed paper regulatory documents. This includes, for example, when the account holder has opted for electronic delivery, or in cases where multiple account holders share the same address and delivery of multiple copies is not required ("householding"). ⁶ For example, the Commission asks "[h]ow do fees charged to funds on an intermediary's behalf for delivery of Fund Materials compare with fees negotiated for comparable services between funds and their service providers for distributions of similar materials to investors holding shares directly with the fund or [non-objecting beneficial owners] NOBOs known to the fund? If they are different, are they higher or lower, and by how much?" Release at page 16. Mr. Brent J. Fields January 17, 2019 Page 3 of 8 To further assist the Commission, we also provided examples of how the NYSE processing fee schedule applied in various scenarios, including for suppressed accounts and managed accounts.⁷ The examples were intended to illustrate for the Commission how the application of the NYSE processing fee schedule substantially erodes the cost savings that were intended by the Commission's regulatory actions over many years.⁸ As described in ICI's comment letter, the differences in processing fees for beneficial and direct accounts are startling. A beneficial account pays three times more in processing fees for mailing a shareholder report than a direct account and pays five times more in processing fees for emailing the shareholder report. The following summarizes how the results from our survey of processing fees charged to direct accounts compares to fees charged to beneficial accounts:

- o The median direct-held account pays 5 cents in processing fees to receive a shareholder report regardless of whether that report is mailed or emailed.⁹
- o The average direct-held account pays 11 cents in processing fees to receive a shareholder report regardless of whether that report is mailed or emailed.
- o Every beneficial account pays the NYSE schedule maximum fee of 15 cents in processing fees to receive a paper shareholder report in the mail.
- o Every beneficial account pays the NYSE schedule maximum fee of 25 cents (15 cents plus 10 cents¹⁰) to receive a shareholder report by email.
- o Every househanded beneficial account pays the NYSE schedule maximum fee of 25 cents in processing fees not to receive a shareholder report.

⁷ Managed accounts are those accounts invested in a portfolio of securities selected by a professional advisor, and for

which the account holder is charged a separate asset-based fee for a range of services which may include ongoing advice, custody and execution services.” With respect to managed accounts, typically, only the intermediary, not the account holder, is required to receive fund disclosure documents. See footnote 104 of ICI October letter for additional information. 8 We note that the Commission began adopting rules to permit householding and electronic delivery in the mid-to- late 1990s. 9 Median represents the midpoint of a distribution. In terms of ICI’s survey, median means that half of direct accounts pay 5 cents or less to receive a shareholder report and half of direct accounts pay more than 5 cents. Our survey median of 5 cents included funds that reported zero processing fees for their direct accounts. Some fund complexes handle delivery of fund materials or the creation of mail files in-house and do not charge a discrete processing fee to the funds. If we omit the funds that reported zero processing costs, the survey median rises to 6.4 cents and is still well below the rates beneficial accounts pay under the NYSE schedule. 10 The NYSE fee schedule provides that intermediaries may charge up to a maximum of 15 cents for each interim report delivered to a beneficial account (“Interim Report Unit Processing Fee”) The NYSE Fee Schedule also provides that intermediaries may charge up to a maximum of 10 cents for reports that are suppressed or emailed to beneficial accounts (“Preference Management Fee”). Mr. Brent J. Fields January 17, 2019 Page 4 of 8 o Typically, a managed account pays the NYSE schedule maximum fee of 25 cents¹¹ in processing fees not to receive a shareholder report. It is our understanding from conversations with intermediaries that they have minimal involvement in the processing associated with the delivery of fund regulatory materials. Most, if not all, of the work, including tracking of preferences, is outsourced to their selected processing and mail vendor. These developments have made the need for “remittances” obsolete.¹² Furthermore, even in the absence of fund regulatory mailings, intermediaries still would need to maintain the appropriate infrastructure to support processing and mailing of statements, marketing materials, and other regulatory documents associated with their clients’ non-regulated fund investments. With their minimal involvement and their own need for infrastructure to support their business and multiple products and investments of their clients, the remittances to paid to intermediaries are outdated and unnecessary. It is simply unfair and inappropriate for funds and their shareholders to be shouldering the cost of these remittances. As described in our letter, the application of the processing fee schedule has genuine impacts on fund costs and creates benefits for vendors rather than funds and their shareholders. In fact, the anomalies of the fee schedule mean that, as compared to mailing paper copies of regulatory materials, vendors earn more fees when they email regulatory materials or when they suppress them (that is, when they do not send anything at all). Consequently, the Commission must carefully and critically assess any initiatives and any advocacy related to fund disclosure and its delivery, including the cost impact of the fee schedule. For example, while an enhanced Rule 30e-3 notice may superficially appear to save shareholders money, two separate processing fees would be assessed for a beneficial account: an interim report processing fee and a notice and access fee. In contrast, a summary shareholder report delivered to a beneficial account would be subject only to the interim report processing fee.¹³ Public commenters’ views and related advocacy will naturally reflect the incentives fostered and encouraged by the NYSE fee schedule and the Commission must remain sensitive to how these fees may affect the regulatory debate. Broadridge Financial Solutions Inc. and Compass Lexecon Economic Analysis On October 31, Broadridge Financial Solutions Inc. submitted a comment letter in response to the Release and included an economic analysis by Compass Lexecon on the business of 11 The 25 cents is comprised of the 15 cent Interim Report Unit Processing fee and 10 cent Preference Management fee. 12 In situations where an intermediary has negotiated processing fees that are lower than the NYSE maximum processing fee, the vendor does not charge the fund the negotiated

rate. Instead the vendor invoices the fund for the maximum NYSE fee rate, and then “remits” the difference back to the intermediary. See Section D.2. of ICI October letter for additional information. 13 Neither notice and access fees nor interim report processing fees are charged when delivering notices to shareholders who hold their positions with the fund directly. Mr. Brent J. Fields January 17, 2019 Page 5 of 8 providing shareholder communication services. Compass Lexecon analyzed the total unit costs for delivery of shareholder reports, bundling together costs associated with paper, printing, postage and processing fees into their total cost calculation. The Compass Lexecon analysis found that total unit costs for delivery to beneficial accounts were lower than total unit costs for delivery to direct accounts. This result reflects the higher rate of suppressed paper reports in beneficial accounts than in direct accounts. 14 The Compass Lexecon analysis does not specifically address processing fees as those costs were bundled into the total cost calculation. By doing so, Compass Lexecon’s analysis obscures the higher processing fees charged to beneficial accounts as compared to direct accounts. Compass Lexecon’s focus on total unit costs and its bundling of costs masks, and unhelpfully distracts from, the key focus of the Commission’s Release and the concern of mutual fund shareholders: What are the processing fees assessed for beneficial accounts versus direct accounts and are the charges under the NYSE fee schedule reasonable in relation to the services provided to mutual funds and their shareholders? A higher suppression rate for beneficial accounts, leading to lower overall total costs, lends no insight into whether the current schedule of NYSE processing fees reflects “fair and reasonable” reimbursement for services. ICI Survey Data and Compass Lexecon Analysis are Consistent At first glance, the results of ICI’s survey and Compass Lexecon’s analysis seem at odds with one another. ICI’s survey found that beneficial accounts paid more in processing fees to receive a paper report in the mail or an emailed report than direct accounts, while Compass Lexecon found that total unit costs were lower for beneficial accounts than direct accounts. In fact, ICI’s and Compass Lexecon’s findings are consistent with one another. The following illustration, which uses information from Compass Lexecon’s study and ICI’s survey, shows how the two seemingly incongruent results can be reconciled. For simplicity, assume that there are 100 beneficial accounts and 100 direct accounts and a shareholder report costs \$1.00 to print and mail for each type of account. 15 Based on Compass Lexecon’s study we used a suppression rate of 62 percent for beneficial accounts and 30 percent for direct accounts. For processing fees, we used the applicable processing fees under the NYSE fee schedule, and ICI’s estimate for median processing fees for direct-held accounts. 14 When paper reports are suppressed, savings are generated by a reduction in paper, printing and mailing costs. 15 Compass Lexecon’s study finds that average unit costs for postage, envelope and printing are \$1.03 for beneficial accounts and \$0.89 for direct accounts. For simplicity, we have assumed \$1.00 for each type of account. This assumption does not change the fact that ICI and Compass Lexecon’s findings are consistent. Mr. Brent J. Fields January 17, 2019 Page 6 of 8

Assumptions and data inputs	Beneficial	Direct
Number of accounts	100	100
Unit cost of print, postage, envelope	\$1.00	\$1.00
Suppression rate	62%	30%
Unit cost of processing fees		
Mailed report	\$0.15	\$0.05
Suppressed report	\$0.25	\$0.05
Calculation of total cost		
Cost of print, postage, envelopes	\$38	\$70
Cost for processing fees	\$21.20	\$5.00
Mailed report	\$5.70	\$3.50
Suppressed report	\$15.50	\$1.50
Total cost	\$59.20	\$75.00
Average total unit cost	\$0.59	\$0.75

As illustrated, consistent with Compass Lexecon’s analysis, average total unit costs¹⁶ are lower for beneficial accounts (\$0.59) versus direct accounts (\$0.75) and, consistent with ICI’s member survey, processing fees for beneficial accounts are four times more than those for direct accounts (\$21.20 for beneficial accounts versus \$5.00 for direct accounts). While print, postage, and envelope costs are lower for beneficial accounts because of the higher suppression rate, the cost of processing fees - the concern of the Commission and fund shareholders - is disproportionately higher for

beneficial accounts than direct accounts. Compass Lexecon's analysis obscures the vast difference in processing fees between beneficial and direct accounts. In other words, total unit costs could (and should) be even lower for beneficial accounts. Both ICI's survey data and Compass Lexecon's analysis unequivocally demonstrate that reforming the NYSE fee schedule can meaningfully lower the cost of delivering mutual fund shareholder materials. It is clear that when mutual funds directly negotiate the fees for delivery of fund materials for their direct accounts that they have been able to obtain far more reasonable 16

Average total unit cost = Total cost divided by the number of accounts. Total cost = Cost for print, postage, envelope + Cost for processing fees. Cost for print, postage, envelope = (1 - suppression rate) * number of accounts * unit cost of print, postage, envelope. Cost for processing fees = Cost of processing fees for mailed reports + Cost of processing fees for suppressed reports. Cost of processing fees for mailed reports = (1 - suppression rate) * number of accounts * unit cost of processing fee for mailed reports. Cost of processing fees for suppressed reports = suppression rate * number of accounts * unit cost of processing fee for suppressed reports. Mr. Brent J. Fields January 17, 2019 Page 7 of 8 rates than those assessed under the NYSE fee schedule for beneficial accounts.¹⁷ Information from Compass Lexecon's analysis supports this conclusion for direct accounts serviced by Broadridge Financial Solutions Inc. Broadridge's implicit average unit processing fees for direct accounts is approximately \$0.12¹⁸ versus the \$0.1819 that would be assessed under the NYSE schedule for beneficial accounts with the same characteristics. In addition, Broadridge's implicit average processing fees for direct accounts (\$0.12) align with the average processing fees on direct accounts from ICI's member survey (\$0.11). * * * * *

We urge the Commission to remain focused on the Release questions related to the NYSE fee schedule and the processing fees paid by funds and their shareholders Under the Securities and Exchange Act of 1934, the Commission must determine if the processing fees represent reimbursement of an intermediary's reasonable expenses incurred in connection with delivering regulatory materials. Both ICI's and Compass Lexecon's analysis clearly raise concerns about whether the fee schedule represents reasonable expenses for delivering fund materials and, in fact, together unambiguously confirm that the NYSE processing fees can be lower. 17 Additionally, Compass Lexecon cites the cost to prepare small print jobs in their analysis (page 33 and accompanying footnotes 40 and 41). While we agree that small jobs, on average, cost more than large jobs, funds with small jobs can negotiate better rates than those referenced in the Compass Lexecon analysis. ICI contacted two members to obtain a quote based on their existing pre-negotiated contracts to prepare a mailing for 150 positions covering the tasks outlined in footnote 40 of Compass Lexecon's analysis. One member received a quote for \$77.95 and another member received a quote for \$125—significantly less than the average \$335.92 cited in Compass Lexecon's analysis. This provides another example of funds' ability to negotiate a much lower rate when they fully control the process. 18 An implicit estimate of Broadridge's average unit processing fee for direct account process charges can be obtained from information on the direct accounts serviced by Broadridge in Compass Lexecon's analysis, including information in footnote 30. We used Compass Lexecon's stated unit cost of printing, postage, and envelope (\$0.89) for Broadridge's direct accounts, their reported suppression rate for direct accounts (29.6%) and their average unit total cost for direct accounts (\$0.75). We solved for average unit processing fees using the following formula: Average total unit cost = (Average unit cost of print) * (Percent mailed reports) + Average unit processing fees. Substituting Compass Lexecon's numbers into this equation, we obtain: \$0.75 = \$0.89 * (1 - 0.296) + Average unit processing fees. Simplifying and solving for average unit processing fees charged by Broadridge on their direct accounts yields: Average unit processing fees = \$0.75 - \$0.627 = \$0.123 or approximately \$0.12. 19 Using the NYSE processing fee schedule (\$0.15 for a mailed shareholder report and \$0.25 for a

suppressed shareholder report) and a suppression rate of 29.6 percent, we calculated average unit processing fees under the NYSE fee schedule as $\$0.15 * (1 - 0.296) + \$0.25 * 0.296 = \$0.1796$ or approximately \$0.18. Mr. Brent J. Fields January 17, 2019 Page 8 of 8 If you have any questions, please contact, Shelly Antoniewicz, Senior Director of Industry and Financial Analysis, (shelly@ici.org or 202-326-5910), or Joanne Kane, Director, Operations & Transfer Agency (joanne.kane@ici.org or 202-326-5850). Sincerely, /s/ Shelly Antoniewicz and Joanne Kane cc: The Honorable Jay Clayton The Honorable Kara M. Stein The Honorable Robert J. Jackson Jr. The Honorable Hester M. Peirce The Honorable Elad L. Roisman Dalia O. Blass Director, Division of Investment Management Brett W. Redfearn Director, Division of Trading & Markets

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.