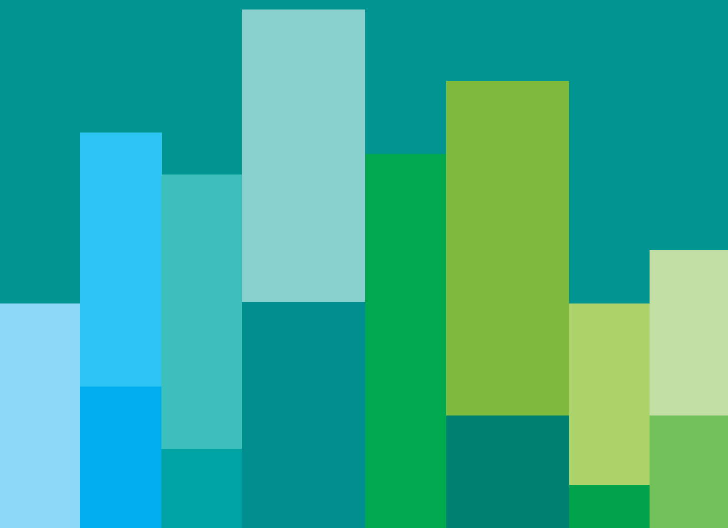
RECOMMENDATIONS OF THE PROXY FEE ADVISORY COMMITTEE TO THE NEW YORK STOCK EXCHANGE

May 16, 2012



NYSE EURONEXT℠

REPORT AND RECOMMENDATIONS

OF THE PROXY FEE ADVISORY COMMITTEE

TO THE NEW YORK STOCK EXCHANGE

May 16, 2012

INTRODUCTION

Proxy distribution fees have been part of the New York Stock Exchange's rules for many years, and have been reviewed and changed periodically over that time. The Exchange has long operated under the assumption that these fees should represent a consensus view of the issuers and the broker-dealers involved. In September 2010 the Exchange formed the Proxy Fee Advisory Committee (PFAC) to review the existing fee structure and make such recommendations for change as the PFAC believes appropriate.

BACKGROUND

The Exchange has been mindful for several years that a further review of the proxy fee rules would be useful. The Exchange's Proxy Working Group in 2007 noted a variety of fee-related issues, and the Exchange was aware of concerns expressed by various parties with an interest in the proxy distribution process. However, when the Exchange became aware that the Securities and Exchange Commission was preparing a study of proxy-related issues, it judged it advisable to await the SEC's publication prior to initiating a formal review of the fees.

On July 14, 2010 the Securities and Exchange Commission issued its Concept Release on the U.S. Proxy System, which has come to be known as the "Proxy Plumbing Release". Among the many issues discussed in that Release were proxy distribution fees, and the SEC stated that "it appears to be an appropriate time for SROs to review their existing fee schedules to determine whether they continue to be reasonably related to the actual costs of proxy solicitation."[1]

As the Exchange noted in its comment letter on the Proxy Plumbing Release, the NYSE has had a significant role in proxy matters for many years, even prior to the SEC's establishment of rules to govern the proxy process at SEC-registered corporations. Of continuing relevance to the proxy process are the Exchange rules relating to the fees which member broker dealers are

[1] SEC Release No. 34-62495; File No. S7-14-10, 75 Fed. Reg. 42982 (July 22, 2010) at text following note 138.

entitled to receive from issuers for forwarding their proxy materials to "street name" beneficial owners.

As noted in the Proxy Plumbing Release, SEC rules require broker-dealers and banks to distribute proxy material to beneficial owners, but the obligation is conditioned on their being assured of reimbursement of their reasonable expenses. The SEC has relied on stock exchange rules to specify the reimbursement rates, and it has been the rules of the NYSE that have established the standard used in the industry.

The Proxy Plumbing Release notes that it is a relatively simple process for an issuer to send proxy materials to registered owners of its securities because their names and addresses are listed in the issuer's records, but the process of distributing proxy materials to beneficial owners is more complicated.[2] Securities intermediaries – banks and brokers – hold securities for their customers, and there can be multiple layers of intermediaries for just one beneficial owner, presenting challenges in the distribution of proxy material.[3]

The chain of ownership starts with the Depositary Trust Company (DTC), which holds the securities for the banks and brokers that are its participants. It holds them in "fungible bulk," meaning there are no specifically identifiable shares directly owned by DTC participants; rather, each participant owns a pro rata interest in the aggregate number of shares of a particular issuer held at DTC. Similarly, each customer of a participant, including the ultimate beneficial owner, owns a pro rata interest in the shares in which the DTC participant has an interest.

When an issuer establishes a record date for a shareholders' meeting, the DTC participants are searched to ascertain the number of beneficial owners holding the issuer's securities so that the number of proxy packages necessary can be ascertained. This can involve searches down the chain of intermediaries when multiple levels are involved.

Since the 1980's, street name shareholding has proliferated, with estimates today that over 80% of publicly held securities are in street name. Over this time, banks and brokers have increasingly turned to third party service providers to coordinate most aspects of this process, from coordinating the beneficial owner search to arranging the delivery of proxy materials to the beneficial owners. At the present time, almost all proxy processing in the U.S. is handled by a single entity, Broadridge Financial Solutions, Inc. ("Broadridge").[4] Broadridge reports that

---

[2] Proxy Plumbing Release at text accompanying notes 32-33.

[3] Id. at text accompanying notes 43-44.

[4] Other intermediaries competing with Broadridge are Proxy Trust (focuses on nominees that are trust companies), Mediant Communications and Inveshare, but their market share is relatively small. We are aware of one broker-dealer, FOLIOfn Investments, Inc., that provides proxy distribution to its accounts itself, without using the services of an intermediary.

during the year ended April 30, 2011 it processed over 12,400 proxy distribution jobs involving over 628 billion shares.[5] It estimates that it handles distributions to some 90 million beneficial owners with accounts at over 900 custodian banks and brokers.[6]

Based on information from Broadridge, the Committee estimates that issuers spend approximately $200 million in aggregate on fees for proxy distribution to street name shareholders during a year. This does not count the amounts spent on printing and postage for those street name distributions that are not made electronically – those costs are typically estimated to be more than double the amount spent on proxy fees, which demonstrates why efforts to suppress physical mailings are so important from a cost perspective. The cost incurred by any given issuer varies widely depending on how broadly its stock is held, and the extent to which physical mailings to its shareholders have been eliminated. Again based on information from Broadridge, among the issuers represented on the PFAC, the smallest spent some $8,000 on proxy fees last year, while the largest spent approximately $1.2 million. Among another representative group of issuers used by the PFAC for study purposes, the smallest paid just over $10,000 in proxy fees last year, while the largest spent approximately $2 million. Overall Broadridge has estimated that issuers with 100,000 or fewer street name positions paid approximately 39% of all street name fees, issuers with 100,001 to 500,000 positions paid approximately 30.5% of such fees, with a similar percentage paid by issuers with more than 500,000 street name positions.

Since 1937 the NYSE has specified the level of reimbursement which, if provided to the member broker-dealers, would obligate them to effect the distribution of proxy materials to street name holders, and those rates have been revised periodically since then. The last, and most far-reaching, revision was finalized in 2002. It was the culmination of a multi-year, multi-task force effort that began in 1995, and attempted to both recognize and encourage significant changes in computer technology that permitted more efficient, and increasingly paperless, distribution of proxy material.

---

[5] Broadridge 2011 Proxy Season Key Statistics & Performance Rating, available at www.broadridge.com/Content.aspx?DocID=1498

[6] Comment letter on Proxy Plumbing Release from Charles V. Callan, Broadridge, October 14, 2010.

The proxy distribution fees that emerged from that effort and remain in effect are:

- A flat nominee fee of $20 per nominee (i.e., bank or broker).
- A basic processing fee of 40 cents for each account to which a proxy is provided
- An additional per-account fee meant to compensate the intermediary.
    - 5 cents per account for issuers with 200,000 or more street name positions
    - 10 cents per account for issuers with fewer than 200,000 street name positions
- An incentive fee that applies whenever the need to mail materials in paper format to an account has been eliminated
    - 25 cents per account for issuers with 200,000 or more street name positions
    - 50 cents per account for issuers with fewer than 200,000 street name positions.

These current fees are more fully described in Addendum I. The creation of a nominee fee, of an incentive fee for mailing suppression, and of fee differentiation between large and small issuers to recognize the economies of scale available in serving the former, are all elements that emerged from the review process that began in 1995 and culminated in 2002. [7]

The proxy fees were also the subject of a partial review in the middle of this last decade, although no change was made at that time. A Proxy Working Group ("PWG") was created by the NYSE in 2005, composed of a diverse group of individuals from issuers, broker-dealers, the legal community and investors. It focused on several different aspects of the proxy process, particularly the NYSE rules on when brokers may vote shares for which no voting instructions were received from the beneficial owner. Relevant to our subject, however, the PWG also looked at whether the NYSE rules on proxy distribution fees should be made applicable to the SEC's then new "e-proxy" system (today referred to as "notice and access"), and concluded that as an initial matter, they should not. In part, the PWG believed it was appropriate to allow some time during which market forces might create a consensus regarding the appropriate kind and level of fees under the new e-proxy rules.

The PWG Reports are referenced in the Concept Release, and the general concerns over proxy distribution fees that were voiced to the PWG are similar to those outlined in the Concept

---

[7] For many years the NYSE proxy fee rules subjected all issuers to the same rates. However, when the last changes were approved in 2002, the rules began to differentiate between "Large Issuers" and Small Issuers." This was because it was determined that economies of scale existed for many of the tasks of processing material for distribution, and for collecting voting instructions. Those analyzing the situation at that time found that the actual cost of proxy distribution incurred with respect to large issuers was lower than the specified fees, whereas the actual cost for handling small issuers far exceeded the fees provided in the NYSE rules. SEC Release 34-45644 (SR-NYSE-2001-53, March 25, 2002).

For this reason the present distinctions were introduced, under which Large Issuers pay half the rate on each of the intermediary fee and the incentive fee . Large Issuers are those with shares held in 200,000 or more street name accounts. This number was selected because at the time approximately 50% of all street name positions were in each category. Id.

Release. Since Broadridge is the third-party vendor utilized by almost all broker-dealers for the distribution of proxy materials, both issuers and potential competitors of Broadridge suggest that competition might result in lower fees to issuers. In part they question whether Broadridge is utilizing the most efficient mailing process, since the NYSE rules simply contemplate that issuers will pay the actual out of pocket postage cost incurred by the broker-dealers (or their agent). They also question whether the incentive fees, first introduced in the late 1990's to encourage the elimination of paper mailings, are still cost efficient and whether they are transparent and reasonable. As noted in the Proxy Plumbing Release, over the several years that notice and access has been a part of the proxy distribution process, there have been concerns about the way Broadridge has priced its notice and access service, although the overall cost of the service does not appear to have generated concern.

The Exchange agreed with the Concept Release statement that "it appears to be an appropriate time for SROs to review their existing fee schedules to determine whether they continue to be reasonably related to the actual costs of proxy solicitation."[8] The Exchange brought together this Proxy Fee Advisory Committee composed of representatives of issuers, broker dealers and investors to undertake this review.

The PFAC is tasked with reviewing the current rules and how they are applied, and it has met with a wide variety of participants in the proxy process to gather information on what is necessary to efficiently and effectively distribute proxy material to street name shareholders and collect their votes. The NYSE asked the PFAC to produce recommendations, which the NYSE can submit to the SEC in the form of a rule change proposal. That proposal will of course be published for public comment, prior to any SEC approval and effectiveness of new rules.

In the course of its review, the Committee has dealt with a number of the issues most frequently discussed with respect to proxy distribution fees:

- Are the relative costs borne by large vs. small issuers appropriate?
- Is it appropriate that a fee for the elimination of a mailing is paid each year, rather than only in the first year that the elimination is effected?
- Is it appropriate to charge incentive fees for mailings that are eliminated because a beneficial owner has delegated voting and receipt of materials to the adviser or manager of a managed account?
- Should notice and access fees be regulated, and if so, what should they be?

However, it is important to understand that some of the concerns expressed about the proxy distribution process are not within the purview of the Committee, or the Exchange, to address.

[8] See note 1, supra.

Issues have been raised as to whether beneficial owners should continue to be able to be Objecting Beneficial Owners, or OBOs, and whether there should be a central data aggregator for beneficial owner information that would enable issuers to distribute proxy materials directly to beneficial owners rather than through the bank and broker intermediaries. However, today's distribution regimen is established by the securities laws and the SEC, and is not within the power of a stock exchange to change. The Committee's recommendations regarding the proxy fee rules of the NYSE are made in the limited context within which those rules presently operate.[9]

COMPOSITION OF THE PFAC AND A SUMMARY OF ITS ACTIVITY

In creating the Committee, the Exchange sought to obtain a diversity of views among issuers and broker dealers as well as expertise in the proxy distribution process. The Exchange asked Paul Washington, Senior Vice President, Deputy General Counsel and Corporate Secretary of Time Warner, Inc., to serve as Committee Chair. In addition to his experience with Time Warner, Paul is also a recent past Chairman (2009-2010) of the Society of Corporate Secretaries and Governance Professionals. Other members of the Committee are in senior positions at public companies, broker-dealers and institutional investors, and are as follows:

- Glenn Booraem, Principal, Vanguard Group
- Jack Carsky, Global Head of Investor Relations, Visa Inc.
- Scott Cutler, Executive Vice President & Co-Head U.S. Listings & Cash Execution, NYSE Euronext
- James Duffy, Consultant to NYSE Euronext, retired Executive Vice President & General Counsel, NYSE Regulation
- Anthony Horan, Corporate Secretary, JPMorgan Chase
- Jeff Kotkin, Vice President, Investor Relations, Northeast Utilities

[9] In its comment letter on the Proxy Plumbing release the NYSE stated that, notwithstanding its establishment of the PFAC, it does not believe that proxy distribution fees should necessarily continue to be specified by SRO rule. However, the NYSE recognized that any change to the current fee-setting structure could take a considerable period of time to effectuate, and in the interim it was appropriate to obtain the most up to date analysis of what SRO-rule-based fee levels should be, while the SEC considers whether the mechanism by which those fees are determined should be changed.

In its comment letter the NYSE also stated that it would welcome a movement away from utilizing SRO rules to set the default proxy distribution fees. While NYSE has had a long history as an innovator and important source of rules for the U.S. proxy process, the SEC has long since taken over the field as the source of regulation for that process. The NYSE asserted that the much reduced role of exchanges in proxy regulation means that they may no longer be the best source of rulemaking in the proxy fee area.

- Robert Masters, Senior Vice President, General Counsel & Chief Compliance Officer, Acadia Realty Trust
- Beverly O'Toole, Managing Director & Associate General Counsel, Goldman, Sachs & Co.
- Paul Porrini, Vice President, Deputy General Counsel & Assistant Secretary, Hewlett-Packard Co.
- Karl Wagner, Assistant Secretary, Merck & Co.
- Michael Yecies, Senior Vice President, Chief Legal Officer & Secretary, Resource Capital Corp.

In addition, the Committee is assisted by Judith McLevey, Vice President, Cecilia Cheung, Director and Michele Lee, Senior Manager, NYSE Euronext, and John Carey, Vice President & Chief Counsel, NYSE Regulation.[10]

The Committee began its deliberations in October 2010, and has met numerous times since then. It received presentations from a number of organizations, including from representatives of Broadridge Financial Solutions, Inc., Mediant Communications, Computershare, Bank of America Merrill Lynch, The Securities Transfer Association, Citibank, Morgan Stanley Smith Barney, Fidelity's National Financial, Curian Capital and MoxyVote. Representatives of the Committee have also met with issuers who are members of the Society of Corporate Secretaries and Governance Professionals, and with a working group of broker dealers organized by the Securities Industry and Financial Markets Association (SIFMA). Committee members also visited the Edgewood, Long Island facility of Broadridge Financial Solutions, to view personally the facilities involved in processing and distributing proxy materials to street name beneficial owners.

ANALYSIS AND RECOMMENDATIONS

As noted above, the obligation of brokers and banks to distribute proxy material to beneficial owners is conditioned on their being assured of reimbursement of their reasonable expenses, and the SEC relies on exchange rules to specify those reimbursement rates. NYSE Rule 451 states that "The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465." For at least the last 30 years, the NYSE has dealt with this issue by convening advisory panels of industry participants – brokers, issuers and investors – to advise on what should be considered "fair and reasonable

[10] The Committee invited the staff of the SEC to attend its meetings, but the staff declined.

rates of reimbursement," and then subjecting the proposals to review and approval by the SEC.[11]

Although the NYSE rules speak in terms of reimbursing brokers for their reasonable expenses, it appears self-evident that this was never feasible on an individual brokerage firm basis given that the rules provided one price to be used by a multiplicity of firms providing services, each with presumably different costs. That issue continued even after services were almost all centralized in one outsourced service provider, Broadridge. This is so because each firm continued to have some workload of its own, and each firm negotiated its own, arms-length agreement with Broadridge, and so had outsourcing costs that differed from firm to firm. In addition, the introduction of incentive fees in the late 1990's established that "fair and reasonable rates of reimbursement" encompassed rates that were not associated with a specified level of costs, but rather were considered adequate to encourage the development of systems that would lead to the elimination of physical delivery.

Given this state of facts, the Committee took the view that the NYSE proxy fee rules do not lend themselves to "utility rate-making," where the specific costs of a process are analyzed and rates revised periodically to permit a specified "rate of return."

However, the Committee did what it could to engage in a review that would in certain ways approximate such a process. It looked first at publicly available financial information on Broadridge, which is a public SEC-reporting company. Unfortunately for this analytical purpose, Broadridge has several business lines other than street name proxy distribution, and it does not isolate costs and revenues from the street name proxy distribution business in any of its publicly reported numbers. There were several analyst reports available that examined this business, and which discussed the segment in which Broadridge includes this activity, which Broadridge refers to as its Investor Communications Solutions segment, or ICS.[12] Broadridge has reported flat to declining margin in this segment over the last four years, from 16% in fiscal 2008 to 14% for fiscal 2011.

The Committee also took note of the fact that since the fees were last changed in 2002, there has been an effective decline in the fees of approximately 20%, given the impact of inflation. Indeed, the nominee coordination fee dates from 1997, and so has been eroded approximately

---

[11] See, for example, SEC Release No. 34-45644, March 25, 2002 (SR-NYSE-2001-53); SEC Release No. 34-38406, March 24, 1997 (SR-NYSE-96-36); and SEC Release No. 34-21900, March 28, 1985 (SR-NYSE-85-2).

[12] Broadridge's ICS revenues combine the street name and registered proxy businesses. This also includes both U.S. and non-U.S. public companies, but we assume that the non-U.S. company income is a relatively small part of the whole. Broadridge separately reports its fee revenue from mutual fund proxy statement and report distribution.

29% by inflation since that time.[13] Broadridge maintains that, in contrast, a number of other related costs have increased over approximately the same period – bulk rate postage by an estimated 38%, printing costs 12%, electricity 60%, and overall IT expenditures by financial services entities, 59%.[14]

After fact gathering and analysis, the Committee has focused on a set of recommendations intended to serve several basic goals:

- To support the current proxy distribution system, given that it provides a reliable, accurate and secure process for distributing proxy materials to street name stockholders. It is also important that the fee structure continues to encourage cost savings through reducing printing, postage and physical handling of proxy materials.
- To encourage and facilitate active voting participation by retail street name shareholders.
- To improve the transparency of the fee structure, so that it is not only clearer to issuers what services they are paying for, but also that fees are consistent with the type and amount of work involved. Updating the terminology used in the rule will be a part of this effort. For example, "incentive fees" will be called "preference management fees," to better describe the work involved. It is also important for transparency that the rules be structured to avoid undue complexity.
- To ensure the fees are as fair as possible, reflecting to the extent possible both economies of scale in processing, and sensitivity to who (issuer or broker) benefits from the processing being paid for. In the course of its review the Committee will address several of the issues that were singled out in the SEC's Proxy Plumbing Concept Release, notably the fees charged in connection with managed accounts, and the fees charged for utilizing notice and access.

The Committee will also suggest that going forward there be a more consistent and coordinated process of reviewing both services and fees, to ensure that the fee structure is kept up to date with future regulatory changes and ongoing technical innovation.

---

[13] Based on the Bureau of Labor Statistics Consumer Price Index All Urban Consumers (CPI-U), U.S. city average, all items, 1982-84=100, annual average figures for 2011 (224.939), 2002 (179.9) and 1997 (160.5). Available at ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt

[14] Data cited by Broadridge in support of these figures are: For postage – Effective 6/30/02: standard A "bulk" flat @$0.552; first class letter @$0.37. Effective 4/17/11: standard A "bulk" flat @$0.761 and first class letter @$0.44. For printing – NIRI biennial surveys; median cost @$4.32 (2004) and $4.82 (2010). For electricity – Bureau of Labor Statistics, Consumer Price Index – Average Price Data, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, Electricity per KWH, 2002 to 2011. For overall IT expenditures – Gartner Group, "Financial Services Market Regains Momentum: Forecast Through 2006", February 2003. Gartner Group, "Forecast: Enterprise IT Spending for the Banking and Securities Market, Worldwide, 2009-2015, 3Q11 Update, October 2011.

A chart showing the recommended changes to the proxy distribution fees is attached in Addendum II. Some fees are reduced and some increased. It is estimated that overall fees paid by issuers will decrease by approximately four percent.[15] The Committee has also focused on whether the new recommended fees appear to be aligned with the work effort to which the fees relate. At the Committee's request, Broadridge analyzed the work effort across the several tasks involved in proxy distribution. Its analysis is presented in a chart attached as Addendum III, and it confirms that fees and work effort do appear to be roughly in line.

The following is an outline description of the various recommendations and the Committee's rationale for the changes proposed.

Basic Fees

This category includes both a per-nominee fee and, under the current rules, two separate per-account (or per-position) fees, as described on page 4 above.

Nominee Fee: The nominee fee is currently $20 per nominee (bank or broker) served by an intermediary (e.g., Broadridge). As noted earlier, this $20 fee has not changed since its implementation in 1997, and has been eroded by some 29% by inflation since that time. In addition, while not required under the current rule, it has been Broadridge's longstanding practice to only charge this amount for a nominee that responds to a search request with an indication that it does have at least one account holding the issuer's stock. This is so notwithstanding that for each meeting or distribution Broadridge makes inquiry of all nominees whether they hold any of the particular security involved. Broadridge notes that while they serve some 900 nominees, the average issuer is held by approximately 100 nominees.

In order to compensate for the impact of inflation and to better align this fee with the work involved, it is recommended that the basic per-nominee fee be increased to $22, but that the rule specify that it applies only to nominees with at least one account holding the issuer's stock. Otherwise, the rule should provide for a charge of 50 cents per nominee for those solicited who indicate no holdings of the stock involved. The Committee was concerned that this additional charge could have an inappropriately large impact on the smallest issuers (who are typically held by the smallest number of nominees). To address this concern, the additional fifty cents fee will be capped at $100 for the smallest issuers (fewer than 10,000 accounts holding their stock).

[15] This does not include the impact of permitting stratification of NOBO lists, or of an Investor Mailbox fee, both discussed later in this Report.

Per-account Fees: The two separate per-account fees are the basic processing fee, and the "intermediary unit fee", which is, in addition to the nominee fee described above, intended as compensation to the intermediary for its work in coordinating among multiple nominees.

As did its predecessor Committee in the 1990's, the PFAC believes that economies of scale exist when handling distributions for more widely held issuers. While the current fees attempt to reflect this in the intermediary unit fee, they do not in the basic processing fee, and the PFAC believes both fees should be structured to recognize the existence of economies of scale.

However, the PFAC is also concerned with the way the current fees approach this issue, with a simple binary distinction between Large and Small Issuers. This "cliff" pricing schedule means that there can be a significant difference in the overall price paid by issuers with 199,000 account positions versus those with 201,000 account positions. Furthermore, companies that are close to this line may find themselves on different sides of it from one year to the next, creating undesirable volatility in the prices paid for proxy distribution from year to year.

It is primarily for this reason that the Committee is recommending moving away from the binary Large/Small Issuer distinction, and utilizing a group of five true tiers for the basic per-account fees. In this way, every issuer will pay the tier one rate for the first 10,000 positions, for example, with decreasing rates calculated only on additional positions in the additional tiers. Modest changes in shareholder population will no longer have the possibility of producing material changes in overall costs, and the sliding scale of rates will better approximate the sliding impact of economies of scale.[16]

In determining the fees applicable to each tier, however, the Committee was sensitive to the fact that an attempt to fully reflect the economies of scale would result in excessive increases in the rates paid by the smallest issuers, and the Committee considered such an outcome inappropriate. Indeed, it was an operating principle for the Committee that it wished to avoid recommendations that would generate large and potentially dislocating changes in the fees or in the impact of the fees on broad categories of brokers or issuers.

---

[16] We note that even under the current "Large/Small issuer" distinction, a question has been raised whether brokers that do not use Broadridge are entitled to bill at the "Small issuer" rate when they serve fewer than 200,000 accounts holding the issuer's stock, even though the issuer is held by far more than 200,000 accounts when all street name positions at all banks/brokers are considered. Given that the rates are based on the cost effectiveness of serving large numbers of accounts, logically the rate applied should be based on the number of accounts served by the particular intermediary (or brokerage firm, if it does not use an intermediary). Because Broadridge serves such a large portion of the whole, the impact of allowing the smaller providers to bill at the higher rates should be minimal, both overall and for any given issuer. For this reason the Committee would be content to have the rule interpreted in this fashion. This would bear re-examination if the processing task should come to be spread more widely among a number of intermediaries.

In addition to being tiered to better reflect economies of scale in processing issuers with a larger number of accounts, both the basic processing fee and the intermediary unit fee would be increased slightly to better align fees and work effort, to reflect increased sophistication in proxy distribution processing, and to reflect the impact of inflation since the fees were last adjusted. Especially relevant to the intermediary unit fee, the work of the intermediary has been enhanced over time, responding to the needs of all participants – issuers, banks and brokers, and investors – in addition to responding to changing regulatory requests.[17]

While the rules will continue to differentiate between these two types of per-account processing fees, the Committee recommends that issuers be invoiced in a way that combines these two per-account processing fees for ease of understanding. The chart in Addendum II describes these two fees in the aggregate (with a footnote presenting the components), since the Committee believes that is more meaningful to issuers who are paying the bill. The increases to these processing fees are estimated to add approximately $11-12 million to overall proxy distribution fees, although that should be considered in connection with the estimated $15 million reduction in fees associated with the proposal to charge preference management fees related to managed accounts at half the regular rate, which is discussed below.

Incentive (Preference Management) Fees

The incentive (or preference management) fees generally appear to have been quite worthwhile for the issuers who pay the proxy distribution fees. Broadridge reports that the percent of mailings eliminated has grown steadily since incentive fees were first instituted in 1998, reaching 57% of all distributions in the 2011 proxy season.[18] In contrast, only 8% of mailings were eliminated in 1998, growing to 27% for the 2002 season.[19] Broadridge estimates that overall issuers saved some $871 million in postage and printing costs in the 2011 season.[20]

[17] For example, significant work has already been done on end-to-end vote confirmation. See descriptions in Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation, available at http://www.sec.gov/comments/s7-14-10/s71410-300.pdf. See also description in Broadridge's October 6, 2010 comment letter on the Proxy Plumbing Release, available at http://www.sec.gov/comments/s7-14-10/s71410-62.pdf. Another example was the work required to accommodate the four voting choices necessitated by the Dodd-Frank requirements for say-when-on-pay votes. See SEC Release No. 33-9178, January 25, 2011, at text accompanying note 127, and Broadridge's November 19, 2010 comment letter on the related proposing release, available at http://www.sec.gov/comments/s7-31-10/s73110-55.pdf

[18] Broadridge 2011 Proxy Season Key Statistics & Performance Rating, available at www.broadridge.com/Content.aspx?DocID=1498

[19] Estimates provided by Broadridge to the Committee.

[20] Broadridge Fiscal 2011 Annual Report to Shareholders, p.5, available at www.broadridge-ir.com/fin/annual/br_AR2011.pdf

In addition to considering what the per-account preference management fee should be, the Committee examined two specific issues that have engendered comment regarding how these fees have been applied.

The first is the "evergreen" nature of the fee. As noted in the SEC's Proxy Plumbing Release, questions have been raised as to whether it is appropriate to charge an incentive fee not only in the year when electronic delivery is first elected, but also in each year thereafter. In its Proxy Plumbing Release the SEC posits that "the continuing role of the securities intermediary, or its agent, in eliminating these paper mailings is limited to keeping track of the shareholder's election."[21]

In discussing this issue with brokerage firms and with Broadridge, the Committee was persuaded that there was in fact significant processing work involved in "keeping track of the shareholder's election," especially given that the shareholder is entitled to change that election from time to time. Although few do change their election, data processing has to look at each position relative to each meeting or distribution event to determine how the "switch" should be set. Data management requires ongoing technology support, services and maintenance, and is a significant part of the total cost of eliminating paper proxy materials. Even if there is some additional effort involved in the year an election is actually made (or changed), the Committee did not find a simple, rational way to construct different prices for "change" versus "maintenance" of elections.[22]

The Committee found that a significant part of the work involved was in "maintaining" or "managing" the preferences attached to each account position regarding distribution, both for householding and eliminating paper delivery entirely. Thus the name used for the fee under the current rules – "incentive fee" – was part of the problem, since it implied that the work was finished once an election had been made. This is why the Committee believes that transparency and understanding will be served by identifying this kind of fee as a "preference management" fee.

---

[21] Proxy Plumbing Release at text accompanying note 134.

[22] For example, a choice to eliminate mailings is often made by an investor for a number of different holdings in the account. How to fairly apportion a front-loaded fee among different issuers, who may have different numbers or types of distributions in the year the election is made, was one of the challenges presented. Moreover, one could argue that the value of the incentive as approved in 1997/2002 was the expected value of a stream of incentive payments over the life of the latest election. On this basis, if the fee were to be largely "front-loaded" into the year of the election, the fee in that year would have to be far larger than anyone would find acceptable.

The other issue to which the Committee devoted considerable time is how this fee is applied to positions that are part of managed accounts. At least in recent years this appears to be the most contentious of all the issues raised by those critical of the current fees.[23]

While, as noted above, mailing eliminations have steadily increased since the incentive fees were implemented, eliminations resulting from elections made by investors holding their positions in managed accounts have consistently represented a significant portion of the whole. Figures supplied by Broadridge indicate that managed accounts have accounted for about 60% of eliminations for most years since 2002, falling a bit after 2008 to be some 51% of all eliminations in 2011.[24]

Eliminations in the managed account context occur not because an investor has consented to have distributions come to him or her electronically, but because the investor has elected to delegate the voting of shares (and typically, the receipt of materials) to a broker or investment manager, and the broker or manager quite naturally prefers to manage the process electronically rather than by receiving multiple paper proxy statements and voting instructions. That the investor makes this election is often described as a rational result of the fact that in a managed account the investments are selected by the manager rather than the investor, and the investor looks to the manager not only to know whether or when to buy or sell a stock, but how to vote the shares as well.[25]

Here the fact that the fee has been described as an "incentive" fee has probably impacted the view on whether application of the fee in this context is appropriate. Once the investor determines to open a managed account, the incentive to delegate voting flows naturally from the nature of the account, rather than from any specific effort made by an intermediary or its agent.

However, the maintenance of the preference is as necessary here as it is in any other election, such as consent to e-delivery. SEC rules applicable to managed accounts require that each beneficial owner be treated as the individual owner of the shares attributed to his or her account, and that includes having the ability to elect to vote those shares and receive proxy

---

[23] Proxy Plumbing Release at text accompanying note 135. See also STA/SSA Petition to the SEC re Managed Account Fees, March 12, 2012, www.stai.org/pdfs/2012-03-12-sta-ssa-joint-letter.pdf.

[24] Based on information supplied by Broadridge, the most steadily growing category of eliminations over the years has been consents to electronic delivery,

[25] See, for example, discussion in SEC Release No. 34-34596, August 31, 1994, approving NYSE rule change allowing delivery of proxy material to investment advisers that have been delegated the authority to vote securities in the account.

materials.[26] Accordingly, each beneficial owner's election must be tracked – just as is the case with an investor in a non-managed account.

As a general matter then, the elimination of preference management fees for all positions held in managed accounts appeared unreasonable. However, the Committee did conclude that making some distinctions between managed accounts and non-managed accounts for fee purposes was appropriate.

Literature on managed accounts indicates they are intended to offer professional portfolio management services with more investment, tax management and fee customization than is available in comingled products such as mutual funds. They have existed since at least the 1970s, and have been growing significantly as an investment style since at least the early 1990s.[27] They are a product class that is followed, studied, analyzed broadly and popularized by many different brokerage firms and investment advisors.[28]

Their increasing popularity demonstrates that the managed account is a product that offers significant advantages both to investors, and to the brokerage firms offering this kind of account.

At the same time, it seems clear that issuers also reap some benefit from inclusion in managed account portfolios. Most obviously, of course, the issuer benefits from the added investment in the company's stock. In addition, the fact that almost all managed account investors delegate voting to the investment manager results in those stocks being voted at a rate far higher than is stock that is held in ordinary retail accounts. This simplifies obtaining a quorum for stockholder meetings, reducing proxy solicitation expenses.

Interestingly, then, this is the one source of mailing eliminations that is a benefit to both the issuer and the brokerage firm – in contrast to ordinary consents to e-delivery or householding, which appear to benefit only the issuer.

It is this unique attribute of the managed account that suggested to the Committee that it would be most fair, and most reasonable, for issuers and brokers to share the cost of the admittedly real processing work that is done to track and maintain the voting and distribution elections made by the beneficial owners of the stock positions in the managed account. It is for this reason that the Committee has recommended that preference management fees for

[26] Investment Company Act Rule 3a-4(a)(5)(ii).

[27] See "The History of Separately Managed Accounts," www.mminst.org/archive/multimedia/Timeline.pdf.

[28] See, for example, "Understanding Separately Managed Accounts," Madison Investment Advisors, Inc., www.concordinvestment.com/docs/SMA.pdf.

managed accounts be charged to issuers at a rate that is half that of other preference management fees.

Beyond this, however, there is another phenomenon that has emerged from the trend towards managed accounts that the Committee believed must be addressed – and this is the proliferation of positions containing very small numbers of shares that can be found when a managed account is offered with a relatively low investment minimum.

Most managed accounts are targeted to wealthy investors, with minimum investment requirements of at least $100,000, up to $1 million or more for certain of these accounts. However, as managed accounts became increasingly popular, and data processing became more sophisticated, some firms have found it feasible, and presumably profitable, to offer a managed account product to a class of investor with a more modest amount of money to invest. Obviously, if you spread, say, $25,000 over a large portfolio of investments, some of those positions, especially holdings in the companies with modest weightings in the portfolio, will contain relatively few shares, or even fractional share positions. In recent years firms with offerings of this nature have become more popular, with the result that some issuers have noted significant increases in the incentive fees appearing on their Broadridge bill, attributable to firms with very small aggregate holdings of their shares.

The Committee was informed by the NYSE that this kind of issue had in fact been considered in the mid-1990s when the incentive fees were being formulated. While the managed account product was not as widespread as it is today, one firm, Smith Barney, was marketing a managed account product with a relatively low minimum investment which the firm called a "Wrap Account". The NYSE reported to the Committee that although the rule filings by the NYSE made no specific reference to this, research indicated that the NYSE had informed Broadridge that the proxy distribution fees should not apply to these Smith Barney "Wrap Accounts,", because they contained so many very small, even fractional, share positions. From that point forward, Broadridge processed "Wrap Account" positions without any charge – either for basic processing or incentive fees. However, Broadridge relied on its client firms to specify whether or not an account should be treated as a "Wrap Account" for this purpose, and positions in small minimum investment managed accounts which were not marketed with that appellation were subjected to ordinary fees, including incentive fees. This produced the anomalous results, and issuer concerns, described above.

In the view of the Committee, the question is what is fair and reasonable in this context. The Committee is aware of one issuer that found its total number of investor positions more than doubled when it was included in the portfolios managed by one of these firms offering low-minimum investment accounts. This was despite the fact that these additional positions held in the aggregate only .017% of the issuer's outstanding stock – an amount of stock that was in the

aggregate less than one share for each account at the firm. Nonetheless, because of the incentive fees charged for these tiny stock positions, the issuer's total bill for street name proxy distribution more than doubled.

Clearly in such a situation the benefits of increased stock ownership and increased voting participation were as a practical matter nonexistent for the issuer, while the added expense on a relative basis was extraordinary.

Accordingly, the Committee considered it most appropriate to preclude the charging of proxy processing fees for managed account positions with very small numbers of shares.

To determine where to set the limit, the Committee first looked at information supplied by Broadridge showing that among managed account positions between 1 and 500 shares (89% of all managed account positions), the average position size was 91 shares, and the median position size was approximately 50 shares.

While the benefit to an issuer is obviously on a continuum – more for larger holders, less for smaller holders - the Committee looked for an appropriate break point. Because one of its goals is to avoid severe impacts on proxy distribution in the U.S., the Committee looked at the estimated financial impact of eliminating proxy fees for managed account positions below a certain number of shares. Based on information supplied by Broadridge, the overall impact varied from approximately $2.6 million at the fractional (less than one) share level, up to approximately $16 million if the proscription applied to positions of 25 shares or less.

After due consideration, the Committee determined that managed account positions of five shares or less was an appropriate level at which to draw the line. The overall impact on proxy revenue was modest (approximately $4.2 million), and the benefit to issuers of holdings of five or fewer shares in a managed account is limited.[29] Put another way, the Committee is comfortable with the position that, given the relative benefit/burden on issuers and brokerage firms, it is not reasonable to make issuers reimburse the cost of proxy distribution to managed account positions of five shares or less.[30]

---

[29] Five shares or less will also represent a very modest monetary investment in almost any public company, with the exception of a stock with an extraordinarily high price, such as Berkshire Hathaway A.

[30] Estimates supplied by Broadridge also demonstrated that a model that included this proscription would reduce by some 45% the fees paid by the issuer whose fees had doubled when it entered the portfolios of the low minimum investment managed account provider described above. This suggests that this level is appropriate to address the unacceptable impact produced by low minimum investment managed accounts.

As a natural corollary to the proscription against fees relative to very small positions in managed accounts, no fee distinction will be based on whether or not a managed account is referred to as a “wrap account.”

Having addressed the “evergreen” and managed account issues, the Committee focused on the amount of the fee, and whether it should be tiered among issuers based on their size.

The current incentive fee differentiates between Large Issuers and Small Issuers. As described above in the discussion of the basic per-account fees, the Committee does not favor this “cliff” differentiation. In the case of the preference management fee, the Committee determined not to tier the fee according to the size of the issuer. This conclusion was based on two other core principles that the Committee used to guide its work. One is a desire to improve transparency and understanding by avoiding unnecessary complexity. Having tiered the basic processing/intermediary fees, it appeared overly complex to have additional tiers for the preference management fee. Another principle was the desire to align the fees with the work done. The Committee was of the view that the processing involved in managing preferences was less susceptible to economies of scale by size of issuer because it is, of necessity, an account by account task, requiring the tracking of the different (and sometimes changing) preferences of street name shareholders across all their company holdings.

The new preference management fee recommended by the Committee is 32 cents per position affected (16 cents for positions in managed accounts). The 32 cents rate would be a reduction for companies that have been characterized under current rules as Small Issuers, and an increase for those that have been categorized as Large Issuers, but would result in an overall savings to issuers taken as a whole.

As discussed earlier, inflation has effectively eroded the existing proxy fees over the last decade and more since they were implemented or last changed. However, the Committee observed that the impact of inflation on Broadridge’s overall proxy distribution revenue has been mitigated by the increased revenue it has obtained from incentive fees. Issuers have saved money on a net basis since the elimination of mailings has reduced postage and printing costs by far more than it has increased incentive fees, but this increased revenue stream to Broadridge has countered to some extent the impact of inflation on the basic processing fee. This is why the Committee has seen fit to offset its recommended reduction in managed account preference management fees by increases to the basic processing and intermediary fees.

Notice and Access Fees

As described above, based on the recommendations of its Proxy Working Group in 2007, the NYSE initially elected to leave fees for notice and access unregulated.[31]

The PFAC found that from an overall financial point of view, the notice and access system has been a great success. (Concerns have been expressed that there may be a decrease in retail voting participation when issuers use Notice & Access,[32] but that is unrelated to the fees involved.) Broadridge estimates that in the most recent proxy season issuers in the aggregate saved $234 million, net of fees, through the use of Notice & Access, an amount that is actually more than the total fees paid annually by all issuers for annual meeting street name proxy processing. Issuers of all sizes have adopted Notice & Access, and the re-use of Notice & Access by adopting issuers is close to 100%.

The first decision for the Committee was whether Notice & Access fees should remain unregulated as they are today. It was noted that an unregulated system is more flexible and can respond quickly to changes in technology and investor behavior, whereas change and new investment could be delayed when fees are regulated and more difficult to change. However, issuers were concerned about leaving Notice & Access vulnerable to fee increases without regulatory oversight, especially in a context where other fees were changing, and in some cases being reduced. Accordingly the Committee concluded that Notice & Access fees should now be regulated. More difficult was the question of what those regulated fees should be.

Among issuers represented on the Committee there was general satisfaction with the overall cost of Notice & Access, but at the same time there was concern with the way Broadridge has structured its Notice & Access fees. (Broadridge's current fees are detailed in Addendum I.) These fees for Notice & Access are charged for *all* account positions holding an issuer's shares, even though mailings to some of those positions are already suppressed by e-delivery, householding, etc. Indeed, when an issuer stratifies its approach, electing to utilize Notice & Access only for account positions below a certain size, for example, Broadridge still applies its Notice & Access fees to all accounts with a position in that issuer's stock. Broadridge explains that from a processing point of view they have to identify each account position as subject to

---

[31] The PWG's Report states: "The majority of the Proxy Working Group came to this conclusion after considering several factors. First, the Working Group decided that in light of the novelty of the [e-proxy] system, as well as the fact that the system was still optional and had not been implemented by many issuers, that market forces should be allowed to determine the appropriate pricing structure for this system. The Working Group was also aware of the role of Broadridge in this system, but concluded that at this stage it was reasonable to allow the participants in the current system, including Broadridge, the brokers and issuers, to negotiate a fee structure for mailings and other matters associated with the new e-proxy rules." August 27, 2007 Addendum to the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange dated June 5, 2006, at 8.

[32] See Proxy Plumbing Release at text accompanying notes 196-197.

Notice & Access or not, justifying the application of a fee to all positions once an issuer determines to use Notice & Access. Nonetheless, some issuers have a concern that under this approach they are being charged for something they are not receiving.

Given the general satisfaction with the overall level of Notice & Access fees, Broadridge was asked to suggest an alternative approach that would net Broadridge a similar amount of fee revenue from Notice & Access but avoid the application of a fee to all accounts. In response, Broadridge suggested that it could apply a preference management fee to each account that was in fact subjected to Notice & Access, but no fee to those accounts that were not. In this way, Notice & Access would be treated as simply another mailing elimination factor, like e-delivery or householding.

This was attractive to the Committee from a design point of view, and at the Committee's request Broadridge prepared estimates of how such a Notice & Access fee would impact issuers. Two models were prepared, one utilizing a flat preference management fee, and the other using a tiered model, but in each case applied only to those positions receiving a notice.

The impact analysis showed that either of those options had a disproportionate impact on certain issuers (doubling notice and access fees in some cases) and potentially serving as a disincentive to issuers using notice and access or to applying notice and access to all holders rather than stratifying.

After discussion, which included considerable focus on issuers that stratify their Notice and Access mailings (i.e., mailing notices only to some shareholder accounts) but that under the current regime still pay Notice and Access fees on their entire beneficial shareholder base, the majority of Committee members decided that, even if it is not ideal - and although there continued to be limited support for only applying Notice and Access fees to those accounts receiving notices - simply bringing notice and access under the regulatory tent with the current rate schedule would be the better approach, and would be consistent with the principle of avoiding large and unanticipated consequences from a fee change.[33]

The Committee noted that if future developments in proxy regulation or use of notice and access suggested that further change in the fees was appropriate, the issue of notice and access fees could be reconsidered by the industry.

Other Fees

Reminder mailings: The reminder mailing fee for annual equity meetings is recommended to be reduced by half. Issuers have a choice whether or not to use reminder mailings, and their

[33] The Committee also understood that fewer users of Notice & Access are now electing to stratify.

choice might in some cases be influenced by cost considerations. The reduced fee may induce more issuers to use reminder mailings, which could increase investor participation, particularly among retail investors.

Special meetings: The intermediary fee for special equity meetings would be increased by 5 cents per position. This acknowledges the additional work required of the intermediary for these meetings.

Contested meetings: In the 1990s a higher processing fee was created for contested meetings, reflecting the additional work involved in those events. It is now proposed that for contests the intermediary fee be increased as well, to a flat 25 cents per position, with a minimum fee of $5,000 per soliciting entity.

NOBO Fees: There is concern that aspects of current proxy regulation impede issuers from effectively communicating with their street name shareholders. This topic is treated at length in the Proxy Plumbing Release, and the issues involved are generally beyond the purview of the NYSE rules and the PFAC.[34]

One concern in this area, however, is that issuers find it expensive to obtain a NOBO list for purposes of communicating with street name shareholders. The fees provided in or established under authority of the NYSE proxy rules for NOBO lists have been in effect for decades, and are charged per name in a NOBO list. While those rules are silent on this issue, it has been customary for brokers, through their intermediary, to require that issuers desiring a NOBO list take (and pay for) a list of *all* holders who are NOBOs, even in circumstances where an issuer might want to be cost effective by limiting its communication to NOBOs having more than a certain number of shares, or to those that have not yet voted on a solicitation.

In an attempt to provide some modest relief in this area, and perhaps encourage issuer communication with shareholders, the Committee is recommending that the NYSE specify in its rules that brokers shall provide stratified lists of NOBOs when requested by an issuer in connection with a communication to record date shareholders involving an annual or special shareholders' meeting. This should be limited to requests where the stratification is based on the number of shares held or whether an investor has or has not already voted a proxy, rather than some other characteristic or affiliation (such as geographic location, brokerage firm holding the account, etc.)

[34] Proxy Plumbing Release, Part IV – Communications and Shareholder Participation, at text accompanying notes 141 – 167.

This suggestion is limited to shareholder meeting record date lists because such lists are more likely to be used by issuers for communications with shareholders about voting at the meeting, a type of shareholder communication most deserving of facilitation.

The financial impact of this change is difficult to predict, since it depends on how many lists are in fact stratified. Broadridge estimated that if all the NOBO lists requested last year excluded NOBOs with fewer than 1000 shares, revenues from NOBO fees would have been reduced by approximately $6 million.

The Committee wishes to avoid a significant impact on brokerage industry proxy fee revenue from this kind of change. The Committee believes that it may well be appropriate to implement a modest additional fee to be applied in situations where an issuer requests a stratified list. The Committee has not had an opportunity to analyze what kind[35] and amount of fee would be appropriate, and it recommends that the NYSE work with Broadridge and brokerage industry representatives to determine both the likely financial impact of NOBO list stratification, and what kind and amount of stratification fee might be appropriate to include in the fee change proposal to be filed with the SEC.

Investor Mailbox

In its Proxy Plumbing Release the SEC discussed whether retail investors might be encouraged to vote if they received notices of upcoming corporate votes, and had the ability to access proxy materials and voting forms, through their own broker's web site – something the Release referred to as "enhanced brokers' internet platforms."[36] Broadridge discussed with Committee representatives a service of this type that they call "Investor Mailbox". Broadridge maintained that while some relatively few brokerage firms have already implemented such "mailboxes", it appeared likely that some financial incentive would be necessary to achieve widespread adoption, given the competing demands at all firms for development resources.

The Committee was supportive in concept of a program that would enhance retail shareholder participation in proxy voting while being structured to impose a fee only on issuers that actually benefit from the program. Broadridge was encouraged to suggest an appropriate fee structure that the Committee could consider.

Broadridge recently brought forward a proposal that was developed in consultation with Broadridge's Independent Steering Committee, which established for the purpose a Subcommittee consisting of issuers, brokers and outside experts. It is a "success fee" approach,

[35] The Committee understands that the most likely alternatives would be an increase in the "per name" amount charged when a list is stratified, or a separate flat "stratification surcharge" applied when a stratified list is requested.

[36] Proxy Plumbing Release, Part IV – Communications and Shareholder Participation, Section B(2)(b).

payable only out of actual savings realized by an issuer. Specifically, the issuer would pay a broker having street name accounts in that issuer a one-time 99 cent fee for each new full package recipient among that broker's street name accounts that converts to e-delivery following the broker's installation of an investor mailbox.[37] The arrangement would be limited to a three-year pilot period (although it could presumably be extended if participants were in favor of doing so). The idea is that the savings to an issuer from the elimination of even one full-package mailing would be significantly greater than the incentive fee paid.

The Committee is supportive of the idea and agrees that the structure of this fee is consistent with the Committee's preferred design. Unfortunately, the detailed proposal was brought forward after the Committee had largely concluded its deliberations, and the Committee has not had an opportunity to carefully consider whether 99 cents is the appropriate level at which to set the fee. The Committee noted, for example, that ideally the fee should be sufficient to encourage other providers to develop services of this nature. Accordingly, the Committee recommends that the NYSE discuss the proposal with additional industry representatives, and include among its fee changes proposed to the SEC an Investor Mailbox fee in an amount that it determines most appropriate. Members of the Committee will be pleased to discuss the proposal further with the Exchange if the Exchange would find that helpful.

ONGOING RESEARCH AND RECENT DEVELOPMENTS

Cost Recovery Payments

The Committee was mindful of the questions that have been raised about the "cost recovery payments" that are made by Broadridge to certain of its broker-dealer customers. The Committee was persuaded that the existence of these payments is not any indicator of unfairness or impropriety. Firms have to maintain internal data systems that are involved in the proxy distribution process, but firms differ in the make-up and size of their beneficial owner populations, and consequently in the size of the proxy distribution effort they are required to undertake beyond that which is outsourced to Broadridge. By the same token, differences in economies of scale mean that Broadridge's cost to provide service differs from firm to firm. Again, the fact that the fees are fixed at "one size" that has to "fit all," means that even if on an overall basis the fee revenue is appropriate given overall distribution expenses, there will be "winners and losers" along the spectrum. And since Broadridge and the various firms negotiate at arm's length over the price to be paid by the firm to Broadridge, it is rational that the set

[37] The fee should be available for newly opened accounts that elect e-delivery, but should not apply to e-delivery consents captured by issuers through, for example, an open-enrollment program, nor should it apply to positions held in a managed account or to investment managers using electronic voting platforms such as Proxy Edge.

prices may leave some room for the largest firms to negotiate a better rate from Broadridge, and therefore find themselves in a situation where they are able to obtain a payment from Broadridge out of the proxy fees collected by Broadridge from issuers at the specified rate. At the other end of the spectrum, of course, the amount charged to the brokerage firm by Broadridge would exceed the proxy fees collected from the issuers.

The Committee understands that the NYSE is attempting to secure from a cross section of brokerage firms more information about the costs incurred by the firms relative to proxy distribution beyond the cost of outsourcing to Broadridge, as further diligence to demonstrate that the Committee's general conclusions regarding the propriety of these arrangements is warranted. The Committee understands that the NYSE expects to discuss this situation in greater detail in the rule filing that it will submit to the SEC to effect changes in these proxy fees.

Mutual Funds

Proxy fees tend to be discussed with respect to business corporations – those that have annual meetings and thus deal with proxy solicitations at least once each year. The PFAC was formed with this kind of issuer in mind, and that is reflected in the backgrounds of the members serving on the Committee.

However, the NYSE proxy fees are used in the context of distributions to street name holders of mutual fund shares as well. But the fee picture for mutual funds is somewhat different. Mutual funds typically do not have to elect directors every year, and for this reason tend not to have shareholder meetings every year. While mutual funds can be found in managed accounts, their inclusion is not necessarily as widespread as with operating companies. While some mutual funds may utilize notice and access for the meetings they do have, it is less common among mutual funds than operating companies. But every mutual fund is required to distribute each year both an annual and a semi-annual report to its shareholders, and so mutual funds pay the interim report fee (15 cents basic processing; 10 cents incentive fee) much more frequently than operating companies do.

Representatives of the Committee have attempted to informally survey selected mutual funds for their views on the current proxy fees, and these informal conversations suggest that there are indeed fee issues that mutual funds would like to discuss. The PFAC's recommended changes should have a relatively modest impact on mutual funds, and the PFAC is not recommending changes to the interim report fees, which are the ones most applicable to mutual funds.

The Committee recommends that a group of appropriate participants – presumably representatives of funds with significant street-name ownership and broker dealers, including

broker dealers that have marketing agreements with such funds – be assembled to review the fees provided in the NYSE rules as they impact mutual funds, to determine whether changes are appropriate, indeed whether distribution of mutual fund reports should be considered covered by the NYSE fees at all.

FUTURE REVIEW OF PROXY FEES

While the NYSE rules do not prescribe how frequently the fees should be reviewed, the Committee has come to believe that a change in the historical approach would be wise. It appears that there is a relatively constant evolution in both regulation and process in the proxy arena, typically advancing the effectiveness and efficiency of the system, often to the benefit of all parties – issuers, brokers and investors. Examples in recent years include the above-discussed notice and access regime, advances in electronic processing of votes, and changes to processing necessary to accommodate say-on-pay and say-when-on-pay votes. Developments under current consideration include not only the "investor mailbox" arrangement discussed above, but also end-to-end vote confirmation.[38] These advances typically involve both implementation costs and ongoing operational costs, but in the past they have in many cases been adopted without specific consideration being given to who will ultimately pay for them. The Committee believes it would be wise for the NYSE to suggest an approach that will involve a participant group similar to this Committee in an essentially ongoing vetting of process developments and associated costs. For example, a group of a workable size – approximately twelve participants – involving issuers of various sizes, together with representative brokerage firms and interested investors, could be kept appraised of and consulted on issues likely to involve significant system or processing changes. This group could also undertake a more comprehensive review periodically, perhaps every three years, thereby ensuring that fees are evaluated in step with new regulations and/or process innovations in the proxy area.

[38] See Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation, available at http://www.sec.gov/comments/s7-14-10/s71410-300.pdf

ADDENDUM I – Current NYSE Proxy Distribution Fees[39]

Description of Fee	Amount	Original rationale	Comments
Proxy Processing Fees			
Nominee Coordination Fee	$20 per nominee	Revenue specified for intermediary. While Broadridge searches all nominees for each meeting, it only charges a nominee fee for a nominee that reports one or more street name positions.	Added in 1997. Broadridge does not share with brokers as part of “cost recovery”. The average issuer has approximately 100 nominees.
Processing Unit Fee	40 cents per position 15 cents/pos. interim reports	Basic processing fee	Reduced in 2002 from 50 cents. Reduced in 1997 from 20 cents
Intermediary Unit Fee	10 cents per position for issuers <200K positions 5 cents per position for issuers >200K positions	Additional revenue for intermediary	Added in 2002, to make up for revenue lost from reduction of basic processing fee to 40 cents. Broadridge does not share with brokers as part of “cost recovery”.
Incentive Fee	50 cents per position suppressed for issuers with fewer than 200K positions; 25 cents for issuers with 200K positions or more. 10 cents/pos. interim reports	To encourage elimination of paper and postage	Added in 1997; rate for large issuers reduced in 2002. Application to managed accounts not specified in rule. 200K positions was chosen as the break point because it represented the mid-point among all issuers in 2001. Mid-point today would be [290]K.

[39] Positions that are in “WRAP” accounts are not counted for fee purposes.

Reminder Mailings			
Processing Unit Fee	40 cents per position	Traditional processing fee	Current rate set in 1997.
Incentive Unit Fee	10 cents per position suppressed	To encourage elimination of paper and postage	Rate utilized is the rate for interim reports
Contested Meeting Fees			
Processing fee	$1.00 per position	One fee applied in lieu of proxy processing fees above	Added in 1997. Broadridge reports that the number of contested meetings is declining, with 89 in fiscal 2009, 60 in fiscal 2010, and [30] in fiscal 2011.
Vote Processing Charges			
Reimbursement for actual communication expenses in receiving vote returns by telephone or electronically	9.8 cents for internet returns 18 cents for telephone returns 6 cents for ProxyEdge returns	Part of the rule provision that also allows for reimbursement for actual cost of postage and envelopes	Added in 1997. Rule contemplates this expense reimbursement without specifying rates; current rates set by Broadridge.
NOBO Fees			
Fee to each nominee	6.5 cents per position	Basic compensation to nominees	
Fee to intermediary	10 cents per position for first 10K positions; 5 cents per position for 10K+ to 100K positions; 4 cents per position above 100K positions	Compensation to intermediaries	Rule contemplates this expense reimbursement without specifying rates; current rates set by Broadridge.

Notice and Access (“unregulated” – not part of NYSE rule)

The following is from a price list provided by Broadridge:

Notice & Access - Beneficial Pricing

- All current NYSE fees remain in place except where noted below

- N&A fee will be an **incremental** fee for **all** positions in an issuer’s job when the issuer chooses N&A

- These incremental fees are:
  - Positions 1 – 6,000: $1,500 flat fee
  - Positions 6,001 – 10,000: $.25 per account
  - Positions 10,001 – 100,000: $.20 per account
  - Positions 100,001 – 200,000: $.15 per account
  - Positions 200,001 – 500,000: $.10 per account
  - Positions ≥ 500,001: $.05 per account

- Other:
  - 2nd mailing fees are the same as reminder mailing fees - $.40/position
  - Paper and postage elimination fees are reduced to $.40 for issuers with less than 200,000 shareholder positions and $.25 for issuers with more than 200,000 positions.
  - Standard stratification are included: full packages and Notices for positions of 20,000 shares or more
  - Non-standard stratification fees of $.05/position – minimum of $500, maximum of $5,000 – remain in place: non-standard stratification includes any hybrid mailing combination other than prior consents receiving full packages, as well as any break point for mail class other than the 20,000 share point.
  - There are no incremental fees for any fulfillment transactions.
  - Fulfillment pass through charges incurred by Broadridge will be billed at out of pocket costs, e.g., postage.

- Issuer is responsible for all print, forms, postage, and vote return processing costs

- These fees do not include document conversion, web hosting or inventory management

ADDENDUM II

Recommended Changes to NYSE Proxy Distribution Fees[40]

Description of Fee	**Current**	**Proposed**	**Comments**
Proxy Processing Fees			
Nominee Coordination Fee	$20 per nominee. (Broadridge charges only for nominees that reports one or more street name positions in the issuer conducting the meeting.)	$22/nominee with ≥ 1 position, plus 50¢/nominee with no positions, with the latter subject to a maximum $100 charge for Tier I issuers (<10K positions)	Represents realignment of fee to reflect work involved. The average issuer has approximately 100 nominees.
Processing Unit Fee (including Intermediary Unit Fee)[41]	50 cents per position for issuers <200K positions 45 cents per position for issuers >200K positions	Tier I: ≤10K positions - 64¢ Tier II: >10K, ≤100K - 63¢ Tier III: >100K, ≤300K - 56¢ Tier IV: >300K, ≤500K - 49¢ Tier V: >500K - 42¢	Represents realignment of fees to reflect work involved.

[40] Note that all these fees that are charged based on the number of positions now *will* be applied to WRAP accounts in the same fashion as any other managed account, but they *will not* be charged for any managed account position of five shares or less.

[41] These fees are presented in combined form because the Committee finds that they both represent basic processing cost and are best understood as such. Stated separately they will be as follows:

	Current	Proposed
Processing Fee	40¢/position	Tier I: 50¢ Tier II: 50¢ Tier III: 45¢ Tier IV: 40¢ Tier V: 35¢
Intermediary Unit Fee	10¢/position < 200K positions 5¢/position ≥ 200K positions	Tier I: 14¢ Tier II: 13¢ Tier III: 11¢ Tier IV: 9¢ Tier V: 7¢

Incentive Fee (to be renamed "Preference Management Fee")	50 cents per position suppressed for issuers with fewer than 200K positions; 25 cents for issuers with 200K positions or more 10 cents/pos. interim reports	32¢/position suppressed for e-delivery, householding and ProxyEdge 16¢/managed account position suppressed. No fee for any managed account position of 5 shares or less. unchanged	Reduced fee for managed account suppressions reflects shared value between issuers and brokers. No fees for small positions reflects relative lack of value to issuers.
Fee for Notice and Access	Unregulated – fee schedule from Broadridge charges for all accounts at an issuer, regardless of whether they are subjected to notice and access	Fees will be regulated, using current Broadridge fee schedule. (See Addendum I)	Fees will be regulated to control future fee changes. Attempts to change to a preference management fee approach were considered uneconomic.
Reminder Mailings			
Processing Unit Fee	40¢/ position	20¢/position for issuers holding annual stockholders' meetings; unchanged for others	Reduction in rate will hopefully interest more issuers in utilizing reminders, to increase voting rates among retail holders.
Incentive Unit Fee (to be renamed Preference Management Fee)	10¢/ position suppressed	Unchanged.	

Special Meetings			
Processing Unit Fee	Same as annual meeting	Same as new annual meeting Processing Unit Fee, plus additional 5¢/position in each Tier added to Intermediary Unit Fee	Reflects added work involved in special meetings.
Contested Meetings			
Processing fee	$1.00/ position	Unchanged.	
Intermediary Unit Fee	No fee	25¢/position, with minimum fee of $5K per soliciting entity.[42]	Reflects added work involved in contests.
NOBO Fees			
Fee to each nominee	6.5 cents per position (in practice issuers have been required to obtain lists of all their NOBOs)	Permit issuers to request lists stratified by number of shares per account or by whether investor has already voted. Limited to requests related to meeting record dates. Stratification fee to be considered.	Intended to increase issuer flexibility and allow more cost-efficient shareholder communications.
Fee to intermediary	10 cents per position for first 10K positions; 5 cents per position for 10K+ to 100K positions; 4 cents per position above 100K positions	Permit issuers to request lists stratified by number of shares per account, or by whether investor has already voted. Limited to requests related to meeting record dates. Stratification fee to be considered.	

[42] Where there are separate solicitations by management and an opponent, the opponent is separately billed for the costs of their solicitation.

Investor Mailbox			
Fee for an enhanced brokers' internet platform	No fee	One-time "success fee" paid to a broker for each full-package recipient that converts to e-delivery following broker's implementation of an "investor mailbox". Limited to a three-year pilot period. Amount of fee to be determined.	"Enhanced brokers' internet platform" is intended to enhance retail participation in proxy voting.

ADDENDUM III

Alignment of Fees and Work Effort

	PROCESS STEP:	Event Identification	Data Aggregation	Preference Management	Material Distribution	Client Service	Vote Processing	TOTALS**
	Work Effort Weighting* (Midpoint)	3 – 4% (3.5%)	24 – 29% (26.5%)	20 – 25% (22.5%)	10 – 12% (11%)	8 – 10% (9%)	25 – 30% (27.5%)	100%
FEE ITEM								
Processing Fee		2.5%	19.4%	X	7.9%	6.8%	20.1%	56.7%
Intermediary Unit Fee		.7%	4.8%	X	2.0%	1.7%	5.0%	14.2%
Nominee Fee		.6%	4.6%	X	X	1.6%	4.8%	11.6%
Preference Mgmt Fee		X	X	17.5%	X	X	X	17.5%
TOTALS***		3.8%	28.83%	17.5%	9.9%	10.1%	29.9%	100%

* Based on estimated work effort
** Based on Proposed Fee Schedule
*** Adjusted Work Effort / Proposed Fee alignment – Compare this row to Mid-point in the 2nd row above
X = Not applicable
These are generalized estimates which vary considerably by job.

11 Wall Street, New York, NY 10005
+1 212 656 3000

nyx.com

©2012 NYSE Euronext, Inc. All Rights Reserved.