



Marcia E. Asquith
Executive Vice President,
Board & External Relations

April 14, 2021

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Change Amending Rules of New York Stock Exchange, LLC, Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners, File No. SR-NYSE-2020-96

Dear Ms. Countryman:

This letter is submitted on behalf of the Financial Industry Regulatory Authority, Inc. (“FINRA”)¹ with respect to the Commission’s order to institute proceedings under Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (“the Act”)² to determine whether to approve or disapprove a proposed rule change amending the rules of New York Stock Exchange, LLC (“NYSE”) establishing maximum fee rates to be charged by NYSE member organizations for forwarding proxy and other materials to beneficial owners (“the Proposal”).³ FINRA previously submitted a comment letter on January 11,

¹ FINRA is a not-for-profit self-regulatory organization authorized by federal law to help protect investors and ensure the fair and honest operation of securities markets. Under the oversight of the Securities and Exchange Commission (“Commission” or “SEC”), FINRA regulates the activities of U.S. broker-dealers and performs market regulation pursuant to its own statutory responsibility and under contract for certain exchanges.

² 15 U.S.C. 78s(b)(2)(B).

³ See Securities Exchange Act Release No. 91359 (March 18, 2021), 86 FR 15734 (March 24, 2021) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-NYSE-2020-96) (“Proceedings Order”); see also Securities Exchange Act Release No. 90677 (December 15, 2020), 85 FR 83119 (December 21, 2020) (Notice of Filing of File No. SR-NYSE-2020-96).

2021, opposing approval of the Proposal.⁴ As discussed in its Prior Comments, FINRA believes that it is premature for the Commission to approve a proposal to rescind the NYSE processing fee schedule without considering its broader implications, and without determining the best means to regulate these activities, which in our view would be standards – and, if necessary, fee schedules – established directly by the Commission.

The Commission received 12 comments on the Proposal. The Investment Company Institute (“ICI”) and seven mutual fund affiliates supported the SEC approving the Proposal, but urged the SEC to reform the current processing fee system for distributing proxies and other disclosure materials of registered investment companies.⁵ The ICI recommended that the SEC take an integral role in reforming the system “to independently arbitrate the differences between funds’ and intermediaries’ viewpoints on how to reform the current processing fee system.”⁶

Four other commenters, including FINRA, opposed the Proposal. Several commenters noted that, unlike the NYSE, FINRA does not have a regulatory relationship with public companies or other issuers of securities, given that its membership consists solely of registered broker-dealers, and these commenters recommended that the current system be replaced with a market-driven solution.⁷

⁴ See Letter from Marcia Asquith, Executive Vice President, Board & External Relations, FINRA, to J. Matthew DeLesDernier, Assistant Secretary, SEC (January 11, 2021) (“Prior Comments”).

⁵ See Letter from Dorothy Donohue, ICI, to Vanessa Countryman, Secretary, SEC (January 8, 2021) (“ICI Letter”); Letter from Timothy McHale and Anthony Seiffert, Capital Group, to Vanessa Countryman, Secretary, SEC (January 11, 2021); Letter from Catherine Newell, Dimensional Fund Advisors LP, to Vanessa Countryman, Secretary, SEC (January 11, 2021); Letter from Peter Germain, Federated Hermes, Inc., to Vanessa Countryman, Secretary, SEC (January 11, 2021); Letter from Basil Fox, Franklin Templeton Investor Services, LLC, to Vanessa Countryman, Secretary, SEC (January 11, 2021); Letter from Heidi Hardin, MFS Investment Management, to Vanessa Countryman, Secretary, SEC (January 11, 2021); Letter from Thomas Faust, Eaton Vance Corp., to Vanessa Countryman, Secretary, SEC (January 14, 2021); and Letter from Noah Hamman, AdvisorShares Investments, LLC, to Vanessa Countryman, Secretary, SEC (January 14, 2021).

⁶ See ICI Letter.

⁷ See Letter from Paul Conn, Computershare, to Vanessa Countryman, Secretary, SEC (January 11, 2021); Letter from Niels Holch, Shareholder Communications Coalition, to Vanessa Countryman, Secretary, SEC (January 20, 2021); and Letter from Todd May, Securities Transfer Association, to Vanessa Countryman, Secretary, SEC (March 1, 2021).

In the Proceedings Order, the Commission solicited additional analysis and input concerning the Proposal's consistency with the Act. In particular, Section 6(b)(5) of the Act⁸ requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.⁹

The Commission noted that the NYSE does not explain why, in the absence of a relationship with issuers, FINRA is in a better position than the NYSE to assume the leadership role with respect to proxy solicitation fees. The Commission also stated that the NYSE has not explained the significance of the fact that only a subset of impacted broker-dealers are NYSE members given that the NYSE is well positioned to consider the views of those members, or why the fact that these firms are also FINRA members puts FINRA in a materially better position to assume the leadership role in this area. The Commission raised similar points regarding the NYSE's failure to explain the significance that a subset of issuers list on the NYSE.

As it discussed in its Prior Comments, FINRA is concerned that moving forward with the Proposal now, without considering its broader implications, will be needlessly disruptive for issuers, broker-dealers, and many other securities market participants. In addition, FINRA agrees with the Commission's observations in the Proceedings Order that the NYSE has not explained why repealing its proxy fee schedule would help resolve the current issues between broker-dealers and issuers concerning the forwarding of proxies and other shareholder materials.

Nor has the NYSE provided any basis why FINRA would be in a better position to take the lead on these matters, particularly since, unlike the NYSE, it does not have a regulatory relationship with issuers. We can firmly attest that we are not in such a position, regardless of suggestions otherwise. In sum, the Proposal does not meet the requirements of Section 6(b)(5) of the Act, particularly since it does not promote just and equitable principles of trade, does not protect investors and the public interest, and has the potential to permit unfair discrimination between customers, issuers, brokers or dealers.

We also agree with other commenters on the Proposal that the Commission is in the best position to determine what standards should govern broker-dealer fees for forwarding and processing proxy and other materials, and whether those fees should be subject to a maximum fee schedule similar to the fee provisions in NYSE Rule 451. The

⁸ 15 U.S.C. 78f(b)(5).

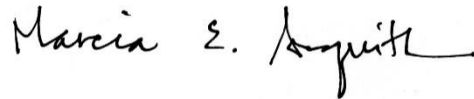
⁹ See id.; see also Proceedings Order, 86 FR 15736.

SEC's Rule 14b-1 under the Act¹⁰ sets the stage for this determination by requiring forwarding of issuer materials, and sets the base requirement of reimbursement of "reasonable expenses."

Because of these concerns, FINRA urges the Commission to disapprove the Proposal until these larger issues regarding the appropriate structure to regulate fees for forwarding and processing proxy and other materials have been properly presented, discussed, and considered.

Should you have any questions or wish further to discuss FINRA's views, please contact Robert Colby, Executive Vice President & Chief Legal Officer, FINRA, at (202) 728-8484 (Robert.Colby@finra.org).

Sincerely,

A handwritten signature in black ink that reads "Marcia E. Asquith". The signature is written in a cursive style with a long horizontal stroke at the end.

Marcia Asquith
Executive Vice President, Board & External Relations
FINRA

¹⁰ See 17 CFR 240.14b-1.