

Proxy Rate Reimbursement

FINRA Amends Rule 2251 Regarding Reimbursement Rates for Processing and Forwarding Proxy and Other Issuer-Related Materials

Effective Date: Immediate

Summary

FINRA has amended, with immediate effectiveness, the provisions of FINRA Rule 2251 regarding rates of reimbursement for expenses incurred in processing and forwarding proxy and other issuer-related materials.¹ As specified in more detail below, the amendments apply the notice and access fees set forth under the rule to the distribution of investment company shareholder reports and further prohibit fees on accounts containing only shares that were transferred to the account holder by the member without charge. These amendments conform Rule 2251 to provisions in the New York Stock Exchange (NYSE) rules approved by the Securities and Exchange Commission (SEC).²

The text of the rule change is available as [Attachment A](#).

Questions regarding this *Notice* may be directed to:

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Background & Discussion

FINRA Rule 2251 requires FINRA member firms to transmit proxy materials and other communications to beneficial owners of securities and limits the circumstances in which FINRA member firms may vote proxies without instructions from those beneficial owners.³ The rule also sets forth the rate reimbursement provisions pursuant to which firms are entitled to receive fees in connection with the rule's forwarding obligations.

January 19, 2022

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Proxy Rate Reimbursement

Referenced Rules & Notices

- ▶ FINRA Rule 2251
- ▶ NYSE Rule 451
- ▶ NYSE Rule 465
- ▶ SEA Rule 14b-1
- ▶ SEA Rule 14b-2

The SEC approved two amendments to the NYSE's rate reimbursement provisions.⁴ Consistent with the NYSE's action, FINRA filed, for immediate effectiveness, a rule change to conform FINRA Rule 2251 with the amendments the NYSE adopted.⁵ The new provisions under Rule 2251 are virtually identical to the NYSE's amendments. The rule change is summarized below.

A. Notice and Access Fees

In 2018, the SEC adopted⁶ Investment Company Act (ICA) Rule 30e-3, which permits specified registered investment companies to satisfy their shareholder report delivery obligations by making the reports available electronically on a website using a "notice and access" process, subject to conditions as set forth in the rule. In connection with the SEC's rulemaking, the SEC approved⁷ amendments under NYSE Rule 451 to provide that the notice and access fees set forth under the rule with regard to proxy distribution apply to issuers that utilize a notice and access process to distribute investment company shareholder reports pursuant to the SEC's rule. The NYSE noted that, absent these amendments to NYSE Rule 451, the notice and access fees under the NYSE rule would not apply to the distribution of investment company shareholder reports.⁸ The amendments provide that NYSE member organizations may not charge the notice and access fee for any account with respect to which an investment company pays a "preference management fee" in connection with a distribution of investment company shareholder reports.⁹ In addition, to address investment companies that issue multiple classes of shares, the NYSE amendments also provide that all accounts holding shares of any class of stock of the investment company eligible to receive the same report distribution will be aggregated in determining the appropriate pricing tier as specified under the notice and access fee provisions of the rule.¹⁰

FINRA Rule 2251.01(a)(6) sets forth the notice and access fees that are designed to correspond with NYSE Rule 451.90(5). FINRA has therefore amended FINRA Rule 2251.01(a)(6) to conform the rule with the NYSE's notice and access provisions. As revised, FINRA Rule 2251.01(a)(6) provides: "The Notice and Access fees set forth herein will also be charged with respect to the distribution of investment company shareholder reports pursuant to the SEC's 'notice and access' rules in relation to such distributions. The Notice and Access fee will not be charged for any account with respect to which an investment company pays a Preference Management Fee in connection with a distribution of investment company shareholder reports."¹¹ Further, the rule as revised provides: "In calculating the rates at which the issuer will be charged Notice and Access fees for investment company shareholder report distributions, all accounts holding shares of any class of stock of the applicable issuer eligible to receive the same distribution will be aggregated in determining the appropriate pricing tier under this Supplementary Material .01(a)(6)."¹²

B. Prohibition on Processing Fees for Securities Transferred at No Cost

On August 13, 2021, the SEC approved a proposed rule change by the NYSE¹³ that, in connection with forwarding proxy and related materials to beneficial owners, prohibits NYSE member organizations from imposing a fee¹⁴ for a nominee¹⁵ account that contains only shares or units of the securities involved that were transferred to the account holder by the member organization at no cost.¹⁶ The NYSE stated that the rule is meant to address a recent practice in which retail brokers provide customers, without charge, a small number of shares with a very small dollar value as a commercial incentive, for example, upon opening a new account or referring a new customer to the broker.¹⁷ The NYSE said that, in certain cases, issuers can experience a significant increase in their distribution reimbursement expenses solely due to their shares being included in these broker promotional schemes, and that it would be more appropriate for the broker to bear the proxy distribution costs in these circumstances.¹⁸

FINRA believes that, in situations where FINRA members that are not NYSE members engage in the promotional practices described by the NYSE, the resulting costs for affected issuers may be significant. FINRA has amended Rule 2251 to align with the NYSE's new rule provision, both for the reasons provided by the NYSE and for the purpose of ensuring regulatory clarity and harmonization with respect to proxy rate reimbursement. As amended by the rule change, FINRA Rule 2251.01(a)(7) states: "Further, notwithstanding any other provision of this Supplementary Material, no fee shall be imposed for a nominee account that contains only shares or units of the securities involved that were transferred to the account holder by the member at no cost."¹⁹

Endnotes

1. Securities Exchange Act Release No. 93769 (December 14, 2021), 86 FR 71936 (December 20, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 2251 (Processing and Forwarding of Proxy and Other Issuer-Related Materials); File No. SR-FINRA-2021-032).
2. See Securities Exchange Act Release No. 79355 (November 18, 2016), 81 FR 85291 (November 25, 2016) (Order Granting Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission; File No. SR-NYSE-2016-55) (referred to as the “Notice and Access Fee Approval Order”); see also Securities Exchange Act Release No. 92667 (August 13, 2021), 86 FR 46733 (August 19, 2021) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Amend Its Rules to Prohibit Member Organizations from Seeking Reimbursement, in Certain Circumstances, from Issuers for Forwarding Proxy and Other Materials to Beneficial Owners; File No. SR-NYSE-2020-98) (referred to as the “Prohibited Fee Approval Order”).
3. FINRA Rule 2251 was adopted as a consolidation of former NASD Rule 2260 and IM-2260 as part of FINRA’s rulebook consolidation process. See Securities Exchange Act Release No. 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (Order Granting Approval of Proposed Rule Change; File No. SR-FINRA-2009-066). FINRA has previously indicated that, in the interest of ensuring regulatory clarity and harmonization with respect to proxy rate reimbursement, it intends to conform the rate reimbursement provisions of FINRA Rule 2251 with the NYSE provisions in this area. See Securities Exchange Act Release No. 71272 (January 9, 2014), 79 FR 2741 (January 15, 2014) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials), Which Includes Fees for Processing and Forwarding Proxy and Other Issuer Communications to Beneficial Owners, and Establish a Fee Under Certain Conditions for an Enhanced Brokers’ Internet Platform; File No. SR-FINRA-2013-056).
4. See note 2.
5. See note 1.
6. See Securities Exchange Act Release No. 83380 (June 5, 2018), 83 FR 29158 (June 22, 2018) (Final Rule: Optional Internet Availability of Investment Company Shareholder Reports).
7. See Notice and Access Fee Approval Order, at note 2.
8. See Securities Exchange Act Release No. 78589 (August 16, 2016), 81 FR 56717 (August 22, 2016) (Notice of Filing of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission; File No. SR-NYSE-2016-55).
9. Under the NYSE rule, and corresponding FINRA Rule 2251.01(a)(5), a “preference management fee” refers to specified fees that the member may charge for each account for which the need to send materials in paper format through the mails or by courier service has been eliminated. The Notice and Access Fee Approval Order

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- noted that, as a result of the rule change, notice and access fees would only be charged with respect to accounts that actually receive a notice and access mailing. Prior to the rule change, an issuer utilizing notice and access for proxy distributions would pay the notice and access fee for all shareholder accounts, including those for which it also would pay the preference management fee. *See* Notice and Access Fee Approval Order, at 81 FR 85291, 85293.
10. *See* Notice and Access Fee Approval Order, at 81 FR 85291, 85293.
 11. *See* Attachment A.
 12. *See* Attachment A.
 13. *See* the Prohibited Fee Approval Order, at note 2. *See also* Securities Exchange Act Release No. 90653 (December 14, 2020), 85 FR 82539 (December 18, 2020) (Notice of Filing of Proposed Rule Change to Amend Its Rules to Prohibit Member Organizations from Seeking Reimbursement, in Certain Circumstances, from Issuers for Forwarding Proxy and Other Materials to Beneficial Owners; File No. SR-NYSE-2020-98).
 14. The NYSE stated that the prohibition on “fees” does not apply to reimbursements for postage, envelope and voting return communication expenses incurred in connection with a distribution of proxy and other materials. *See* Prohibited Fee Approval Order, at 86 FR 46733, 46734. FINRA notes that the same applies under FINRA’s corresponding amendments as discussed in this *Notice*.
 15. The term “nominee” is defined under NYSE Rule 451.90, and correspondingly under FINRA Rule 2251.01, to mean a broker or bank subject to SEA Rule 14b-1 or SEA Rule 14b-2, respectively.
 16. The NYSE stated that the rule would not limit a broker’s right to reimbursement for distributions to any beneficial owner if any part of that beneficial owner’s position in an issuer’s securities was received by any means other than a transfer without charge from the broker. The NYSE also stated that the new rule would not limit a broker’s right to receive reimbursement under NYSE Rules 451 and 465 unless that broker itself transferred the issuer’s shares without charge into the account of the beneficial owner. Further, the NYSE stated that NYSE Rules 451 and 465 would continue to apply to all distributions, so the broker would continue to be fully obligated to solicit votes from, and make other distributions on behalf of issuers to, all beneficial owners notwithstanding the limitations on reimbursement of expenses imposed by the new rule. *See* Prohibited Fee Approval Order, at 86 FR 46733, 46735. FINRA notes that the same applies under FINRA’s corresponding amendments as discussed in this *Notice*.
 17. *See* Prohibited Fee Approval Order, at 86 FR 46733, 46734.
 18. *See* Prohibited Fee Approval Order, at 86 FR 46733, 46734.
 19. *See* Attachment A.