THE STA
SECURITIES TRANSFER ASSOCIATION, INC.

Established 1911

July 12, 2012

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Subject: Concept Release on the U.S. Proxy System, File No. S7-14-10

Dear Ms. Murphy:

In response to the Concept Release on the U.S. Proxy System, the Securities Transfer Association submits a copy of our analysis of fees recently proposed by the NYSE Proxy Fee Advisory Committee, ("PFAC"). A few years ago, the NYSE put together a working group that looked at the current fee structure and advised that further work was needed. As a result of that initiative, and of feedback from the Concept Release, the NYSE PFAC undertook a new review, and came out with recommended fees that, in their view, would reduce fees overall by 4%.

However, the STA Analysis of the proposed fees, when applied against actual invoices of 33 public companies, indicates that under the proposed fee schedule, fees will increase for most issuers. The STA remains disappointed that the PFAC did not use an independent entity to evaluate the cost of the services before determining the proposed fees to be charged, as had been recommended by the earlier NYSE Proxy Working Group.

Sincerely,

Charles V. Rossi
President

P.O. BOX 5220 ■ HAZLET, NEW JERSEY 07730-5220 ■ (732) 888-6040 ■ EMAIL: cgaffney@stai.org ■ WEB: http:\\www.stai.org

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The Securities Transfer Association: Analysis of Proposed NYSE Proxy Fee Schedule

July 12, 2012

I. Executive Summary

The Securities Transfer Association ("STA") analyzed 33 public company invoices for proxy distribution services and applied a new proxy fee schedule proposed by the New York Stock Exchange Proxy Fee Advisory Committee ("PFAC") in May 2012, after 20 months of review. According to the STA's analysis, the 33 issuers participating in this study would experience, on average, **a 7.43% increase in proxy distribution costs**, if this new fee schedule is approved by the Securities and Exchange Commission ("SEC").

The STA also found significant flaws in the composition of the PFAC and the process used in developing the proposed fee structure.

In the STA's opinion, the membership of the PFAC was over-representative of financial services companies and under-representative of non-financial issuers. Moreover, the PFAC report also relies almost exclusively on data provided by a near-monopoly service provider, Broadridge Financial Solutions, Inc. ("Broadridge"),[1] with very little information or analysis provided by independent sources or industry organizations.

The STA is very disappointed that the PFAC failed to use an independent third-party to analyze the data provided by Broadridge and to conduct an independent cost analysis, prior to recommending changes to the NYSE proxy fee schedule. This approach was recommended by the NYSE Proxy Working Group in its 2006 report, in order to avoid a conflict of interest among Broadridge and other stakeholders. This lack of independent data or analysis casts doubt on the PFAC's findings.

The STA is not opposed to proxy fees that reflect reimbursement for reasonable expenses; however, those fees should be based on actual costs and not used to fund "back office" services that benefit only Broadridge and its clients. Basing fees on actual costs is by no means impossible, as the financial services industry uses other processing entities that function on an at-cost basis, with fees that are a fraction of what Broadridge charges to issuers.[2]

Given Broadridge's dominant role in the proxy processing system, the STA believes issuers should have the right to an independent review of Broadridge's cost structure, including its contractual arrangements with its clients, not just for the purposes

[1] Federal rules require broker-dealers and banks to distribute proxy materials to their customers. The cost of distributing these materials is the obligation of the issuer, which is required by the same rules to reimburse broker-dealers and banks for their "reasonable" expenses. Almost all broker-dealers and banks have outsourced their proxy processing responsibilities to Broadridge.

[2] For example, the mutual fund industry uses a service called Networking that charges only $0.20 for 100 shareholder account records to be shared electronically between a mutual fund and its distributing broker-dealers through an accounting platform operated by the National Securities Clearing Corporation ("NSCC"). If you contrast these fees with average processing charges by Broadridge of close to $1.00 for each shareholder position, it becomes very difficult to argue that the fees that issuers are forced to pay for proxy processing services are merely reimbursements for reasonable expenses.

of the PFAC recommendations, but to ensure that proxy fees are only used to reimburse broker-dealers and banks for their reasonable expenses.

The specific findings in the STA analysis of the 33 issuer invoices are as follows:

- The new basic processing and intermediary unit fees result in an **average increase of 4.90%**;

- The new suppression fees result in an **overall average decrease of only 0.20%**;

- The new nominee coordination fees to be charged result in an **average increase of 13.69%**; and

- The new Notice and Access fees, which include charges for wrap fee accounts, result in an **average increase of 0.78%**.

Another disappointment in the PFAC report is the recommendation that Broadridge fees for separately managed accounts should continue to be charged to issuers. The PFAC claimed that "a significant part of the work involved [for separately managed accounts] was in 'maintaining' or 'managing' the preferences attached to each account position,"[3] despite testimony before the PFAC that almost all beneficial owners in these managed accounts make a single election not to receive proxy materials and delegate their voting rights to the investment manager at account inception—a simple account flag applied once when the account is opened.

The STA continues to maintain that issuers should not be charged for managed account positions at the beneficial owner level when proxy voting authority has been delegated to an investment adviser, but, instead, should be charged for the one proxy package that is provided to the sponsor of these investment options.

The PFAC did elect to exempt any shareholder position holding 5 shares or less in a managed account from all proxy fees. **The STA estimates that the benefit of this proposed change would be a reduction in managed account charges of only 5.49%**.

However, to add insult to injury, the PFAC also recommends in its report that wrap fee accounts be added back to issuer invoices as billable positions and charged in the same manner as separately managed accounts, despite SEC rule interpretations that say otherwise. Some of the modest decreases in managed account fees will therefore be offset by new charges for all wrap fee accounts.

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[3] New York Stock Exchange, *Recommendations of the Proxy Fee Advisory Committee to the New York Stock Exchange*, at 13, May 16, 2012, *available at* https://usequities.nyx.com/sites/usequities.nyx.com/files/final_pfac_report.pdf (hereinafter "NYSE PFAC Report").

In summary, while several minor problems are addressed in the PFAC report, the recommendations fail to address in a meaningful manner any of the significant concerns that have been raised by issuers over the past several years. Instead, the PFAC recommendations would significantly increase the basic processing and intermediary unit fees for issuers, avoid addressing the managed accounts problem in a meaningful way, impose a new nominee coordination fee that is unnecessary, and charge issuers the full amount of proxy fees for wrap fee accounts.

Given the overwhelming support for reform found in the responses to the SEC's 2010 Concept Release on the U.S. Proxy System, the STA believes a more robust review of the fee structure should be conducted by an independent third party.

II. Introduction

The Securities Transfer Association ("STA") completed a new analysis of 33 invoices for proxy distribution services and applied a new proxy fee schedule to these invoices proposed in May 2012 by an advisory committee to the New York Stock Exchange ("NYSE"). The public company issuers that provided these 33 invoices to the STA would experience, on average, a **7.43% increase in proxy distribution costs,** if this new fee schedule is approved by regulators.

The STA is an industry trade association, established in 1911, comprised of transfer agents that provide services to over 12,000 large and small public companies in the United States. The STA and its members work closely with issuers of securities on a variety of public policy matters and have been active over many years in advocating for a fair and efficient system for proxy distribution and communications.

At present, the substantial majority of shareholders in the U.S. hold their securities in "street name" within their brokerage and bank accounts, rather than holding shares in their own name as a registered owner on the records of an issuer's transfer agent.

Securities and Exchange Commission ("SEC") rules require broker-dealers and banks to distribute proxy materials to their customers, called "beneficial owners," under the street name system. The cost of distributing these materials is the obligation of the issuer, which is required by the same rules to reimburse broker-dealers and banks for their "reasonable" expenses.

Almost all broker-dealers and banks have outsourced their proxy processing responsibilities to one service provider, Broadridge, which operates as a near-monopoly in this market. As an agent of these financial intermediaries, Broadridge distributes annual meeting proxy materials to beneficial owners, while transfer agents generally distribute proxy materials to the registered shareholders listed on their records.

Since 1937, the NYSE has determined the level of reimbursement for proxy distribution and communications activities to be provided to their member broker-dealers. The proxy fee schedule developed by the NYSE is used by banks and other stock exchanges for the same purpose. This fee schedule appears in NYSE Rules 451 and 465.

On May 16, 2012, the NYSE Proxy Fee Advisory Committee ("PFAC") released a report with recommendations for modifications to the NYSE proxy fee schedule.[4] The PFAC was established in September 2010 to review NYSE proxy rules and their application to issuers and other stakeholders. This review was long overdue, as the proxy fee schedule was last modified in 2002.

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[4] New York Stock Exchange, *Recommendations of the Proxy Fee Advisory Committee to the New York Stock Exchange*, May 16, 2012, *available at* https://usequities.nyx.com/sites/usequities.nyx.com/files/final_pfac_report.pdf (hereinafter "NYSE PFAC Report").

In its report, the PFAC acknowledges that nearly all of the banks and broker-dealers using the street-name system have outsourced their proxy activities to Broadridge. As a result of the lack of a market-based system to establish proxy fees, Broadridge has a unique and special interest in advocating for modifications to the NYSE-regulated fee schedule that will primarily benefit the company and its clients.

The PFAC itself noted the near-monopoly status enjoyed by Broadridge in saying "almost all proxy processing in the U.S. is handled by a single entity."[5] This status provides Broadridge with an information advantage that can only be addressed through an independent audit of the company's costs, as the relationship between the fees it charges—for both regulated and unregulated services—and the costs it incurs to provide proxy services are unknown outside of Broadridge. Payments made by issuers essentially go into a "black hole," and it is impossible to know where proxy fees are being used without an independent audit of Broadridge's costs and the fee sharing arrangements it has with its clients.

Given Broadridge's dominant role in the proxy processing system, the STA is very disappointed that the PFAC failed to use an independent third party to analyze and recommend changes to the NYSE proxy fee schedule. This approach was recommended by the NYSE Proxy Working Group in its 2006 report, in order to avoid a conflict of interest among Broadridge and other stakeholders:

> The Proxy Working Group therefore recommends that the NYSE should periodically re-evaluate the fees structure to ensure that no entity is unduly profiting off the current system. Issuers and shareholders deserve periodic confirmation that the system is performing as cost-effectively, efficiently and accurately as possible, with the proper level of responsibility and accountability in the system.
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> To achieve these objectives, the Proxy Working Group recommends that the NYSE engage an independent third party to analyze what is a 'reasonable' amount for issuers to be charged pursuant to Rule 465 and to conduct cost studies of the current services provided by [Broadridge] and commission an audit of [Broadridge] costs and revenues for proxy mailing. These studies and audit should include a detailed review of [Broadridge's] actual and anticipated future costs, especially in light of the new electronic delivery proposal by the SEC. The NYSE should disclose the findings of these regular reviews to a Sub-Committee of the Working Group before instituting any changes to the current fees.

[5] *NYSE PFAC Report* at 2.

> The Working Group also recommends that the NYSE review [Broadridge's] contract arrangements with brokers. It is understood that these contracts are designed to cover the brokers' costs of providing information about beneficial owners to [Broadridge], but since this reimbursement is tied to the fees regulated by the NYSE, they should be carefully reviewed to make sure that these agreements are not covering other costs unrelated to beneficial owner information.[6]

Unfortunately, **none of these recommendations were followed**. Instead, the NYSE assembled a group of 12 individuals to evaluate its proxy rules.[7] Of these 12 individuals, at least 7 represent issuers in the financial services sector[8] and only 4 represent non-financial issuers.[9]

While several minor problems are addressed in the PFAC report, the recommendations fail to address in a meaningful manner any of the significant concerns raised by issuers over the years and discussed in the 2006 NYSE Proxy Working Group Report and the 2010 SEC Concept Release on the U.S. Proxy System. The PFAC recommendations also will increase costs for issuers without providing any new services to them.

The PFAC report relies almost exclusively on data provided by Broadridge, with very little information or analysis provided by independent sources.[10] The lack of objectivity in the PFAC recommendations will not result in an overall decrease in issuer costs of 4%, as represented by the PFAC report. Rather, the modifications advocated by the PFAC are going to **increase average costs by 7.43%** for the 33 issuer invoices analyzed by the STA staff.

The following table compares the average total invoice cost, both current and proposed, for the 33 issuers participating in this STA study, using a breakdown into 3 categories, based on the number of shareholder positions:

[6] New York Stock Exchange, *Report and Recommendations of the Proxy Working Group to the New York Stock Exchange*, at 28, June 5, 2006, *available at* http://www.nyse.com/pdfs/PWG_REPORT.pdf.
[7] *NYSE PFAC Report* at 6-7.
[8] NYSE Euronext, Vanguard Group, Visa, Inc., JPMorgan Chase, Acadia Realty Trust, Goldman Sachs, and Resource Capital Corp.
[9] Time Warner, Inc., Northeast Utilities Co., Hewlett-Packard, Co., and Merck & Co. The 12th member of the PFAC was the former Chief Executive Officer of NYSE Regulation.
[10] As an example, more than 25% of the footnotes in the PFAC Report cite and rely on data provided solely by Broadridge. Only 3 of 38 footnotes rely on information developed by outside third parties. The balance of the footnotes cite SEC and NYSE sources.

TABLE #1: Average Total Invoice Changes for 33 Issuers

Range of Shareholder Positions	Average Total Invoice (Current)	Average Total Invoice (Proposed)	Percentage Change
110 - 10,000	$4,016	$4,328	+7.8%
10,001 - 200,000	$42, 921	$44,268	+3.1%
200,001 – 2.4 million	$992,376	$1,025,144	+3.3%

III. The STA Study and its Methodology

This study by the STA provides an analysis of the proxy fee changes recommended by the PFAC. The study was completed by the STA staff using 33 actual Broadridge invoices for beneficial owner data processing and proxy distribution services. These invoices were sent to issuers between January 2010 and June 2012. These invoices were priced using the new fee schedule and then compared to the current fee schedule used for these invoices.

The 33 Broadridge invoices, which included individual shareholder position volumes, were provided to the STA anonymously by issuers of varying sizes. The issuer invoices range from 110 beneficial owner positions to 2.4 million beneficial owner positions.[11]

In order to conduct this cost study, STA staff applied the proposed proxy fee schedule, as described in the PFAC report of May 16, 2012. Postage and sales tax charges were excluded from the total amounts for both the current invoices and the invoices created using the new fee schedule.[12] Other assumptions that were used in the calculations are disclosed in the descriptions below about each fee modification proposed by the PFAC.

IV. Modifications to the Basic Processing Fee and the Intermediary Unit Fee

The current NYSE fee schedule contains a $0.40 basic processing fee and a $0.10 intermediary unit fee, adding up to a total processing fee of $0.50 per shareholder position. These fees drop to $0.45 per position for issuers with 200,000 or more beneficial owners.

[11] The STA study evaluated: (a) 11 invoices between 110 and 10,000 shareholder positions; (b) 14 invoices between 10,001 and 200,000 shareholder positions; and (c) 8 invoices between 200,001 and 2.4 million shareholder positions.

[12] This assumption was made despite the fact that Broadridge derives revenue from postage by charging a rate that is higher that its actual postage costs.

These processing fees were originally intended to be charged for processing activities in connection with a physical proxy package being mailed to a beneficial owner.[13] However, this fee continues to be assessed on all shareholder positions, even when no proxy packages are mailed, including for managed accounts where the beneficial owner neither receives, nor expects to receive, any proxy materials at all.

The PFAC recommends moving away from the distinction between large issuers, which are charged $0.45 per position, and smaller issuers, which are charged $0.50 per position. In place of this framework would be a tiered pricing model, using five tiers. Each issuer would pay the rate Tier I rate for the first 10,000 positions, with decreasing rates calculated on additional positions in the higher tiers. The following table summarizes these proposed rates:

TABLE #2: Proposed PFAC Tiered Processing Fees

Tiers	Number of Positions	Current Processing Fees	Proposed Processing Fees	Change in Fees (%)
I	1 – 10,000	$0.50	$0.64	+28.0%
II	10,001 – 100,000	$0.50	$0.63	+26.0%
III	100,001 – 300,000	$0.50 (< 200K)	$0.56	+12.0%
		$0.45 (> 200K)	$0.56	+24.4%
IV	300,001 – 500,000	$0.45	$0.49	+8.9%
V	500,001 +	$0.45	$0.42	-6.7%

In its report, the PFAC stated that its goals for these fees were to recognize the existence of economies of scale and to change the "cliff" pricing model that causes issuers with 201,000 positions to be charged significantly less than issuers with 199,000 positions.[14] In making these changes, however, the PFAC is recommending a significant increase in this fee for the substantial majority of issuers, with no new services being offered.

The PFAC justifies its recommended increases in the intermediary unit fee by noting that the "work of the intermediary has been enhanced over time, responding to the needs of all participants – issuers, banks and broker, investors – in addition to responding to changing regulatory requests."[15] However, **the PFAC provides no data for this**

[13] *See* Securities and Exchange Commission, *Order Approving Proposed Rule Change Relating to the Transmission of Proxy and Other Shareholder Communication Material*, SEC Release No. 34-41117, 64 Fed. Reg. 14, 294, at 14, 295 (Mar. 24, 1999) ("Under the fee structure in effect prior to March 14, 1997, NYSE member firms were permitted to charge NYSE issuers a basic processing fee of $.60-$.70 for each proxy package (i.e. proxy statement, form of proxy, and annual report *delivered to a beneficial owner*." (emphasis added).

[14] Under the current fee schedule, an issuer with 201,000 positions would be charged $0.45 per position, for a total basic processing and intermediary fee of $90,450. An issuer with 199,000 positions, just under the 200,000 pricing "cliff" would be charged $0.50 per position, for a total basic processing and intermediary fee of $99,500. Ignoring the difference in number of positions, this difference is about 10%.

[15] *NYSE PFAC Report* at 12.

assertion, except to note that work is being done to improve end-to-end vote confirmation. The PFAC also provides no data on how these fees (and other proxy charges) are shared between Broadridge and its broker-dealer and bank clients. It remains unknown how extensive this fee sharing is due to the lack of an independent audit of these activities.

The new basic processing and intermediary unit fees proposed by the PFAC, when applied to the 33 invoices in the possession of the STA, result in an **average increase of 4.90%** for the issuers involved.[16] Each of the 33 issuers in this study would receive an increase in their processing fees under this new tiered framework. Additionally, despite its expression of concern for the cost of proxy processing for smaller issuers, the PFAC is recommending significant increases for small- and mid-cap issuers.

The following table compares the average processing and intermediary unit fee charges, both current and proposed, for the 3 categories of issuers involved in this STA study:

TABLE #3: Average Processing and Intermediary Fee Changes for 33 Issuers

Range of Shareholder Positions	Average Fees (Current)	Average Fees (Proposed)	Percentage Change
110 - 10,000	$1,191	$1,530	+28.5%
10,001 - 200,000	$17,764	$22,611	+27.3%
200,001 – 2.4 million	$624,731	$648,003	+3.7%

As discussed below, this new framework would permit these higher fees to be charged for separately managed accounts and for wrap fee accounts. Broadridge does not charge currently for wrap fee accounts, as it is not permitted by the SEC.

V. Modifications to the Paper and Postage Elimination Fee

The current NYSE fee schedule contains a $0.50 per shareholder position fee for suppressing the need to mail proxy materials to certain beneficial owner positions, such as for householding and/or electronic delivery. This fee is reduced to $0.40 per position for issuers using the Notice and Access format. This fee is also reduced to $0.25 per position for larger issuers, i.e., those with 200,000 or more beneficial owners.

Without any detailed analysis (or discussion) regarding the cost of providing these services, the PFAC recommends that these fees be reduced to $0.32 per position for

[16] These 33 issuers paid $5,259,650.90 in basic processing and intermediary unit fees, according to the Broadridge invoices in the possession of the STA. Under the tiered pricing model proposed by the PFAC, these issuers would pay $5,517,402.08 in basic processing and intermediary unit fees, an increase of 4.90%.

ProxyEdge, householding, and e-delivery activities.[17] PFAC also recommends that the suppression fee for managed accounts be reduced to $0.16 per position, again without any review of costs.

Despite the recommended fee reductions, these new suppression fees, when applied to the 33 invoices in the possession of the STA, result in an **overall average decrease of only 0.20%**, primarily because suppression fees would increase for issuers with more than 1 million positions.[18]

The following table compares the average suppression fee charges, both current and proposed, for the three categories of issuer involved in this STA study:

TABLE #4: Average Suppression Fee Changes for 33 Issuers

Range of Shareholder Positions	Average Fee (Current)	Average Fee (Proposed)	Percentage Change
110 - 10,000	$622	$360	-42.1%
10,001 - 200,000	$9,949	$5,666	-43.1%
200,001 – 2.4 million	$170,807	$178,284	+4.4%

The PFAC report also discusses the "evergreen" issue, which involves the question of whether it is appropriate to charge a suppression fee not only in the year when electronic delivery is first elected, but also in each year thereafter. This issue was raised in the 2010 SEC Concept Release on the U.S. Proxy System.[19]

In its discussions with brokerage firms and Broadridge, the PFAC concluded that there is significant processing work involved in keeping track of a shareholder's election on an ongoing basis, especially regarding the preference attached to each account position regarding proxy distribution, both for householding and for eliminating paper delivery altogether. For this reason, the PFAC seeks to change the concept of a paper and postage elimination fee into a "preference management fee."

The PFAC proposes to change the purpose of this fee without any explanation of what "significant processing work" is involved. The PFAC also does not explain why issuers are to continue paying for certain suppressions that should be the sole responsibility of broker-dealers.

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[17] Even though not mentioned in the PFAC Report, the STA assumes that consolidation activities would also be subject to a new fee of $0.32, under the fee schedule proposed by PFAC.

[18] These 33 issuers paid $1,512,581.75 in postage and printing elimination fees, according to the Broadridge invoices in the possession of the STA. Under the fee schedule proposed by the PFAC, these issuers would pay $1,509, 556.80 in postage and printing elimination fees, a decrease of 0.20%.

[19] Securities and Exchange Commission, *Concept Release on the U.S. Proxy System*, July 22, 2010, *available at* http://www.sec.gov/rules/concept/2010/34-62495fr.pdf.

A significant problem with the proposed "preference management fee" concept is that the PFAC report fails to distinguish between these suppression fees and the basic processing and intermediary unit fees also charged for these positions. If Broadridge is paid to "keep track" of a shareholder preference regarding householding or electronic delivery, it should not also be permitted to charge a basic processing fee and an intermediary unit fee for positions that are suppressed.[20] These fees were intended to cover the printing of a Voting Instruction Form ("VIF") and enclosing it with an annual report, proxy statement, and return envelope in a poly wrapped package. If these basic processing functions are not performed, then these fees should not be charged for a suppressed account.

Additionally, and as discussed below, this new framework would permit these fees to be charged for separately managed accounts and wrap fee accounts. These are accounts in which the shareholder has delegated investment discretion and proxy voting authority to an investment adviser. No proxy materials are distributed to the shareholder who has delegated authority and no proxy voting occurs at the beneficial owner level. Any processing activities by broker-dealers and Broadridge to manage these accounts where proxy voting has been delegated should not be the financial responsibility of the issuer.

VI. Changes to the Nominee Coordination Fee

The current NYSE fee schedule contains a nominee coordination fee of $20 per nominee. This fee is charged for each nominee that responds to a search request with an indication that it has at least one shareholder position (or account) holding an issuer's stock.[21] According to the PFAC, there are at least 900 banks and broker-dealer nominees that need to be contacted with a search request for shareholder positions for each issuer.[22]

The PFAC recommends that this nominee coordination fee be increased by 10%, to $22 per nominee. As proposed, the rule would specify that the fee applies only to nominees with at least one account holding the issuer's stock.

The rule also would permit Broadridge and other broker-dealer agents to charge a new fee of $0.50 per nominee for those nominees indicating that they have no holdings of the stock involved. This new supplemental nominee fee would be capped at $100 for issuers with fewer than 10,000 shareholder positions.

The STA's analysis of the application of this new fee framework indicates an **average increase of 13.69%** in nominee fees for the 33 Broadridge invoices in the

[20] Broadridge also charges a Notice and Access fee to issuers using this format, something that also should not be charged for suppressed accounts.
[21] *See NYSE PFAC Report* at 10.
[22] *See NYSE PFAC Report* at 3.

STA's possession.[23] However, the application of these proposed fees differs among issuers, depending on their size:

- **Microcap Issuers**. For issuers with fewer than 10,000 shareholder positions, this would result in a 10% increase, from $20 to $22 in the nominee coordination fee, plus a new charge of $100 for contacting other nominees that indicate no shareholder positions in an issuer's stock.

- **Small/Mid Cap Issuers**. For issuers with more than 10,000 positions and less than 200,001 positions, this new fee framework is quite costly, as these issuers typically have between 100 and 300 nominees holding their stock. Under the new fee schedule, an issuer with 100 nominees would be charged a nominee coordination fee of $2,200, an increase of 10%. This issuer also would be charged $0.50 for each of the 800 nominees which responded negatively to a search request regarding that issuer's stock.[24] This issuer's nominee fees would rise from $2,000 under the current fee schedule to $2,600 under the proposed PFAC schedule, an increase of 30%.[25]

  An issuer with 300 nominees would be charged a nominee coordination fee of $6,600, an increase of 10%. This issuer also would be charged $0.50 for each of the 600 nominees which responded negatively to a search request. This issuer's nominee fees will rise from $6,000 under the current fee schedule to $6,900 under the proposed PFAC schedule, an increase of 15%.[26]

- **Large Cap Issuers**. For issuers with more than 200,000 positions, this new fee framework will result in a less dramatic increase in fees, as these issuers have an average of 700 nominees holding their stock in the invoices reviewed by the STA staff. An issuer with 700 nominees would be charged a nominee coordination fee of $15,400, an increase of 10%. This issuer also would be charged $0.50 for each of the 200 nominees which responded negatively to a search request. This

[23] These 33 issuers paid $183,800 in nominee coordination fees, according to the Broadridge invoices in the possession of the STA. Under the fee schedule proposed by the PFAC, these issuers would pay $208,958 in nominee coordination fees, including the new $0.50 charge for nominees not holding any shareholder positions, resulting in an overall increase of 13.69%.

[24] In making these calculations, the STA assumes a total of 900 nominees contacted for each issuer involved.

[25] Under the current fee schedule this issuer would be charged $20 for each of the 100 nominees holding at least one shareholder position of the issuer's stock, or $2,000. Under the proposed PFAC fee schedule, this fee increases 10% to $22 per nominee holding at least one shareholder position plus a new $0.50 charge for each of the other 800 nominees responding negatively about holding the issuer's stock, or $2,600 ($2,200 + $400).

[26] Under the current fee schedule this issuer would be charged $20 for each of the 300 nominees holding at least one shareholder position of the issuer's stock, or $6,000. Under the proposed PFAC fee schedule, this fee increases 10% to $22 per nominee holding at least one shareholder position plus a new $0.50 charge for each of the other 600 nominees responding negatively about holding the issuer's stock, or $6,900 ($6,600 + $300).

issuer's nominee fees would rise from $14,000 under the current fee schedule to $15, 500 under the proposed PFAC schedule, an increase of 10.71%.[27]

The following table illustrates the application of this new fee framework on the 3 categories of issuer invoices analyzed by the STA:

TABLE #5: Average Nominee Fee Changes for 33 Issuers

Range of Shareholder Positions	Average # Nominees	Average Fee (Current)	Average Fee (Proposed)	Percentage Change
110 - 10,000	68	$1,356	$1,592	+17.4%
10,001 - 200,000	188	$3,767	$4,500	+19.5%
200,001 – 2.4 million	726	$14,518	$16,056	+10.6%

The STA objects to both a 10% increase in the nominee coordination fee and the imposition of a new fee for a negative response to a search request. The search request process is handled electronically and most of the process is automated. This new fee framework ignores the efficiencies of an electronic system and imposes unnecessary costs on issuers for activities that do not add additional services for them.

The PFAC stated that it adjusted the nominee transmission fees to align them "with the work effort involved" and to reflect the depreciation of the fee by a 29% inflation factor since 1997.[28] However, as noted elsewhere in the PFAC report, there is no independent analysis of the actual costs of providing these proxy services, nor is there a clear argument as to why the issuer should be paying for activities related to the transmission of information by a broker-dealer (or a bank) to its proxy service provider. A decision to outsource proxy activities may be efficient for the broker-dealer or bank, but the issuer should not be saddled with extra costs as a result of this outsourcing process.

A comparison to a similar process in the mutual fund industry suggests that a deeper analysis of the actual costs of this activity may have generated a different result. Record date information and requests for shareholder identification information and share positions are routinely processed between mutual funds and broker-dealers through the National Securities Clearing Corporation ("NSCC") Networking service at a cost of only $0.20 per 100 shareholder positions for the fund and a broker-dealer. There is no nominee fee, or any fee for contacting all nominees, as record date announcements are

[27] Under the current fee schedule this issuer would be charged $20 for each of the 700 nominees holding at least one shareholder position of the issuer's stock, or $14,000. Under the proposed PFAC fee schedule, this fee increases 10% to $22 per nominee holding at least one shareholder position plus a new $0.50 charge for each of the other 200 nominees responding negatively about holding the issuer's stock, or $15,500 ($15,400 + $100).
[28] *See NYSE PFAC Report* at 10.

routinely processed to all NSCC participants, including broker-dealers and custodial banks.

VII. Modifications to the Notice and Access Fee

Broadridge fees for issuers using the Notice and Access format are currently not included in the NYSE proxy fee schedule. This fee is tiered, starting at $0.25 per shareholder position for the first 10,000 beneficial owners and then reducing itself to $0.05 per position for any beneficial owner positions that exceed 500,000.[29]

The fees for Notice and Access processing are currently unregulated and appear to be applied in the same manner that processing fees were in the past, despite the significantly lower costs associated with one-page mailings and electronic delivery compared to full proxy package mailings. Again, the lack of an independent audit hampers the ability of the market to know how proxy fees are being used and why these fees are needed to handle a much lower level of mail processing, i.e., the mailing of one piece instead of a four-piece proxy package.[30]

Without any evaluation or discussion of the costs of providing these services, the PFAC is recommending that Notice and Access fees be included in the NYSE fee schedule at their current levels. Despite issuer concerns that Broadridge charges these fees for all account positions holding an issuer's shares—including those that are already suppressed—the PFAC decided not to change any Broadridge practices involving these fees.

When Notice and Access fees are applied to the 33 invoices in the possession of the STA, these fees **increase by 0.78%**, largely as a result of wrap fee accounts being added back into issuer invoices in the same manner as other managed accounts.[31] The new Broadridge charges for wrap fee accounts, which are not subject to proxy fees currently, are discussed in the next section on separately managed accounts.

VIII. Modifications to the Fees Charged for Separately Managed Accounts

For a number of years, Broadridge and its broker-dealer clients have been charging issuers a series of proxy fees for separately managed accounts at the beneficial owner level. These fees are being charged despite the fact that investors in these

[29] For positions between 10,001 – 100,000, the fee is $0.20 per position; for positions between 100,001 – 200,000, the fee is $0.15 per position; and for positions between 200,001 – 500,000, the fee is $0.10 per position. For issuers with beneficial owner positions that total 6,000 or less, Broadridge charges a flat fee of $1,500.

[30] As noted earlier, a full proxy package consists of four pieces: a VIF, an annual report, a proxy statement, and a return envelope.

[31] These 33 issuers paid $578,854 in Notice and Access fees, according to the Broadridge invoices in the possession of the STA. Under the fee schedule proposed by the PFAC, these issuers would pay $583,381 in Notice and Access fees, an increase of 0.78%. This increase is a result of the PFAC recommendation to add back to issuer invoices all wrap fee accounts in the same manner as separately managed accounts.

accounts are not receiving—or expecting to receive—any proxy materials and are not casting any proxy votes.

Under current practices, Broadridge and its clients do not charge issuers for processing wrap fee accounts at the beneficial owner level. These broker-dealer accounts function in the same manner as separately managed accounts for the purpose of proxy voting activities.

A more detailed explanation of broker-dealer managed account programs and their costs can be found in Appendix A.

The documentation and data processing for both wrap fee accounts and separately managed accounts are standardized within a broker-dealer's accounting platform. Both types of accounts are flagged at the time they are created for the broker-dealer's own purposes, as well as to suppress transaction confirmations and issuer communications at the beneficial owner level. For the purpose of proxy voting, these accounts only require the distribution of one proxy package—whether by mail or electronically—for each investment adviser possessing delegated voting authority.

According to the PFAC, "a significant part of the work involved [for separately managed accounts] was in 'maintaining' or 'managing' the preferences attached to each account position."[32] Yet, during testimony before the PFAC, it was acknowledged that almost all beneficial owners in these managed accounts make a single election not to receive proxy materials and delegate their voting rights to the investment manager at account inception—a simple account flag applied once when the account is opened. Apart from the flag being read by a computer program, **the PFAC does not in its report discuss what additional effort is required that justifies the "significant" work of managing these account preferences.**

Additionally, the report does not state the exact percentage of managed accounts that actually elect to receive materials, nor does it clarify what percentage of accounts would be impacted by its recommended fee changes—which, as discussed below, include wrap fee accounts.

Despite this lack of detailed analysis, the PFAC decided that managed account fees should remain an issuer expense, as the maintenance of the investor "preference" should be handled in the same manner as in any other beneficial owner election, such as consenting to electronic delivery. The PFAC also concluded that issuers benefit by having "added investment" in their stock and by having investment fiduciaries voting at a higher rate than the typical retail investor outside of a managed account.

On this latter point, the PFAC provides no justification as to why issuers should have to pay for the proxy votes of investment fiduciaries which are required to vote under SEC and U.S. Labor Department rules. Asking issuers to pay for these expenses is no

[32] *NYSE PFAC Report* at 13.

different than proposing that companies reimburse institutional investors for their custodial expenses.

The PFAC decided that issuers and brokers should share in the cost of the processing work involved with managed accounts. For this reason PFAC recommends that the paper and postage elimination fee be reduced to $0.16. All other proxy fees, including the basic processing and intermediary unit fee, the notice and access fee (when applicable), and the proxy voting fee all would continue to be charged to issuers at the beneficial owner level.

To add insult to injury, PFAC recommends in its report that wrap fee accounts be added back to issuer invoices as billable positions and charged in the same manner as separately managed accounts, **despite SEC rule interpretations that say otherwise**.[33]

The only flexibility on this issue shown by the PFAC was on the issue of fractional shares within managed accounts. These shares were being charged the full amount of processing, suppression, Notice and Access (when applicable), and proxy voting fees despite a very small amount of stock involved. The PFAC decided to exempt any shareholder position holding 5 shares or less in a managed account from all proxy fees. **The STA estimates that the benefit of this proposed change would be a reduction in managed account charges of approximately 5.49%**.[34] Some of this decrease will be offset, of course, by the PFAC recommendation to permit issuers to be charged for all wrap fee accounts, something that is not occurring today.

For the 33 Broadridge invoices in the STA's possession, the current fee schedule resulted in total proxy fees for managed accounts of $1,953,020. These charges involve 2.4 million beneficial owner positions and represent **23.0% of the total charges** by Broadridge in all the invoices.[35] The average charge per position was $1.04 for the beneficial owner positions in the managed accounts involved in this study.[36]

Under the proposed PFAC fee schedule for managed accounts, the issuers involved in this study would pay proxy fees for managed accounts of $1,889,870, a **decrease of 3.2%**. The average charge per position would be $0.91 for the 2.4 million beneficial owner positions in managed accounts.[37]

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[33] *See*, *infra*, footnote 42.

[34] This calculation is derived by taking 5 shares and dividing it by the average of 91shares for managed accounts with between 1 – 500 shares, as noted in the PFAC report. This results in an estimated benefit to issuers of 5.49%. This estimate can also be calculated by taking the $4.2 million savings noted in the PFAC report and dividing into the STA's estimated $70 million cost to issuers of this managed account practice. This calculation results in an estimated benefit to issuers of 6%. *See NYSE PFAC Report* at 17.

[35] These 33 issuers paid a total of $8,584,072 in proxy fees to Broadridge, excluding postage and sales tax. Of this amount, $1,953,020 was paid in managed account charges, representing 23.0% of the total fees paid.

[36] The per position charges ranged from $0.76 to $1.21, depending on the size of the issuer and whether or not the Notice and Access format was used. These STA calculations include the proxy voting fee of $0.06, even though that fee is invoiced separately.

[37] The per position charges ranged from $0.67 to $1.10, depending on the size of the issuer and whether or not the Notice and Access format was used. These calculations include the proxy voting fee of $0.06. The

Despite this modest benefit to issuers, the STA continues to believe that there is no justification for these charges to issuers. Separately managed accounts are a large profit center for broker-dealers and the suppression of beneficial owner accounts which are enrolled in these discretionary investment programs should be the responsibility of each broker-dealer. Issuers should not be charged for these account positions at the beneficial owner level and, instead, should only be charged for the one proxy package that is provided to the sponsor of these investment programs.

The STA brought this issue to the attention of the SEC in 2010, and it was highlighted in the SEC's Concept Release later that year.[38] In 2011, the STA filed complaints with FINRA and NASDAQ while the PFAC was conducting its evaluation of proxy distribution fees.[39] More recently, the STA and the Shareholder Services Association ("SSA") jointly filed a Petition for Rulemaking at the SEC, requesting that the agency prohibit broker-dealers and their agents from charging issuers any proxy fees for separately managed accounts.[40]

In the STA's view, this fee prohibition should apply to any circumstance in which a beneficial owner has instructed in writing that an investment adviser is to receive issuer proxy materials and vote his or her proxies in lieu of the beneficial owner.

IX. Conclusion

The STA remains very disappointed that the NYSE did not select an independent third party to evaluate its proxy fee schedule and make recommendations, as urged by its own Proxy Working Group in 2006. Instead, it organized an advisory committee that was over-representative of financial services companies and under-representative of non-financial issuers.

After nearly 20 months of review, the STA had hoped for a more thorough review of the total costs for the proxy services being provided, as every company does when it engages a service provider.

STA could not evaluate the precise impact of the 5-share exemption on the 33 issuer invoices it analyzed because it lacks the data to calculate any fee decreases. Only Broadridge and its broker-dealer clients are in possession of this information.

[38] Letter from Thomas L. Montrone, The Securities Transfer Association, to Mary L. Schapiro, Chairman, Securities and Exchange Commission, June 2, 2010, available at http://www.stai.org/pdfs/STA_Letter_to_SEC_re_Managed_Accounts_6-2-2010.pdf.

[39] Letter from Charles Rossi, President, The Securities Transfer Association, to Richard G. Ketchum, Chairman and Chief Executive Officer, Financial Industry Regulatory Authority, October 31, 2011, *available at* http://www.stai.org/pdfs/2011-10-ketchum-letter.pdf; and Letter from Charles Rossi, President, The Securities Transfer Association, to Robert Greifeld, Chief Executive Officer and President, The NASDAQ OMX Group, November 9, 2011, *available at* http://www.stai.org/pdfs/2011-11-sta-letter-to-robert-greifeld-nasdaq.pdf.

[40] The Securities Transfer Association and the Shareholder Services Association, Petition for Immediate Regulatory Action Regarding Issuer Invoice Payments to Broker-Dealers for Separately Managed Accounts, March 12, 2012, *available at* http://www.stai.org/pdfs/2012-03-12-sta-ssa-joint-letter.pdf.

The PFAC estimates that its recommended modifications to the NYSE proxy fee would result in an average decrease in issuer costs of 4 percent. However, an STA analysis of 33 Broadridge invoices, representing a wide range of shareholder positions, indicates that issuer costs would **increase by an average of 7.43%.**

The PFAC recommendations would significantly increase the basic processing and intermediary unit fees, avoid addressing the managed accounts problem in a meaningful way, and impose a new nominee coordination fee that is unnecessary. To add insult to injury, the PFAC recommendations would charge issuers the full amount of proxy fees for wrap fee accounts, a practice not permitted under current SEC rule interpretations.

The STA believes that proxy fees should be set at a level that reflects a reimbursement for reasonable expenses. Issuers should not be responsible for funding "back office" services that only benefit Broadridge and its clients. More attention should be focused on what the true cost of providing these proxy services is, as the proposed proxy fee schedule (both current and proposed) is clearly being used for activities that transcend the original intent of providing reasonable reimbursements.

In comparison, the financial service industry uses other processing entities that function on an at-cost basis, with fees that are a fraction of what Broadridge charges to issuers. As noted earlier, the mutual fund industry uses a service called Networking that charges only $0.10 for 100 shareholder account records to be shared electronically between a mutual fund and its distributing broker-dealers, though an accounting platform operated by the NSCC.[41] If you contrast these fees with average processing charges by Broadridge of close to $1 for each shareholder position, it becomes very difficult to argue that the fees that issuers are forced to pay for proxy processing services are merely reimbursements for reasonable expenses.

The NYSE should follow the recommendations of its Proxy Working Group and commission an independent review of its proxy fee schedule, including an evaluation of the costs of providing proxy processing services and the contractual arrangements between Broadridge and its clients. It has been more than 6 years since these recommendations were made and valuable time has been lost in addressing the concerns raised by the Proxy Working Group in its report.

If a near-monopoly in the provision of proxy services to issuers is permitted to exist, then the costs and contractual arrangements that comprise that monopoly should be reviewed by an independent third party so that issuers can be assured that proxy fees have no other purpose than to reimburse broker-dealers and banks for their reasonable expenses.

[41] NSCC Networking charges $0.10 for 100 records to be exchanged on each side of the transaction, so the cost is $0.20 for 100 records, split evenly between the fund and its broker-dealer.

Appendix A: Description of the Separately Managed Accounts Issue

Managed account programs sponsored by broker-dealers permit investors to delegate investment discretion and proxy voting authority to an investment adviser. Typically, these investors prefer not to receive what could be a substantial volume of proxy materials, especially for investments they are not selecting themselves.

One form of a separately managed account is called a “wrap fee account” and current SEC rule interpretations do not permit broker-dealers to charge issuers any proxy fees for these accounts at the beneficial owner level.[42] Despite these SEC rule interpretations, Broadridge charges a basic processing fee, an intermediary unit fee, a paper and postage elimination fee, and a proxy voting fee for each shareholder participating in a managed account program.[43]

Both wrap fee accounts and separately managed accounts function in the same manner regarding proxy voting activities. In both cases, the sponsor of these investment programs receives one package of proxy materials on behalf of each issuer holding a shareholder meeting. Acting in its capacity as an investment adviser, this sponsor then casts proxy votes in lieu of the beneficial owners who have delegated proxy voting authority, as a part of these investment programs.

The broker-dealers that sponsor these discretionary account programs are well-compensated for their services, primarily through asset-based fees applied to these individual accounts. Any processing or programming functions necessary to segregate these accounts for proxy voting purposes should take place at the broker-dealer level and before any information is transmitted to Broadridge, in its capacity as the central intermediary for compiling a list of beneficial owners eligible to participate in a shareholder meeting.

If Broadridge is involved in this coding process, then this activity should remain a matter between Broadridge and its clients. Otherwise, broker-dealers are benefiting from their decision to outsource proxy activities and from the systemic inefficiencies which result from the additional of a third-party vendor in this process.

For all these reasons, the processing and management of these accounts at the beneficial owner level should not be the responsibility of issuers; and issuers should not be charged proxy fees for these activities.

The fees being charged for managed accounts are quite costly for issuers. A review of the 33 Broadridge invoices in the STA’s possession indicates that are being

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[42] *See, e.g.*, Status of Investment Advisory Programs Under the Investment Company Act of 1940, SEC Release No. IC-22579, 62 Fed. Reg. 15,098, at 15,015 (Mar. 31, 1997) (“[I]f a client delegates voting rights to another person, the proxies, proxy materials, and, if applicable, annual reports, need be furnished only to the party exercising the delegated voting authority.”).

[43] Broadridge also charges a Notice and Access for these beneficial owner positions, when an issuer uses this format.

charged the following proxy fees for each beneficial owner position in a separately managed account:

- A $0.50 basic processing and intermediary unit fee. This fee drops to $0.45 per position for issuers with 200,000 or more beneficial owners.

- A paper and postage elimination fee of $0.50. This fee is reduced to $0.40 per position for issuers using the Notice and Access format. This fee is also reduced to $0.25 per position for large issuers, i.e., those with 200,000 or more beneficial owners.

- A Notice and Access fee of between $0.05 and $0.25. This fee is charged when an issuer elects the Notice and Access format authorized by the SEC.

- A proxy voting fee of $0.06. This fee is charged for *each position* in a separately managed account even though beneficial owners in these accounts do not cast any proxy votes, pursuant to their written brokerage account agreements.

Taken together, these four different proxy fees add significant costs to an issuer with a large number of beneficial owner positions in separately managed accounts. For an issuer using the Notice and Access format, these fees can total as much as $1.21 for each beneficial owner position.[44] For an issuer not using the Notice and Access format, these fees can total as much as $1.06 for each beneficial owner position.[45]

[44] For smaller issuers using a Notice and Access format, these charges result in a basic processing and intermediary fee of $0.50, a paper and postage elimination fee of $0.40, a Notice and Access fee of $0.25, and a ProxyEdge voting fee of $0.06.

[45] For smaller issuers using a non-Notice and Access format, these charges result in a basic processing and intermediary fee of $0.50, a paper and postage elimination fee of $0.50, and a ProxyEdge voting fee of $0.06.