



March 18, 2013

**By Electronic Mail (rule-comments@sec.gov)**

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: NYSE Request for Comment on SEC File No. SR-NYSE-2013-07

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the above-referenced filing, which is a proposed rule change filed by the New York Stock Exchange (“NYSE”) with the Securities and Exchange Commission (“Commission”).<sup>2</sup> NYSE has filed a proposed rule change to amend Rule 451, Transmission of Proxy Material. SIFMA overall supports the proposals, and commends the NYSE and its Proxy Fee Advisory Committee for its diligence, professionalism, and integrity in addressing complex issues and in balancing competing objectives. Our comments follow.

#### Enhanced Broker Internet Platforms

SIFMA supports the proposal to establish a 99 cent “success fee” to encourage the development of Enhanced Broker Internet Platforms, or “EBIPs.” We believe that the more widespread development of EBIPs would further promote consents in electronic delivery and therefore result in significant cost savings for issuers through the reduction in the number of paper deliveries of proxy materials. It should also lead to greater participation of retail shareholders in the proxy process by making it easier for retail shareholders to participate. Further, it would lay the groundwork for the development of additional proposed improvements to the system, such as “client directed voting,” which if developed as a feature in EBIPs, would permit shareholders to provide advance voting instructions to their brokers and banks, and help to place retail shareholders on an equal footing with institutional shareholders in the ability to vote proxies in an efficient manner.

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> See Securities Exchange Act Release No. 34-68936; (February 15, 2013), 78 FR 12381 (February 22, 2013).

We believe that the proposed success fee will increase the likelihood that brokers will seriously consider the implementation of EBIPs. Brokers typically have competing priorities for website enhancements, some of which address regulatory obligations. Accordingly, there is no assurance that the proposed success fee will result in significant implementation of EBIPs, although we are hopeful that the proposed fee, if implemented, would have that effect. As you are aware, the 99 cent fee level was not based on any survey of brokers, or on the anticipated impact of any particular level of success fee on individual broker decisions to implement EBIPs. In formulating terms and conditions to govern the implementation of EBIPs other than the level of success fee, we encourage the SEC and the NYSE to avoid requirements or limitations that could prove to be an unintended disincentive. For example, we suggest that rules on brokers' eligibility to receive a success fee, or not receive it, should be drafted to provide bright lines so that brokers are not compelled to conduct extensive research or analysis to determine whether or how the fee might apply in their individual circumstances. We also agree that the amount of the "success fee" should be re-examined in the course of the 5-year EBIP program.

#### Effective Dates of New Rules

SIFMA encourages the SEC and the NYSE to set an effective date for the new rules that will provide sufficient time for brokers and their agents to modify their operations to reflect the new fee structure. We recommend that the new rules become effective on January 1, 2014.

Further, we urge the SEC to set a special effective date for the commencement of the 5-year EBIP program that is at least 6 to 9 months following the date of adoption of the final rules implementing the program. Until the rules are finalized, brokers will not know the detailed requirements and limitations for the implementation of an EBIP program, or, with any certainty, the amount and duration of the success fee. After confirmation of these details, brokers will require several months to (1) reexamine their priorities for website enhancements in light of the new success fee, together with the other related requirements and limitations for the program, (2) seek appropriate authorizations, and then (3) provide for development and other related costs in their budgets. In order to complete these review, authorization, and budgeting activities, brokers will need to know that the program will in fact be implemented, and the full details of the program, as reflected in final rules. Significantly, if the success fee for the EBIP program were to commence before brokers could complete those activities, the practical effect would be to reduce the 5-year duration that has been proposed.

#### De-Minimis Thresholds

The proposals would provide for minimum share thresholds under which no fee reimbursements would be provided even where expenses are actually incurred by brokers and banks. More specifically, the proposed rules would apply a fixed five-share threshold for reimbursements relating to managed accounts, so that an account holding 5 shares or fewer would not be eligible for reimbursement.

Because there are processing costs associated with such accounts without regard to the actual number of shares in question, we do not support the establishment of such thresholds that would result in the elimination of any reimbursement for transactions which in fact involve the incurrence of costs. Rather, we believe that rules for reimbursement should be based on actual (or a reasoned estimate of) proxy processing costs rather than on arbitrarily fixed thresholds or percentages. We are concerned about this approach to the extent that it is based on what is in effect arbitrary "line drawing," which would represent a fundamental departure from the manner in which reimbursement rates have been set in the past, and indeed would represent an approach that would almost certainly produce anomalous results that are not fair, balanced, or reasonably based, both in the short and long term.

SIFMA strongly encourage the NYSE and the SEC not to expand this approach to other proxy activities.

SIFMA greatly appreciates the SEC's consideration of SIFMA's comments in reference to the above. If you have any questions, please do not hesitate to contact me at (212) 313-1260 or [tprice@sifma.org](mailto:tprice@sifma.org) or Ellen Greene at (212) 313-1287 or [egreene@sifma.org](mailto:egreene@sifma.org).

Respectfully Submitted,



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