

SEC Announces Further Delays to Ruling on Proposed NYSE Proxy Fee and Brokers' Internet Platform Changes

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The SEC has again decided that it needs more time before it can make a decision on a NYSE rule filing to change the fees paid by companies for proxy distribution, and has delayed its order until October 20, 2013.

24 comment letters were initially submitted after the NYSE filed a proposed rule change last year related to expense reimbursement by companies to brokers for processing proxy materials to shareholders holding securities in street name. In addition, the proposal attempted to establish a five-year fee for the development of an enhanced brokers Internet program.

In April, the SEC extended its decision and received 4 additional letters. On May 23, the SEC initiated proceedings to decide whether to disapprove the rule change and solicited additional comments, after which it received 14 letters. A final decision was to be made on August 21, but according to the latest notice, the Commission is waiting until October because it needs a longer period to consider the "significant question" as to whether the NYSE has sufficiently justified its proposal.

Companies are required to pay broker-dealers or banks that hold securities in street name reasonable expenses incurred in forwarding proxy materials to beneficial owners. The current reimbursement scheme was adopted in 2002, and the proposed rule change represents recommendations made by the Proxy Fee Advisory Committee as established by the NYSE. Companies represented most of the members on the Committee, and estimated that they pay \$200 million annually. The Committee believes that the proposed changes would decrease the overall fees by approximately 4%. As almost all of the brokers use Broadridge for proxy distribution, the Committee based its analysis largely on data provided by Broadridge.

The 60-page SEC [order](#) in May presents a detailed explanation of each aspect of the fee breakdown and specific questions raised by the SEC as to the rationale for each change, but ultimately the issue is centered on whether an independent third-party audit is necessary. The NYSE has [responded](#) to the points raised by the SEC and noted that the information available is limited since there is no common methodology for tracking these costs and much of it is aggregated with other costs rather than separated, therefore having a third-party review does not make sense. But some of the commenters, including those that would like to better compete with Broadridge, dispute the conclusion that the proposed changes would result in lowering the costs for companies, and claim instead that its own analysis shows an overall increase. Given the SEC's own controversies regarding cost-benefit analysis, it would likely need to consider those criticisms carefully before ruling on the NYSE proposal.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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