

NYSE Committee Recommends Reform in Proxy Fees Paid by Companies

May 16, 2012 | Client Update | 2-minute read

The NYSE [announced](#) today that the Proxy Fee Advisory Committee (PFAC), formed in September 2010 and comprised of representative investors, brokers and companies, has published its recommendations to change the proxy fees. Brokers and banks are required under SEC rules to distribute company proxy materials to beneficial owners of securities, or shareholders holding in "street name." In turn, companies must reimburse them for their expenses. The NYSE regulates the amount of fees, subject to SEC review and approval.

The full [Report](#) by PFAC explains in summary form the complexities of the proxy distribution process, by reference to the SEC "proxy plumbing" [concept release](#). Over 80% of public securities are estimated to be held in street name. Broadridge, the primary intermediary for proxy distribution, reported that in 2011 it handled distributions to 90 million beneficial owners with accounts at over 900 banks and brokers, covering over 628 billion shares, at a cost of about \$200 million to companies in the aggregate.

The Report painstakingly describes the careful work by PFAC in considering each of the four different type of proxy fee designed to compensate brokers for different services, an examination of the existing rationale based on the work involved and an evaluation of whether a change in fee is warranted based on recent developments, such as a move toward less paper distributions. According to the Report, it is expected that overall fees paid by companies will decrease by about 4% under the revised structure.

PFAC's recommendations include several changes to the existing fees and also streamlining the proxy fee categories to increase transparency. In addition, PFAC supported allowing companies to ask brokers for a list of the identity of non-objecting beneficial owners (NOBO) based on number of shares held or of those that have not yet voted proxies, without needing to pay for an entire list of all NOBOs. In order to encourage further retail investor voting, PFAC also recommended that the NYSE broach with the SEC the idea of a fee to pay for an "investor mailbox," through which investors can access proxy materials and voting forms through their brokers' website.

For those interested in learning more, an archive version of a webcast sponsored by the NYSE is [here](#).

PFAC's work is only the beginning. The NYSE indicated that it will initiate discussions regarding the PFAC's recommendations with the SEC, after which the NYSE would expect to submit a rule change proposal to the SEC reflecting the outcome of these discussions. Any rule filing proposal would be published for public comment prior to SEC approval.

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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