SIG
SUSQUEHANNA
INVESTMENT GROUP
AFFILIATE OF SUSQUEHANNA INT'L GROUP, LLP

February 13, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

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OFFICE OF THE SECRETARY

Re: SR-AMEX-2007-13

Dear Ms. Morris:

Susquehanna Investment Group ("SIG") submits this comment on the proposed rule change by the American Stock Exchange ("AMEX" or "Exchange") to impose certain restrictions on specialist commissions and other fees for equities and Exchange Traded Fund Shares ("ETF's). For the reasons noted below, the SEC should not approve the rule change as proposed and, in any event, should not grant accelerated approval of the proposal.

The Exchange requested that the SEC approve the proposed rule change before the 30th day after publication in the Federal Register. In making that request the Exchange stated that the proposed rule change is an extension of a recently adopted rule. This proposal, however, goes further by addressing commission charges and cancellations in ETFs. We believe that important issues relating to this additional matter were not addressed in the Exchange's filing and that these issues need to be addressed before any action is taken on this proposal.

We are concerned with respect to the timing of this proposal, as it comes at a time where exponential increases in order and cancel volume levels are expected with the implementation of Reg NMS. The AMEX, like other market centers, is in the process of bolstering its order management system ("AEMI") to handle these new levels of volume. Yet, without knowing the effects of NMS and the impact of such higher volume on the ability of specialists to perform agency obligations, the AMEX is attempting to eliminate the right of ETF specialists to charge for related agency obligations.

AEMI system issues could arise that cause a delay in an order from being immediately cancelled off the book. For example, if an incoming NMS Inter-market Sweep Order (ISO) does not receive the expected fill due to a systems delay while the order being sought to trade against is in the process of being cancelled, it may create an obligation to the ISO order or the cancelled order. Moreover, if the sending trading center then determines (after failing to get its ISO fill) to avail upon a self-help exemption to the NMS trade-through rule, it could disregard the AMEX market going forward and cast the AMEX into a "slow market" situation. This could deprive other AMEX orders on the book of NMS order protection and create new liabilities.

System issues could also arise when the transmission of an ISO occurs while the processing of a cancellation order is momentarily delayed. Sweeping another exchange while the order on the AMEX system is processing a cancellation from the AMEX customer (but is delayed in finishing the processing of the cancellation) could create obligations with respect to absorbing the execution away.

As can be seen from the examples above, processing cancellations is a particular concern. In the past, a few firms with accounts that used high-cancel strategies created operational and order handling issues that slowed order handling processing in certain actively traded ETFs. The systems and liability problems caused by high-cancel strategies were often significant and sometimes severe. Depending on the ETF product, these strategies were known to produce tens of thousands of cancels on the AMEX in a single day. In May of 2000, for example, there were approximately 250 million cancels in the QQQs alone, most of which came from a small group of firms. Specialists had to add staff support at the post and deploy extensive cross-checking efforts to ensure proper execution of live orders, as many order cancellation instructions were at the same time in some stage of being processed by the Exchange's systems.

The costs (e.g., potential liabilities, adds to staff) associated with these high-cancel strategies were managed in some cases through the implementation of a specialist fee program for high-cancellations. The program imposed a fee only on the firms that exceeded a high-cancel threshold in active ETFs. The net result was that the firms that contributed disproportionately to cancel-induced system queues, and created the greatest order handling costs, paid a fee to offset the related liabilities and other costs placed upon the specialists. A separate basis for the cancellation fee was the assumption of agency obligations and concomitant risks towards the booked orders, for which it has been maintained that specialists are entitled to be compensated even when the order cancels.

The above examples are only some of potentially many issues that could occur if this rule change were to be adopted as proposed without a full understanding of the impact NMS will have on volume and order book processing. The Exchange needs to see how AEMI interacts in the NMS environment before eliminating the specialists' ability to charge for providing agency functions. It would be far better to first allow NMS to be implemented before this filing is acted upon.

We know of no systems testing by the Exchange that would evidence that the Exchange has established the level of impact in post-NMS on specialists in this regard. It would be imprudent to implement a prohibition without having first rigorously tested AMEX systems to withstand these burdens. In addition, such testing would be difficult and perhaps too unreliable if performed in a pre-NMS environment.[1]

The AMEX is requesting to revoke the right of the specialist to charge a fee for performing agency functions notwithstanding that the issue has not been fully vetted with its specialists and other potentially interested parties. We ask for a full and fair opportunity for public discourse on these issues before any decision is made to approve or disapprove the proposed rule change. The Exchange should at least explain its basis for restricting the right of a specialist to charge a fee where the specialist has been vested with agency responsibilities.

[1] Indeed, recently on February 5, 2007, the AEMI system suffered an outage at 3:20 p.m. and trading on AEMI was halted for the rest of the day. It appears questionable that any AMEX testing of the anticipated heavy message traffic from NMS could be completely relied upon at this juncture.

Systems will always be prone to failures and the AMEX has relied on its specialists to meet systems related liabilities in the past. If this remains the case, then the AMEX should allow specialists to charge for assuming such risks. If on the other hand the AMEX has concluded that specialist fees for AEMI orders and cancellations are not reasonable because the specialist is not considered to be "handling" orders and cancellations on the AEMI Book, then the SEC should ensure that the AMEX relieves specialists of any agency obligations respecting order handling issues related to such orders and cancellations. This relief should cover liabilities relating to order display and best execution resulting from system delays in the receiving and processing of orders and cancellations received by the Exchange. This is an issue that should be addressed by the SEC before any determination is made to approve or disapprove the proposed rule.

In conclusion, we ask that this proposal not be implemented. If this proposal is approved, we ask that any specialist agency responsibility for orders and cancels on AEMI be set forth so that the respective specialist is duly advised as to such attendant obligations. In the interim, a fair consideration of these issues requires that accelerated approval of the rule filing be withheld.

Thank you for this opportunity to respond. Should you wish to contact me, I can be reached at (610) 617-2624.

Sincerely,

Jerry O'Connell
Chief Regulatory Officer
Susquehanna Investment Group