



June 9, 2003

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609
Attn: Mr. Jonathan G. Katz, Secretary

Re: Release No. 34-47842; File No. SR-Amex-2003-35 – Proposed Rule Change by the American Stock Exchange LLC relating to Legal Fees Incurred by the Exchange

Dear Mr. Katz:

Susquehanna International Group, LLP ("SIG") appreciates this opportunity to comment on the proposed rule change by the American Stock Exchange LLC (the "Exchange") relating to the reimbursement by non-prevailing parties of legal fees incurred by the Exchange (the "Proposed Rule Change").¹ Various affiliates of SIG are member organizations of the Exchange, namely: Susquehanna Investment Group (options and exchange traded funds specialist), Susquehanna Securities (options market maker), Susquehanna Brokerage, L.P. (floor broker) and Susquehanna Financial Group, LLLP (floor broker). Accordingly, SIG would be impacted greatly by the Proposed Rule Change.

In general, the Proposed Rule Change seeks to require members, member organizations and others who bring legal proceedings against the Exchange to reimburse the Exchange for all costs associated with defending such proceedings when such persons do not prevail and the Exchange's costs exceed fifty thousand dollars (\$50,000). The Exchange's stated purpose for the Proposed Rule Change is "to ensure that only merit-based legal proceedings are pursued against the Exchange . . . [to] help protect against Exchange resources being unnecessarily diverted from the Exchange's regulatory and business objectives, thus strengthening the overall organization."

SIG submits that the Proposed Rule Change is defective in that it is not tailored toward its stated purpose of preventing frivolous lawsuits against the Exchange. So long as the dollar threshold is achieved, the sanctions of the Proposed Rule Change would be operative based solely on whether or not the Exchange prevails in the lawsuit. This result presupposes that all non-prevailing parties to lawsuits proffered a frivolous claim. Clearly, this is not the case.

¹ SIG acknowledges that the Chicago Board Options Exchange (the "CBOE") has implemented a rule (Rule 2.24) which is similar to the Proposed Rule Change and believes that no comments against the CBOE's rules were provided to the Commission. SIG was not aware at the time that the CBOE had proposed its rule. If SIG had been aware of the CBOE's proposed rule, it would have provided a comment letter to the Commission comparable to this comment letter. As such, SIG respectfully request that any action taken by the Commission against the Proposed Rule Change is also applied to the CBOE Rule 2.24.

Moreover, SIG believes that the Proposed Rule Change is superfluous given the statutory authority afforded to judges to sanction those who file frivolous lawsuits. In the event that the Exchange prevails in a lawsuit that it believes is frivolous, the Exchange may request that the judge require the plaintiff to pay the Exchange's legal fees. In the event that the judge determines that the lawsuit was frivolous (not just that the Exchange was the prevailing party), the judge is authorized to do so.

In the United States, each party pays its own attorneys fees in most civil lawsuits, whether the party wins, loses or the case is settled out of court. This is the so-called "American Rule." In contrast, the prevailing practice in England is that the losing party pays the attorneys fees of the prevailing party. This is the so-called "English Rule." The Proposed Rule Change seeks to implement for the Exchange's benefit (and the detriment of its members) the most favorable aspects of each rule. Put simply, if the Exchange prevails in a lawsuit, the member will have to pay for both its and the Exchange's legal fees, but if the member prevails in a lawsuit, the Exchange and the member will each pay only their respective attorneys fees. In other words, the Proposed Rule Change seeks to tilt the playing field in the Exchange's favor and is analogous to a "heads I win, tails we tie" type of arrangement.

Aside from the inherent unfairness of the Proposed Rule Change, SIG submits that it will discourage the filing of meritorious lawsuits against the Exchange by deserving parties who fear the severe economic repercussions that they would suffer in the event that they do not prevail in the lawsuit. To be at risk of losing a case on the merits is one thing, but to also take on the risk that you will be required to also pay your opponent's legal fees (when it is not required to bear this same risk) can be a crushing blow to the filing of an otherwise meritorious claim. This risk is heightened when novel and more controversial issues are being raised. In addition, this lost opportunity is a cost to both the timid plaintiff and all others similarly situated, since they will not derive the benefits that they would have received had the plaintiff litigated and prevailed.

Finally, the Proposed Rule Change will eliminate an important check on the power of the Exchange. If the Exchange's members are effectively unable to challenge the Exchange's actions, the Exchange will have virtually free reign over them and, indirectly, over the investing public. As we are sure you are aware, the investing public is currently very apprehensive and skeptical of the oversight afforded to the securities markets. The Proposed Rule Change flies in the face of these concerns and would serve to further alienate the investing public. SIG submits that the Exchange's stated purpose for the Proposed Rule Change does not outweigh these inherent costs to the perception of the securities markets.

Even if the Exchange needed to adopt a special rule to provide it added protection from frivolous lawsuits, the Proposed Rule Change is not designed to achieve this result. The more frivolous a lawsuit, the earlier one would expect it to be dismissed and the lower one would expect the Exchange's costs to be. However, the Proposed Rule Change takes the opposite tact by exempting the first fifty thousand dollars (\$50,000) of Exchange costs and only requiring the challenging party to pay the Exchange's costs when more lengthy proceedings occur. As such, the Proposed Rule Change's dollar threshold will serve to prevent the Exchange from recouping its legal fees in truly frivolous lawsuits. Instead, in a non-frivolous case in which the Exchange does not prevail on its dismissal motion or does not seek dismissal because the facts do not support it, the Proposed Rule Change may allow the Exchange to recover its legal fees.

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In conclusion, for the reasons stated above, SIG respectfully requests that the Commission abrogate the Proposed Rule Change. Alternatively, if the Commission determines not to abrogate the Proposed Rule Change, SIG respectfully requests that the Commission require the Exchange to modify the Proposed Rule Change by lowering the fifty thousand dollar (\$50,000) threshold and changing the threshold to a cap, such that the Proposed Rule Change will only be operative to the extent that the Exchange's legal fees do not exceed the capped amount.

Thank you for your consideration.

Sincerely,

Todd Silverberg

Todd Silverberg,
General Counsel