



June 30, 2003

VIA HAND DELIVERY

Mr. Jonathan G. Katz
Office of the Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: SR-Amex-2003-50

Dear Mr. Katz:

This letter is submitted on behalf of the Susquehanna Investment Group (“SIG”)¹ for the purpose of commenting on a rule proposal recently submitted to the Securities and Exchange Commission (“Commission”) by the American Stock Exchange LLC (“Amex” or the “Exchange”). This proposal² re-instates a payment for order flow program that was in effect at the Amex in a slightly different format from July 2000 until August 2001. We strongly urge the Commission and its staff to abrogate this proposal because exchange sponsored payment for order flow (“PFOF”) programs harm the options markets as a whole, investors who access those markets, and market makers such as SIG, by introducing artificial costs into the market, decreasing price transparency, and blurring the lines between an exchange’s role as the regulator of its members and its role as a “marketer” of the exchange. These programs also violate the Securities Exchange Act of 1934, as amended (the “Exchange Act”) because they discriminate against certain market participants.

Description of the Proposal

In its filing with the Commission, the Amex states that beginning June 2, 2003, it will assess a \$0.40 per contract fee on certain customer transactions executed on the exchange by

¹ SIG is a market maker on all of the U.S. options exchanges except The International Securities Exchange (“ISE”). SIG makes a market in more than 2000 options classes and is the “specialist” or “designated primary” market maker in selected classes.

² SR-AMEX-2003-50 became immediately effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act and subparagraph (e) of Rule 19b-4 thereunder.

Amex market makers, including those market makers that have “specialist” status. The fee applies to customer orders for 200 contracts or less that have been routed to the Amex by broker-dealers that have agreed to accept payment for their order flow (each, an “order routing firm”).³ Amex specialists will be solely responsible for negotiating payment for order flow arrangements with order routing firms and may negotiate payment plans that charge less than the \$0.40 per contract fee established by the Exchange. In the event that a specialist negotiates a lower amount with an order routing firm, the Exchange will refund the excess revenue to its specialists and market makers.

RATIONALE FOR ABROGATION

The Chicago Board Options Exchange, Inc. (the “CBOE”) recently reinstated a PFOF program pursuant to a rule filing⁴ that SIG requested be abrogated by the Commission.⁵ The Amex proposal is substantially the same as the PFOF program adopted by the CBOE. Therefore, the reasons set forth in our letter requesting abrogation of the CBOE PFOF program apply equally to the Amex’s proposed PFOF program. Moreover, SIG recently filed an application pursuant to Section 36 of the Exchange Act requesting that the Commission grant SIG an exemption from rules adopted by self-regulatory organizations (“exchanges”) that require SIG and other similarly situated firms to contribute to exchange sponsored PFOF programs.⁶ For the reasons set forth in our Section 36 application and in our letter requesting abrogation of the CBOE PFOF program, we respectfully request that the Commission exercise its authority and abrogate the Amex proposal.

We also note that the Amex filing is deficient in that it does not contain any discussion on the proposal’s impact on competition. The Amex’s stated purpose in re-instating an exchange sponsored PFOF program is to respond to competitive pressures resulting from PFOF programs adopted by the other options exchanges. However, the Amex filing, like the CBOE rule filings, never address what impact its PFOF program will have on competition between members of the Amex that are subject to the fee and other members of the Amex and non-member professional traders who are not subject to the fee. More importantly, the Amex does not address the impact

³ The Amex describes these firms as firms “that include payment as a factor in their order routing decisions in designated classes of options.”

⁴ SR-CBOE-2003-19.

⁵ See Letter from Todd Silverberg on behalf of SIG to Jonathan Katz dated June 17, 2003.

⁶ See Letter from Joel Greenberg on behalf of SIG to Jonathan Katz dated June 11, 2003. SIG also requested that the Commission treat the letter as a petition for rulemaking under Rule 192 of the SEC’s Rules of Practice to repeal transaction and marketing fees adopted by the CBOE and other option exchanges (including the Amex) if Section 36 were determined not to be the proper vehicle for the submission.

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the program will have on public customers and how, if at all, this kind of competition will benefit the public customers whose transactions form the basis for this fee.

If any questions should arise with respect to our comments, please contact the undersigned at (610) 617-2600.

Sincerely,

Todd L. Silverberg

Todd L. Silverberg
General Counsel

cc: Annette Nazareth, Director, Director of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation
Elizabeth King, Associate Director, Division of Market Regulation