SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 59577 / March 13, 2009

Admin. Proc. File No. 3-13128

In the Matter of

RICHARD B. FEINBERG

c/o Peter J. Mooney, Esq.
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE – REVIEW OF EXCHANGE ACTION

National securities exchange member suspended for failure to pay $464,418.51 in legal fees and expenses incurred by the exchange in connection with a lawsuit filed by the member. Held, exchange's findings of fees, expenses and sanctions are set aside.

APPEARANCES:

Peter J. Mooney, Esq., White and Williams LLP, for Richard B. Feinberg.

Stephen J. Kastenberg, Esq., Ballard Spahr Andrews & Ingersoll, LLP, for the Philadelphia Stock Exchange.

Appeal filed: August 12, 2008
Last brief received: November 26, 2008

I.

Richard B. Feinberg, a member and former stockholder of the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), appeals a ruling by the Special Committee to Review Delinquencies and Payments of the Board of Governors of the PHLX ("Special Committee") that Feinberg pay fees and expenses of $464,418.51 incurred by the PHLX in connection with a

lawsuit Feinberg filed against a governor on the PHLX Board of Governors. The Special Committee also ruled that it would suspend Feinberg's membership if he did not pay the fees and expenses within ten business days of the Special Committee's decision. This appeal followed. We base our findings on an independent review of the record.

II.

A. Feinberg's Sale of PHLX Stock to Benton Partners

This case arises from the PHLX's attempt to recoup fees and expenses in connection with Feinberg's unsuccessful insider trading suit against a governor on the PHLX's Board of Governors. Feinberg became a member of the PHLX in 2003 by purchasing a seat on the Exchange for approximately $18,000. In January 2004, the PHLX converted from a nonprofit mutual organization to a for-profit corporation through a process called demutualization. As a result of this process, each of the PHLX's seat-holders became shareholders, with each seat converting into 100 shares of common stock. Feinberg's seat was thus converted into 100 shares of PHLX common stock.

In the fall of 2004, Feinberg decided to sell his shares of PHLX stock. He initially offered the shares for $25,000 but was unable to attract a buyer. After lowering his price to $20,000, Feinberg sold the shares on December 1, 2004 to Benton Partners II LLP ("Benton Partners"). At the time of the sale, Benton Partners was controlled by I. Isabelle Benton, a governor on the PHLX Board of Governors and a member on the PHLX's executive, options, floor procedure and strategic alliance committees. Feinberg did not know who the buyer was, however, until after Benton Partners had accepted his offer.

Around the time Benton Partners purchased Feinberg's shares, the PHLX was in private negotiations to sell all or part of the Exchange. For example, shortly before Benton's transaction with Feinberg, the PHLX had begun negotiations with Archipelago Holdings LLC ("Archipelago"). Archipelago apparently offered the PHLX $50 million to purchase all of the PHLX's outstanding stock. While the PHLX eventually rejected this offer, the PHLX announced a partial sale of its stock in June 2005 to Citadel Derivatives Group, LLC ("Citadel") and Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). 1/ Under the terms of this deal, Citadel and Merrill Lynch each obtained a ten-percent stake in the PHLX, with a potential option to double that stake. The record is unclear on how much Citadel or Merrill Lynch paid to obtain these stakes. Two months later, the PHLX announced another sale of its stock. In this second transaction, the PHLX sold a ten-percent stake to Morgan Stanley & Co., Inc. for $7.5 million and a five-percent stake to each of Citigroup, Credit Suisse First Boston and UBS Securities, LLC for $3.75 million. Similar to the deal announced in June, each of these investors retained an option to double its interest. At the same time it announced this second transaction, the PHLX also announced its intention to implement a share buyback offer, pursuant to which the PHLX

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1/ The PHLX apparently first began negotiating with Citadel sometime in the fall of 2004.

would offer to repurchase its shares at $900 per share – a price $700 per share greater than the price at which Feinberg sold his shares to Benton Partners.

B. Insider Trading Suit

In September 2005, Feinberg sued Benton and Benton Partners for securities fraud in the U.S. District Court for the Eastern District of Pennsylvania. Feinberg alleged that Benton Partners violated Section 10(b) of the Securities Exchange Act of 1934 2/ and Rule 10b-5 3/ promulgated thereunder, and that Benton was liable as a control person of Benton Partners under Section 20(a) of the Exchange Act. 4/ Feinberg claimed that Benton Partners had failed to disclose three pieces of material nonpublic information: (i) that, in November 2004, the PHLX had begun negotiations to sell the Exchange to Archipelago, (ii) that, in the fall of 2004, the PHLX had negotiated with Citadel to sell a stake in the Exchange, and (iii) that, in 2002, Keefe Bruyette & Woods had performed a valuation of the PHLX that placed the PHLX's value at between $250 and $350 million. Feinberg alleged that, had he been aware of this information at the time of the sale, "[he] would not have sold the 100 shares of PHLX stock to anyone for $20,000." 5/

The ensuing litigation lasted approximately two and a half years, but details of what occurred at the district court level are unclear. The record before us on appeal contains only the district court docket and a sampling of various filings. These documents make clear, however, that Feinberg served a number of discovery requests on various nonparty witnesses, including the PHLX and certain affiliates. Feinberg first sought documents informally from the PHLX, and after negotiating a confidentiality order, the PHLX produced certain materials. It is not clear from the record the number of documents the PHLX produced or the content of those documents. Feinberg also issued formal discovery subpoenas to the PHLX and individuals who appear to have been PHLX officers and governors. The PHLX largely fought these subpoenas, and other than successfully conducting one deposition, Feinberg was unable to obtain much of the discovery he sought from either the PHLX or its affiliates.

The record provides little insight into the court's rationale for granting the PHLX's various motions to quash or for imposing sanctions. We can glean, however, that the district court granted one of the PHLX's motions because the time for discovery had elapsed and granted another motion because Feinberg failed to file a timely opposition to that motion. The district court twice sanctioned Feinberg in connection with his discovery requests, for a total of $5,867.

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2/ 15 U.S.C. § 78j.

3/ 17 C.F.R. § 240.10b-5.

4/ 17 C.F.R. § 78t.

5/ Complaint at 8, Feinberg v. Benton, No. 05-4847 (E.D. Pa. Sept. 9, 2005).

The district court docket indicates that Feinberg was more successful in other areas of the case, including defeating both a motion to dismiss and a motion for summary judgment. The record includes the order denying Benton's motion for summary judgment, in which the court concluded that Feinberg had produced enough evidence to create "a strong inference" that Benton was aware of the PHLX's negotiations with Archipelago at the time she purchased Feinberg's stock. In support of this conclusion, the court pointed to Benton's position as governor, the timing of Benton Partner's purchase from Feinberg, and the size of profits Benton Partners made from the transaction.

Feinberg's suit was finally tried before the district court on March 4, 2008. After Feinberg presented his case in chief, the court entered a directed judgment in favor of Benton and Benton Partners. The record does not contain the basis for the court's decision.

C. PHLX-Issued Invoice

One month after the district court entered the directed judgment, the PHLX sent Feinberg an invoice for $470,285.51 in legal fees and expenses the PHLX incurred during the Benton lawsuit. Of these fees and expenses, $320,281.31 were attributable to indemnifying Benton for the costs she incurred defending herself and Benton Partners during trial 6/ and $150,823.05 were attributable to responding to Feinberg's third-party discovery requests, preparing witnesses for deposition and trial, and "generally represent[ing] PHLX's interests with respect to the litigation." The PHLX stated that it was issuing the invoice pursuant to PHLX Rule 651, which requires members to repay legal costs incurred by the PHLX in defending itself or its board members from certain suits that are "related to the business of the Exchange."

Feinberg objected to the invoice and filed a brief in opposition with the Special Committee. Feinberg argued that Rule 651 did not apply to expenses incurred responding to third-party subpoenas, that he did not name the Exchange as a party to his suit, and that his suit against Benton was not "related to the business of Exchange." The Special Committee held a hearing and, on July 17, 2008, issued an opinion rejecting Feinberg's objections. 7/ The Special Committee summarily "found that expenses incurred related to the business of the Exchange, which includes protecting the integrity of trading and ensuring that its Board members are comporting themselves in conformance with the securities laws, and the Exchange's own code of conduct." The committee gave Feinberg ten days in which to pay the amount due or to agree to a payment schedule. The Special Committee further ordered that Feinberg be suspended from the PHLX pursuant to PHLX By-Law Article XIV, Section 14-5, if he did not meet the ten-day

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6/ The PHLX agreed to indemnify Benton at the outset of the suit and to advance the fees and costs incurred by her counsel.

7/ The Special Committee adjusted the amount owed to $464,418.51, which represents the PHLX's original invoice minus $5,867 in sanctions imposed by the district court and previously paid by Feinberg.

deadline. 8/ The record contains no evidence that Feinberg ever paid any portion of the fees. This appeal follows.

III.

A.

Before addressing the merits of Feinberg's appeal, we must first determine whether we have jurisdiction to review the PHLX's decision to impose litigation costs and to suspend Feinberg from the PHLX for nonpayment. 9/ Neither Feinberg nor the PHLX questions our jurisdiction, and our own consideration of the issue leads us to conclude that we have jurisdiction to review this matter.

According to Section 19(d) of the Exchange Act, we may review any self-regulatory organization ("SRO") action that (i) "involves a final disciplinary sanction imposed on a member" or (ii) "prohibits or limits any person in respect to access to services offered by [the SRO] . . . ." 10/ The PHLX's order suspending Feinberg for nonpayment arguably fits within either of these two prongs. Case law, however, suggests that we categorize the Special Committee's action as a final disciplinary sanction, as the Special Committee made a determination of wrongdoing (i.e., that Feinberg failed to pay the PHLX invoice pursuant to Rule 651) and imposed a sanction (i.e., ordered that Feinberg be suspended if he failed to pay). 11/

B.

To affirm a final disciplinary sanction, we must determine that (i) the member engaged in the conduct found by the SRO, (ii) the conduct violated the SRO rules at issue, and (iii) the SRO

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8/ Article XIV, Section 14-5 of the PHLX By-Laws sets forth the penalties for non-payment of fees or other charges. In particular, the section allows the PHLX to suspend or terminate the permit, rights or privileges of any member for non-payment.

9/ Matthew Proman, Securities Exchange Act Rel. No. 57740 (April 30, 2008), 93 SEC Docket 5513, 5514.

10/ 15 U.S.C. § 78s(d).

11/ See Wedbush Morgan Sec., Inc., Exchange Act Rel. No. 57138 (Jan. 14, 2008), 92 SEC Docket 1306, 1310 (noting that suspending a member for failing to pay interest on an arbitration award would amount to a final disciplinary sanction for purposes of Section 19(d)(i) of the Exchange Act); see also Morgan Stanley & Co., 53 S.E.C. 379, 385 (1997) (stating that a final disciplinary action is "a sanction . . . following a determination of wrongdoing").

applied those rules in a manner consistent with the purposes of the Exchange Act. 12/ There is little dispute that Feinberg was a member of the Exchange, 13/ that Feinberg unsuccessfully brought a suit against a PHLX governor, that the PHLX issued an invoice to Feinberg for legal fees and expenses related to that suit, that the Special Committee ordered Feinberg to be suspended if he failed to pay the invoice, or that Feinberg refused to pay.

The core of the parties' disagreement is whether the PHLX's rules entitled the Exchange to recoup litigation fees and expenses from Feinberg, the nonpayment of which provided the basis for the Special Committee's order to suspend Feinberg under its by-laws. In asserting its right to recover costs, the PHLX relies on Rule 651, which states that "[a]ny member . . . who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding . . . ."

Rule 651 is similar to rules adopted by the American Stock Exchange, the Chicago Board Options Exchange, the Pacific Stock Exchange, and the Chicago Stock Exchange. 14/ When approving the Chicago Stock Exchange's fee-shifting rule, we stated that such rules "reflect[] a reasonable business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances." 15/ In part because Rule 651 was "consistent with existing rules," we designated Rule 651 effective upon filing on August 5, 2004. 16/

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12/ 15 U.S.C. § 78s(e).

13/ Feinberg contends that he brought his suit against Benton in his capacity as a shareholder, rather than as a member. According to Feinberg, "PHLX cannot expand the scope of Rule 651 to allow it to recover legal expenses from a shareholder simply because that shareholder also happens to be a PHLX member." We disagree. Rule 651 requires only that Feinberg was a member, of which there is no dispute here. Nothing in the rule suggests that Feinberg's membership status must have played a role in the suit.

14/ Compare Exchange Act Rel. No. 50159 (Aug. 5, 2004), 83 SEC Docket 1768 (adopting PHLX Rule 651) with Exchange Act Rel. No. 47842 (May 13, 2003), 80 SEC Docket 655 (adopting American Stock Exchange rule); Exchange Act Rel. No. 37421 (July 11, 1996), 62 SEC Docket 853 (adopting Chicago Board Options Exchange rule); Exchange Act Rel. No. 37563 (Aug. 14, 1996), 62 SEC Docket 1661 (adopting Pacific Stock Exchange rule) and Exchange Act Rel. No. 34505 (Aug. 9, 1994), 57 SEC Docket 909 (adopting Chicago Stock Exchange rule).

15/ 57 SEC Docket at 912.

16/ 83 SEC Docket at 1769.

Although the PHLX's fee-shifting rule largely mimics the Chicago Stock Exchange's rule, the PHLX added a requirement that the underlying lawsuit be "related to the business of the Exchange." This added requirement is where Feinberg claims the PHLX's case now fails. Specifically, Feinberg claims his suit revolved around a private-party transaction and was in no way "related to the business of the Exchange."

The Special Committee rejected Feinberg's claim that his suit was unrelated to the business of the Exchange when considering Feinberg's arguments below. In reaching this conclusion, the Special Committee provided no authority and virtually no analysis in support of its interpretation of Rule 651. In fact, very little authority appears to address Rule 651: our own research has failed to uncover any adjudicatory decisions interpreting the scope of Rule 651, and the Commission's release approving Rule 651 does not expressly address the scope of the phrase "related to the business of the Exchange." We approach the interpretation of an SRO rule as we do a statute or Commission regulation, 17/ and an examination of the rule's language and history indicates that the Special Committee misinterpreted Rule 651.

The wording "related to the business of the Exchange" is relatively broad, as the Supreme Court has defined the phrase "related to" as "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." 18/ Despite this broad wording, we must not interpret the phrase so broadly as to render it superfluous. 19/ The phrase must have limits.

The PHLX itself acknowledged one such limit when it sought the Commission's approval to adopt Rule 651. In describing the rule's purpose, the PHLX stated that Rule 651 would apply

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17/ Compare, e.g., Sisung Sec. Corp., Exchange Act Rel. No. 56741 (Nov. 5, 2007), 91 SEC Docket 3050, 3060-61 (interpreting a rule of the Municipal Securities Rulemaking Board by examining the rule's language and submission history) with George C. Kern, Jr., 50 S.E.C. 596, 598 (1991) (stating that, under "established principles of statutory construction, the starting point of our analysis is the statutory language, and if the language is unclear, we may look to the legislative history for guidance").

18/ Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992) (quoting BLACK'S LAW DICTIONARY 1158 (5th ed. 1979)) (interpreting the Airline Deregulation Act, which includes a provision that preempts the states from enforcing any law "relating to rates, routes, or services of any air carrier").

19/ See, e.g., Duncan v. Walker, 533 U.S. 167, 174 (2001) (stating that "a cardinal principle of statutory construction" is that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant") (internal quotation marks omitted).

to suits brought against "the Exchange and/or persons acting on the Exchange's behalf." 20/ The PHLX's statement indicates that, for the Exchange to recoup costs under Rule 651 for litigation against a board member, officer, or employee of the Exchange, the underlying suit must relate to actions the defendant took in his or her role as governor – and on behalf of the Exchange. This seems a pertinent limitation given the PHLX's emphasis on protecting the Exchange and its resources. As the PHLX explained when seeking approval for Rule 651, the Exchange believed the rule would "reduce non merit-based or vexatious legal proceedings against the Exchange by member litigants," which the Exchange in turn hoped would "help protect against Exchange resources being unnecessarily diverted from the Exchange's regulatory and business objectives, thus strengthening the overall organization."

On appeal, however, the PHLX takes a more generous view of its authority under Rule 651. The PHLX claims that internal governance rules connect Feinberg's suit to the business of the Exchange, pointing, for instance, to the fact that the PHLX has barred governors from purchasing or selling PHLX stock or required them to obtain specific permission from a Board committee during certain periods. The PHLX acknowledges, however, that "Benton was not under such a constraint when she purchased the relevant stock from Mr. Feinberg." Moreover, Feinberg's lawsuit did not question whether Benton violated any internal governance rules when purchasing Feinberg's shares, and Feinberg never alleged that the PHLX facilitated or negligently allowed Benton to trade on inside information. Feinberg's suit, at most, put the Exchange on notice of a possible rule or ethics violation by one of its members. Any such determination, however, would require the PHLX to perform its own analysis of its rules and Benton's conduct. Such an analysis is an internal matter between the Exchange and its governor; the PHLX has not proffered any theory of how its response to Feinberg's discovery requests and reimbursement of Benton's legal fees could further its goal of preventing governors from violating internal governance rules, or why it should trigger an outside obligation for Feinberg to reimburse the PHLX's expenses.

The PHLX also relies on the fact that Benton was aware of material nonpublic information by virtue of her position as governor as evidence that Feinberg's suit related to the business of the Exchange. The PHLX reasons that, "[b]ecause a Governor's awareness of material non-public information is part and parcel of her oversight and management of the Exchange as a member of the Board, [Feinberg's suit] relates to the business of the Exchange." The PHLX adds "[t]hat the information Ms. Benton was alleged to have here pertains to strategic initiatives and transactions only underscores the relationship." This argument also fails. Benton's position as governor may have provided a means by which Benton learned of inside information, but her alleged possession of inside information does not establish that Benton ever acted on the Exchange's behalf, or that her actions otherwise related to the business of the Exchange, when purchasing Feinberg's shares.

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20/ 83 SEC Docket at 1768 (emphasis added).

The PHLX finally argues that "the fact that the Exchange had a duty to indemnify Ms. Benton further proves the relatedness of [Feinberg's suit] to the business of the Exchange." The only document in the record related to the Exchange's determination to indemnify Benton does not explain the basis for this determination. In its brief on appeal, the PHLX summarily concludes that "Delaware law is clear that Board members wrongfully accused of insider trading, like Ms. Benton, are entitled to indemnification." 21/ Delaware law, however, is not so clear.

The PHLX's Certificate of Incorporation and By-Laws require the Exchange to indemnify a governor in certain actions in which the governor is a party "by reason of the fact that the person is or was a Governor." This language closely tracks the language in Delaware's indemnification statute, which permits corporations to "indemnify any person who was or is a party to any [lawsuit] by reason of the fact that he is or was a director." 22/ The PHLX, however, provides no analysis of this language. The PHLX instead quotes a corporate law treatise, which states that indemnification under the Delaware code is "intended to cover the cost of at least the successful defense of suits based on executives' trading in the corporation's securities for their own account, particularly suits under Sections 10(b) and 16(b) of the [Exchange Act]." 23/ Delaware indemnification law may cover the costs of a successful defense of an insider trading suit in some circumstances, but such a determination first requires an analysis of whether Benton was sued "by reason of the fact" that she was governor, along with an exploration of any other prerequisites to Benton's indemnification claim.

The only case that the PHLX cites in support of its position falls short of establishing that Benton was entitled to indemnification. In Merritt-Chapman & Scott Corp. v. Wolfson, the Superior Court of Delaware held that a corporation was required to indemnify a director who had allegedly participated in a plan to cause his company to purchase shares of its own stock. 24/ The Merritt-Chapman director was thus alleged to have caused his company to play an active – although apparently unwitting – role in the fraudulent activity, establishing a strong connection between the director's conduct and the company. Benton's conduct, by comparison, does not establish such a connection, as Feinberg did not allege that Benton caused the PHLX to do anything, or that Benton and the PHLX acted in concert.

Regardless, the question here is not whether the PHLX was required to indemnify Benton, but whether the PHLX was entitled to reimbursement from Feinberg under Rule 651.

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21/ The PHLX is a Delaware corporation.

22/ Del. Code Ann. Tit. 8, § 145(a) (emphasis added).

23/ J OSEPH WARREN BISHOP, JR., THE LAW OF CORPORATE OFFICERS & DIRECTORS: INDEMNIFICATION AND INSURANCE § 2:3 (Rev. 2008).

24/ 321 A.2d 138, 140 (Del. Super. Ct. 1975).

Delaware's indemnification statute serves a very different purpose than the PHLX's fee-shifting rule. The Delaware indemnification statute "ensure[s] that capable persons would be willing to serve as directors, officers, employees, and agents of Delaware corporations." 25/ As a result, courts interpret Delaware's indemnification statute expansively. 26/ By comparison, fee-shifting rules such as PHLX Rule 651 represent a "business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances." 27/ Such a practical, financial purpose does not justify the same expansive application as Delaware's indemnification statute.

The PHLX acknowledges that the scope of its authority under Rule 651 is not limitless, conceding that the rule would not apply "to a private tort claim between Mr. Feinberg and Ms. Benton arising from an auto accident, even if Ms. Benton 'was an official of the PHLX' at the time of the accident." This is certainly true because the PHLX should not be entitled to reimbursement for a suit where the only connection to the Exchange is that the defendant just happens to be an official of the PHLX. Although Feinberg's suit is not as extreme as the PHLX's example, Feinberg's suit is still not sufficiently connected to the business of the Exchange. Although Benton's employment at the Exchange may have been a means by which she had access to inside information, she acted for her personal interests, and not on behalf of the Exchange, in purchasing the PHLX shares, which was the subject of the litigation between Feinberg and Benton.

As stated at the outset of our analysis, the Exchange Act requires that an SRO apply its rules consistently with the Act's purposes. Generally, we do not believe that the policies of the Exchange Act permit Rule 651 to be used as the basis for shifting legal fees in insider trading cases, effectively insulating the PHLX and its directors from liability in all but the most distantly connected cases.

As noted earlier, in addition to indemnifying Benton, the PHLX incurred costs responding to Feinberg's discovery requests, preparing witnesses for deposition and trial, and "generally represent[ing] PHLX's interests with respect to the litigation." The PHLX singles out these costs, arguing that Rule 651 requires only that costs be incurred in a "legal proceeding . . . against the Exchange" and that the definition of "legal proceeding" includes "all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a

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25/ Levy v. HLI Operating Co., Inc., 924 A.2d 210, 226-27 (Del. Ch. 2007).

26/ See Witco Corp. v. Beekhuis, 38 F.3d 682, 691 (3d Cir. 1994) (discussing the policy behind Delaware's indemnification statute and noting "[c]ourts have interpreted these indemnification rights very broadly").

27/ 57 SEC Docket at 912 (approving the Chicago Stock Exchange rule).

right or the enforcement of a remedy." 28/ We find no basis, nor does the PHLX provide any, for finding that these trial and pre-trial activities were separate legal proceedings from Feinberg's lawsuit against Benton. Rather, they were integral parts of Feinberg's suit against Benton, not against the Exchange. Moreover, Rule 651 still requires that any proceeding be "related to the business of the Exchange." For the reasons discussed above, we find that the above-mentioned trial and pre-trial proceedings did not relate to the business of the Exchange and that allowing the Exchange to recoup costs related to them would be inconsistent with the purposes of the Exchange Act. 29/

For these reasons, we set aside the Special Committee's opinion imposing $464,418.51 in fees and expenses and suspending Feinberg's membership.

An appropriate order will issue. 30/

By the Commission (Chairman SCHAPIRO and Commissioners WALTER and PAREDES; Commissioners CASEY and AGUILAR not participating.)

Elizabeth M. Murphy
Secretary

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28/ B LACK'S LAW DICTIONARY 896 (6th ed. 1990).

29/ Feinberg also argues that Rule 651 does not apply because (i) Feinberg did not bring a "lawsuit or other legal proceeding" against the PHLX, (ii) a subpoena is not a "lawsuit or other legal proceeding," (iii) Benton was not sued in her official capacity as a governor, and (iv) Benton and the PHLX should have sought recoupment of their legal expenses in district court. Because we conclude that Feinberg's suit was not related to the business of the Exchange, we need not address these issues.

30/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 59577 / March 13, 2009

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In the Matter of

RICHARD B. FEINBERG

c/o Peter J. Mooney, Esq.
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395

ORDER SETTING ASIDE ACTION OF NATIONAL SECURITIES EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that the action taken by the Philadelphia Stock Exchange, Inc. imposing costs and expenses on Richard B. Feinberg and suspending his membership, be, and it hereby is, set aside.

By the Commission.

Elizabeth M. Murphy
Secretary