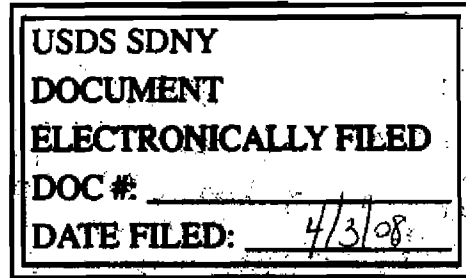


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SEOW LIN, on behalf of herself and all
others similarly situated,

Plaintiff,

08 Civ. 00242 (CM)

-against-

INTERACTIVE BROKERS GROUP, INC.,

Defendant.

ORDER DENYING MOTION FOR UNDERTAKING
AND DIRECTING AMENDMENT OF THE CAPTION

McMahon, J.:

In view of the plaintiff's substitution of a new (and qualified) named plaintiff, and the amendment of the complaint, it would not be appropriate to grant the motion for an undertaking. In its present posture, the complaint is not frivolous and was not filed in bad faith. See Straus v. Holiday Inns, Inc., 460 F. Supp. 729, 732 (S.D.N.Y. 1978). Therefore, the litigation does not meet the standards articulated by the Second Circuit for requiring that plaintiff post an undertaking in a Section 11 case – a provisional remedy that is not favored in this Circuit. Id. at 732 ("An application for undertaking generally is not looked upon with favor.") (citing Lerner v. Ripley Co., (1961-1964) Fed. Sec. L. Rep. (CCH) P 91,249, at 94,127 (S.D.N.Y. 1963)). Therefore, the motion is denied as moot.

The parties are reminded that the lack of an undertaking does not constrain the court from awarding costs or sanctions in the event further proceedings reveal their necessity.

The Clerk of the Court is ordered to revise the caption by deleting the name of the former named plaintiff, Zeeshan Nayab, and substituting in the name of the new named plaintiff, Seow Lin.

Dated: April 3, 2008

U.S.D.J.

BY ECF TO ALL COUNSEL