



Department of Justice

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JUSTICE DEPARTMENT FILES SUIT CHALLENGING ANTICOMPETITIVE AGREEMENT AMONG OPTIONS EXCHANGES

Justice Department and Securities and Exchange Commission Require Options Exchanges to Restructure Options Industry to Increase Competition

WASHINGTON, DC — The Department of Justice today filed a civil antitrust action against the four leading options exchanges, charging that they illegally agreed that they would not list equity option classes listed already on one of the other exchanges. At the same time, the Department filed a consent decree that, if approved by the court, would resolve the lawsuit. Also today, the Securities and Exchange Commission issued an order requiring important reforms by the options exchanges. Collectively, the consent decree and the order will prohibit anticompetitive conduct and will restructure the options industry to ensure greater competition in the future.

The Department's Antitrust Division filed suit in U.S. District Court in Washington, D.C., naming the American Stock Exchange, L.L.C., the Chicago Board Options Exchange, Incorporated, the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc. as defendants. Option exchanges provide a forum for their members to trade options. An option is the right either to buy or sell a specific amount or value of an underlying interest (equity securities, stock indices, government debt securities or foreign currencies) at a fixed "exercise"

price by a specified expiration date. The four exchanges named in the suit account for the vast majority of standardized equity option trades in the United States.

According to the Department's complaint, starting sometime in the early 1990s, the defendant exchanges agreed not to list equity option classes that were listed already on another exchange. The SEC determined in the late 1980s that competition among exchanges for equity options would benefit investors, in part by narrowing spreads – the difference between the best quoted price to buy and the best quoted price to sell an option. The agency then revised rules that had previously limited the listing of certain option classes to a single exchange. The revised SEC rules prohibited the exchanges from maintaining any rule, stated policy, practice or interpretation that precluded the multiple listing of options.

Rather than conform to the directives of the SEC, the defendant exchanges reached an understanding between and among one another to refrain from listing equity options classes that were already listed on another exchange. As a result, many frequently traded equity options were traded only on one exchange from the early 1990s until at least the summer of 1999, thereby depriving investors of the benefits of competition.

The complaint also alleges that the exchanges enforced the agreement by threatening and harassing exchanges and market makers who desired to multi-list option classes and by jointly limiting capacity of systems that disseminate options information for the purpose of deterring listing competition.

"Today, more people than ever are investing in the options market," said Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division. "Investors who choose to buy or sell equity options expect to receive -- and are entitled to receive -- the full benefits of

competition. The agreement reached by the defendant exchanges harmed consumers by depriving some investors of better prices, lower transaction fees, and higher quality services, that would have occurred had no agreement existed."

Under the terms of the consent decree, the exchanges are prohibited from entering into, continuing, or reinstating their listing agreement in any form; prohibited from threatening, harassing, or intimidating exchanges or exchange members that seek to multi-list an option class; and prohibited from maintaining rules or policies that prohibit multiple listing. The exchanges are also required to provide reports relating to listing decisions and allegations of harassment or intimidation to the Department and to put antitrust compliance procedures in place.

The Department worked closely with the SEC, which was conducting its own investigation of the options industry. The Department determined that certain reforms necessary to promote competition in options trading could best be achieved by the SEC because of the important role it plays in regulating the options industry. Thus, under the terms of the SEC order issued today, the exchanges are required to propose rule changes that eliminate the opportunity for future anticompetitive conduct. Further, the exchanges are also required to increase surveillance expenditures. To comply with the consent decree and the SEC order, the options exchanges will have to make substantial changes in their operations.

"The Justice Department's consent decree and the SEC's order represent the culmination of a major cooperative effort of the two agencies that will change the way business is done in the options industry," said Mr. Klein. "The Justice Department and SEC worked shoulder to shoulder to uncover anticompetitive conduct. The agencies also cooperated to design remedial measures to prevent the options exchanges from operating in an anticompetitive manner in the

future, and I have been assured by the SEC that it will act promptly to implement the reforms that both agencies have determined are necessary. I am delighted that the Justice Department and SEC were able to work together to accomplish such an important result for the American consumer, and I want to take this opportunity to express the Department's appreciation to the SEC staff."

As required by the Tunney Act, the proposed consent decree, along with the Department's Competitive Impact Statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed decree during a 60-day comment period to: Nancy Goodman, Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, 600 E Street, N.W., Suite 9500, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the Court may enter the final judgement upon a finding that it serves the public interest.

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