IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Department of Justice Antitrust Division 600 E Street, N.W. Suite 9500 Washington, D.C. 20530 *Plaintiff,*	CASE NUMBER 1:00CV02174 JUDGE: Emmet G. Sullivan DECK TYPE: Antitrust DATE STAMP: 09/11/2000
v.	
AMERICAN STOCK EXCHANGE, LLC 86 Trinity Place New York, NY 10006	
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED 400 South LaSalle Street Chicago, IL 60605	
PACIFIC EXCHANGE, INC. 301 Pine Street San Francisco, CA 94104, and	COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATION OF 15 U.S.C. § 1
PHILADELPHIA STOCK EXCHANGE, INC. 1900 Market Street Philadelphia, PA 19103	
Defendants.	

COMPLAINT

The United States of America, acting under the direction of the Attorney General, brings this civil action pursuant to Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain

violations of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. The United States alleges:

1. The United States brings this action to enjoin the four defendant options exchanges from maintaining, continuing or renewing an agreement to limit competition among themselves by not listing equity options that were previously listed on another exchange.

2. Each of the defendants provides a forum for trading options and, when options are listed on more than one exchange, the exchanges compete for customers by, among other things, offering better prices and more efficient execution of option trades. From the early 1990's until at least the summer of 1999, the defendants and their co-conspirators maintained an agreement pursuant to which many frequently-traded equity options were traded only on one exchange, resulting in some investors paying more when buying options and receiving less when selling options, and being denied the other benefits of competition.

I.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this action and jurisdiction over the parties pursuant to 15 U.S.C. § 4 and 28 U.S.C. §§ 1331 and 1337.

4. Each of the defendants resides, or is licensed to transact business, or is transacting business, in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFENDANTS

5. Defendant AMERICAN STOCK EXCHANGE, LLC ("AMEX") is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

6. Defendant CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED ("CBOE") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

7. Defendant PACIFIC EXCHANGE, INC. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in San Francisco, California.

8. Defendant PHILADELPHIA STOCK EXCHANGE, INC. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Philadelphia, Pennsylvania.

III.

CO-CONSPIRATORS

9. Various partnerships, corporations, associations and individuals, including persons not named as defendants in this Complaint, have participated with defendants in the violations alleged in this Complaint.

IV.

TRADE AND COMMERCE

10. An option is the right either to buy or to sell a specified amount or value of a particular underlying interest (equity securities, stock indices, government debt securities or foreign currencies) at a fixed "exercise" price by a specified expiration date. An option "class" defines the option by its type, whether it is a "put" -- the right to sell -- or a "call" -- the right to buy, and by its underlying interest. An option "series" includes all option contracts of the same class with the same exercise price, expiration date, and unit of trading. An equity option is an option in which the underlying interest is an equity security.

11. In 1973, the Securities and Exchange Commission ("SEC") authorized CBOE to begin trading equity options. Over the next three years, the SEC authorized AMEX and the other defendant

exchanges to begin options trading. Options trading is facilitated by the Options Clearing Corporation ("OCC"), which standardizes the option terms, clears the trades and acts as the contra-party guarantor of performance on these options. These OCC guaranteed option contracts are referred to as "standardized" options. Because option classes are standardized, each class can be traded today on any SEC-approved options exchange. As of the date of this Complaint, standardized equity options are traded on the exchanges operated by the defendants and the International Stock Exchange. The International Stock Exchange began trading options in May 2000 and is not a party to this action.

12. Option exchange activities, and the violations alleged in this Complaint, affect investors located throughout the United States. During the time period covered by this Complaint, substantial numbers of standardized equity option contracts have traded across state lines in a continuous and uninterrupted flow of interstate trade and commerce. The activities of each defendant as described in this Complaint have been within the flow of, and have substantially affected, interstate commerce.

V.

CLAIM FOR RELIEF

13. An options exchange provides a forum for trading standardized options. Market makers on a specific exchange compete with one another in the prices they offer to buy and sell a particular option series. If an option is listed on two or more exchanges, the best prices to buy and sell of the market makers on one exchange are published as the prices of that exchange, and those prices compete with the best prices of the market makers on each of the other exchanges where the option is listed. Exchanges compete for customer orders by offering better prices, lower transaction fees, and higher quality services, including quicker execution and greater liquidity. The difference between the best price at which any market maker is willing to buy an option series (the "bid") and the best price at which any market maker is willing to sell the same option series (the "ask") is referred to as the "spread." The narrower the spread, the more likely it is that consumers, in general, are receiving better prices when trading options.

14. Prior to 1990, rules of the SEC prohibited, with a few exceptions, equity options from being traded on more than one exchange. The SEC subsequently rescinded these rules and

adopted Rule 19c-5. From January 20, 1990, going forward, each exchange was permitted to list any equity option that was being listed for the first time, i.e., that had not been previously traded on any exchange, as long as its underlying security met specific criteria, such as having a trading history and sufficient activity, to make it eligible for listing as an option. Multiple listing of equity options that were already being traded as of January 20, 1990, was phased in over a period of time ending in late 1994. Thus, by the end of 1994, each option exchange could list any equity option class. The SEC undertook these changes because, among other reasons, it determined that competition among exchanges for options business would benefit investors by narrowing spreads.

15. Following the adoption of Rule 19c-5, the defendants adopted procedures for listing new equity options. These procedures were contained in the "Joint-Exchange Options Plan" "Options Plan"). The Options Plan required each exchange to pre-announce its intention to list a new equity option class, established a twenty-four hour time frame for other exchanges to announce their intention to list the same option, and provided waiting periods before any exchange could start trading that option. The Options Plan also provided that if an exchange was

not the first exchange to announce an intent to list an option, or did not submit a notice of intent to list the option within the twenty-four hour period following the initial notice (referred to as the "initial listing window" herein), it had to wait until at least the eighth business day after the date of the initial notice before it could list and begin trading the option.

16. Starting in the early 1990's, the defendants and their co-conspirators entered into an agreement to limit the multiple listing of equity options. Although the language of the Options Plan provided that an exchange could list and begin trading previously listed options after waiting eight days, defendants undertook to develop additional procedures to govern the multiple listing of equity options already listed on an exchange. Defendants engaged in protracted discussions regarding the development of such procedures. During the course of these discussions, an agreement between and among defendants and their co-conspirators developed that each would refrain from listing equity options classes that were already listed on another exchange.

17. The agreement among defendants had the effect of limiting listing competition. As a result of defendants' agreement, many frequently-traded equity options were traded only

on one exchange. No exchange faced new competition on their options from another exchange, other than in the initial listing window, until at least the summer of 1999.

18. The volume of options traded grew tremendously between the early 1990's and the summer of 1999, making it more attractive for exchanges to seek to list options exclusively traded on another exchange. However, during this period, many of the largest volume and most actively traded option classes remained exclusively traded on a single exchange.

19. It was often in the economic self-interest of one or more exchanges to multiple list options or to engage in more active direct competition with the other exchanges. However, each time an exchange considered or took any steps that would have undercut the existing agreement among the defendants, one or more of the defendants acted to stop this threat by, among other things:

a. threatening or harassing an exchange or market maker that had proposed or even suggested multiple listing, including threats in conversations between exchanges that occurred after plans to act in a manner inconsistent with the agreement became known and threats of economic retaliation against market makers who advocated or supported

plans to multiple list;

b. ignoring or summarily denying requests from market makers to list an option class that was already listed elsewhere and failing to provide internal procedures by which a market maker could apply to list an option class that was already listed elsewhere;

c. directly or through the OCC, discussing and jointly determining what options products would be made available and to which exchanges, including deciding which exchange would list an option class following corporate mergers or reorganizations of the companies whose equities underlie the options. These decisions were made in a manner to limit listing competition among the exchanges; and

d. directly or through the Options Price Reporting Authority ("OPRA"), an exchange organization that facilitates the consolidation and distribution of information on quotes and transactions, discussing and jointly deciding issues related to options message traffic capacity available for quoting options and reporting options trades in a manner intended to constrain capacity so as to deter listing competition. Through these activities, defendants used OPRA improperly to discourage the multiple listing of options.

20. After the Antitrust Division of the Department of Justice and the SEC began to investigate defendants' listing practices, the defendants altered their listing practices by beginning, in the summer of 1999, to list options that had previously been exclusively listed on a single exchange. Since that time, there has been a substantial increase in multiply-listed options, and some option spreads have narrowed significantly.

21. The purpose and effect of the agreement were to limit competition among defendants and their co-conspirators in the purchase and sale of equity options from and to the investing public. The agreement has had the following effects, among others:

a. price competition in the purchase and sale of equity options has been unreasonably restrained; and

b. investors who purchased or sold equity options that, absent the agreement, would have been multiply listed, have been deprived of the benefits of free and open competition in the purchase and sale of options.

22. Unless permanently restrained and enjoined, defendants will continue, maintain or renew the agreement or take other steps to limit the multiple listing of equity options, in

violation of Section 1 of the Sherman Act.

VI.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired to restrain interstate trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendants, their officers, directors, agents, employees, and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy alleged herein, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That plaintiff have such other relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.

Respectfully submitted,

JOEL I. KLEIN
Assistant Attorney General

JOHN M. NANNES
Deputy Assistant
Attorney General

MARY JEAN MOLTENBREY
Director, Civil - Non-Merger
Enforcement

NANCY M. GOODMAN
Chief
Computers & Finance Section

GEORGE S. BARANKO
D.C. Bar No. 288407

JOHN D. WORLAND, JR.
D.C. Bar No. 427797

JOHN H. CHUNG

MOLLY L. DEBUSSCHERE

CATHERINE E. FAZIO

RICHARD L. IRVINE

JOSHUA SOVEN
Attorneys
U.S. Department of Justice
Antitrust Division
600 E Street, N.W., Room 9500
Washington, D.C. 20530
(202) 307-6200 phone
(202) 616-8544 fax

Dated: September 11, 2000