

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
)	
UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	
)	Civ.No.00-CV-02174(EGS)
AMERICAN STOCK EXCHANGE,)	
LLC; CHICAGO BOARD OPTIONS)	
EXCHANGE, INCORPORATED;)	
PACIFIC EXCHANGE, INC.; and)	
PHILADELPHIA STOCK EXCHANGE,)	
INC.,)	
<i>Defendants.</i>)	
)	

MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on September 11, 2000. The Final Judgment may be entered at this time without further hearing if the Court determines that such entry is in the public interest. The Competitive Impact Statement ("CIS"), filed on September 11, 2000, explains why entry of the proposed Final Judgment is in the public interest. The United States has filed simultaneously with this Motion its Certificate of Compliance with the Provisions of the Antitrust Procedures and Penalties Act ("Certificate of Compliance"), setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

Background

The United States filed a civil antitrust Complaint on September 11, 2000, alleging that the defendants had violated Section 1 of the Sherman Act, 15 U.S.C. § 1. Defendants are option exchanges that provide a forum on which their members trade options. An option is the right either to buy or to sell a specified amount or value of a particular underlying interest (equity security, stock indices, government debt securities or foreign currencies) at a fixed exercise price by exercising the option before its specified expiration date. An equity option is one in which the underlying interest is an equity security. Since the early 1990s, exchanges have been permitted to list options on any equity security that meets certain listing criteria. The Complaint alleges that, beginning in the early 1990s, an agreement arose among the defendants to limit competition among themselves by not listing equity options that were already listed on another exchange.

Also on September 11, 2000, the United States and the defendants filed a Stipulation in which they consented to the entry of a proposed Final Judgment that requires defendants to eliminate the conduct alleged in the Complaint. Specifically, the proposed Final Judgment prevents the defendants from allocating equity options between or among exchanges or from agreeing that an equity option will be traded exclusively on any one exchange. The proposed Final Judgment also prohibits an exchange from maintaining any rule, policy, practice or interpretation that directly prohibits, or that has the purpose and an effect of indirectly prohibiting, the multiple listing of equity options. Further, the Final Judgment enjoins defendants from retaliating, harassing or intimidating any exchange or member of an exchange for listing an equity option or introducing a new equity option product.

The United States and defendants have stipulated that the proposed Final Judgment may

be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations of it.

II.

Compliance with the APPA

The APPA requires a sixty (60) day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In this case, the sixty-day comment period commenced on September 27, 2000, and terminated on November 27, 2000. During this period, the United States received no comments on the proposed Final Judgment, so that it was not necessary to file a Response of the United States to Comments or publish any comments or Response in the Federal Register. Those requirements of the APPA that must be completed prior to entry of the proposed Final Judgment have all been met, as is attested in the Certificate of Compliance filed by the United States simultaneously with this Motion. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment is in the "public interest." In making that determination, the Court *may* consider:

- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its Competitive Impact Statement filed with the Court on September 11, 2000, the United States has explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference.

The public has had opportunity to comment on the proposed Final Judgment as required by law, and no comments have been received. There has been no showing that the proposed settlement constitutes an abuse of the Justice Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV.

Conclusion

For the reasons set forth in this Motion and the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States is authorized by counsel for the defendants to state that the defendants do not oppose this motion. The proposed Final Judgment submitted on September 11, 2000 has not changed during the pendency of the Tunney Act proceedings in this case and should be entered in the form originally submitted to the Court. A copy of the proposed Final Judgment is attached to this motion as Exhibit 1.

Respectfully Submitted,

_____|s|
George S. Baranko
(D.C. Bar # 288407)
Trial Attorney
Computers & Finance Section
U.S. Department of Justice
600 E Street, N.W.
Suite 9500
Washington, DC 20530
202-307-6236

Dated: December 1, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2000, I caused copies of the MOTION FOR ENTRY OF FINAL JUDGMENT and UNITED STATES' CERTIFICATE OF COMPLIANCE WITH THE PROVISIONS OF THE ANTITRUST PROCEDURES AND PENALTIES ACT to be served upon the following:

Shepard Goldfein, Esq.
Skadden Arps, Slate,
Meagher & Flom LLP
Four Times Square
New York, NY 10036
(212) 735-3620

Representing AMERICAN
STOCK EXCHANGE, LLC.

Mark C. Schechter, Esq.
Howery, Simon, Arnold & White
1299 Pennsylvania Ave., N.W.
Washington, DC 20004-2402
(202) 383-6890

Representing CHICAGO
BOARD OPTIONS EXCHANGE,
INCORPORATED

Bruce Coolidge, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Representing PACIFIC
EXCHANGE, INC.

Jonathan Rich, Esq.
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, DC 20036-5869
(202) 467-7433

Representing PHILADELPHIA
STOCK EXCHANGE, INC.

George S. Baranko
Trial Attorney
U.S. Department of Justice
Antitrust Division
600 E Street, N.W.
Room 9500
Washington, D.C. 20530
Telephone: 202-307-6136
Facsimile: 202-616-8544