''sixty days'' until February 27, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William J. Miller, *William.miller@atf.gov,* Chief, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

— Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Daily Summaries, Records of Production, Storage and Disposition and Supporting Data by Explosives Manufacturers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. These records show daily activities in the manufacture, use, storage, and disposition of explosive materials by manufacturers. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. ATF requires that records be kept 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,008 respondents will take 15 minutes to maintain each record.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 130,520 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–33374 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Deutsche Börse AG and NYSE Euronext; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Deutsche Börse AG and NYSE Euronext,* Civil Action No. 1:11–cv–02280. On December 22, 2011, the United States filed a Complaint alleging that the proposed merger of Deutsche Börse AG and NYSE Euronext would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Deutsche Börse AG's subsidiary to divest its interest in Direct Edge Holdings LLC within two years and to take the necessary steps to remove its affiliates from governance of Direct Edge.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530 (202) 307–6640).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Antitrust Division
U.S. Department of Justice
450 Fifth Street NW., Suite 7100
Washington, DC 20530

Plaintiff,

v.

DEUTSCHE BÖRSE AG,
Mergenthalerallee 61
65760 Eschborn
Germany

and

NYSE EURONEXT,
11 Wall Street
New York, NY 10005

Defendants.

Case: 1:11–cv–02280
Assigned To: Beryl A. Howard
Date: 12/22/2011
Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action pursuant to the antitrust laws of the United States to enjoin the proposed merger of Deutsche Börse AG (''DB'') and NYSE Euronext (''NYSE'') and to obtain such other equitable relief as the Court deems appropriate. The United States alleges as follows:

NATURE OF ACTION

1. DB is among the largest operators of financial exchanges in the world. While most of its businesses are in Europe, DB, through various subsidiaries, is also the largest unitholder of Direct Edge Holdings LLC (''Direct Edge''), the fourth-largest operator of stock exchanges in the United States. Direct Edge competes head-to-head with NYSE and is an exchange innovator, leading in

technology, pricing, and in the development of exchange models.

2. NYSE operates some of the oldest, largest, and most prestigious stock exchanges in the United States. It stands at the center of American financial markets, with its exchanges handling roughly a third of the equities traded daily in the United States, and considerably more for certain equities and certain times of day. NYSE exchanges list the vast majority of the listed exchange-traded products, including the majority of exchange-traded funds, and they supply key market data to customers making investment decisions.

3. On February 15, 2011, NYSE and DB agreed to merge in a transaction worth roughly $9 billion. NYSE and DB propose to combine under a new Dutch holding company (''NewCo''), which would be the largest exchange group in the world, with dual headquarters in Frankfurt and New York. NewCo would own 100% of NYSE and 31.54% of Direct Edge.

4. The proposed transaction would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, because it would substantially lessen competition and potential competition in at least three lines of commerce in the United States: (a) displayed equities trading services; (b) listing services for exchange-traded products (''ETPs''), including exchange-traded funds (''ETFs''); and (c) real-time proprietary equity data products.

JURISDICTION, VENUE AND COMMERCE

5. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. The Court has subject matter jurisdiction over this action and the defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345. NYSE and DB provide and sell displayed equity trading services and real-time proprietary equities trading data. NYSE also provides and sells listing services for exchange traded products. Sales of these services in the United States represent a regular, continuous, and substantial flow of interstate commerce, and have a substantial effect upon interstate commerce.

7. This Court has personal jurisdiction over each defendant and venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b)(1) and (c). Defendants transact business within the District of Columbia. DB and NYSE acknowledge personal jurisdiction in this District and consent to venue.

DEFENDANTS AND THE TRANSACTION

8. DB is a German *Aktiengesellschaft* that operates financial exchanges and related businesses in the United States and Europe. It generates revenue from, among other things, listing fees, stock trading transaction fees, market data licensing fees, and technology licensing arrangements. Through its subsidiaries, DB is the largest holder of equity in Direct Edge, a leading stock exchange operator in the United States. DB owns 50% of the equity and controls Frankfurt-based Eurex Group, a leading European derivatives exchange operator. DB has announced an agreement to buy the remaining equity in Eurex after DB completes its merger with NYSE. Eurex owns International Securities Exchange Holdings, Inc. (''ISE''), a leading options exchange in New York that also owns a 31.54% equity interest in Direct Edge. In 2010, DB's subsidiaries earned substantial revenues from sales in the United States.

9. NYSE is a publicly traded Delaware corporation with its principal place of business located in New York, New York. The company operates financial exchanges in the United States and Europe. In the United States, NYSE operates three stock exchanges: (i) the New York Stock Exchange LLC; (ii) NYSE Arca, Inc., an all-electronic exchange; and (iii) NYSE Amex LLC, an exchange that lists the stock of primarily small- and medium-sized companies. NYSE generates revenue from, among other things, listing fees, stock trading transaction fees, market data licensing fees, and technology licensing arrangements. In 2010, NYSE earned over $3 billion in total revenues from within the United States.

10. Direct Edge is a Delaware limited liability company with its principal place of business in Jersey City, New Jersey. Direct Edge, through its subsidiary Direct Edge Holdings, Inc., owns and operates two leading U.S. stock exchanges, EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge is majority-owned by a group including ISE, Goldman Sachs Group Inc., Citadel Investment Group LLC, and Knight Capital Group Inc. ISE owns 31.54% of Direct Edge and holds certain key voting and special veto rights, such as the right to veto entry by Direct Edge into options trading. ISE also has the right to appoint three members to the Direct Edge board of managers and one member to each of the corporate boards of EDGA Exchange, Inc. and EDGX Exchange, Inc. Goldman Sachs, Citadel, and Knight each own 19.9% of Direct Edge. The remaining 8.76% is owned by a group of five brokers, including affiliates of JP Morgan Chase & Co. (through LabMorgan Corp.), Bank of America (through Merrill Lynch L.P. Holdings, Inc.), Nomura Securities International, Inc., Deutsche Bank USA (through DB US Financial Markets Holding Corporation), and Sun Partners LLC. Direct Edge's exchanges compete head-to-head with the NYSE exchanges. In 2010, Direct Edge earned substantial revenues in the United States.

11. DB and NYSE have proposed to merge into a NewCo that will house all their current corporate holdings. NewCo will be a Dutch holding company, with dual headquarters in New York City and outside Frankfurt, Germany. Combined annual net revenues of NewCo are expected to be over $5 billion, with revenue sources including market data and technology; equities trading and listings; derivatives trading and listings; and settlement and custody. NewCo will own many of the world's leading brands in finance. Its post-merger leadership will be split between former executives from both NYSE and DB. The current DB Chief Executive Officer will stay on as Chairman, and the current NYSE CEO will remain CEO of the combined entity.

RELEVANT MARKETS

Displayed Equities Trading Services

12. Displayed equities trading services comprise a relevant antitrust product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act. These services include providing mechanisms and ancillary services to facilitate the public purchase and sale of exchange-traded stocks (those defined as ''NMS stock'' under Rule 600(b)(47) of Regulation NMS, 17 C.F.R. § 200 *et seq.*). These services are offered mainly by national stock exchanges registered under Section 6 of the Securities Exchange Act of 1934, 15 U.S.C. § 78f, and also by electronic communications networks (''ECNs'') regulated by Regulation ATS, 17 C.F.R. § 242.300 *et seq.*

13. Several key attributes separate displayed from undisplayed or ''dark'' equities trading services, including the continuous pre-trade publication of the best-priced quotations for buying and selling exchange-traded stocks in a national consolidated data stream, the display of certain customer limit orders (offers to buy and sell stock at particular prices), and the provision of deep and reliable liquidity for a broad array of exchange-traded stocks. Displayed trading venues, in particular those operated by NYSE, The NASDAQ OMX Group, Inc., Direct Edge, and BATS Global Markets, Inc. form the backbone of the American national market system and over the past several years have accounted for roughly 65% to 75% of the overall average daily trading volume in the United States. Broker-dealers, institutional investors, and other customers rely on displayed trading venues to provide meaningful price discovery for exchange-traded stocks and to act as exchanges of last resort, especially for thinly traded stocks, in times of market volatility or stress.

14. Undisplayed trading services account for roughly 25% to 35% of total average daily trading volume and serve a very different purpose for investors: to allow for anonymous matching of orders without publicly revealing the intention to trade before execution. Institutional investors and other traders use these services to minimize the likelihood that their trades will cause the stock price to move against their interest. Most of the undisplayed trading centers offer less liquidity on most stocks (indeed, an alternative trading system providing undisplayed trading must account for less than 5% trading volume in a stock or the venue automatically becomes displayed by regulations promulgated by the U.S. Securities and Exchange Commission (''SEC'')) and base their prices on those prevailing in the displayed equities trading centers.

15. The relevant geographic market is the United States. Trading equities on a foreign exchange is not an adequate substitute for trading on an exchange in the United States. Trading on an exchange outside the United States exposes traders to risks like foreign exchange risk, country risk, reputational risk,

different or potentially lax regulatory environments for trading, lack of analyst coverage, different accounting standards, time differences, and language differences, among other things. Additionally, the majority of American companies choose to list on domestic exchanges. Therefore, to trade most publicly-listed American stocks, investors must use stock exchanges located in the United States.

16. The market for displayed equities trading services in the United States satisfies the hypothetical monopolist test. A profit-maximizing monopolist in the offering of displayed equities trading services in the United States likely would impose at least a small but significant and non-transitory increase in the price of such services. Not enough customers would switch to alternative means of trading equities in undisplayed trading centers or foreign exchanges to render this price increase unprofitable.

Listing Services for Exchange-Traded Products

17. The provision of ETP listing services constitutes a relevant antitrust product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act. An ETP is typically an exchange-listed equity security instrument other than a standard corporate cash equity, the performance of which is designed to track another specific instrument, asset or group of assets, such as a market index or a selected basket of corporate stocks. ETPs are typically sponsored by firms that monitor and manage the composition and performance of the ETP. The most popular type of ETP today is an exchange-traded fund, an equity fund with a form of exchange-listed securities (often trust units) that can be traded like a stock but that is also benchmarked against another stock, index or other asset. Buying an ETP offers a simple way for investors to diversify their portfolios without having to buy each individual corporate stock or other financial instrument directly. For instance, the SPDR S&P 500 exchange-traded fund tracks the S&P 500 U.S. stock index, which comprises widely held American stocks. ETFs and other ETPs are very popular and serve as the cornerstone of many individual investors' portfolios.

18. The relevant geographic market is the United States. Listing an ETP on a foreign exchange is not an adequate substitute for listing on an exchange in the United States. U.S. sponsors of ETPs overwhelmingly choose to list domestically, because it allows them to build brand awareness and reputation and stay close to U.S. capital markets and investors in the United States considering the purchase and sale of ETFs and other ETPs, as well as the analysts that cover ETPs and ETFs and, in many cases, the underlying or related assets, indexes, or products.

19. The market for ETP listing services in the United States satisfies the hypothetical monopolist test. A profit-maximizing monopolist that was the only present and future firm in the offering of ETP listing services in the United States likely would impose at least a small but significant and non-transitory increase in the price of ETP listings. Not enough customers would switch to alternatives to render this price increase unprofitable.

Real-time Proprietary Equity Data

20. Real-time proprietary equity data is a relevant antitrust product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act. Access to affordable, reliable and timely data about the stock market is essential for informed stock trading. NYSE and Direct Edge are among only four major competitors that aggregate and disseminate certain market data to brokers, dealers, investors, and news organizations. They sell (or with little lead time could easily sell) competing proprietary market data products derived from trading activities occurring both on and off their exchanges.

21. The product market for real-time proprietary equity data consists of what is commonly referred to in the industry as ''non-core'' data. Market participants generally refer to two broad categories of critical market data: ''core'' and ''non-core.'' Core data refers to the transaction data the SEC requires stock exchanges to report to securities information processors for consolidation and public distribution, including the current best bid and offer for each stock on every exchange and information on each stock trade, including the last sale. Non-core data includes trading volume and ''depth of book'' data that certain exchanges collect and sell, *i.e.*, the underlying quotation data on any given exchange. Non-core data helps traders determine where liquidity for a given stock exists during the day and the depth of that liquidity. Each exchange (or other trading platform) owns non-core data and can distribute it voluntarily for a profit in competition with data from other exchanges. Non-core data products can be made to replicate core data and exchanges can package and sell both core and non-core data together.

22. The market for real-time proprietary equity data satisfies the hypothetical monopolist test. A profit-maximizing monopolist in the offering of real-time proprietary equity data likely would impose at least a small but significant and non-transitory increase in the price of its equity data products. Not enough customers would switch to other products or services to render this price increase unprofitable.

23. The relevant geographic market is the United States. Real-time proprietary equity data in this context relate only to domestic trading of U.S.-listed stock. Customers needing real-time proprietary equity data relating to U.S.-listed stocks cannot turn to foreign alternatives.

ANTICOMPETITIVE EFFECTS

NYSE and Direct Edge Are Head-to-Head Competitors

24. NYSE and Direct Edge compete head-to-head in displayed equities trading services and in the provision of real-time proprietary equity data products. Direct Edge over the years has been a force in modernizing stock trading with cutting edge technology, faster trading times, lower prices, and new market models. Direct Edge began in 1998 as an electronic communication network named Attain. By 2007, it was a major trading venue owned and supported by broker-dealers Knight Capital, Citadel and Goldman Sachs. These broker-dealers used Direct Edge as a counterweight to the exchange duopoly of NYSE and NASDAQ. In December 2008, Direct Edge and ISE agreed that ISE would buy part of Direct Edge and Direct Edge would take control of the struggling ISE Stock Exchange. In March 2010, Direct Edge received approval from the SEC to convert its two ECNs into national securities exchanges under Section 6 of the Securities Exchange Act of 1934 (''Exchange Act'').

25. Direct Edge was first to offer two trading platforms using the same technology, but with different pricing schemes. EDGA historically has been operated as a lower cost exchange, being typically free or nearly free for many traders to make offers to buy or sell stock at certain posted prices (*i.e.*, ''post liquidity'') as well as for customers to trade against these offers and buy and sell stock (*i.e.*, ''take liquidity''), making EDGA attractive to traders sensitive to execution charges. Approximately one-third of Direct Edge volume trades over EDGA. EDGX historically has offered a more traditional pricing structure whereby the exchange normally pays customers to post liquidity and charges a fee for them to take liquidity. Although the two platforms have different pricing structures and cater to different segments, they share technology, support, code, and data centers.

26. NYSE has responded to Direct Edge's aggressive tactics in part by improving its own technology and changing its pricing. For example, NYSE in 2009 replaced its trading system in an effort to regain business lost mainly to the sophisticated electronic platforms at Direct Edge and BATS. The new system was faster, reducing transaction processing time to less than 10 milliseconds, which at the time made NYSE roughly as fast as its rivals. NYSE largely was able to stabilize its share of trading volume by implementing a new market model and introducing a new pricing scheme, which gave rebate incentives to certain designated market makers (*i.e.,* those market participants that agreed to buy and sell particular stocks at certain prices for certain amounts of time).

27. Direct Edge's investors, mainly broker-dealers, use its exchanges to put downward pressure on trading fees at NYSE and other exchanges. When possible, Direct Edge's broker-dealer investors often send trades to a Direct Edge exchange in order to keep their overall transaction costs down. In this way, Direct Edge helped spur a 2009 pricing war that substantially reduced the cost of trading stocks in the United States.

28. NYSE and Direct Edge also are head-to-head competitors in the provision of real-time proprietary equity data. Both are well-situated to offer new real-time equity data products and equity data products that replicate portions of core data offerings, but with even faster feeds.

Direct Edge Is a Potential Competitor to NYSE in Listing Services for Exchange-Traded Products

29. Direct Edge is a potential competitor to NYSE in listing services for ETPs. An ETP, including an ETF, must be listed on a registered stock exchange in order to be widely-traded in the United States. Exchanges typically compete for listings based on market structure, market maker incentives, marketing, and other associated services.

30. NYSE dominates the business of providing listing services for ETPs. NYSE's major competitors are NASDAQ, with a small share, and recent entrant BATS. Direct Edge, as a leading operator of registered stock exchanges, is uniquely situated for entry and already imposes competitive discipline on NYSE: its potential entry has already affected NYSE decisions to innovate and its pricing decisions in its ETP listings business.

This Merger Would Substantially Lessen Competition

31. NYSE and Direct Edge are currently vigorous competitors and closely monitor each other's competitive positions in at least two highly-concentrated markets. They are also close potential competitors in a third highly-concentrated market, listing services for ETPs, in which NYSE is a dominant player. Upon consummation of the proposed transaction, NewCo would own NYSE and would be able to control NYSE's management decisions.

32. Upon consummation of the proposed transaction, NewCo also would become, through ISE, the largest equity owner and most influential member of Direct Edge. NewCo would be able to appoint three of the eleven Direct Edge managers, and one representative to each of the EDGA and EDGX exchange's respective corporate boards. NewCo would have important ancillary rights at Direct Edge: veto rights over certain major corporate actions, representation on key committees, and shareholder rights under corporate law, such as the right to file shareholder derivative lawsuits. NewCo also would have access to Direct Edge's non-public, competitively sensitive information, and to the company's officers and employees. NewCo's ownership interests and associated rights would give it influence over Direct Edge's management decisions.

33. NewCo's presence on the Direct Edge boards would also likely chill board-level discussions of competition with NYSE. Direct Edge was formed, in part, as a customer-owned foil to NYSE and NASDAQ. When NYSE or NASDAQ fails to innovate or price competitively, broker-dealers can encourage Direct Edge to innovate or can shift their business to Direct Edge. If a NYSE-affiliate were sitting on Direct Edge boards, the broker-dealer board members would likely not want to discuss or reveal Direct Edge's potential innovations or other competitive initiatives targeting NYSE.

34. NewCo would have the incentive and ability to use its ownership, influence, and access to information as to both NYSE and Direct Edge to reduce competition between the companies in markets where they are significant competitors or potential competitors, resulting in an increase in prices or a reduction in innovation and quality for a significant number of trading, listings, and data customers.

ENTRY

35. Supply responses from competitors or entry of new potential competitors in the relevant markets—displayed equities trading services, ETP listing services, and real-time proprietary equity data—would not prevent the likely anticompetitive effects of the proposed merger. The merged firm would possess significant advantages that any new or existing competitor would have to overcome to successfully compete with the merged firm.

36. Barriers to entry into each of these markets are formidable. In the market for displayed equities trading services, any entrant would have to overcome hurdles of reputation, scale and network effects to successfully challenge the incumbents. In ETP listing services, any entrant would have to overcome numerous barriers to successfully challenge NYSE, including regulation, reputation, scale, and liquidity. Direct Edge is in a strong position to enter because it is already a registered stock exchange with reputation, scale and liquidity. Finally, competition in real-time proprietary equity data is largely limited to registered securities exchanges, and is closely linked to and derived from an exchange's presence in trading and market data collection. Only four exchange operators today have large enough public trading volume and existing facilities for collecting, aggregating, and disseminating data to meaningfully compete. They enjoy a significant advantage over any possible entrant.

VIOLATIONS ALLEGED

37. The United States incorporates the allegations of paragraphs 1 through 36.

38. The proposed transaction between DB and NYSE would substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

39. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. Actual and potential competition between NYSE and Direct Edge in displayed equities trading services and real-time proprietary equity data products in the United States will be substantially lessened;

b. Potential competition between NYSE and Direct Edge in ETP listing services in the United States will be substantially lessened;

c. Prices for displayed equities trading services, ETP listing services, and real-time proprietary equity data products likely will increase; and

d. Innovation in displayed equities trading services, ETP listing services, and real-time proprietary equity data products likely will decrease.

RELIEF REQUESTED

40. The United States requests that:

a. the proposed merger of NYSE and DB be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. DB and NYSE be enjoined from carrying out the proposed merger or carrying out any other agreement, understanding, or plan by which DB and NYSE would acquire, be acquired by, or merge with each other;

c. The United States be awarded the costs of this action; and

d. The United States receives such other and further relief as the case requires and the Court deems just and proper.

Dated: December 22, 2011

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/Sharis Pozen

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Acting Assistant Attorney General

/s/Leslie C. Overton

LESLIE C. OVERTON (DC Bar #454493)
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PATRICIA A. BRINK
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEUTSCHE BÖRSE AG,

and

NYSE EURONEXT,

Defendants.

Case: 1:11–cv–02280
Assigned To: Beryl A. Howard
Date: 12/22/2011
Description: Antitrust

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On February 15, 2011, NYSE Euronext (''NYSE'') and Deutsche Börse AG (''DB''), two of the world's leading owners and operators of financial exchanges, agreed to merge in a transaction valued at approximately $9 billion. NYSE and DB are seeking to combine their businesses and create the largest exchange group in the world under a new Dutch holding company (''NewCo''). NewCo would have dual headquarters in Frankfurt and New York.

Both NYSE and DB have substantial operations in the United States, including between them interests in five major American stock exchanges. NYSE is one of the two largest and most prestigious stock exchange operators in the United States. It owns the New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE Amex LLC. DB, through a series of subsidiaries, is the largest unitholder of Direct Edge Holdings LLC (''Direct Edge''), which operates the EDGA and EDGX electronic exchanges and is the fourth largest stock exchange operator in the United States by volume of shares traded. Direct Edge is considered an innovator in the exchange space and a competitive constraint on NYSE. This transaction therefore poses a significant risk that NewCo could use its influence to dampen the competitive zeal of Direct Edge. The United States brought this lawsuit on December 22, 2011, seeking to enjoin the proposed transaction. After a thorough investigation, the United States believes that the likely effect of the merger would be to lessen substantially competition and potential competition in displayed equities trading services, listing services for exchange-traded products, including exchange-traded funds, and real-time proprietary equity data products in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Simultaneous with the filing of the complaint, the United States filed a proposed Final Judgment designed to remedy the Section 7 violation. Under the proposed Final Judgment, which is explained more fully below, Defendants are subject to affirmative obligations to divest DB of its holdings in Direct Edge and to immediately eliminate DB's ability, through its subsidiaries, to influence the business and governance of Direct Edge.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, or enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

DB is a German *Aktiengesellschaft* that runs financial exchanges and ancillary businesses in the United States and Europe. DB generates revenue from several sources, including fees for securities listings and trading, fees for market data, and charges for licensing of exchange-related technology. DB, through its subsidiaries, is the largest holder of equity in Direct Edge, a leading stock exchange operator in the United States. DB owns 50% of the equity and controls Frankfurt-based Eurex Group, a leading European derivatives exchange operator. DB has announced an agreement to buy the remaining equity in Eurex after DB completes its merger with NYSE. Eurex owns International Securities Exchange Holdings, Inc. (''ISE''), a leading options exchange in New York that also owns a 31.54% equity interest in Direct Edge. In 2010, DB's ISE and Eurex subsidiaries earned substantial revenues from sales in the United States.

NYSE is a publicly traded Delaware corporation with its principal place of business in New York, New York. NYSE operates financial exchanges in the United States and across Europe. In the United States, NYSE operates the New York Stock Exchange, which is the storied hybrid exchange with both trading floor and electronic components; NYSE Arca, which is an all-electronic exchange; and NYSE Amex, the former American Stock Exchange, which targets mainly small- and medium-sized companies. NYSE also generates revenue from a wide range of exchange-related businesses, including securities listings, trading, data licensing, and technology licensing. In 2010, NYSE earned more than $3 billion in total revenues from within the United States.

Direct Edge is a Delaware limited liability company with its principal place of business in Jersey City, New Jersey. Direct Edge, through its subsidiary Direct Edge Holdings, Inc., owns and operates two leading U.S. stock exchanges, EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge is majority-owned by ISE, Goldman Sachs Group Inc., Citadel Investment Group LLC, and Knight Capital Group Inc. ISE owns 31.54% of Direct Edge and holds certain key voting and special veto rights, such as the right to veto entry by Direct Edge into options trading. ISE also has the right to appoint three members to the Direct Edge board of managers and one member to each of the corporate boards of EDGA Exchange, Inc. and EDGX Exchange, Inc. Goldman Sachs, Citadel, and Knight each own 19.9% of Direct Edge. The remaining 8.76% is owned by a group of five brokers, including affiliates of JP Morgan Chase & Co. (through LabMorgan Corp.), Bank of America (through Merrill Lynch L.P. Holdings, Inc.), Nomura Securities International, Inc., Deutsche Bank USA (through DB US Financial Markets Holding Corporation), and Sun Partners LLC. Direct Edge's exchanges compete head to head with the NYSE exchanges. In 2010, Direct Edge earned substantial revenues from within the United States.

B. Relevant Markets

Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as a firm's acquisition of the ability to raise prices or reduce innovation. Market definition assists antitrust analysis by focusing attention on those markets where competitive effects are likely to be felt. Well-defined markets include both sellers and buyers, whose conduct most strongly influences the nature and magnitude of competitive effects. Defining relevant markets in merger cases frequently begins by identifying a collection of products or set of services over which a hypothetical profit maximizing monopolist likely would impose at least small but significant and non-transitory increase in price. Defining markets in this way ensures that antitrust analysis takes account of a broad enough set of products to evaluate whether a transaction is likely to lead to a substantial lessening of competition.

Here, the investigation revealed three relevant markets. The first is displayed equities trading services, which includes stock trading services offered by trading venues that publicly disclose certain key information about quotes and transactions. Registered stock exchanges and electronic communication networks offer such displayed trading services. Displayed trading services are accompanied by the continuous pre-trade publication of the best-priced quotations for buying and selling exchange-traded stocks in a national consolidated data stream, the display of certain customer limit orders (offers to buy and sell stock at particular prices), and the provision of deep and reliable liquidity for a broad array of exchange-traded stocks. Displayed equities trading services form the backbone of the American national market system and facilitate equity price discovery in the United States. Displayed services are by their nature very different from undisplayed equity trading services, like dark pools, which offer no pre-trade transparency and cater mainly to institutional traders looking to buy or sell large volumes of stock while minimizing stock price movement.

A second relevant market consists of the listing services for exchange-traded products (''ETPs''). An ETP is typically an exchanged-listed equity security instrument other than a standard corporate cash equity, the performance of which is designed to track another specific instrument, asset or group of assets, such as a market index or a specific basket of corporate stocks. ETPs typically are sponsored by firms that determine the composition of the ETP and then manage it for investors. The most popular type of ETP today is an exchange-traded fund (''ETF''), which is a security traded like a stock that is designed to replicate the returns of a stock, index or similar asset. Exchanges compete to

list, or offer for trading, ETPs in exchange for listing fees and fees for ancillary services. Exchanges compete for listings mainly on the basis of their market structure, market maker incentives, marketing, and other associated services. ETP listings are a separate relevant market because there are no reasonable substitutes for listing an ETP if a sponsoring firm wants a widely-traded product with access to the liquidity offered by exchanges. In addition to which, only registered exchanges can offer these listing services.

A third relevant market encompasses real-time proprietary equity data products comprised of non-core data. There are two general types of equity data: ''core'' and ''non-core.'' Core data refers to the transaction data the U.S. Securities and Exchange Commission requires stock exchanges to aggregate and distribute publicly, including the current best bid and offer for each stock on every exchange and information on each stock trade, including the last sale. Non-core data includes trading volume and ''depth of book'' data that certain exchanges collect and sell, i.e., the underlying quotation data on any given exchange. Non-core data helps traders determine where liquidity for a given stock exists during the day and the depth of that liquidity. Access to market data is critical to many market participants and followers, who are willing to pay a premium for the best price, quote, volume, and other data available about exchange-listed equities being traded on the exchanges. Each exchange (or other trading venue) owns its non-core data and can distribute it for a profit. Proprietary data products can be made to replicate core data and exchanges can package and provide both core and non-core data together. NYSE and Direct Edge, as registered exchange operators, are among only four major competitors supplying real-time proprietary equity data products derived from trading activities.

Antitrust analysis must also consider the geographic dimensions of competition. Here, the relevant geographic markets exist within the United States and are not affected by competition outside the United States. The competitive dynamics for each of the three markets is distinctly different outside the United States.

C. Competitive Effects

NewCo would have the incentive and ability to significantly influence the competitive conduct of Direct Edge through ISE's voting interest, governance rights, or other shareholder rights under corporate law, like the right to file shareholder derivative suits. NewCo would likely use its influence to induce Direct Edge to compete less aggressively, to coordinate Direct Edge's conduct with the NYSE exchanges, or to disrupt day-to-day business activities at Direct Edge.

NewCo's presence on the Direct Edge boards would chill discussion of head-to-head competition with the NYSE stock exchanges. Direct Edge was formed, in part, by a group of broker-dealers intending to constrain the two large stock exchange operators in the United States, NYSE and NASDAQ. The broker-dealer owners of Direct Edge, and others, can and do turn their trades to Direct Edge when NYSE or NASDAQ fails to compete aggressively.

Finally, NewCo also would gain access to non-public, competitively sensitive information about Direct Edge. This access would likely enhance NewCo's ability to coordinate the behavior of the NYSE and Direct Edge exchanges, or make the accommodating responses of NYSE faster and more targeted. And if Direct Edge gained access to competitively sensitive NYSE information, it would further elevate the risk of coordinated effects.

Finally, even if it were unable to influence Direct Edge, NewCo would likely have, as a result of the partial ownership interest in Direct Edge, a reduced incentive to direct the NYSE exchanges to compete as aggressively against the Direct Edge exchanges. Since NewCo would share Direct Edge's losses inflicted by the NYSE exchanges, this may lead NewCo to behave in ways that would reduce those losses.

Supply responses from competitors or entry of potential competitors in any of the relevant markets would not prevent the likely anticompetitive effects of the proposed merger. The merged firm would possess significant advantages that any new or existing competitor would have to overcome to successfully compete with the merged firm. Entrants face significant entry barriers including hurdles of reputation, scale and network effects to successfully challenge the incumbents in the markets for displayed equities trading services, listing services for ETPs, and real-time proprietary equity data products.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to preserve competition in displayed equities trading services, listing services for exchange-traded products, and real-time proprietary equity data products by restricting NewCo's ability to influence Direct Edge and by eliminating NewCo's equity stake in Direct Edge. The proposed Final Judgment has two principal requirements: (1) the complete divestiture of Defendants' equity stake in Direct Edge, and (2) the immediate suspension of Defendants' ability to participate in the governance or business of Direct Edge. The proposed Final Judgment also has several sections designed to ensure its effectiveness and adequate compliance. Each of these sections is discussed below.

Before closing the DB–NYSE transaction, the proposed Final Judgment requires the Defendants provide a written plan explaining the steps they will take to render DB's interest in Direct Edge passive until such time as the divestiture occurs. Defendants must also certify that the plan complies with all applicable laws and that all voting, director, or other rights DB held have been eliminated, except as otherwise been provided for in the order. Within two calendar days of closing the transaction, any DB officer, director, manager, employee, affiliate, or agent must resign from the boards of all Direct Edge entities.

Further, from the date of the filing of the Final Judgment, the Defendants are prohibited from suggesting or nominating any candidate for election to the board of any Direct Edge entities or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee with or for any Direct Edge entities. The Defendants are also prohibited from any participation in a nonpublic meeting of any Direct Edge entities or in otherwise receiving any nonpublic information from any Direct Edge employee or board member, except to the extent necessary to fulfill the provisions of the proposed Final Judgment or to fulfill financial reporting obligations. The Defendants are further prohibited from voting except to the extent necessary to fulfill the provisions of the proposed Final Judgment, in which case they must vote their shares in proportion to how the other owners vote.

The Defendants are also prohibited from using their ownership interest in Direct Edge to exert any influence over it or to prevent it from making any necessary changes to its corporate governance documents to comply with the Final Judgment. The proposed Final Judgment provides that the Defendants must continue to provide regulatory and backup facility services to Direct Edge pursuant to existing contracts, and requires that the Defendants implement a firewall to prevent any inappropriate use of information gained by the Defendants about Direct Edge's business as a result of those contracts. The firewall requires that only the employees of the Defendants specifically necessary to provide the agreed upon services may receive any information from Direct Edge under those agreements, and those employees are prohibited from using any such information for any purpose other than providing the agreed upon services. This provision will allow Direct Edge to continue to receive its contracted services while reducing the opportunities for the Defendants to misuse any information provided by Direct Edge under the agreement. The anticipated effect of all these provisions is to maintain Direct Edge as an independent and viable competitor.

The proposed Final Judgment provides a two-year period, which the United States in its sole discretion may extend up to three additional years, for Defendants to divest all equity ownership in Direct Edge. The assets may be divested by open market sale, public offering, private sale, private placement, or repurchase by Direct Edge. If the assets are divested by private sale or private placement the United States must, in its sole discretion, approve the buyers of the assets. This provision ensures that the divestiture itself does not create any competitive issues. To maintain the complete independence of Direct Edge after the divestiture, the proposed Final Judgment prohibits the Defendants from financing any part of any purchase made pursuant to the Final Judgment.

In the event that Defendants are unable to take the steps required by the proposed Final Judgment to render their Direct Edge interest passive or create a plan demonstrating their compliance with the proposed Final Judgment, or do not accomplish the divestiture as prescribed in the proposed Final Judgment, Section VII of the Final

Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture upon the request of the United States. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment lasts for ten years, and prohibits the Defendants from acquiring any additional equity interest in Direct Edge during that time. It also provides procedures for the United States to access the Defendants' records and personnel in order to secure compliance with the terms of the Final Judgment.

The proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by maintaining Direct Edge as an independent and vibrant competitive constraint in displayed equities trading services, listing services for exchange-traded products, and real-time proprietary equity data products in the United States.

IV. REMEDIES APPLICABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES APPLICABLE FOR APPROVAL OR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, seeking preliminary and permanent injunctions against Defendants' transaction and proceeding to a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will preserve competition in the markets for displayed equities trading services, listing services for exchange-traded products, and real-time proprietary equity data products. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').[1]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '').

a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, ''a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: December 22, 2011

Respectfully submitted,

FOR PLAINTIFF

UNITED STATES OF AMERICA

/s/Alexander P. Okuliar

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEUTSCHE BÖRSE AG,
and
NYSE EURONEXT,

Defendants.

Case:
Assigned To:
Date:
Description: Antitrust

[Proposed] Final Judgment

WHEREAS, Plaintiff United States of America (''United States'') filed its Complaint on December 22, 2011, the United States and Defendants Deutsche Börse AG and NYSE Euronext, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

AND WHEREAS, the United States requires that Defendants agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the actions and conduct restrictions can and will be undertaken and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Defendants, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Deutsche Börse'' means defendant Deutsche Börse AG, an Aktiengesellschaft organized under the laws of the Federal Republic of Germany with its principal place of business in Eschborn, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. This definition expressly includes International Securities Exchange Holdings as a subsidiary of Deutsche Börse.

B. ''NYSE'' means defendant NYSE Euronext, a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. The ''Deutsche Börse/NYSE Merger'' means the transaction to be undertaken pursuant to the Business Combination Agreement, dated as of February 15, 2011, by and among Deutsche Börse, NYSE, Alpha Beta Netherlands Holding N.V., and Pomme Merger Corporation, under which Deutsche Börse and NYSE will combine their businesses under a new holding company, Alpha Beta Netherlands Holding N.V.

D. ''Direct Edge'' means Direct Edge Holdings LLC, a Delaware limited liability company with its principal place of business in Jersey City, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. Direct Edge includes, but is not limited to, its subsidiaries Direct Edge, Inc., EDGA Exchange, Inc. and EDGX Exchange, Inc.

[3] See United States v. Enova Corp., 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States v. Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

E. ''Direct Edge Equity'' means any equity interest, whether voting or nonvoting, of Direct Edge that defendants own or control, directly or indirectly, including, but not limited to, the units of interest in the ownership and profits and losses of Direct Edge and such rights to receive distributions from Direct Edge (defined as ''Units'' in the Operating Agreement) owned by Deutsche Börse through International Securities Exchange Holdings as of the date of the filing of this Final Judgment.

F. ''Divestiture Assets'' means the Direct Edge Equity required to be divested under this Final Judgment.

G. ''International Securities Exchange Holdings'' means International Securities Exchange Holdings, Inc., a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''Mutual Services Agreement'' means the Mutual Services Agreement by and between ISE and Direct Edge, dated as of November 4, 2010, including any modifications, amendments, restatements, or other versions of the Mutual Services Agreement existing at the time of this Final Judgment or in the future.

I. ''Operating Agreement'' means the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, dated as of June 12, 2010, including any modifications, amendments, restatements, or other versions of the Operating Agreement existing at the time of this Final Judgment or in the future.

J. ''Own'' means to have or retain any right, title, or interest in any asset, including any ability to control or direct actions with respect to such asset, either directly or indirectly, individually or through any other party.

K. ''Regulatory Services Agreements'' means the Regulatory Services Agreement by and between ISE and EDGX Exchange, Inc., dated as of January 21, 2010, and the Regulatory Services Agreement by and between ISE and EDGA Exchange, Inc., dated as of January 21, 2010, including any modifications, amendments, restatements, or other versions of the Regulatory Services Agreements existing at the time of this Final Judgment or in the future.

III. APPLICABILITY

This Final Judgment applies to Deutsche Börse and NYSE and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. CERTIFICATION OF PASSIVE INTEREST

A. Defendants are hereby ordered and directed to take all necessary steps to render the Direct Edge Equity passive and to divest the Direct Edge Equity, consistent with the time limits, rights and restrictions specified elsewhere herein and in conformance with all applicable statutes, rules, regulations, and policies of relevant federal authorities.

B. Defendants are hereby ordered and directed, before closing of the Deutsche Börse/NYSE Merger, to provide a written plan outlining the steps defendants will take to comply with the terms of this Final Judgment, and written certification and supporting documentation to the United States demonstrating that such plan complies with this Final Judgment and that all voting, director, or other rights Deutsche Börse enjoyed under the Operating Agreement, the Certificate of Incorporation and By-Laws of EDGA Exchange, Inc., the Certificate of Incorporation and By-Laws of EDGX Exchange, Inc., or any other organizational documents of Direct Edge, have been eliminated (except any such rights specifically reserved or provided for herein).

V. DIVESTITURE OF DIRECT EDGE EQUITY

A. Defendants are ordered and directed, in a manner consistent with this Final Judgment, on or before two (2) years from the date of closing of the Deutsche Börse/NYSE Merger, to divest the Direct Edge Equity sufficient to cause defendants to own no outstanding equity in Direct Edge. The United States, in its sole discretion, may extend the two (2) year time limit in this Section V.A for up to three (3) additional extensions of one (1) year each upon written application of the Defendants.

B. Defendants are enjoined and restrained from the date of entry by the Court of the Stipulation and Order until the completion of the divestiture required by Section V.A from acquiring, directly or indirectly, any additional Direct Edge equity (including Units, options or any other forms of equity rights or warrants) or ownership interest or rights, except pursuant to a transaction that does not increase defendants' proportion of the outstanding equity of Direct Edge, such as a stock split, stock dividend, rights offering, recapitalization, reclassification, merger, consolidation, or corporate reorganization. Any additional Direct Edge equity acquired by defendants as specifically permitted in this Section V.B shall be part of the Direct Edge Equity and be subject (1) to the divestiture obligations of Section V.A of this Final Judgment; and (2) to the rights and restrictions set forth herein.

C. The divestiture required by Section V.A may be made by open market sale, public offering, private sale, private placement, repurchase by Direct Edge, or a combination thereof, subject to the restrictions outlined herein. Such divestiture shall not be made by private sale or private placement to any person unless the United States, in its sole discretion, shall otherwise agree in writing pursuant to the procedures set out in Section VIII.

D. Defendants shall notify the United States no less than sixty (60) calendar days prior to the expiration of the time period for divestiture required by Section V.A of this Final Judgment as to the arrangements made to complete the required divestiture in a timely fashion.

E. Upon completion of the divestiture required by Section V.A, defendants may not acquire, directly or indirectly, any additional equity (in any form) or ownership interest or rights in Direct Edge.

F. Defendants may not acquire debt obligations of Direct Edge, enter into any loan agreements with Direct Edge, or provide any financing to Direct Edge.

G. Defendants shall not take any action that will impede in any way the divestiture of the Divestiture Assets.

VI. DIRECT EDGE GOVERNANCE

A. Within two (2) business days after the closing of the Deutsche Börse/NYSE Merger, any Deutsche Börse officer, director, manager, employee, affiliate, or agent shall resign from the Board of Managers or Board of Directors of Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc., and EDGX Exchange, Inc., and from any executive committees, advisory committees, or other comparable positions.

B. Except to the extent permitted elsewhere herein, from the date of the filing of this Final Judgment and until its expiration, defendants are enjoined and restrained, directly or indirectly, from:

1. Suggesting, designating or nominating, individually or as part of a group, any candidate for election to the Board of Managers or Board of Directors of Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc. or EDGX Exchange, Inc., or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee, or in a comparable position with or for Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc. or EDGX Exchange, Inc.;

2. participating in, being present at, or receiving any notes, minutes, or agendas of, information from, or any documents distributed in connection with, any nonpublic meeting of the Board of Managers or Board of Directors of Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., or any committee thereof, any other governing body of Direct Edge, or any nonpublic meeting of members, shareholders, Unitholders, or any other type of equity owners of Direct Edge in which the business, operations, or ownership of Direct Edge are discussed, except to the extent it is necessary to disclose such information to the defendants in order to implement the provisions of this Final Judgment (the term ''meeting'' here includes any action taken by consent in lieu of a meeting);

3. voting, causing to be voted or permitting to be voted any Direct Edge shares, Units, or other equity that defendants own in any Direct Edge entity, except to the extent that Direct Edge determines that Deutsche Börse must vote its Units in Direct Edge, in which case Deutsche Börse shall vote in an amount and manner proportional to the vote of all other votes cast by other Direct Edge owners;

4. using or attempting to use any ownership interest in Direct Edge to exert any influence over Direct Edge in the conduct of Direct Edge's business;

5. using or attempting to use any rights or duties under any agreement or relationship between Deutsche Börse and Direct Edge, including but not limited to the Regulatory Services Agreements and Mutual Services Agreement, to influence Direct Edge in the conduct of Direct Edge's business;

6. communicating to or receiving from any officer, director, manager, member, owner, employee, or agent of Direct Edge any nonpublic information regarding any aspect

of defendants' or Direct Edge's business, including any plans or proposals with respect thereto; provided, however, that defendants shall be allowed to receive from Direct Edge quarterly financial information, including profit and loss information, of Direct Edge, to the extent necessary for defendants to comply with their financial reporting obligations; and

7. preventing, or attempting to prevent, Direct Edge from making any changes in any corporate governance documents necessary to implement the prohibitions contained in Sections IV.A, IV.B, or in this Section VI. B.

C. Except as set out elsewhere herein, nothing in this Final Judgment is intended to prevent Deutsche Börse from continuing to provide services for Direct Edge under the Regulatory Services Agreements and Mutual Services Agreement or from agreeing with Direct Edge to amend or terminate such agreements.

a. During the period of any Regulatory Services Agreement and Mutual Services Agreement between defendants and Direct Edge, defendants shall construct and maintain in place a firewall that prevents any information obtained pursuant to those agreements from flowing to any employee of the defendants except those necessary to provide the services under the Regulatory Services Agreements and Mutual Services Agreement. Defendants shall not use information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement for any purpose other than in connection with providing the agreed upon services under the Regulatory Services Agreements and Mutual Services Agreement. To implement this provision, defendants are required to identify those employees necessary to provide the services under the Regulatory Services Agreements and Mutual Services Agreement. All identified employees shall be prohibited from passing on information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement to non-identified employees, and all non-identified employees shall be prohibited from receiving any information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement. For the avoidance of doubt, identified employees of the defendants may become employees of a self-regulatory organization (as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934) other than a self-regulatory organization owned or operated by the defendants and such employees may continue to receive information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement as necessary to provide the services under the Regulatory Services Agreements and Mutual Services Agreement.

b. Defendants shall, within ten (10) business days of the entry of the Stipulation and Order, submit to the Department of Justice a document setting forth in detail its procedure to effect compliance with provision VI.C.a. The Department of Justice shall have the sole discretion to approve defendant's compliance plan and shall notify defendants within three (3) business days whether it approves of or rejects the compliance plan. In the event that defendant's compliance plan is rejected, the reasons for the rejection shall be provided to defendants and defendants shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by defendants.

VII. APPOINTMENT OF TRUSTEE

A. In the event that the United States, in its sole discretion, determines (a) that, upon receipt of the notice called for in Section V.D, defendants have not made arrangements that will result in completion of any divestiture within the time limits specified in Section V.A, (b) that defendants have not completed the divestiture required in Section V.A within the specified time limits, or (c) the defendants have not complied with the requirements of Section IV herein, the Court shall, upon application of the United States, appoint a trustee selected by the United States to effect such divestiture. Plaintiff may request a trustee before any of the time periods for divestiture specified in Section V.A expire. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, and shall have such other powers as the Court shall deem appropriate. The trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

B. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Sections VII.E and F.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with incentives based on the price and terms of the divestiture and the speed with which they are accomplished, but timeliness is paramount.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to all information held by defendants relating to the Divestiture Assets. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets by means of private sale or placement, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

F. If the trustee has not accomplished such divestiture within six (6) months after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee at the same time shall furnish such reports to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VIII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement for private sale or private placement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed

Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VII.B of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section V or Section VII shall not be consummated. Upon objection by defendants under Section VII.B, a divestiture proposed under Section VII shall not be consummated unless approved by the Court.

IX. Financing

Defendants shall not finance all or any part of any purchase made pursuant to this Final Judgment.

X. Compliance Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets or any other equity interest in Direct Edge during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

XIII. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

[FR Doc. 2011–33413 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 5, 2011, Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 30, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975,