Material Relating to Interstate Commerce and Restraint

of Trade Aspects of the NYSE Rule

Judge Healy's Comments

1. Section 2 provides for regulation and control reasonably complete and effective to protect interstate commerce, and to insure the maintenance of fair and honest markets. Transactions in securities constitute an important part of the current of interstate commerce, etc., etc.

2. Restraint on alienation of chattels violate the common law, the Sherman Act and were held unfair by the Supreme Court in the case of Dr. Miles Medical Co., 220 U.S. 373 (1911). Is this then fair administration?

3. Most of the unfair methods condemned by the Federal Trade Commission and the Courts were motivated by a desire to keep the business.

4. Dual trading is lawful. It is provided for by the Act. The Rule restricts what the Act provides for. Considered it as a restraint on interstate commerce and as unfair with relation to the other exchanges.

5. The security is lawfully listed on both exchanges. The person involved is a member of both exchanges. He is told by the Rule to buy and sell for his own account only on the NYSE. This is restraint of trade and is, therefore, unfair.

A rule by which the NYSE attempts not merely to maintain the minimum commission which its members may charge on the purchase or sale of securities, but also forbids persons who are lawfully members of other exchanges from transacting business on such exchanges in securities lawfully listed on such exchanges, with the effect of diminishing business on such exchanges and diverting business from such exchanges to the NYSE, seems to us to amount to restraint of trade and is probably invalid both at common law and so far as it effects interstate commerce, under the Sherman Anti-Trust Act of July 2, 1890. Cf. Dr. Miles Medical Company v. John D. Park & Sons Company, 220 U.S. 373 (1911).

Such a rule is not excepted from the general principle stated above and rendered valid merely because it relates to exchange practices, since such practices have a substantial effect upon the flow of business in securities in the current of interstate commerce.

The public interest, as shown above, is vitally effected by the rule. To sustain the restraint, it must be reasonable as to the public, as well as the parties, and limited to what is reasonably necessary, under the circumstances, otherwise restraints of trade are void as against public policy.

We are of the opinion that the rule is injurious to the public interest and must be changed. It is not saved by the advantages which the NYSE expects to derive from its operation.

Cases Relating to the Restraint of Trade Aspects

of the NYSE Rule

1. Dr. Miles Medical Company v. John D. Park & Sons Company, 220 U.S. 373 (1911).

2. Eastern States Lumber Association, 234 U.S.

3. Chicago Board of Trade, 246 U.S.

4. U.S. v. Patten, 226 U.S. 525.

5. Moore v. New York Cotton Exchange, ____ U.S. ____.

For further information call Mr. Doyle, Department of Justice, Anti-Trust Division, Extension 587.