

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
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APPLICATION FOR UNLISTED TRADING PRIVILEGES :  
IN COMMON STOCK OF LUDLOW CORPORATION :  
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by :  
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THE BOSTON STOCK EXCHANGE :  
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File No. 7-4596 :  
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INITIAL DECISION

Washington, D.C.  
May 6, 1976

Edward B. Wagner  
Administrative Law Judge

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Before the  
SECURITIES AND EXCHANGE COMMISSION

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APPEARANCES: Arthur Mason, Ira Polin and Roslyn Mazer of Dickstein,  
Shapiro & Morin, 1735 New York Avenue, N.W.,  
Washington, D.C., for the Boston Stock Exchange.

Cyril V. Smith, Jr. and George B. Reid, Jr. of Covington  
& Burling, 888 Sixteenth Street, N.W., Washington,  
D.C. for Ludlow Corporation.

Theodore W. Urban and Joel D. Worshtil, attorneys for the Division of  
Market Regulation, attended the hearing as observers, and Mr. Urban  
participated in a later oral argument.

BEFORE: Edward B. Wagner, Administrative Law Judge

THE PROCEEDING

On April 23, 1974 the Boston Stock Exchange (BSE), a national securities exchange, submitted an application to the Commission for unlisted trading privileges in the common stock of Ludlow Corporation (Ludlow) pursuant to Section 12(f)(1) of the Securities Exchange Act of 1934 (Act).<sup>1/</sup> Ludlow opposed the application and requested a hearing. The Commission ordered a hearing on the application and granted Ludlow the status of a party.<sup>2/</sup>

Thereafter, a pre-hearing conference was held in July and a hearing was held in November, 1975. Both the Exchange and Ludlow were represented by counsel at the conference and hearing and participated fully. The Commission's Division of Market Regulation (Division) took the position that it was not "the interested Division of the Commission" pursuant to Rule 9(a) of the Commission's Rules of Practice and, therefore, not a "party" under that Rule.<sup>3/</sup> Although representatives of the Division did attend the conference and evidentiary hearing, they merely observed and did not participate.

Proposed findings of fact, conclusions of law and briefs were filed by both the BSE and Ludlow, and the BSE filed a reply brief.

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<sup>1/</sup> 15 U.S.C. §78 1 (f)(1).

<sup>2/</sup> SEA Rel. 11492 (June 25, 1975), 7 SEC Docket 238 (July 8, 1975), reflects the Commission's ordering of a hearing; and a Minute Order of the Commission, dated July 23, 1975, granted Ludlow's application for leave to intervene as a party.

<sup>3/</sup> 17 CFR 201.9(a)

In addition the Division of Market Regulation filed a Memorandum of Law. An oral argument was had before me on March 26, 1976 in which counsel for the BSE, Ludlow and the Division participated.

Section 12(f)(2) of the Act sets forth the standards for determining whether an application such as that involved in this proceeding shall be granted.<sup>4/</sup> It provides that no application shall be approved unless it is found that the extension of unlisted trading privileges is "consistent with the maintenance of fair and orderly markets and the protection of investors."

During the hearing at the request of the parties official notice was taken of the Constitution, By-Laws and Rules of both the BSE and the NYSE.

The findings and conclusions herein are based upon the evidence as determined from the record and upon observation of the witnesses. Preponderance of the evidence is the standard of proof applied.

#### Ludlow

##### General

Ludlow is a diversified manufacturer of products falling into three categories: home furnishings, manufactured housing and papers and packaging. Its principal executive offices are located in Massachusetts, and it was incorporated there. In calendar year 1974 Ludlow

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<sup>4/</sup> 15 U.S.C. §78 1 (f)(2).

had net income of approximately \$5.9 million on sales of \$229 million, or \$1.63 of income per share of common stock.

As of February 6, 1974,<sup>5/</sup> there were 3,185,725 shares of common stock outstanding, held by 8,667 shareholders residing in every state and the District of Columbia. As of that date, 3,447 record shareholders (approximately 40%) resided in the New England states. Almost 31% of the outstanding shares were held by New England residents, and approximately 400 of its 11,500 employees reside in the New England states. Certain of these 400 employees own options to purchase Ludlow common stock.

The largest individual stockholder holds around 129,000 shares, and the average stockholder owns around 370 shares. There are no substantial institutional holdings.

BSE member firms executed 657 trades, comprising 161,779 shares of Ludlow common stock in the three calendar months preceding March 31, 1974. These transactions were, of course, not executed on the BSE.

#### Trading Characteristics of Stock

Ludlow common stock, which is listed on the New York Stock Exchange (NYSE), traded at prices ranging between \$8 and \$12 per share during the period January 1974 through June 1975. It has been listed on the NYSE since 1965 and is neither listed nor traded

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<sup>5/</sup> The record date for the annual meeting of shareholders in 1974.

on any other national securities exchange. There is no appreciable third-market trading.

The volume of trading in Ludlow stock on the NYSE is low relative to that of other listed stocks. Trading volume in Ludlow stock on the NYSE for 1974 was 773,300 shares, as compared with the average volume for all stocks on the NYSE during 1974 of approximately 2,800,000 shares. Although Ludlow's 1974 trading volume represents an average daily volume of approximately 3,000 shares, total trading on some days has been as low as 200 shares. For the first six months of 1975 Ludlow volume was 535,900 shares compared with the average volume for all NYSE stocks for the same period of approximately 1,700,000 shares. In 1974 Ludlow ranked 912th out of 1,543 in total volume on the NYSE.

Market Liquidity, Closeness and Depth<sup>6/</sup>

Documentary evidence was submitted by Ludlow concerning the above measurements. It showed, if 1/8th of a point were taken as the appropriate measure, that during the period January 1974 through July 1975 (during which there were wide variations in monthly trading volume) there generally was a direct and significant correlation

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<sup>6/</sup> "Market Liquidity" is measured by the criterion of transaction-to-transaction price continuity, with the greatest degree of price continuity maintained when there is no price variation between two successive transactions.

"Market Closeness" is measured by the spread between the bid and asked prices continuously quoted by the specialist. The closest spread possible on the NYSE is 1/8th of a dollar.

"Market Depth" is measured by the change in the price of a stock over any continuous sequence of 1,000-share transactions. The greatest possible depth is indicated by no change in price over a 1,000-share sequence.

between Ludlow stock trading volume and the degree of liquidity, closeness and depth of the market for Ludlow stock. Thus, as trading volume increased during the period, the percentage of trades with a high level of price continuity (the measure of market liquidity) increased, and as trading volume decreased, this percentage decreased. During the period, as trading volume increased, the percentage of spreads indicating a close market increased, and as trading volume decreased, this percentage decreased. Changes in the depth of the market for Ludlow stock (as measured by the specialist's quotation spread) are also directly related to changes in Ludlow stock trading volume. During the period, as trading volume increased, the percentage of sequences indicating a high degree of market depth increased, and as trading volume decreased, this percentage decreased.

Cross-examination by counsel for the BSE with respect to the high and low volume months during the period elicited that, if  $1/4$  of a point were taken as the appropriate measure, the correlation between volume of trading and the three measurements was not significant.

Ludlow's expert witness testified that, since Ludlow trades in a range of \$8 to \$12 per share, the appropriate measure for the above studies is  $1/8$ th of a point or less and not  $1/4$  of a point. <sup>7/</sup>

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<sup>7/</sup> It is obvious, as Ludlow points out, that, given the price range of Ludlow stock,  $1/4$  of a point could amount to as much as 3 percent of the price.

No testimony to the contrary was offered, and this conclusion is accepted as valid.

The same expert witness, however, testified that in his view there would not be any diversion of Ludlow trading volume to the NYSE if unlisted trading privileges on the BSE were granted.<sup>8/</sup> He further testified that a fair and orderly market was being maintained (Tr. 192, 196).

### BSE

#### Operation of BSE

The BSE has 156 member firms and 205 individual members. BSE members have 1,359 offices, of which 165 are located in the New England states. Approximately one-half of the members are also members of other exchanges. As associate members of the BSE, both the PBW and Montreal Stock Exchanges can execute orders in stocks which are traded on an unlisted basis on the BSE.

The hours of trading on the BSE, like those on the NYSE, are 10:00 a.m. until 4:00 p.m.

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<sup>8/</sup> A question to which neither the hearing nor the briefs specifically addressed themselves is whether it can be assumed that a low volume of trading on the NYSE, such as is reflected in the Ludlow exhibits in certain months, can validly be equated in terms of the three pertinent measurements with reduced trading on the NYSE occasioned by a diversion of transactions to the BSE. It would appear, if unlisted trading privileges were granted, that with the degree of communication between the exchanges now available (See page 8 of this Initial Decision), and the considerable mutuality of access which exists, the situation might be one approaching one market taking place in two locations (See Oral Argument pp. 18-19, 52-56). If this were the situation, the adverse effects of reduced trading on the NYSE would be lessened.



Of the 917 issues currently traded on the BSE, 154 are fully listed, leaving a balance of 763 issues, representing over 80 percent of tradeable issues, which are traded on an unlisted basis.

The total volume of trading on the Exchange in calendar year 1974 was 44,031,000 shares. Of these 44,031,000 shares, 39,460,000, representing over 89 percent of the shares traded, were attributable to trading in unlisted stocks.

For the period January through August 1975, 34,020,000 shares, representing over 86 percent of the shares traded, were attributable to trading in unlisted stocks.

Volume in the 100 most active issues traded on the Exchange in calendar year 1974 accounted for 23,653,712 shares. Of these 23,653,712 shares, 21,968,641, representing over 92 percent of the shares traded, were attributable to trading in unlisted stocks.

Volume in the 100 most active issues traded on the Exchange for the period January through August 1975 accounted for 22,078,577 shares. Of these 22,078,577 shares, 19,308,813, representing over 87 percent of the shares traded, were attributable to trading in unlisted stocks.

32 percent of the Exchange's total operating revenues in calendar year 1974 was attributable to trading in unlisted issues. In the first eight months of 1975, 52 percent of the Exchange's

total operating revenues was attributable to trading in unlisted issues.

Orders for stocks traded on an unlisted basis reach the floor of the Exchange by telex, telephone and by international teletype.

All trades in NYSE-listed issues are reported on the consolidated tape, regardless of the market on which the trade is executed. Since July 1, 1975, every trade in NYSE-listed issues is reported within two minutes of execution to the information processor, the Securities Industry Automation Corporation, and appears within a matter of minutes on the consolidated tape. The tape reports the symbol of the stock, the market designation "&B" (meaning market designation Boston), the price and the quantity.

#### BSE Specialist System

The Exchange utilizes the services of approximately 40 specialists, representing approximately 550 stocks. Approximately 48 percent of the stocks admitted to unlisted trading privileges on the BSE do not have assigned specialists.

Specialists on the BSE must be capitalized with cash or liquid assets equal to the greater of \$50,000 or enough equity to carry at least 200 shares of each security for which they are the specialists. The specialist must quote a market, one side of which equals or exceeds the current primary market quote and the other side not to exceed 1/4 of a point from the primary market quote. After the opening, he must buy or sell at least 100 shares, at a price equal

or better than that prevailing on the primary market, on a multiple round lot order, provided such purchase or sale will not increase a long or short position above 300 shares. He is obligated on at least one order to either buy or sell 100 shares before the opening regardless of his position.

The Exchange's Business Conduct Committee decides which specialist, if any, is to be assigned a stock, considering such factors as the specialists' respective capital positions, other stocks on their books, and their performance on other issues. The procedure is that after a new listing or unlisted trading privileges have been granted, a notice to the effect is posted on the floor with an indication that those interested in applying for the specialist assignment should notify the Secretary's office within a specified period. If there are no applicants, no specialist is appointed. The President of the BSE testified that he was unable to predict whether a specialist would be appointed for Ludlow.

A specialist's obligation to maintain a fair and orderly market in the securities which are assigned to him does not differ with respect to whether the stocks are traded on a listed or unlisted basis.

Disciplinary and removal action has been undertaken by the Exchange's Business Conduct Committee against specialists who have violated their obligations.

### Competitive Factors

Massachusetts does not have a state stock transfer tax, as does New York. The BSE permits foreign memberships, while the NYSE does not. Multiple trading of an issue which has its primary market on another exchange opens up a new field of brokers, the sole members of the regional exchange, who have an economic incentive to deal in the issue.

The BSE has had since 1938 a "primary market protection" order system. This system permits BSE specialists to guarantee members that they will automatically receive a price equal to the current market on either the primary market or the BSE, whichever is better.

### General

Counsel for the BSE submitted documentary evidence relating to the effect of the granting of unlisted trading privileges on the BSE upon the amount of trading upon the NYSE. This information involved 10 issues recently admitted to unlisted trading privileges where a specialist had been appointed and 9 issues where there was no specialist. The BSE exhibits showed that average monthly volume of trading on the NYSE (for the 6-month period after the unlisted trading privileges were granted on the BSE) increased in 8 of the 10 issues where a specialist had been appointed, and likewise increased in 8 of the 9 issues where there was no specialist. The

periods of comparison were a six-month period covering the latter part of 1974 with a six-month period following admission to unlisted trading privileges generally covering the first half of 1975.

It was conceded that the average exchange overall volume for 1975 was almost double that in 1974, and that this increase alone could explain the increased volume referred to above. Accordingly, the most that can be concluded from the above evidence is that admission to unlisted trading privileges on the BSE does not necessarily result in reduced trading for the particular security on the NYSE (Tr. 56).

In respect to the above securities where a specialist had been appointed, generally prices on the BSE on the 10th, 20th, and 30th of each month for the first 6 months of 1975 substantially tracked those of the NYSE. There were too few prices on those dates for meaningful comparison in respect to securities where no BSE specialist had been appointed.

In the event a specialist is not assigned to a stock which has unlisted trading privileges, and an order for such stock is not sent to the primary market,<sup>9/</sup> the BSE member firm may take the order to the "crowd" on the Exchange floor, and, if it finds a match, the firm may execute the order in the presence of a floor official. This procedure would be more likely to be followed by a sole member of

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<sup>9/</sup> Brokers generally are obligated to seek the best execution available on behalf of their customers.

the BSE, particularly if such sole member maintained a floor membership. As stated above, about one-half of the members of the BSE are sole members. It is not likely that the above procedure would be followed by a BSE member who is also a member of the NYSE and who has no floor broker on the BSE. Many such dual members do not maintain floor brokers on the BSE. Floor brokerage commissions are around 8 percent of the prior fixed commission charged on the transaction.

Applicable Standard

As stated earlier, the application is not to be granted unless the Commission finds, pursuant to Section 12(f)(2) of the Exchange Act that "the extension of unlisted trading privileges . . . is consistent with the maintenance of fair and orderly markets and the protection of investors." The quoted provision is a part of the 1975 Amendments to the Securities Laws and has yet to be interpreted by the Commission in a contested case. Sharply divergent positions on the meaning and application of the new statutory requirements have been taken in this proceeding.<sup>10/</sup>

The BSE points out that no applications for unlisted trading privileges by exchanges have been denied since 1944 and that the

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<sup>10/</sup> Immediately prior to the 1975 Amendments the statute provided: "No application . . . shall be approved unless the Commission finds . . . that the extension of unlisted trading privileges pursuant to such application is necessary or appropriate in the public interest."

Commission has been satisfied in most instances to base its dispositions of these applications on the modest information concerning local interest required by the form, and that it has met its burden of proof by furnishing such material. It contends that the new statutory provisions must be liberally interpreted in view of the Congressional command that anti-competitive barriers be eliminated contained in the legislative history and in other provisions of the 1975 Amendments.

Ludlow's position is that the BSE has the burden of proof that it will establish a fair and orderly market and that the establishment of such a market will have no adverse impact on the primary market for Ludlow stock on the NYSE. It argues that the BSE has not shown, in view of its failure to assure that a specialist will be assigned, that any market -- much less a fair and orderly one -- will be maintained on its exchange. It contends that the Commission, during the period when Section 12(f)(2) applications were the subject of active consideration, did require an applicant to demonstrate that an adequate trading market would develop. Ludlow further argues that its trading volume on the NYSE is very low on a relative basis and that any diversion will have a demonstrably adverse effect on the quality of the primary market.

The Division supports granting the application, contending that the BSE has met its burden of proof by showing that it provides

"an appropriate medium for trading"<sup>11/</sup> dually traded stocks. The Division's position is that the BSE has shown that it has the organization and capacity to maintain a fair and orderly market in Ludlow stock and that it need not show that there will be a continuous market on the exchange. It argues that potential diversion of trading volume from one exchange to another should not be viewed as a determining factor and that Commission decisions construing Section 12(f)(2) have consistently cited the encouragement of greater competition as a basic purpose for granting unlisted trading privileges. The Division also contends that the legislative history and other provisions of the Securities Acts Amendments of 1975 make it clear that fostering competition is of preeminent importance.

The position taken by Ludlow would be much more cogent if we were writing on a blank slate. But the slate has already been extensively written upon in terms of the legislative history of the 1975 Amendments, the long-standing policy of the Commission, and the provisions of the Amendments themselves. When these factors are taken into consideration, it becomes clear that Ludlow's view of the meaning of the new standards is in error.

Thus, in discussing the 1975 Amendments Congress stated that their "objective would be to enhance competition and to allow

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<sup>11/</sup> II Loss, Securities Regulation 1136 (2d ed. 1961)



economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services".<sup>12/</sup> As the Division and the BSE contend, the standard of the maintenance of fair and orderly markets and the protection of investors must be considered in the context of the legislative goal of enhancing competition.

In another section of the 1975 Amendments - Section 11A(a)(1)

(C)(ii) - Congress stated:

"It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure-- . . . (ii) fair competition among brokers and dealers, among exchange markets . . . ."<sup>13/</sup>

It will be noted that this section employs phraseology identical to that used in the provision in issue here, Section 12(f)(2). At the very least, Section 11A creates, as contended for by the BSE, a disposition favoring unlisted trading which requires a finding for the applicant, in view of its showing here, in the absence of contrary and persuasive evidence. In effect, a presumption in favor of competition has been created.

It is clear that since 1944 the Commission, acting through its staff, has uniformly approved applications for unlisted trading

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<sup>12/</sup> S. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975). It was also stated as a goal that "investors should be able to obtain the best execution of their orders and be assured that because of open competition among market makers the total market for each security is as liquid and orderly as the characteristics of that security warrant." Id at 12.

<sup>13/</sup> 15 U.S.C. §78k-1(a)(1)(C)(ii).

privileges by the regional exchanges. Congress was well aware of this policy before enacting the 1975 Amendments.<sup>14/</sup> Ludlow is arguing for a radical change in the past policies of approving these applications upon minimal showings by applicant exchanges. If such a change were intended by Congress, it would be logical to expect the legislative history to contain statements critical of past Commission policy or indicating that a departure from past practices is in order. No such statements appear.

The Commission has itself noted that the 1975 Amendments require it to "consider and weigh the competitive impact of all its decisions . . ." SEA Release No. 11942 (December 19, 1975), 8 SEC Docket 756, 760 (January 5, 1976).

Further, as the Division points out, the 1975 Amendments in many other sections establish the encouragement of competition as a policy guideline with respect to other Commission responsibilities. See e.g., Sections 6(b)(5), 15(b)(9), and 15A(b)(9).

There can be no doubt in view of the above that Congress not only favored the liberal approach to unlisted trading privileges taken by the Commission since 1944, but wished that approach strengthened to foster even greater competition between exchange markets. Accordingly, the proper interpretation of the standard is basically to

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<sup>14/</sup> In 1973 in the Securities Industry Study it was stated "the Commission has consistently approved applications by regional exchanges for dual trading privileges in NYSE-listed securities." Subcommittee on Securities, Sen. Comm. on Banking, Housing, and Urban Affairs, Securities Industry Study, 93d. Cong. 1st Sess. 121 (1973).

require a minimal showing on the part of applicant exchange, namely, a degree of local interest, the existence of rules and practices on said exchanges which assure a fair and orderly market in the subject securities should such a market develop, and that the subject securities are currently being traded in a fair and orderly fashion. It would be inconsistent with the statutory standard for the mere possibility of an adverse effect from diversion of transactions to result in a denial of the application.

It is clear that the BSE has shown that the extension of unlisted trading privileges in Ludlow stock would be consistent with the statutory standard, as interpreted here. It has shown, pursuant to the requirements of Rule 12f-1,<sup>15/</sup> that a considerable amount of local interest in the security exists, and that, with or without the appointment of a specialist, it will provide an appropriate medium for trading in the particular security,<sup>16/</sup> i.e., that it presently has the organization and capacity for the execution of transactions in Ludlow securities in a fair and orderly fashion. It has also been shown on the record that trading in Ludlow shares on the NYSE

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<sup>15/</sup> 17 CFR 240. 12f-1.

<sup>16/</sup> That the operating mechanics of the applicant exchange must be satisfactory was a test applied in cases under earlier statutory standards. See Boston Stock Exchange, 3 S.E.C. 693,699, (1938); Seattle Stock Exchange, 8 S.E.C. 707, 712-13 (1941)

has remained fair and orderly through various fluctuations in the number of shares traded. The BSE has shown that competitive advantages do exist which conceivably could lead investors to trade Ludlow stock on the BSE rather than the NYSE.

Ludlow has contended that the BSE must also show that an adequate market for Ludlow stock will develop on that exchange. The BSE takes the position that it is enough to show that such a market "could develop" (Oral Argument, p. 18). In support of its contention Ludlow relies, among other cases, upon Baltimore Stock Exchange, 12 S.E.C. 516 (1942), and Cincinnati Stock Exchange, 6 S.E.C. 661 (1940), and takes the position that unless the BSE commits a specialist no such showing can be made (Oral Argument, p. 39).<sup>17/</sup> However, the Baltimore Stock Exchange case presented a situation in which there were no specialists on the Exchange - not, as here, where there are specialists and one may eventually be appointed to deal in Ludlow stock. In the Cincinnati Stock Exchange case applications were granted even though there were no specialists on the floor of the exchange. The procedure for trading the security "on call" on that Exchange was somewhat similar to that which could occur in this case (See pp. 11-12 of this Initial Decision).

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<sup>17/</sup> If, however, under Ludlow's theory a specialist were committed, it would still oppose granting the application because of its position that a harmful diversion of transactions from the primary market would probably occur (Oral Argument, p. 41).

Further, to the extent these and other cases appear to require some concrete assurance that an adequate market will develop, it should be noted that they were decided in a different factual context, under different statutory standards and in a different regulatory climate. To require in this case that a specialist be committed or other specific assurance that "an adequate market" will develop would have the effect of unnecessarily impeding competition. Such a requirement would not be consonant with the statutory purpose to "enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services."<sup>18/</sup>

Ludlow contends that development of a trading market on the BSE would substantially impair the present fair and orderly market for that stock on the NYSE through diversion of transactions to the BSE. While Ludlow's expert witness testified that he expected no significant diversion from the granting of unlisted trading privileges (Tr. 162-3),<sup>19/</sup> Ludlow argues that, if a specialist were appointed, a significant diversion would occur (Oral Argument, pp. 40-41). Although no Commission cases have denied applications for unlisted trading privileges on the basis of potential diversion, early legislative history relating to predecessor provisions to that in issue here

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<sup>18/</sup> Sen. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975)

<sup>19/</sup> He further was unable to cite any examples of other stocks in which a fair and orderly market on the primary exchange was impaired by the granting of unlisted trading privileges (Tr. 179-80).

suggests that potential diversion could be so substantial and so clearly imminent as to warrant denial of applications.<sup>20/</sup> In view of the legislative history and related provisions of the 1975 Amendments, diversion, which is, after all, a necessary result of the favored goal of competition, must now be assigned an even narrower role.

In this case it is obviously impossible to predict the extent of diversion or its impact upon the primary market in the event a specialist is appointed. The problem of diversion here is best left for consideration under other provisions of the statute where action could be based upon more than mere speculation. In the event difficulties should develop in the trading of Ludlow stock, the Act provides in Section 12(f)(4) that upon application of the issuer or others, or upon its own motion, the Commission shall "terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors."<sup>21/</sup>

In the event a specialist is not appointed, it appears that transactions in Ludlow stock, on the BSE may consist largely of pre-arranged block trades. Ludlow argues that such trading is inconsistent

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<sup>20/</sup> See Testimony of Chairman Landis, Hearings on S. 4023 Before the House Comm. on Interstate and Foreign Commerce, 74th Cong., 2d Sess. 22 (February 25, 1936), 8 (May 6, 1936).

<sup>21/</sup> 15 U.S.C. §78 1 (f)(4).

with the protection of investors, because it would deprive public limit orders, residing on the NYSE specialist's book and capable of execution at the block price, of the opportunity to receive an execution at the time of the block trade. As the Division points out, this issue has existed for many years because of the multiple-exchange and over-the-counter markets for many securities. It has never been articulated as a consideration in Commission decisions on unlisted trading. As the Division further points out, the Commission has determined to address this problem not by restricting multiple trading of securities but rather by the development of a national market system, including the implementation of a composite book. See SEA Rel. No. 11628 (September 2, 1975), 7 SEC Docket 762 (September 16, 1975), and SEA Rel. No. 11942 (December 19, 1975), 8 SEC Docket 756 (January 5, 1976).<sup>22/</sup>

Ludlow also argues that, if the interpretation which I have adopted is correct, it was pointless for Congress to have provided any standard. It might just as well have "said that any stock listed on the New York Stock Exchange can be automatically traded on any regional exchange" (Oral Argument, p. 43). It does seem clear that Congress has substantially narrowed the area in which the Commission may properly deny applications for unlisted trading privileges. However, it cannot be concluded that there will never be any such situations. Conceivably, procedures or practices on a

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<sup>22/</sup> While Congress did express concern over this problem, it did not view the remedy as the suppression of competition but rather as the establishment of "a mechanism by which all buying and selling interest in a given security can be centralized and thus assure public investors best execution." S. Rep. No. 94-75 94th Cong., 1st Sess. 17 (1975).

particular exchange might not measure up to the statutory standard, or there might be no possibility of activity in the particular security on the applicant exchange, or the extent of the impact from diversion might be so clear and so adverse as clearly to outweigh the benefits of competition. Further, the statutory standard was designed to serve over the long term, and conditions may change.

As indicated above, it has been concluded that granting the BSE application is consistent with the maintenance of fair and orderly markets and the protection of investors.

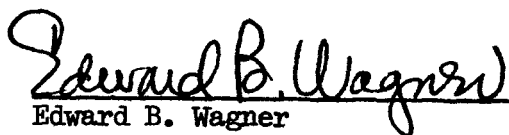
Accordingly, IT IS ORDERED that the application of the Boston Stock Exchange for unlisted trading privileges in the common stock of Ludlow Corporation is granted.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision



shall not become final with respect to that party.<sup>23/</sup>

  
Edward B. Wagner  
Administrative Law Judge

Washington, D.C.  
May 6, 1976

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<sup>23/</sup> All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.