

# CENTER FOR CAPITAL MARKETS COMPETITIVENESS

OF THE

UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN  
PRESIDENT AND CHIEF EXECUTIVE OFFICER

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July 10, 2008

The Honorable Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: SEC Release No. 34-57917

Dear Chairman Cox:

The U.S. Chamber of Commerce is the largest business federation in the world, representing the interests of some 3 million companies of all sizes and industries. The Chamber is acutely aware of how the structure of our securities markets can facilitate or impede the overall competitiveness of our market, impacting efficient capital formation which is critical to economic growth.

Information is the “oxygen” of the financial markets. The Chamber is proud to include among its members firms that rely upon market data to serve customers and clients, and firms that provide market data to them. As a broad principle, the Chamber supports the ability of efficient, competitive markets to achieve reasonable pricing. We believe that the Securities and Exchange Commission (“Commission”) should promote fair competition among all market participants. Having access to data is essential for all market participants, both institutional and retail. The Chamber also believes that consumers are best served when able to make economic decisions for themselves in the context of freely-functioning markets with minimal government intervention, and we support the use of economic analysis to determine if government regulation is necessary. Therefore, we urge the Commission to carefully examine any additional economic evidence available, in addition to the review that it has conducted, as it considers the steps needed to ensure that the marketplace will function efficiently.

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The Chamber has consistently promoted the concept that market efficiency and investor protection depend on the broad availability of market data—both before Congress and the Commission. We strongly support an environment where for-profit exchanges can thrive and in which investors, other market players, and the markets themselves are also well-served.

In our prior submission to the Commission, we applauded the Commission's December 2006 decision to further review the approval of NYSEArca's depth of book product without cost data and careful review. In the submission, we reiterated our concern that exchanges had been permitted to issue rules limiting access to data under processes that did not allow for public comment and that the staff had approved fee proposals without the submission of any supporting cost data.<sup>1</sup> We urged the Commission to sponsor a transparent process that would culminate in predictable rules that would be fair to all market players—on both fees and on ensuring non-discriminatory access to the information generated by the U.S. capital markets.

We remain concerned about the process that led to the Draft Order issued on June 10, 2008. As you know, one of the U.S. Chamber Center for Capital Markets Competitiveness' primary goals is to establish a modern and coherent regulatory structure. Ensuring greater transparency and predictability in rule-making is central to our efforts. In light of the heightened necessity of rigorous and meaningful Commission review in a for-profit world, it is unfortunate that the SEC allowed 18-months to elapse with little public transparency before issuing this Draft Order. In particular, a more transparent process would have allowed the Commission to gather more data. Therefore, we encourage the Commission to carefully review all available data provided during this brief comment period before issuing a Final Order. We also urge it to conduct further economic analysis based on the information received in the comment period. We encourage the Commission to indicate how it reviewed all relevant data based on the comments it receives.

We believe it is important for the exchanges to have an environment in which they can thrive, including an environment in which they can receive fair fees for data. At the same time, we must do so in a manner that comports with the statute and protects the legitimate interests of other market participants. The Commission should complete an analysis that fully accounts for these considerations.

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<sup>1</sup> Comment Letter from the Chamber of Commerce of the United States on SR-NYSEArca 2006-21 (May 3, 2007).

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Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "D. T. Hirschmann". The signature is written in a cursive, somewhat stylized font.

David T. Hirschmann

cc: Paul S. Atkins, Commissioner, U.S. Securities and Exchange Commission  
Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission  
Elisse B. Walter, Commissioner, U.S. Securities and Exchange Commission  
Erik Sirri, Director, Division of Market Regulation, U.S. Securities and  
Exchange Commission