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February 2, 2009

Via Electronic Mail (rule-comments@SEC.gov)

Ms. Florence Harmon
Deputy Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090

Re: SR-NYSE-2008-131

Dear Ms. Harmon:

Charles Schwab and Co., Inc., and its affiliates ("Schwab")[1] appreciate the opportunity to comment on the New York Stock Exchange's ("NYSE") proposed rule change, SR-NYSE-2008-131, published by the Securities and Exchange Commission ("SEC" or "Commission") on January 12, 2009.[2] The NYSE proposal introduces a nonprofessional subscriber fee for NYSE's OpenBook product (a full depth-of-book market data offering) and revises the unit of count that determines the amounts payable by data recipients. Schwab has long sought a product offering such as this because of our belief that retail customers deserve better data than that provided by the cartel of exchanges through their consolidated products. We applaud the NYSE for expanding the transparency of their price discovery process, particularly during this time when customers have lost so much confidence in the fairness of our trading markets.

Over the last decade, Schwab has often commented on NYSE market data filings, almost always opposing them. We are pleased, however, to offer this letter of support for much of NYSE's proposed rule change. The introduction of nonprofessional fees, including a monthly maximum amount fee cap for an unlimited number of nonprofessional recipients, will for the first time allow retail customers to obtain affordable depth-of-book market data.

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[1] The Charles Schwab Corporation, through its affiliates, is one of the nation's largest full-service financial services firms. Schwab engages in a range of financial activities, including retail brokerage, mutual funds, and services to investment advisers and retirement plans. Schwab controls insured depository institutions through which it engages in retail and private banking as well as trust and fiduciary activities. Today, Schwab serves more than 7.3 million client accounts holding over $1.3 trillion in client assets.

[2] Securities Exchange Act Release No. 59198 (January 5, 2009), 74 FR 1268 (January 12, 2009).

The NYSE will charge $25,000 per month for the right to distribute OpenBook to all of Schwab's nonprofessional clients. To put this in perspective, Schwab has over 1 million customers that log into our systems each month to access market data. Before this filing, OpenBook would have cost Schwab $60/month/customer – a staggering $60 million a month to distribute full depth across our firm. The NYSE was not alone in setting unreasonable prices. Nasdaq also claims to offer its full book product for a maximum amount of $25,000 per month for nonprofessional customers, however, Nasdaq ties this maximum amount to a requirement that Schwab also pay $9 per month for its level II offering for each customer accessing full book data. Under Nasdaq's plan, Schwab would have to pay $9,025,000+ per month to broadly disseminate Nasdaq's full book data. It is easy to see why we applaud the NYSE for its proposed rule change.

The NYSE also made several important changes to the way we count users of data. These administrative changes will make the market data billing process more efficient and less burdensome. For example, the pool of nonprofessional customers under the maximum amount cap may contain up to five percent professional customers without risking professional charges upon detection. For the first time, a Schwab employee otherwise deemed a "professional" will be able to access data through their personal online account for personal use at the nonprofessional rate. As the NYSE says in its filing, the new nonprofessional monthly maximum will "enable much wider distribution of NYSE OpenBook data to retail investors," will "further the goal of transparency," and "reduces administrative burdens."

Additionally, the NYSE has changed the unit of count from "subscribers" or "devices" to entitlements, allowing a Schwab employee or a Schwab retail client to obtain data from multiple devices without multiple charges. Finally, the proposal will allow Schwab to manipulate the data as we choose and to aggregate this data with data from other exchanges to offer innovative market data displays to our customers.

These are important steps forward that the SEC, Consolidated Tape Association, Nasdaq UTP Plan, and the other individual exchanges should adopt for other market data products.

Despite these advancements, Schwab continues to object to the SEC's and NYSE's use of the "subject to significant competitive forces" test – set forth by the SEC in its order resolving the Net coalition Petition[3] - for determining whether specific market data fee proposals meet the "fair and reasonable" requirement in the Securities Exchange Act of 1934. We do not believe a competitive market exists in the context of market data and the NYSE and the SEC are in error in claiming otherwise. We understand that the Securities Industry and Financial Markets Association ("SIFMA") and the Net Coalition have appealed the SEC's decision in the Net Coalition matter to the U.S. Court of Appeals for the D.C. Circuit[4] and we await the court's evaluation of the arguments.

[3] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008).
[4] *See* SIFMA press release dated January 30, 2009.

As indicated above, however, we support the efforts of the NYSE to bring change to the market data structure. Schwab would be pleased to engage in further conversation with the Commission regarding these issues. If you have any questions, please contact me at 202-662-4902.

Sincerely,

Jeffrey T. Brown