CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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EXECUTIVE VICE PRESIDENT
Government Affairs

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WASHINGTON, D.C. 20062-2000
202/463-5310

September 27, 2004

The Honorable William Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: File No. SR-NYSE 2004-43

Dear Chairman Donaldson:

Efficient capital formation is critical to American business. As the world's largest business federation – representing more than three million businesses and organizations of every size, sector and region – the U.S. Chamber of Commerce is acutely aware of how key decisions on the structure of our securities markets can facilitate or impede efficient capital formation.

We believe the recent NYSE proposal to make its OpenBook market data service available in real-time at a $60 per month per terminal fee raises significant substantive and procedural issues that, in its current form, could reduce the availability and transparency of critical market data.

The Chamber has long been troubled by how market data is priced and how associated revenues are used. The pricing of OpenBook – essentially the book of limit orders maintained by the NYSE's specialists – illustrates our concern. While the NYSE filing states that the Exchange "believes the fee for the real-time NYSE OpenBook service reflects an equitable allocation of its overall costs associated with using its facilities" there is no information to support that belief presented in the filing. Based on the filing, there is no way to ascertain whether the $60 per month per terminal fee bears any relationship to costs, whether those costs are reasonably allocated, whether the Congressional mandate that market data fees be "fair and reasonable" is being met.

Along with questions regarding the availability of market data, the current proposal raises serious concerns as to whether the contracts governing the use of OpenBook data actually undermine market transparency.

The NYSE failed to file its vendor and subscriber agreements as rules for public comment and Commission review and approval. These contracts place severe restrictions on the ability of vendors to consolidate NYSE OpenBook data with data from any other market center. In approving fees for OpenBook in 2001 when it was proposed on a delayed basis, the SEC expressed serious concerns about these contracts, noting:

> “The NYSE’s proposed restrictions on vendor redissemination of OpenBook data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data found in these agreements are on their face discriminatory, and may raise fair access issues under the Act.”

While these contracts troubled the Commission when they were to govern the distribution of delayed data in 2001, the potential harm to investors and competing market centers is even greater when the product is in real-time. Just as the Commission opposed similar NYSE contracts that sought to preclude the commingling of Liquidity Quote data, the Commission should oppose these contracts.

In conclusion, the OpenBook proposal is not a routine rules change and should not be considered under a fast-track 21-day comment period in which material aspects of the proposal – namely the contracts restricting use of the data – aren’t presented as part of the proposal. OpenBook is a significant element of the ongoing market structure debate. In its current form, it raises significant competitiveness issues. The proposal should be resubmitted in a form that addresses concerns regarding the availability and transparency of market data and under a process that allows broad public comment. Thank you for your consideration of our views.

Sincerely,

R. Bruce Josten