CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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202/463-5310

July 22, 2005

The Honorable Cynthia Glassman
Acting Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: SR-NYSE-2005-32

Dear Chairman Glassman:

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.

Affordability and availability of market data is a key market structure issue. That is why the Chamber has followed closely the ongoing debate regarding OpenBook. In 2001, the Commission approved OpenBook fees at a time when the product was only available on a delayed basis. At that time, the Commission raised serious concerns regarding access issues and other defects of the OpenBook contract:

> The Commission notes that this order only approves the filing submitted by the NYSE, for the fees for the NYSE OpenBook service. Therefore, the Commission is not approving or disapproving the terms of the NYSE's vendor or subscriber agreements. 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. (Securities Exchange Act Release No. 45838 , December 7, 2001).

In spite of the Commission's warning, when the NYSE last year proposed making real time OpenBook data available, it did so in a manner that would have prohibited vendors from commingling that OpenBook data with data from other markets. This prompted the Chamber to write the Commission to express our concerns regarding the proposal's negative impact on the availability and transparency of critical market data.

The Chamber was pleased when – in light of expressions of public and Commission concern – the NYSE backed away from its express ban on the commingling of market data. Unfortunately, the NYSE's revised proposal for the display of real-time Open Book data may replace the discredited express ban on commingling with a de facto ban on commingling.

The new, pending proposal would require that vendors provide "attribution" for all NYSE OpenBook data. Specifically, each element or line of NYSE OpenBook data must display the identifier "NYSE". The NYSE identifier will consume valuable screen space, limiting the visibility of competing market centers and diminishing the amount of depth and analytics that can be displayed. In short, the attribution requirement may well have the same effect as the rejected ban on commingling of data.

Clearly this will reduce transparency and market efficiency. It also raises the question of whether a soon to be for-profit NYSE should be free to exploit its regulatory power to disadvantage competitors by mandating that vendors provide this burdensome and redundant level of NYSE identifiers – thus both promoting the NYSE and reducing the amount of screen space available for those competing with the NYSE. Investors should be free to choose the display format most useful and informative for their trading purposes. They should not be forced to have screen space consumed by advertising for one market participant.

The Commission notes, in soliciting comments, that the rules of an exchange must not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As presently constituted, this proposal imposes exactly the kind of burden on competition which undermines capital formation.

The Chamber also remains troubled by the fees to be charged for OpenBook. The NYSE filing of last year asserted that the NYSE "believes the fee for the real-time NYSE OpenBook service reflects an equitable allocation of its overall costs associated with using its facilities". The NYSE, however, has offered no information to support that contention. There continues to be no information offered that would permit anyone to ascertain whether the $60 per month per terminal fee bears any relationship to costs, whether those costs are reasonably allocated or whether the Congressional mandate that market data fees be "fair and reasonable" is being met.

The OpenBook proposal is intended to become a model for displaying information from the world's largest equity market. Getting this model right is critical. The SEC should not allow the restrictions proposed by the NYSE to take effect. We urge that the SEC either permit a full 90 day comment period on this important issue or consider this issue in the context of the broader array of market data/market access issues that the Commission will be addressing in the months ahead.

Thank you for consideration of our views.

Sincerely,

R. Bruce Josten