TD Ameritrade

April 4, 2011

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: File No. 265-65; Joint CFTC-SEC Advisory Committee Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010.

Dear Ms. Murphy:

TD Ameritrade, Inc.[1] ("TD Ameritrade" or "the Firm") appreciates the opportunity to submit comments regarding the recent recommendations of the Joint CFTC-SEC Advisory Committee (the "Committee") on Emerging Regulatory Issues report "Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010" (the "Report").[2] The Firm notes that past market events which resulted in suggested changes to market structure that went unheeded could have possibly prevented or at least mitigated the market events of May 6, 2010 had such suggestions been implemented[3]. The Firm, therefore, believes that government intervention is long overdue and greatly applauds the efforts taken to date in the wake of the May 6th incident to prevent another market disruption.

Harm to Retail Investor

While the Firm agrees with many of the recommendations contained within the report such as a limit up/limit down process and has previously commented on the benefits such a mechanism would have

[1] TD Ameritrade is a wholly owned broker-dealer subsidiary of TD Ameritrade Holding Corporation ("TD Ameritrade Holding"). TD Ameritrade Holding has a 34-year history of providing financial services to self-directed investors. TD Ameritrade serves an investor base comprised of over 5.3 million funded client accounts with approximately $408 billion in assets. During February 2011, the Firm averaged a total of 453,000 client trades per day.

[2] TD Ameritrade previously has commented on the benefits of the limit up/limit down mechanism. *See* http://www.sec.gov/spotlight/sec-cftcjointcommittee/021811-report.pdf

[3] See the report entitled "*The Market Break of May 1962*" noting the Securities and Exchange Commission ("Commission") recommendation to "make a joint study of possible intermediate measures, short of suspending trading, that might be invoked to assure minimum disruption of the fair and orderly functioning of the securities markets in times of severe market stress." http://c0403731.cdn.cloudfiles.rackspacecloud.com/collection/papers/1960/1963_SSMkt_Chapter_13_1.pdf

on the markets,[4] we cannot agree to certain other recommendations, such as "trade at,"[5] which appear to not only fail to address market volatility, but its implementation will likely cause significant harm to retail investors.

As the Firm previously commented, dispersed liquidity becomes an issue for retail investors when and if professional traders use the opaqueness of undisplayed markets to trade for their own benefit and at the expense of retail investors, who generally rely on public quotations and transact in the displayed markets. Consequently, the current market-structure creates incentives for proprietary trading firms to use high volume computer algorithms, pinging, co-location and other approaches to take advantage of retail order flow.[6] Yet, this is exactly the **two tiered market structure** that was recommended by the Committee when it expressed its approval to allow institutions to utilize dark pool trading to seek out best price but refused to permit retail order flow to do the same.

The Committee's recommendation that the Commission further analyze internalization and preferencing arrangements implies that such activities had a role in the May 6th market event. The Firm objects to this implication, in that the Firm's own statistics belie this point: of the more than 700,000 trade executions by the Firm on that day, and the more than 98,000 retail orders received between 2:40 and 3:00 p.m., a mere 360 orders were busted as "erroneous trades," or less than 1% (.006%) of the total client orders for that day. We do not see any reason to include internalization or preferencing in the discussion of the May 6th event.

The Firm strongly believes that "trade at" protections would significantly increase costs and would only serve to harm retail investors. The Committee correctly points out in it's "trade-at" proposal, that "such a change in routing may entail substantial costs with respect to technology and implementation and may adversely impact some forms of competition." The Firm estimates that such a rule will have an impact to the Firm of $50 million dollars annually and may remove more than $31 million in price improvement delivered directly to our retail investors. Moreover, through our analysis of Rule 606 reports[7] the Firm notes that its routing is not dissimilar from a number of other retail providers which all utilize market makers in favor of exchanges for their marketable orders.

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4 http://www.sec.gov/comments/265-26/265-26-46.pdf

5 The Report describes trade at as a "regime in which orders must be routed to one or more markets with the best displayed price. Note that in such a "trade at" regime venues would be able to retain and execute any order by improving the current price. Such a regime reinforces the incentive to post displayed limit orders and hence encourages the liquidity and price discover roles of the market."

6 http://www.sec.gov/comments/s7-02-10/s70210-124.pdf

7 **TD Ameritrade**: http://www.tdameritrade.com/orderdisclosure.html
Schwab:
http://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing_execution?cmsid=P-1022336&lvl1=nn&lvl2=legal_compliance
E*Trade:
https://us.etrade.com/e/t/activetrading/apptemplate?gxml=scard.html&rightrail=disable&_skinnertab=activetrading&_skinnerfamily=Execution%20Quality
Fidelity:
http://personal.fidelity.com/products/trading/Fidelity_Services/Service_Commitment.shtml.cvsr?refpr=brk29
Scottrade:

The "trade at" proposal is akin to a Central Limit Order Book ("CLOB") regime in that while not imposing strict price/time priority, it aims to ensure that resting limit orders at the best price are more likely to receive executions. This regime forces market venues to route to the best price, or execute the order at a 50 mils price improvement, which, in turn, will have a deleterious effect on the ability of the various market venues to compete, potentially reducing the number and variety of trading services routing firms. The trade at proposal with its "CLOB-like" approach to market structure, would deal a significant blow to competition among the market centers, and therefore undo much of the benefits the markets and more importantly, retail investors, have realized as a result of Regulation NMS.

The Firm respectfully requests that the Commission carefully weigh what it considers to be the benefits of the "trade at" protections versus the likelihood of reductions in execution quality that retail investors will receive and the imposition of significant additional costs on retail order routing firms. It should be clear that the scale tips against instituting such a rule.

Market Data, Again

TD Ameritrade is disappointed that the Committee did not do more to highlight the necessity of effecting real change in the way market data is structured and offered to retail investors especially given that the current market data regime certainly had a role in the May 6th market event. The Firm recently submitted a Petition for Rulemaking to the Commission requesting that the Commission conduct a comprehensive review of market data structure.[8] Although Chairman Schapiro has mentioned in U.S. Senate testimony that the Commission is going to review fee structures within the exchanges, there has been no concrete action taken to date. TD Ameritrade again calls on the Commission to conduct a comprehensive review of this important area.

Consolidated Audit Trail is Long Overdue

The Firm applauds the Committee for recognizing the need to proceed with a sense of urgency on a meaningful cost/benefit analysis to implement a consolidated audit trail for the US equity markets and that the CFTC similarly enhance its existing data collection regarding orders and executions. As the Firm noted in its comment letter[9] to the Commission regarding the proposed implementation of a Consolidated Audit Trail,[10] while real-time systems are not the easiest solution, it is the right solution and one that is long overdue. The Firm, therefore, strongly supports the Commission to expeditiously move to the adopting phase of the proposed rule.

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http://www.scottrade.com/online_trading_documents/online_investing_order_routing/
Merrill Lynch:
http://www.tta.thomson.com/msi/reports/index.html?clientid=mlco
Edward Jones:
http://www.edwardjones.com/en_US/disclosures/acct_transactions/oerp/rule6/index.html

8 http://www.sec.gov/rules/petitions/2011/petn4-623.pdf

9 http://www.sec.gov/comments/s7-11-10/s71110-49.pdf

10 http://www.sec.gov/rules/proposed/2010/34-62174.pdf

TD Ameritrade appreciates the opportunity to comment. Please feel free to contact Chris Nagy at 402-970-5656 or John Markle at 443-539-2128 with any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director Order Strategy
Co-Head of Government Relations
TD Ameritrade

/S/

John Markle
Deputy General Counsel
Co-Head of Government Relations
TD Ameritrade