

June 30, 2010

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

RE: *Proposed Amendments to Rule 610 of Regulation NMS:
File No. S7-09-10*

Dear Ms. Murphy:

TD AMERITRADE, Inc.¹ (“TD AMERITRADE” or “the Firm”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (“Commission”) proposed Amendments to Rule 610 of Regulation NMS, which seek to cap the amount of fees that can be assessed by an exchange for accessing a posted bid or offer. TD AMERITRADE supports the Commission’s proposal to cap access fees in the options market, but believes that the cap should be lower.

TD Ameritrade previously has commented to the Commission that it should extend the protections of Regulation NMS to the options markets by adopting a cap on access fees.² In the equity markets, the implementation of access fee caps has helped retail investors by lowering direct and indirect execution costs. The Firm believes that fee caps are the next logical step in the evolution of the options markets. The Firm noted in its comments to the Commission in December 1, 2009 that investors have

¹ TD AMERITRADE is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation (“TD AMERITRADE Holding”). TD AMERITRADE Holding has a 35-year history of providing financial services to self-directed investors. TD AMERITRADE Holding’s wholly owned broker-dealer subsidiary, TD AMERITRADE serves an investor base comprised of over 5.3 million funded client accounts with approximately \$332 billion in assets. During the month of May 2010, the Firm averaged a total of 484,000 client trades per day.

² *See, e.g.*, Letter from Christopher Nagy, Managing Director, Order Routing Sales & Strategy, TD AMERITRADE, Inc., to Florence E. Harmon, Secretary, U.S. Securities and Exchange Commission, NYSE Arca’s Proposed Rule Change to Amend its Schedule of Fees and Charges, SR-NYSEArca-2008-75, (Sept. 8, 2008) (“TD Ameritrade recommends that the Commission extend the protections provided through Regulation NMS to the options markets by utilizing a cap consistent with the one applicable to access fees in the equities markets.”); Letter from Christopher Nagy, Managing Director, Order Routing Strategy, TD AMERITRADE, Inc., to Elizabeth M. Murphy, Treasurer, U.S. Securities and Exchange Commission, Proposals to Expand the Penny Pilot (SR-NYSEArca2009-044, SR-CBOE-2009-13, SR-ISE-2009-32) (June 17, 2009); Letter from Christopher Nagy, Managing Director Order Routing Strategy, TD AMERITRADE, Inc., to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, Rel. No. 34-60684; File No. S7-21-09 (Nov. 23, 2009) (the Firm “believes that the Commission should enact Rule 610 in the listed options markets.”); Letter from Christopher Nagy, Managing Director, Order Routing Strategy, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, Rel. No. 34-61061, File No. SR-NYSEArca-2009-044 (Dec. 1, 2009); Letter from Christopher Nagy, Managing Director Order Strategy, Co-Head of Government Relations and John S. Markle, Deputy General Counsel, TD AMERITRADE, Inc., to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, Release No. 34-61358, File No. S7-02-10, Concept Release on Equity Market Structure (Apr. 21, 2010).

significantly benefitted from the reduced trading increments brought about by the Commission's initiative to reduce trading spreads. However, as spreads have narrowed due to the implementation of tighter trading increments, indirect costs have increased in relation to the notational value of the trading increment.

The Firm notes that revenue sharing by market centers have declined significantly³ with the introduction of Options Penny Pilot while the overall transaction costs have remained artificially high and unchanged. In fact, as the Firm cited in its December letter, fees for execution are 15 times higher on a notional basis than the equivalent charge for equities under Rule 610 today.

The Firm also noted in its November 23, 2009 letter to the Commission on the Elimination of the Flash Order Exception from Rule 602 of Regulation NMS, that the utilization of Flash Order types in the options markets are a direct result of the excessive access fees so pervasive in the options markets. In addition, the Firm notes that the rebates offered on the opposite end of the fee structures are designed to attract High Frequency Traders to post fleeting liquidity at the expense of the retail investor. In fact, in many cases retail limit orders are not able to achieve the high rebates earned by the High Frequency Trading firms creating a discriminatory environment that may harm retail investors. The Firm, therefore, believes that the Commission's proposal will limit fees to help achieve fair and efficient access and to provide greater transparency in the quoted price.

The Firm also denounces the notion that investors will not be worse off accessing a price that is better by \$1 per contract as long as the fee to access that quotation is not more than \$0.99 per contract. The notion that a fee cap should not be higher than \$0.99 is a flawed premise as many times today that same price is accessible with a negative fee, thus the overall delta if an access cap was set at \$0.99 could potentially be higher than the overall quoted spread. The Firm notes that access fees are similar to shipping charges or taxes in other businesses with one major difference; when a consumer purchases a product with shipping charges or taxes those are known to the consumer whereas in the options market, access fees are not displayed within the public quotation thus represent a "hidden" charge where the true price may not be the total price paid.

The Firm notes that the Commission previously addressed this issue in the equities markets and determined that access fees should not be higher than \$0.003 per share.⁴ In the adopting release the Commission noted that "protecting the best displayed prices against trade-throughs would be futile if broker-dealers and trading centers were unable to access those prices fairly and efficiently." Further the Commission concluded that "the purpose of the fee limitation is to ensure the fairness and accuracy of displayed quotations by establishing an outer limit on the cost of accessing such quotations." The Firm agrees with the Commission's analysis⁵ and further notes that the fee proposal does not interfere with current business practices as few options centers today have fees greater than the proposal.

³ Since the introduction of the penny pilot in January of 2007, payment for order flow has declined 61%.

⁴ *Regulation NMS; Final Rule*, 70 FR 37496, 37631, June 29, 2005.

⁵ <http://www.sec.gov/rules/proposed/2010/34-61902.pdf>, Table 3, "Estimates of Potential Revenue Impact on Options Exchanges." The total estimated revenue impact is 5.6%. The Firm agrees with the Commission estimation.

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The Firm commends the Commission for taking necessary measures to continue to perfect the options markets and our national market system and more importantly to protect investors and the public interest.

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TD Ameritrade appreciates the opportunity to comment. Please feel free to contact me with any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director Order Strategy
TD AMERITRADE