TD Ameritrade

January 13, 2012

Via Email and First Class mail

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

Re: SR-BATS-2011-053

Dear Ms. Murphy:

TD Ameritrade, Inc.[1] ("TD Ameritrade" or "the Firm") appreciates the opportunity to comment on the above referenced proposal that was filed with the Securities and Exchange Commission ("Commission") as immediately effective upon filing which serves to raise fees and rebates for adding and removing liquidity on the BATS Exchange, Inc. ("BATS").

The Firm is a strong believer in transparent and efficient markets that serve to benefit the investing public. The Firm believes that the BATS filing is in violation of Section 6(b) of the Exchange Act[2] as it inserts unreasonable fees to access public quotations onto the options markets; specifically in the case of an option series where the quoted spread is a penny the proposed tax represents 44% of the entire quoted spread. Moreover, **<u>BATS is increasing the fee for Customer orders from $0.30 to $0.44 without any justification or explanation as to why Customer fees are increasing 68%.</u>** TD Ameritrade strongly believes that the fees as proposed adversely impacts the investing public because the ability of the exchanges to file immediately effective fee increases, without there being a cap in place, adversely affects brokers ability to access the BATS quotes at a reasonable cost.

As the Commission previously pointed out when it sought to "enact rules to strengthen the national market system for listed options by prohibiting the imposition of unfairly discriminatory terms by a national securities exchange that inhibit efficient access to quotations

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1 TD Ameritrade is a wholly owned broker-dealer subsidiary of TD Ameritrade Holding Corporation ("TD Ameritrade Holding"). TD Ameritrade Holding has a 36-year history of providing financial services to self-directed investors. TD Ameritrade serves an investor base comprised of over 5.5 million funded client accounts with approximately $404 billion in assets. During November 2011, the Firm averaged a total of 377,000 client trades per day.

2 15 U.S.C. 78f(b).

in listed option on its exchange"[3], the fee filing serves to inhibit efficient and transparent access to published quotations. Additionally, as noted recently by the Commission when instituting proceedings to determine whether to disapprove a recent BOX rule filing, Release No. 34-6533 ("the BOX Filing")[4], among other items, the Commission specifically noted that one reason for instituting the proceedings was "with respect to the net fee differential that it would place on BOX Options Participants that respond to a PIP auction." The Firm notes that the net fee filed by BOX is 15% of the quoted spread or 29% lower than the BATS filing's 44% tax for access to their publicly displayed quotation. The Firm believes strongly that when the Commission instituted proceedings to determine whether to disapprove the BOX Filing precedent was established as to what the Commission should review as a maximum allowable fee. Fundamentally there is no difference between the BOX fee or the access fee charged by BATS as both represent charges to participate. Further, the Firm notes that unlike BOX's tax which is not mandatory and which is not part of the National Best Bid Offer ("NBBO") disseminated by the Options Price Reporting Authority, the BATS price is part of the NBBO.

The Firm also raises issue within the BATS proposal regarding the "Bulk-Quoting Interface" which allows users of BATS the unfettered ability to provide both a bid and an offer in one message as well as the ability to bundle several quote updates into a single message. The proposal seeks to waive fees for the logical ports with bulk-quoting capabilities for certain members. According to statistics the Firm compiled from the Financial Information Forum, peak messages per second during the month of September 2011 exceeded 3.8 million quotes, which are nearly double to peak messages per second the year prior, and 50% of the expected traffic in September of 2012. The resulting impact of allowing unfettered access to allow members of BATS bulk-quoting capabilities subsequently forces its way downstream resulting in brokers having to purchase greater capacity to disseminate the subsequent information to the retail consumer. The Firm believes that in addition to violating Section 6(b) of the Exchange Act, BATS' proposal places significant burdens on the OPRA ability to disseminate option quotes to the investing public. Therefore, TD Ameritrade believes that in addition to instituting proceedings to determine whether to disapprove the filing, the Commission should also initiate rulemaking concerning market data structure which the Firm previously petitioned[5] the Commission.

[3] Release No. 34-61902; File No. S7-09-1.

[4] See http://www.sec.gov/rules/sro/bx/2011/34-65330.pdf.

[5] See TD Ameritrade petition for Rulemaking Concerning Market Data Structure; http://www.sec.gov/rules/petitions/2011/petn4-623.pdf.

For the reasons cited above, the Firm strongly recommends that the Commission institute proceedings to determine whether to disapprove SR-BATS-2011-53. Additionally, TD Ameritrade recommends that the Commission adopt SEC Release No. 34-61902; File No. S7-09-10 "Proposed Amendments to Rule 610 of Regulation NMS" for the options markets originally proposed on April 20, 2010.

Please feel free to contact me at 402-970-5656 with any questions regarding our comments.

Respectfully Submitted,

/S/ Christopher Nagy

Christopher Nagy
Managing Director Order Strategy
TD Ameritrade