

November 11, 2011

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-ISE-2011-67

Dear Ms. Murphy:

TD Ameritrade, Inc.¹ (“TD Ameritrade” or “the Firm”) appreciates the opportunity to comment on the above referenced proposal by the International Securities Exchange, LLC (“ISE”) to amend its Schedule of Fees and to adopt subscription fees for the sale of the ISE Implied Volatility and Greeks Feed and the addition of a new data distribution model called the Managed Data Access Service.

The Firm believes that the filing should be immediately suspended under Section 19(b)(3)(C) of the Exchange Act, and that the Securities and Exchange Commission (“Commission”) institute proceedings to disapprove (or approve) under Section 19(b)(2)(B) of the Exchange Act, as the filing does not comply with ISE’s obligations under the Exchange Act for market data fee filings, as articulated in the recent decision of the United States Court of Appeals for the District of Columbia in *NetCoalition v. Securities and Exchange Commission*, (“*NetCoalition*”).² In its filing, the ISE fails to address the Court order which, among other things, requires that exchanges assess market data fees that are “fair and reasonable,” as determined on the basis of a substantive justification of the costs of producing such data. ISE’s filing fails to meet these requirements and, therefore, suspending and instituting proceeding is in the public interest. Furthermore, TD Ameritrade disagrees that the intent of Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) provides the ISE unfettered ability

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 \$405 billion in assets. During October 2011, the Firm averaged a total of 407,000 client trades per day.

² 615 F.3d 525 (D.C. Cir.2010).

to initiate pricing increases without first demonstrating the fees are fair and reasonable and the ISE fails to discuss the basis of the fees.

As the Firm references in its Petition for Rulemaking submitted to Commission,³ market data is long overdue for a comprehensive review regarding the input and distribution of exchange data products. As a result, TD Ameritrade also strongly encourages the Commission to seek commentary and adopt proposals to modernize the long out dated market data regime.

TD Ameritrade appreciates the opportunity to comment on the filing and respectfully requests that the Commission suspend the proposed rule changes therein and institute administrative proceedings to disapprove or approve the filing consistent with the requirements under the Exchange Act. 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

³ Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian Global Head of Market Data TD Ameritrade, "Petition for Rulemaking Concerning Market Data Structure," to the Commission, dated January 20, 2011; <http://www.sec.gov/rules/petitions/2011/petn4-623.pdf>