TD AMERITRADE
Holding Corporation

April 21, 2010

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

Re: ***Concept Release on Equity Market Structure, Rel. No. 34-61358, File No. S7-02-10***

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") concept release and request for comments regarding the equity market structure. TD AMERITRADE strongly supports the Commission's comprehensive review of equity market structure given the significant structural changes that have occurred since Regulation NMS was promulgated in 2005. TD AMERITRADE submits these comments on behalf of the individual investors who hold over 7 million accounts at the Firm.

I. BACKGROUND – "ROADMAP FOR THE RETAIL INVESTOR"

The Commission's Concept Release comes at a time of tremendous technological and competitive changes in the equity markets. In the four years since Regulation NMS was adopted, the U.S. markets have seen an explosion of growth in market centers, exchanges and proprietary trading firms. At the same time, formerly traditional, floor-based, manual markets have seen their market share slip precipitously. For example, NYSE Euronext's average daily volume of shares in the stock of U.S. equities that it handled in March of this year fell 47 percent compared to a year ago.[2]

As the equities and options markets have entered the phase of full electronic trading, the results have been dramatic for retail investors. TD AMERITRADE believes strongly that retail

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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 34-year history of providing financial services to self-directed investors. TD AMERITRADE Holding's wholly owned broker-dealer subsidiaries, TD AMERITRADE and thinkorswim, Inc. serve an investor base comprised of over 5.3 million funded client accounts with approximately $342 billion in assets. During the first quarter of 2010, the firms averaged 379,000 client trades per day.

[2] *"NYSE Euronext in the U.S.: Options Up 39%, Equities Down 47%,"* Securities Industry News (Apr. 9, 2010).

investors have reaped tremendous benefits from the market structure changes that have occurred over the past decade since Rule 605/606 and Regulation NMS were enacted. Today's retail investors placing trades through browser-based systems or on their computers via downloadable software, have access to streaming, real-time market data (quotes and last sale) and tools that provide visual displays of market prices, depth and liquidity. For example, in 2001, the average individual investor transaction took upwards of eighteen seconds to receive an execution, while today that same transaction is done in less than one second.[3] Moreover, investors have access to independent research and tools that allow them the flexibility to understand the fundamentals of a company, the technical trading indicators and analysis (everything from MACD and RSI to streaming Greek analytics), the ability to spot trading opportunities and even back-test trading strategies. Moreover, access has expanded via applications on wireless devices. Simply put, retail investors have never had such access to information coupled with powerful tools at such reasonable prices in accessing the U.S. equity markets.

Technical progress and the hyper-competitive world of Wall Street, also have created a market structure with incredibly low barriers of entry. With over 200 market centers currently filing Rule 605 reports, the venues for trading are becoming endless. Moreover, given new Commission flexibility on exchange applications, market centers can establish a business model and proceed expeditiously down the road of becoming a registered stock exchange.

TD AMERITRADE has a long history of acting as agent for its clients and generally has decided to not internalize orders through an affiliated capital markets broker. Rather, TD AMERITRADE has used competition among market centers to provide its clients with best execution through a mix of speed, price and liquidity. As noted in the Concept Release, however, competition also leads to a dispersal of liquidity among market centers and, more concerning, an increase in trading volume that executes in so-called "dark pools."

Dispersed liquidity becomes an issue for retail investors if professional traders use the opaqueness to trade for their own benefit and at the cost of retail trading volumes that generally transact in the displayed markets, as retail investors rely on public quotations. That is, the current market-structure has created incentives for proprietary trading firms to use high volume computer algorithms, pinging, co-location and other approaches to take advantage of retail order flow. This brings us back to our clients, retail investors. Whether a client is investing for retirement, for a child's college education, in an oversold financial company stock, or in a company producing the latest technological wireless gadgetry, TD AMERITRADE believes that investors, *both active traders[4] and long-term investors*, have the same general goal: when they place a trade they want, *they demand*, three things:

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[3] http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=35ff7d62-1e3e-417e-9b72-a26dfe2286dc

[4] The Firm considers a client to be an active trader if that client engages in 50 or more trades in any given quarter or 10 or more option traders per quarter.

1. they want their order filled quickly;
2. at the price they are quoted, or better;
3. and in the full amount of the order.

Although the Commission considers the long-term investors' needs as paramount, TD AMERITRADE believes there is no distinction between the goals of active traders and long-term investors. In many instances long-term goals are attained through short-term investments, or by frequent re-balancing of investments. In fact, based on interactions with the 7 plus million client accounts we hold, the Firm believes that both active traders and long-term investors' interests are aligned to the three goals noted above. The instances in which such goals diverge usually have to do with the opportunity cost of obtaining a security at a specific price level. If an investor has decided that he/she wants to buy a security for a long-term holding and price is not their number one priority, they may opt to use a market order to ensure an execution. The same long-term investor, however, may opt to use a limit order to obtain a specific entry point into a stock. The active trader, although more apt to use a limit order, similarly may use market orders in situations where they are concerned about the lost opportunity to acquire a position at a certain price.

TD AMERITRADE believes these differences are ephemeral and, therefore, should be merit little consideration. Rather, the Firm submits that both active traders and long-term investors want to buy or sell securities at the price they are quoted or better, in the full amount they seek; period. Given the significant advances in speed and price protection that have occurred since the introduction of Rules 605/606 and Regulation NMS, TD AMERITRADE submits these comments to serve as roadmap for the retail investor on behalf of its 7 million client accounts to further advance the access that the individual investor is afforded in today's marketplace. TD AMERITRADE believes the Commission should begin to focus its efforts: (1) on incentivizing the markets to provide size enhancements, a component missing from the current rules and one that has eroded significantly since the introduction of Regulation NMS; and (2) increment reform.

II. MARKET STRUCTURE PERFORMANCE

As noted above, TD AMERITRADE believes that the post-Regulation NMS equity market structure has provided investors with both price protection and increasing speed of execution. The primary issue facing retail investors is obtaining executions in the size they seek. The Firm believes that one of the measures the Commission can take to incent size enhancement is by amending Rule 605 statistics to provide a basis on which to compare market center performance in this area. This simple change would allow firms an additional best execution metric that would, in turn, drive firms to compete for order flow based on size enhancements.

As an initial matter, TD AMERITRADE believes strongly that the current Rule 605 and 606 market quality statistics have performed a vital role in adding transparency to market center execution quality and how brokers seek best execution. Although our experience has shown that retail investors generally do not utilize Rule 605 and 606 data directly, the Firm believes the disclosure statistics are necessary and important to the industry in allowing brokers and advisers to measure execution quality. Retail investors, in fact, reap the ultimate benefit of the statistics as brokers, through their regular and rigorous review of market quality, continually seek improved executions for their clients.

TD AMERITRADE believes that a "size enhancement" statistic should be added to Rule 605. Specifically, such a statistic would measure the amount of size improvement a market center provides at the National Best Bid and Offer "NBBO" as compared to its then available quoted amount. For example, in the markets today the "NBBO" generally does not contain much size at the displayed price and generally is far less than the Firm's average client order-size of 1,500 shares.

In addition to the above, the Firm agrees with the Commission that the Rule 605 measurements also are in need of updating as follows:

- Due to the technological advancements in speed, rather than a measurement of 0-9 seconds, TD AMERITRADE proposes sub-second measurements of 0.00 to 0.50 seconds and so forth. The Firm also recommends that the unit of measurement be standardized to begin at the receipt of order by the executing market center and the quote to the nearest sub-second prior to receipt be utilized for reporting purposes. Moreover, the Firm recommends that the Commission consider proposing a methodology for updating the speed of execution statistics going forward to ensure that they more closely represent the speed of markets. For example, the Commission could consider creating an annual requirement to retain or reset the statistics, allowing such action through a delegation of authority to the Commission staff.

- TD AMERITRADE supports the exclusion of certain orders as they unnecessarily discredit Rule 605 statistics. In this regard, the Firm believes intermarket sweep orders ("ISO") and immediate or cancel ("IOC") orders should be excluded from Rule 605, or, preferably, separately reported. It is the Firm's experience that brokers that engage in ISO and IOC order-types show favorable results on the statistics as they are only engaging in positive selection, yet in practice the outcome is very different as those orders not selected generally receive adverse results. By including these statistics within Rule 605 in the current categories, it detracts from the ability to compare, on an "apples-to-apples" basis, one market center that engages in such trading to other market centers which do not engage in such tactics.

- Given the significant increase in IOC & IOI orders in the market, the Firm also supports the Commission in requiring the disclosure of the average time that canceled orders were displayed in the order book. The Firm also requests that statistics regarding the overall number of cancellations in relation to ISO/IOC/IOI and other "pinging" order types be displayed. This would provide a much more accurate depiction as to what percentage of the overall percentage of orders a broker that engages in such practices is experiencing. In this regard a broker conducting its regular and rigorous review would be better suited to make an assessment if such a practice would be beneficial.

- TD AMERITRADE also requests that the Commission require Rule 605 data to begin at market open; 9:30 am ET, and not 9:45 am ET as is currently mandated. When adopting Rule 605 and 606, the Commission noted that it was reluctant to expand the market data statistics to include the market open and left that issue to the industry to resolve.[5] The resolution the Commission had hoped for never materialized and TD AMERITRADE submits that a large percentage of its retail clients place market orders in the evening when they are home from work and that the market open represents about 10% of clients' daily trading volume. The absence of Rule 605 data for the first 15 minutes of trading is a significant hole in the data that should be fixed. In today's day and age when we are measuring executions in micro seconds the absence of 605 data at market open is simply inexcusable. Moreover, to this day, certain exchanges continue to delay the market open, sometimes for 10 or more minutes due to "order imbalances" or other issues and continue to invoke rules to mask the opening process. These delayed opens are a constant source of confusion, irritation and pain to retail clients who expect their orders to be filled at 9:30 am ET, the market open. The negative perception created by this lack of transparency for retail investors is profound. TD AMERITRADE strongly recommends that the Commission create a separate Rule 605 category for market opens and specifically require market centers to report the instances in which they do not open trading in a security on time.

- TD AMERITRADE also requests that the Commission seek to add a "cost of liquidity" section to the reports. In today's markets access fees are not included within the quotation. The Firm notes that cost is a consideration of best execution.[6]

- TD AMERITRADE also requests that the Commission expand Rule 605 to cover the options markets.

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[5] http://www.sec.gov/rules/final/34-51808.pdf, at fn. 344.

[6] *See*, *e.g.*, Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266 at 270 (3d Cir.), cert. denied, 525 U.S. 811 (1998). *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. Id. At 270 n. 2 (citing Payment for Order Flow, Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937–38 (Oct. 13, 1993) (Proposed Rules)). *See* In re E.F. Hutton & Co. (''Manning''), Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Payment for Order Flow Final Rules, 59 FR at 55008–55009.

TD AMERITRADE believes that Rule 606 data also assists the industry in understanding how brokers seek best execution and it serves as an important competitive tool in a broker's regular and rigorous review of execution quality. However, in this regard, the Firm believes that brokers need to be reminded of their obligation to report the 606 data correctly. By way of example, the Firm conducted its own analysis of firms that report Rule 606 information through the two primary providers for the industry[7] for the 4th quarter of 2009:

Thomson & TAG Q4-2009 606 Stats		
606 Options routing displayed by market maker rather than exchange	98	25%
Good 606 but missing material relationship disclosure	180	45%
Good 606 however lacks remuneration disclosure	30	8%
Good 606 with good material disclosure	89	22%
Total>>>	**397**	

As the above demonstrates, of the 397 firms reporting data through the Transaction Auditing Group and Thomson Transaction Analytics we reviewed, only 22% of the firms observed were reporting the disclosures consistent with the requirements of Rule 606 and including some disclosure of material terms

TD AMERITRADE also has noticed instances in which brokers consistently report not the exchange where options orders are executed, but rather, the intermediary who was the recipient of the order. It would be helpful if the Commission clarified the reporting requirement for options, or enforced the rule as to the firms that are misreporting. In addition, TD AMERITRADE notes brokers are not disclosing material terms of remuneration received from market centers or merely noting instead that such information is available upon request. Overall, however, TD AMERITRADE believes the Rule 606 data is extremely useful and provides benefit. The Firm recommends the following changes to Rule 606:

- Combine AMEX, Nasdaq and NYSE categories to one new category entitled: NMS Securities.
- Include securities that trade Over the Counter "OTCBB" and Pink Sheet Quoted securities in a new category entitled "Over the Counter Securities."
- Eliminate the directed orders section. The Firm believes that all routed orders should be reported irrespective of directed status particularly in light of the approval of Regulation NMS.
- Change the order classification status to include "Opening," "Marketable Limit," "Odd-lot," "Mixed Lot," "Stop Orders" and "IOC/IOI" and "Spreads" for Options. This change also should be commensurate with the additions to Rule 605 where applicable.

[7] Source: Transaction Auditing Group, Inc. & Thomson Transaction Analytics.

- Require brokers that internalize order-flow to include additional disclosure of payments made and overall profitability generated by the internalizing subsidiary internalizing that order-flow. Clarify the provisions related to payment for order-flow. For example if a market center pays for the Section 31 fees of a routing broker, that information should be disclosed.
- TD AMERITRADE also recommends that the Commission either: (1) provide for a central repository so that investors may access Rule 606 reports from one location; or (2) mandate where the disclosure can be found from a reporting broker's' website (*e.g.*, the main page of the broker's website must contain link).

TD AMERITRADE recommends that the Commission consider requiring firms within their 606 reports to disclose 605 information relating to overall quality of execution received from those executing market centers. Standardizing this requirement, coupled with uniform disclosure would serve useful to investors. TD AMERITRADE notes that while it and other brokers provide information specific to their execution quality, since this is not a uniform requirement, investors often complain that they are not able to make apples-to-apples comparisons.

III. HIGH FREQUENCY TRADING

Along with technology changes, the Commission rightfully focuses the Concept Release on the explosive growth of so-called "high frequency traders" ("HFTs"). As noted in the Concept Release, HFTs can use a multitude of strategies, from arbitrage to passive market making. Regardless of the strategy employed, HFTs share the following characteristics: high volume, computer-driven trading usually in the form of small-sized orders and a very high percentage of cancelations.

The significant and rapid increase in the HFT trading volume, which by the Commission's estimate constitutes typically 50% or higher, of total trading volume, impacts retail investors in many ways; the majority of which are not to their benefit.

First, the rapid order placement and high cancellation rates have only exacerbated flickering quotations, which undermine retail investor confidence in the execution quality they obtain. Simply put, retail investors expect the best price they see and they do not accept the excuse that the quote they saw is not attainable. A requirement should be mandated to make all bid/asks effective for a minimum amount of time. Further, the Commission should strongly consider the impact that excessive cancellations have on the markets, market data and costs for retail investors.

Second, while HFTs may add needed liquidity into the markets, unlike specialists and OTC market makers who are required to maintain two-sided markets, HFT liquidity is far more opportunistic and fleeting and under no such two-sided requirement. In fact, the speed at which HFT trading volumes fluctuate may add to volatility to overall liquidity in the markets.

Third, TD AMERITRADE has observed that as HFT has become an increasing percentage of trading volume, client orders also are more often than not executed as partial fills. That is, the size of executions has steadily declined. These partial fills impact retail clients because their orders are not filled in full, but rather a series of partial mixed lot fills at different prices.

Fourth, is the perception that HFTs are taking advantage of retail order flow by stacking the odds against them. An example is the use of co-location to gain fractions of a second advantage and trade ahead of retail flow. It is simply no wonder why our clients complain to us about these negative perceptions that they associate with high frequency trading.

TD AMERITRADE's experience demonstrates that retail investor best execution opportunities are achieved by employing a competitive mix of OTC market makers and bona fide specialists. The Firm believes that OTC market markers offer superior price improvement, size enhancement and overall reliability particularly in times of stressful market conditions, which is typically when the individual investor engages in the market. In comparison, in pursuing its regular and rigorous review of execution quality, TD AMERITRADE has experimented with using an HFT to execute a small portion of its client order flow. The result was inconsistent execution quality, partial mixed lot fills and no size enhancement. One noteworthy example was an IOC order for 500 shares – the client received an execution of 485 shares leaving the client with 15 shares unexecuted. As noted above, TD AMERITRADE believes HFT represent opportunistic liquidity which generally do not serve the individual investor well.

As to what the Commission can do about the detrimental impact that HFTs are having on the quality of the U.S. equity markets, TD AMERITRADE offers the following suggestions:

- First, the Commission should be vigilant in using existing self-regulatory organization tools in policing for manipulative trading and market abuses. The Firm does support the Commission's proposal to tag high frequency trades so that it can better understand the practice.

- Second, as was universally agreed by all parties testifying at the Senate hearing on market structures issues in October 2009,[8] the Commission should move expeditiously to institute a market-wide surveillance program. Such surveillance must be smart, sophisticated, targeted and timely. There is the perception in the marketplace that HFTs are trading at the expense of retail investors and this perception can only be countered by a dedicated surveillance effort.

- Third, amend the provisions of Rule 610. The Firm believes that the current pricing caps established with the introduction of Regulation NMS is detrimental to the markets and

[8] *Hearing on "Dark Pools, Flash Orders, High Frequency Trading, and Other Market Structure Issues" Before the Subcommittee on Securities, Insurance and Investment of the Senate Comm. on Banking, Housing and Urban Affairs,* 111th Cong. (Oct. 28, 2009).

create a distorted market-structure in that they are not tied to the notional value of the trade but rather a fixed amount. As a result, the Firm believes that many unintended consequences occur in the markets due to the current "make or take" pricing that exists and drives HFTs to engage in "rebate trading." TD AMERITRADE suggests that the Commission seek to adopt a basis point pricing cap tied to the notional value of the trade itself or seek to eliminate access fees in the markets altogether.[9]

Finally, the Commission should use its enforcement powers to ensure HFTs are acting in conformance with the rules. Of note are the fines recently levied by the U.K. Financial Services Authority against Credit Suisse, Getco and Instinet Europe for reporting inaccurate transaction data.

IV. INCREMENT REFORM

The Commission's Concept Release also requests comment regarding undisplayed liquidity, more commonly referred to as "dark pools." TD AMERITRADE believes that dark pool operators under Regulation ATS should be held to the same rigorous standard applicable to registered stock exchanges. The Firm raised the notion that any exchange should be subject to stringent requirements during its testimony to the United States Senate.[10] As noted above, TD AMERITRADE believes that that market makers and specialists provide the most cost-effective and consistent execution quality for retail investors. Today they offer two sided quotations, price improvement to the best displayed price, and expanded size to ensure that the retail order gets filled at the price the client saw when the order was he placed his order. Furthermore, TD AMERITRADE strongly believes that transparency is one of the most effective tools the Commission can wield and that the alleged benefits that dark pools provide to retail investors are grossly overstated.[11] The Firm also believes that dark pools should be required to immediately disclose all transactions to the marketplace and as previously stated, agrees with many of the proposed dark pool enhancements the Commission seeks to enact.[12]

In addition to transparency, TD AMERITRADE believes the single most important step the Commission could take to improve price discovery is to enact increment reform. In Regulation NMS, the Commission took the step of prohibiting quoting in sub-penny increments for securities priced above $1.00 per share based on the belief that the costs outweighed the

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9 "Equity Trading in the 21st Century" ID 43 http://www.knight.com/newsRoom/pdfs/EquityTradinginthe21stCentury.pdf

10 *Hearing on "Dark Pools, Flash Orders, High Frequency Trading, and Other Market Structure Issues" Before the Subcommittee on Securities, Insurance and Investment of the Senate Comm. on Banking, Housing and Urban Affairs*, 111th Cong. (Oct. 28, 2009).

11 *See* Securities Exchange Act Rel. No. 60997, "Regulation of Nonpublic Trading Interest," Comments by Christopher Nagy, Managing Director, Order Strategy, TD AMERITRADE (Feb. 22, 2010).

12 http://www.sec.gov/comments/s7-27-09/s72709-15.pdf

benefits. The Commission found that the sub-penny rule would promote transparency and consistency as well as protect limit orders.[13] Specifically, the Commission noted prohibiting sub-penny quoting would increase liquidity, and at the same time, reduce quote flickering and the incidence of stepping ahead of displayed trading interest by an economically insignificant amount.[14]

Although the sub-penny rule has been successful in reducing the prevalence of stepping ahead, TD AMERITRADE believes that computer-based trading has evolved to once again take advantage of retail investor limit orders. Rather than quoting in sub-pennies, professional traders can now program their systems to route to market centers offering sub-penny prints. This complaint, coming from TD AMERITRADE's more active traders, has been increasing as of late. With the introduction of Regulation NMS, the Commission emphasized that price must be elevated above all other factors as a measure of best execution. Regulation NMS also allowed printing of trades to be carried out to 4 and even 6 decimal places. The unintended consequence of this is that brokers seek out price improvement above all measures of best execution. In turn, HFTs use the information gleaned from the sub-penny prints that occur in the marketplace to further their proprietary trading profits or to avoid trading with resting limit orders all together. Here is how it works:

- An individual investor decides to buy 1,500 shares of XYZ stock.
- As previously stated, most long term investors enter marketable orders.
- The broker receives the order and sends it to a market maker for execution.
- The market maker immediately executes the order slightly better than the best displayed price in the market (usually by .0001 or $0.15 to the client).
- That print immediately hits the tape.
- HFTs see that print and subsequently cancel their resting limit orders.
- The market maker that filled the order is now sought with higher layoff costs on the client filled order.
- The benefactors are the retail client and the HFT.
- The market maker and specialist are left with the bill making it less likely that they will improve the order or provide liquidity next time around.

One could certainly suggest that the broker simply avoid the price improvement opportunity and that the market maker or broker should have simply sent the order to fill at the NBBO. In such case, however, the broker would run the risk of being accused of violating its best execution obligation, as Regulation NMS elevated price improvement above all else. In addition, the order would most likely have only seen 100 or 200 shares filled at that price and subsequent prices to fulfill the order could have resulted in much higher prices and at potentially higher costs of access. The real benefactor is, again, the HFT. Maybe it is no wonder then that

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13 Securities Exchange Act Rel. No. 51808 (June 9, 2005), 70 Fed. Reg. 37496 at 37596.

14 Ibid.

Regulation NMS coupled with sub-penny printing (and trading on stocks below $1.00) has resulted in HFTs engaging in more than 50% of overall market volume as described above? Is it surprising why HFTs want to continue to "split the penny?"[15]

TD AMERITRADE therefore believes that increment reform is necessary in the markets by amending Rule 612 to establish a minimum price variation "MPV" of $.01. In other words, the display, ranking, printing and trading of NMS stocks should be mandated to an MPV of $0.01 regardless of the NMS security price. The Firm additionally notes that the current MPV of securities priced below $1.00 is inconsistent with Regulation NMS as trading and printing can occur out to 4 decimal places; however, trade through protection offered by Regulation NMS is only offered to 2 decimal places.[16] This hole within Regulation NMS creates a negative perception and experience in the markets. As with sub-penny quoting, the Firm believes that the costs of allowing professional traders to use sub-penny trading to step ahead of resting limit orders is creating a detrimental impact on investor confidence. To illustrate this point the Firm spoke to many clients, including clients that trade stocks under $1.00 to inquire as to their preference. Overwhelmingly, the voice of our clients demanded that TD AMERITRADE request the Commission ban trading, printing and ranking of orders at an MPV of no less than $0.01. Moreover, the Firm believes that sub-penny printing, which has increased dramatically since the introduction of Regulation NMS, creates the perception of a two-tiered market in the eyes of the individual investor. The reasoning the Commission used in Regulation NMS to support a prohibition on sub-penny quoting holds true for sub-penny trading. The Commission found:

> The Commission also believes that Rule 612 will enhance market depth and improve transparency by preventing trading interest from being spread across an unnecessarily large number of price points. Therefore, we believe Rule 612 will encourage market participants to use limit orders, an important source of liquidity, and thereby promote market efficiency, competition, and capital formation. The Commission also believes that the new Rule will bolster investor confidence by helping ensure that their orders, especially large orders, can be executed without incurring large transaction costs. This increase in investor confidence also will promote market efficiency, competition, and capital formation.[17]

In addition to the above, the Firm notes recent challenges encountered in the market as a result of the ability to display rank and print orders to 4 decimal places on NMS Securities priced below $1.00.[18].

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15 http://www.tradersmagazine.com/news/high-frequency-trading-benefits-105365-1.html

16 http://www.sec.gov/rules/exorders/2006/34-54678.pdf

17 Ibid.

18 http://www.directedge.com/AboutDirectEdge/Announcements/ViewNewsletterDetail.aspx?NewsletterID=155.

As a result, TD AMERITRADE believes the Commission should require the MPV for both trading and quoting to be established at $.01 for all NMS Securities regardless of price.

V. "TRADE AT" PROTECTIONS WOULD HARM RETAIL INVESTORS

The Firm strongly cautions the Commission regarding enlisting "trade at" protections in the market. At first glance it may appear that such protections would serve to protect the investing public. Upon closer examination however, trade at protections would serve to only lessen the near equal footing retail investors enjoy in today's marketplace. The Firm is concerned by the Commission's intent to consider instituting "trade at" protections to the U.S. markets as it would serve to drive retail commissions higher, favor the HFTs at the expense of the retail investor and drive a negative market experience for retail clients in the U.S. markets. In fact, trade at protection would create many negative and unintended consequences for retail investors. Let's look at the following example:

- Retail investor wants to buy 1,500 shares of XYZ.
- The order is sent to a market maker.
- The market maker cannot match nor improve the price.
- The order is then sent "as agent" to the exchange quoting the best price.
- Only 100 shares of the clients 1,500 share order are offered at the displayed price which are executed.
- HFTs see this execution "as agent" and cancel other resting limit orders.
- The 1,400 shares are routed to the next best price, perhaps many price points away from the 100 share original print.
- HFT observe that the remainder of the order has been completed, thus re-entering their limit orders.

Was the retail client protected in this potential "trade at" scenario? Sure the client got his 100 shares but the remainder was executed at potentially very different price points. This client would most likely complain as to why his order was not executed at the price he saw. As previously stated the Firm's long term investors typically enter market or marketable orders, thus the only party being protected in this case is more likely the HFT who can enter, execute and cancel orders at lightning speed compared to the long term investor. The Firm thus concludes that the Commission should seek to enhance overall liquidity at the inside by enacting the measures discussed previously, rather than focusing on protections that will not serve long term investors.

V. CONCLUSION

TD AMERITRADE appreciates the opportunity to share these comments as a roadmap for the retail investor on the Commission's Concept Release. As noted above, TD AMERITRADE strongly supports a comprehensive review of the U.S. equity market structure.

TD AMERITRADE believes the Commission should focus its attention on creating incentives for market participants to trade in size and increment reform by establishing the MPV at $.01.

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Please feel free to contact us at (402) 970-5656 (Christopher Nagy) or (443) 539-2128 (John Markle) with any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director Order Strategy
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/S/

Deputy General Counsel
Co-Head of Government Relations

cc: The Hon. Mary L. Schapiro, Chairman
The Hon. Kathleen L. Casey, Commissioner
The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Troy A. Paredes, Commissioner
Robert W. Cook, Director, Division of Trading and Markets
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