Scottrade

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May 19, 2010

By Electronic Mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: **Concept Release on Equity Market Structure**
Exchange Act Release 34-61358; File No. S7-02-10

Dear Ms. Murphy:

Scottrade, Inc. ("Scottrade") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") Concept Release on Equity Market Structure published on January 14, 2010 ("Concept Release") as part of the Commission's broad review of the current equity market structure. Scottrade applauds the Commission for its comprehensive review of U.S. equity market structure. We believe this review is particularly timely in view of the recent global financial crisis and the significant regulatory, technological and competitive changes to our markets since 2005 when the Commission adopted Regulation NMS.

Founded in 1980, Scottrade has grown to become one of the largest retail discount broker-dealers in the United States serving over 2 million self-directed investors both online and through over 450 branch offices nationwide. It is from the perspective of our self-directed retail customers that we provide feedback on the questions posed by the Commission in the Concept Release.

We believe it is important, at the outset, to provide some overarching comments on the structure of the U.S. equity markets. Scottrade believes that the U.S. equity markets are the best they have ever been for self-directed investors from every meaningful perspective, including but not limited to: competition, access, transparency, liquidity, transaction costs, speed and cost of execution, order handling and regulatory oversight. Today, an investor entering a small, marketable order online for a large cap stock is very likely to obtain a sub-second execution at a price better than the NBBO. The market structure that made this possible for the self-directed retail investor has been achieved through a series of regulatory initiatives over the past 15 years, rapid technology changes and, most recently, fierce competition between exchanges and other market centers.

The U.S. equity markets operated remarkably well and remained structurally strong throughout the recent global financial crisis. We believe the transparency, fairness, competition and regulatory oversight of the U.S. equity markets allowed our markets to function incredibly efficiently throughout the global economic crisis. However, the "flash crash," as it has been dubbed, of May 6th is a blemish on this claim. Despite this blemish, our view remains that the overall quality of the U.S. equity market structure has never been better for the self-directed retail investor. Nevertheless, we believe there are a number of areas where the equity market structure can be strengthened to benefit self-directed retail investors.

Responses to Questions Raised by the Commission in the Concept Release

A. Market Data - Consolidated Quote v. Direct Feeds

In the Concept Release, the Commission raised the issue of whether traders receiving and using market data feeds directly from an exchange instead of from the SIPs have an unfair time advantage over those traders using the consolidated quote. The Commission said in the Release that it "... understands that the average latency plans processors from the consolidated data feeds is generally less than 10 milliseconds." The Commission further explained that since direct data feeds bypass consolidation at the plan processor level they are able to reach users faster than the consolidated feed. Scottrade does not have sufficient information to comment whether latency in this context raises a fairness issue. However, the lack of transparency certainly could give retail investors the impression that other, more sophisticated market participants who leverage direct feeds and have co-located computers at exchange datacenters have a material time advantage over them. Scottrade believes the Commission should retain a third party with technical expertise to study whether the latency of the consolidated quote is material in this context. As for additional regulation, we would favor an ongoing reporting regime for latency statistics to promote greater transparency.

B. Depth of Book Data and the Consolidated Quote

Scottrade also believes the Commission should study whether there should be an additional consolidated quote feed that contains the NBBO plus an additional level(s) of consolidated quotes. In today's equity markets, we see smaller quote, order and execution sizes than we did prior to the implementation of Regulation NMS. Moderately sized retail orders, to our customers' frustration, are often executed in a series of smaller orders at several different prices. The consolidated quote feed provides only a single level of liquidity. The question whether multiple book levels are necessary data for retail investors was debated and decided as part of the Regulation NMS rulemaking process. However, Scottrade believes that the Commission should study whether the current consolidated NBBO quote is sufficient for investors in the post-NMS world.

C. Is the Cost of Market Data "Fair and Reasonable"?

Scottrade is also concerned about whether the fees being charged by the exchanges for consolidated quotes are "fair and reasonable" as required by the Exchange Act. The data in Table 1 on page 25 of Concept Release reveals that, in the aggregate, exchanges generated $463 million in revenues for market data in 2008, while the cost of consolidation that year was only $15 million. It is hard to fathom how it could cost the exchanges approximately $450 million in the aggregate to provide market data to the SIPs, especially with cost cutting at exchanges over the last several years as they've become for profit entities. Scottrade believes the Commission should undertake a comprehensive examination and accounting of the cost structure of market data and provide that data to the public so that there can be a constructive debate to determine if market data fees are fair and reasonable.

D. Rule 605/606 Statistics

Scottrade believes that Rule 605 and 606 statistics play a vital role in supplying transparency to market center execution quality and trends. This information is at the core of our "regular and rigorous" process. In this regard, Scottrade believes that a "size enhancement" statistic should be added to Rule 605 to track the amount of size improvement a market center provides at the NBBO versus its then available quoted amount. Scottrade also recommends that the Commission require: (1) Rule 605 data to begin at market open, rather than 9:45 a.m. E.T. and (2) market centers to report each instance when they do not open trading in a security on time. Finally, Scottrade believes that the Commission should expand Rule 605 to cover options trading.

E. High Frequency Trading

The Commission requested comment on the growth and impacts of high frequency traders ("HFTs"). In normal market conditions, Scottrade believes that HFTs have generally benefited the equity markets by adding liquidity and tightening spreads although this belief is anecdotal and not based on an analysis of the data. However, in fast market conditions (e.g. the "flash crash") many HFTs stopped trading draining too much liquidity out of the market too quickly. Scottrade believes the Commission should study the impacts of HFTs on the equity markets. Scottrade commends the Commission for its recent Large Trader Reporting System rule proposal because it will make the studies we have recommended more meaningful with this enhanced data. In addition, we are concerned that HFTs may have a material access advantage over self-directed retail investors through direct market data feeds and co-location. The Commission should include this issue in an HFT study.

F. Competition for Order Flow

As the Concept Release points out, the five market structure objectives in Section 11A of the Exchange Act present various challenges for the Commission in formulating the right regulatory balance between objectives, particularly in how to balance the "promoting competition" and "order interaction" objectives. From Scottrade's perspective, the balance is the best it has ever been for the self-directed retail investor. For our customers seeking to take liquidity in most large cap stocks through small, marketable orders, we can consistently obtain a sub-second execution at a price better than the NBBO. With today's ultra-fast linkages between exchanges and other trading centers, we would favor the Commission promoting more competition between trading centers at more book levels than just at the NBBO. We are mindful of the challenges that the Commission faces in its regulatory response to the flash crash and dealing with the perception – whether valid or not – that "dark pools" are private or two-tiered markets and are detrimental to retail investors. On the flash crash issue, we would not be opposed to circuit breaker type safeguards that would promote fair and orderly markets. On the dark pools issue, we have not seen a negative impact on overall execution quality for self-directed retail investors. Our view is that ATSs have brought innovation and better execution quality to the equity markets. We would not be in favor of additional regulation that would reduce competition, raise barriers to entry for ATSs or force orders to be routed to specific destinations. However, we would not be opposed to the Commission's efforts to combat negative perceptions regarding "dark pools" through some type of after-the-fact reporting requirement. In Scottrade's view, this approach would be better for overall market structure than imposing front-end rules that would limit routing choices.

Scottrade sincerely appreciates the opportunity to comment on the Commission's Concept Release.

Sincerely,

Andrew C. Small
General Counsel
Scottrade, Inc.

cc: The Hon. Mary L. Shapiro, 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
James Brigagliano, Deputy Director, Division of Trading and Markets