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August 9, 2010

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

RE: *Consolidated Audit Trail*  
Release No. 34-62174; *File No. S7-11-10*

Dear Ms. Murphy:

TD AMERITRADE, Inc.<sup>1</sup> (“TD Ameritrade” or “the Firm”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (“Commission”) proposed Amendments to develop, implement and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities. The Firm applauds the Commission for proposing these important steps to strengthen our securities markets and agrees that in today’s technologically advanced exchange infrastructure that the Commission must be equipped with sufficient and timely information to ensure our markets remain fair and orderly. The Firm acknowledges that today’s disbursed market structure coupled with antiquated and a lack of uniform requirements in the current audit trail make it difficult, if not impossible, to quickly detect nefarious trading activity. While TD Ameritrade supports the Commission’s proposal, the Firm believes that aspects of the proposal are too ambitious in scope, with attendant costs in some instances outweighing perceived benefits. Moreover, the Firm believes that the proposal requires more details regarding how client data will be protected and how post-execution events, such as trade corrections and allocations, will be reported.

### **Real-time Versus Delayed Information**

As noted below, TD Ameritrade spent time determining whether a real-time or delayed/batched reporting system was optimal from a cost/benefit analysis. TD Ameritrade believes the scalability of its systems can be used to support real-time reporting to the central repository. In fact, the Firm believes a real-time reporting system may be easier to achieve than one that requires intra-day or end of day batch processing.

TD Ameritrade’s support of a real-time reporting system is conditioned on critical safeguards being put in place (as detailed below) and the regulators actually using the data for real-time market surveillance. For example, the Firm strongly recommends that the regulators use the real-time system to alert firms to market manipulations, identify theft rings or pump and dump schemes as they occur.

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<sup>1</sup> 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 5.4 million funded client accounts with approximately \$323 billion in assets. During the month of June 2010, the Firm averaged a total of 413,000 client trades per day.

### **Cost of Implementation**

TD Ameritrade recognizes that a real-time system is not the easiest solution; however it is the right solution and one that is long overdue. The Firm therefore agrees that a real time system must be implemented. The Firm spent a considerable amount of time analyzing the development effort required internally to achieve the Commission's goal of a real-time system. The Firm determined that the proposal would cost the Firm \$1.25 million in initial costs, as follows:

- A development timeframe – 9-12 months once final architecture is drafted
- A development cost of \$750,000.00
- Approximately 6,000 hours of development work
- \$500,000 in estimated hardware costs (includes hardware, circuits, etc.)

The assumptions that drove this analysis were that any real-time reporting or order events would leverage the capabilities contained within the FINRA Order Audit Trail System ("OATS") reporting today and that the revised real-time system would retire the legacy systems of Bluesheets, OATS, OTS and TRACE.

TD Ameritrade believes, however, that the Commission may have underestimated the ongoing costs of the proposal. Specifically, the Firm believes that the approximate 3000 hour per year burden is considerably understated – TD Ameritrade estimates it will require three full time employees to handle the day-to-day operations of managing such a system, or approximately 6000 hours per year.

The Firm believes that the Commission require as part of Rule 608, an industry working group of self-regulatory organizations ("SROs") and a representative group of broker dealers to address the complexities involved in developing the system. The Firm believes the problem as proposed will not allow for the development of the proper architecture to create a robust system. The Firm would be pleased to assist in developing the framework needed to achieve the goal of a real-time reporting system. Some of the questions the working group will need to address are:

- What message protocol will be utilized for the transmission of data?
- How will trade allocations work with a real-time system?
- How will the trade correction process work with a real-time system?
- Who will have access to the data?
- How will exception processing work?
- What time synchronization process will be utilized?

The above are just a few of the detailed issues that will need to be worked out prior to implementation.

### **Scope of Coverage**

TD Ameritrade is concerned that the Commission's proposal is too ambitious and that it may go too far in identifying information that would be nice to have, but may be very expensive to retrieve, or may be of little use. Rather, TD Ameritrade believes the Commission should pare down its list of data points to focus on what would appear on a trade ticket and certain client demographic information. The Firm believes this approach makes sense because for most brokers pulling trade ticket information from

frontend systems will be straightforward, and client demographics should be easily pulled and populated onto a system for fast retrieval.

Information beyond trade ticket information and simple demographics, however, may be spread across different internal systems, some of which do not update in real-time, but rather, update through batch processing. Requiring this type of information to be submitted in real-time will result in significantly increased costs, with, in some cases, questionable benefit. For example, the Commission proposes that the material terms of the order should include “whether the account has a prior position in the security.” The Firm questions the value of knowing, in real-time, if a client has a prior position in the security – especially since how long the position has been held is not included. Also, what if the client has multiple accounts, but it is the first time he/she has opened a position in a specific account? TD Ameritrade submits that such real-time data will be of little value and questions its inclusion in the Rule. Likewise, having firms pull commission data by order will likely require pulling data from non-frontend systems, and is of questionable value in determining whether a firm is fulfilling its best execution obligations.

As for the scope of the securities covered by the rule, as proposed Rule 613 would apply to all secondary market transactions such as corporate bonds, municipal bonds and other debt instruments; credit default swaps, equity swaps and other security-based swaps and other products that may come under the Commission’s jurisdiction. The Firm strongly believes all securities should be covered securities which means anything submitted to an exchange or clearing agency should be included under Rule 613.

Regarding the proposed roll-out of the system, TD Ameritrade believes a phased approach by both firm and by security will be necessary to ensure the system operates correctly. The Firm believes that the industry will need two years to complete the technology build out that will be required.

### **Orders and Quotations**

The Firm believes that as proposed the rule would not go far enough to determine if “spoofing” exists in the market and therefore requests that the Rule cover any order received by a member of a national securities exchange or nation securities association, including any indication of interest “IOI” or any intention or similar indication to trade on any Exchange, quoting facility (such as the Pink Sheets) or Alternative Trading System under Rule 301 of Regulation ATS or bond desk. Additionally, the Firm requests that quotation updates, if not considered orders, also should be included within the rule.

### **Safeguarding of Client Information**

While the Firm agrees with the establishment of a central repository to receive and retain the consolidated audit trail information, of paramount concern is the safeguarding of the information stored within the central repository. The information is of such sensitivity and value that it surely will be targeted for both identify theft purposes and for the commercial value of knowing how specific investors trade.

The Firm believes above any other requirement, the safeguarding of this information is the most critical issue, and one that has not been addressed in the proposal in a comprehensive fashion. For example, what specific internal controls will be in place to ensure that unauthorized access does not occur? How will the Commission and SROs handle employee access? Should SROs access be limited to their own market, or will they be allowed to view trading market wide? Should information leakage or

unauthorized access occur, who is responsible? How will such unforeseen compromises to the repository be handled and corrected? Will investors be contacted each time there is a data breach or potential data breach? Who will be responsible for contacting investors? Who will pay for the costs of notifying investors and mitigating their potential harm? The Firm believes that there should be a comprehensive plan to address the security involved within the repository and corrective measures should unauthorized access occur.

TD Ameritrade also is concerned that central repository could be used by SROs as another source of revenue, as many SROs today operate “for profit” models with fiduciary duties to shareholders, and thus their interests may not be aligned. SROs have used similar functions to justify high market data fees with the brokers having virtually no ability to question the costs and resulting fees that are imposed on the industry and investors. Similarly, the Firm is concerned that the SROs not treat compliance with these rules to drive revenues through the imposition of penalties. Specifically, TD Ameritrade believes technical violations, and self-reported issues should not be the subject of drawn out enforcement investigations and fines – there needs to be a more enlightened approach to ensuring firms provide accurate and timely data. Because of these concerns, TD Ameritrade strongly opposes the SROs having an ownership of the facility and its data. Rather, TD Ameritrade believes that the central repository should be owned and operated by the Commission, or a non-profit organization formed to operate the central repository.

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The Firm commends the Commission for taking this very important step to ensure that our regulatory agencies have the best up-to-date information to carry out surveillance activities to protect investors and the public interest.

TD Ameritrade appreciates the opportunity to comment. Please feel free to contact us (Chris Nagy at 402-970-5656 or John Markle at 443-539-2128) with any questions regarding our comments.

Respectfully Submitted,

/S/

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