

August 9, 2010

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

RE: *Release No. 34-60684; File No. S7-21-10, Elimination of Flash Order Exception with the respect to listed options from Rule 602 of Regulation NMS*

Dear Ms. Murphy:

TD AMERITRADE, Inc.¹ (“TD Ameritrade” or “the Firm”) appreciates the opportunity to submit additional comments on the proposed elimination of the Flash Order Exception from Rule 602 of Regulation NMS (the “Proposal”) specific to the options markets. In our original comment letter² the Firm focused on the negative aspects of removing step up programs from the options markets without first addressing other factors would lead to negative unintended consequences for the individual investor. The Firm is pleased that the Commission recognizes these virtues and is addressing them in a comprehensive fashion and applauds the Commission for proposing Rule 610.

As an initial matter, the Firm believes that many of the questions being sought are grounded in the fact that there is a substantial lack of data to complete a comprehensive analysis to determine if the small percentage of orders that participate in flash style programs are causing harm to the options markets. As the Firm suggested in its comments on the Concept Release on Market Structure,³ the Commission should seek to adopt the provisions of Rule 605, and, by such action, apply the vast benefits realized in the equity markets, to the options markets. As the Commission rightly points out, while the two exchanges that use flash order mechanisms indicated that their fill rates for flash orders were in the range of 60-70%, they did not provide data on the execution quality, including implementation shortfall of orders that failed to receive an execution in the flash process. The Firm could not agree more with this observation and

¹ 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.

² See TD Ameritrade letter dated November 23, 2009, <http://www.sec.gov/comments/s7-21-09/s72109-88.pdf>.

³ See TD Ameritrade Comment letter dated April 21, 2010 regarding the SEC’s request for comments on equity market structure, <http://www.sec.gov/comments/s7-02-10/s70210-124.pdf>.

believes that if qualitative measurements were a requirement in the options markets the analysis and decisions at hand could be grounded in empirical evidence.

In its regular and rigorous review of execution quality the Firm finds little evidence that clients are harmed by flash programs and “miss the market.” In a review of all orders in July 2010, less than 1% of orders failed to receive the National Best Bid or Offer (“NBBO”). As noted in our earlier comment letter, TD Ameritrade believes that flash is a symptom of our current market structure and that in many ways the perception that it is unfair and predatory has become the reality regardless of what the data claims. Therefore, the Firm believes that flash order types should be eliminated commensurate with the approval of Rule 610 to the options markets.

The Firm believes strongly that the benefits of qualitative analysis provide tremendous benefit to the end user even though they may not be directly utilizing the information. The Firm notes that since 2001 it has posted information related to the quality of execution for equity orders on its website and believes that the transparency and benefits of that qualitative information have been enormous for the individual investor. The Firm believes that if the Commission were to adopt a standardization requirement among executing market centers that it likely would begin disseminating information on its website in the same fashion it does today for equity securities.

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The Firm appreciates the opportunity to once again comment on the proposal. We would be pleased to discuss our concerns in greater detail with you and your staff. Please feel free to contact me.

Sincerely,

/S/

Christopher Nagy
Managing Director Order Strategy
TD AMERITRADE

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

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David Shillman, Division of Trading and Markets

Daniel Gray, Division of Trading and Markets

Steve Williams, Division of Trading and Markets

Theodore S. Venuti, Division of Trading and Markets