

June 30, 2011

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

RE: **SR-BATS-2011-009**

Dear Ms. Murphy:

TD Ameritrade, Inc.¹ (“TD Ameritrade” or “the Firm”) appreciates the opportunity to comment on the revised above referenced rule filing proposal submitted by the BATS Exchange, Inc. (“BATS”). TD Ameritrade is a strong proponent of market structures that create a level playing field for retail investors and in this regard the Firm applauds BATS’ revised proposal as it will be beneficial to retail investors. Additionally, the Firm is pleased to see that BATS addressed the concerns raised in our initial comment letter regarding the potential detrimental impact of sub penny pricing to the options markets by removing certain language from the earlier proposal.²

Price Improvement is Important for Retail Option Orders

As the Firm previously stated, the BATS Directed Order Process is very similar in nature to many price improvement programs that exist in the options markets today, including the International Securities Price Improvement Mechanism (“PIM”) and The Boston Options Exchange Price Improvement Period (“PIP”). The BATS proposal actually looks to improve upon those programs by encouraging transparent quote completion to exist in the markets. TD Ameritrade applauds the innovative nature of the BATS proposal and agrees with BATS response to the initial proposal in that:

By requiring BATS Options Market Makers to be quoting at the NBB or NBO to participate in an execution against a Directed Order directed to it, BATS’ proposal incentivizes market makers to competitively quote and thereby furthers the public price

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 serves an investor base comprised of over 5.4 million funded client accounts with approximately \$420 billion in assets. During May 2011, the Firm averaged a total of 378,000 client trades per day.

² <http://www.sec.gov/comments/sr-bats-2010-034/bats2010034-1.pdf>.

discovery process. By further requiring BATS Options Market Makers to include a non-displayed price better than the displayed limit price at an increment as small as (1) one cent or the midpoint of the NBBO, the proposal increases the opportunities for customer orders to receive price improvement over the NBBO. Moreover, by permitting all Options Members to enter orders in the same increments as Market Maker Price Improving Orders, including as proposed at the midpoint of the NBBO, and according those orders in all cases priority at their non-displayed prices over Market Maker Price Improving Orders, the proposal avoids creating participation guarantees in place at other markets and instead promotes market-wide competition for executions at prices between the NBBO.

TD Ameritrade could not agree more with this statement and believes that is exactly what will happen in that as the Directed Order Process grows so too will competition by market makers grow to quote even tighter bid/ask spreads in the transparent market in the hopes of attracting the order. The Firm also believes that this process provides a relatively low barrier to entry and thus will foster much needed competition among new market makers not currently engaged in the options market today. Understandably, this proposal could be disruptive to many of the current large options market makers as a result.

The Firm also notes that the Securities and Exchange Commission (“Commission”) should recognize that price improvement opportunities in the options markets are just as important to investors as they are in the equities markets. The issue, however, is that unlike other markets, price improvement opportunities in the options markets are not transparent and easy to compare from exchange to exchange. As a result, it is easy to criticize these programs due to the lack of market-wide price improvement metrics available to firms conducting regular and rigorous review of options exchanges pursuant to their best execution responsibilities. The Firm, therefore, recommends again that the benefits brought to the equity marketplace through Rule 605 should be adopted in the options markets.

The BATS Program Fosters Competition

The Firm notes several commenters suggest that this program will allow internalization and will make it as seemingly simple for a market maker to “cash in on easy money.” The Firm is puzzled by these comments as the BATS process is rigorous, in-fact more rigorous than other price improvement auctions. The proposal as written requires that:

- (1) the Directed Order must be from a BATS Options Member that is on a list of eligible Options Members provided to the Exchange by the BATS Options Market Maker, in a manner prescribed by the Exchange;
- (2) the BATS Options Market Maker must be publicly quoting on BATS at the NBB (for sell Directed Orders) or NBO (for buy Directed Orders) with a Market Maker Price Improving Order that contains a non-displayed amount of price improvement over the NBB or NBO at the time the Directed Order arrives to the Exchange; and

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(3) the Directed Order must be marketable against the non-displayed price of the Market Maker Price Improving Order.

If the above conditions are met, and if there are no other non-displayed orders at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, the Directed Order will trade with the Market Maker Price Improving Order up to the full displayed size of the Market Maker Price Improving Order.

TD Ameritrade notes that BATS is seeking to institute the program on a 6 month pilot basis and believes that this will provide ample opportunity to determine the actual effects in the marketplace. At that time, and based on empirical data, the Commission can decide whether to permit the BATS program to continue.

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Given the above comments, the Firm believes the Commission should, on a pilot basis, approve new BAT Rule 21.1(d)(13). TD Ameritrade appreciates the opportunity to comment. Please feel free to contact me at 402-970-5656 with any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director Order Strategy
TD Ameritrade

cc: Robert W. Cook, Division of Trading and Markets
James A. Brigagliano, Division of Trading and Markets
Heather Seidel, Division of Trading and Markets