TD AMERITRADE
Holding Corporation

September 9, 2008

VIA ELECTRONIC MAIL

Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: *NYSE Arca's Proposed Rule Change to Amend its Schedule of Fees and Charges (SR-NYSEArca-2008-075)*

Dear Ms. Harmon:

TD AMERITRADE, Inc. [1] ("TD Ameritrade" or "the Firm") appreciates the opportunity to comment on the above referenced proposed fee amendments filed by NYSE Arca. If the Securities and Exchange Commission ("Commission") permits the proposed fee amendments to go into effect, NYSE Arca would be allowed to increase the fees and rebates allowed on options orders executed on NYSE Arca. TD Ameritrade strongly opposes the increase in fees and rebates as not in the public interest and, thereby, the Firm requests that the Commission abrogate NYSE Arca's proposed fee amendments. TD Ameritrade believes that options exchanges using so-called "maker-taker" fee structures must be capped as the Commission did for the equities markets in Regulation NMS.

TD Ameritrade believes that maker-taker fees have the potential of creating incentives for market participants to post liquidity. The liquidity incentives left unchecked, unfortunately lead to distortions in the markets as market participants are incentivized to lock markets to capture the rebate. This activity was rampant in the equities market before Regulation NMS and exists today in the options markets. *In the early stages of the penny pilot TD Ameritrade found from data we culled from November 26th to December 4th in the QQQQ Options the market was in a locked condition 4.3% of the trading day of which NYSE ARCA was on one-side 92% of the time.* Allowing NYSE Arca to increase its fees and rebates will only exacerbate this problem. Moreover, if NYSE Arca's gambit were to increase its market share, other options exchanges would increase their fees and rebates beyond NYSE Arca's to retain their share. As such, allowing one options exchange to increase its fees and rebates, is likely to lead to a price war, as options exchanges seek to defend their market share.

While the potential distortion created by NYSE Arca's proposal is clear, also, is the countervailing duty to retail clients to contain unnecessary transaction costs. As the final rule of Regulation NMS states, "[m]inimizing these investors costs to the greatest extent possible is the hallmark

[1] TD Ameritrade is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation ("TD Ameritrade Holding"). TD Ameritrade Holding has a 33-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 4.8 million funded client accounts with approximately $309 billion in assets.

of efficient markets, which is the primary objective of the NMS."[2] When enacting Regulation NMS, the Commission struggled with the issue presented in this filing and decided to impose caps on access fees. TD Ameritrade recommends that the Commission extend the protections provided through Regulation NMS to the options markets by utilizing a cap consistent with the one applicable to access fees in the equities markets.

In evaluating NYSE Arca's proposal, the Commission must consider the impact that such fees and rebates have on a broker's duty of best execution. Trade-through rules require options orders to be executed on the options exchange with the best price. The Commission, however, has recognized that there are numerous factors relevant to best execution, including, "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."[3] Without a cap, brokers may be faced with best execution decisions based on the size of the taker fees. That is, based on prior Commission pronouncements, a broker would not be required to route to an options exchange quoting alone at the national best bid or offer if the taker fees charged by that options exchange result in the broker determining the costs of execution are too high.

Most importantly, NYSE Arca's proposal also has the potential to confuse retail clients by creating a lack of transparency regarding options quotations. That is, retail clients expect to receive the price they are quoted, and will not be satisfied if they are told their order did not receive the best price in the market due to the high cost of obtaining an execution.

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In conclusion, TD Ameritrade requests that the Commission abrogate NYSE Arca's fee assessments as they are inconsistent with the public interest. TD Ameritrade appreciates the opportunity to comment. Please contact me at 402-970-5656 if you have any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director, Order Routing Sales & Strategy

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2 Regulation NMS, Exchange Act Rel. No. 51808, 70 Fed. Reg. 37496 at 37498 (June 29, 2005).

3 Regulation NMS, 70 Fed. Reg. at 37538, n. 341, citing *Newton v. Merrill, Lynch, Pierce, Fenner & Smith*, 135 F.3d 266 at 270, *cert. denied*, 525 U.S. 811 (1998).