

December 1, 2009

VIA ELECTRONIC MAIL

Elizabeth M. Murphy
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: *34-61061; File No. SR-NYSEArca2009-44 - Amendment 4*

Dear Ms. Murphy:

TD AMERITRADE, Inc.¹ (“TD Ameritrade” or “the Firm”) appreciates the opportunity to comment on the above referenced proposals related to the expansion of the Options Penny Pilot (“Pilot”). As previously cited, the Firm applauds the efforts to expand the current program and is a strong supporter of the benefits that reduced trading increments have brought to the Options Market-place and retail Option investors.

The firm notes the Commissions comments “to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest”². The firm agrees with this statement and feels that in order to protect investors and the public interest cost containment measures should be introduced into the Options markets commensurate with this change. As previously stated by the firm³ and later acknowledged by the Commission⁴, the application of Rule 610 of Regulation NMS to the Options markets would significantly advance the Commissions above stated objective.

¹ TD Ameritrade is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation (“TD Ameritrade Holding”). TD Ameritrade Holding has a 34-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 \$225 billion in assets. During May 2009, TD Ameritrade clients placed an average of 408,000 trades per day and combined with the acquisition of thinkorswim represented greater than 9.00% of reported Options Clearing Corporation volume.

² Rel No. *34-61061; File No. SR-NYSEArca2009-44 Amemdment 4 at 4.*

³ See TD Ameritrade Letter Rel No. 34-6101 Dated June 17, 2009 at 2; See TD Ameritrade Letter Dated November 23, 2009 at 2.

⁴ See Release No. 34-60711; File No. SR-NYSEArca-2009-44 n. 49, “the Commission staff is currently considering the issue of access and access fees in the context of its ongoing consideration of a petition for rulemaking requesting that the Commission impose a cap of \$.20 on certain transaction fees.” (September 23, 2009)

Market Structure Considerations Must Preempt an Expansion

As the firm has previously stated, without protections like Rule 610 in place, rebate arbitrage could be exacerbated on these securities at the expense of the individual investor. Today, Regulation NMS calls for an access fee cap of \$0.003 per share in the equity markets. Given that the average stock price is \$17.00⁵ in the equity markets, this equates to 0.0176% of the transaction value. Conversely in the Options markets which are not subject to the provisions of Rule 610, fees are as high as 0.0045 per share⁶, where the average security transaction price is \$1.69⁷, resulting in charges of 0.266% or **15 times higher than the equivalent equities charge**. The firm notes that unlike the equity markets, individual investors in the Options markets are more often “net takers” of liquidity as the investment objectives for options tend to serve as hedges or insurance policies for their portfolios rather than investment vehicles while the providers tend to be professional trading operations, so these costs are ultimately realized by the individual investor.

The firm respectfully requests that prior to the expansion of further securities to be quoted in Pennies which are also the options that are often quoted by maker-taker exchanges, that the Commission adopt provisions of Rule 610 to the Options markets. The firm also requests that the Commission apply consistent transaction values to the Options markets as currently enjoyed in the equity markets.

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TD Ameritrade appreciates the opportunity to comment. Please contact me if you have any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director Order Routing Strategy

Cc: Jamie Brigagliano Deputy Director Division of Trading and Markets
Elizabeth King Associate Director Securities & Exchange
Heather Seidel Division of Market Regulation

⁵ See Citadel letter from John Nagel dated November 20, 2009 at n. 13.

⁶ <http://www.nyse.com/futuresoptions/nysearcaoptions/1147128317287.html>

⁷ See Citadel Letter from John Nagel dated November 20, 2009 at n. 14; See CBOE letter from Edward J. Joyce dated October 15, 2009 at 2;