TD AMERITRADE
Holding Corporation

June 17, 2009

VIA ELECTRONIC MAIL

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

Re: Proposals to Expand the Options Penny Pilot
Release No. 34-59944; File No. SR-NYSEArca-2009-44
Release No. 34-60018; File No. SR-CBOE-2009-31
and File No. SR-ISE-2009-32

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"). 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 believes that overall, the Pilot[2] introduced in 2007 has brought about tighter trading increments which have resulted in pricing benefits for retail Options Investors. According to NASDAQ OMX PHLX[3], their analysis demonstrates that since the launch of the Pilot quoted spreads for all months decreased on Option premiums up to $5.00 showing even more quote compression as the expiration cycle nears. This analysis is consistent with the experience of the Firms clients and the firm notes that since December 2008, an average of 52% of the firms clients have engaged in the trading and investment of the Pilot classes.

<u>Market Structure Considerations Must Preempt an Expansion</u>

The firm does note however, that an expansion must carefully draw into consideration the unintended consequences of a broad and expansive move. The firm notes that since the introduction of the Pilot, the number of Options Exchanges has grown from six to eight with prospects of that number

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 http://www.sec.gov/news/press/2007/2007-10.htm

3 http://www.nasdaqtrader.com/content/marketregulation/phlxreg/022709.pdf

increasing to ten[4]. In particular, the firm notes that the incidence of locked markets grew with the introduction of the Pilot and in a recent study the firm found that the most active security in the pilot program was in a locked condition 4.3% of the trading day[5]. Moreover, the firm found that it appeared that two disparate market structures, introduced with the implementation of the Pilot, appear to be clashing with each other relative to their fee structures. The firm notes that since the introduction of the Pilot, the additional exchanges that have come into the fray offer different payment incentives over the traditional models the Pilot was structured on. In the traditional model, the exchanges collect a marketing fee on all orders while in the new models payments are provided for posting orders while charging for the removal of orders. In the absence of any provisions related to locked/crossed markets, the Firm feels that an expansion could exacerbate the friction of these competing payment models. The firm believes that this issue could be mitigated if the SEC summarily adopts the Joint Industry Plan proposing Options Order Protection and Locked/Crossed Market Plan[6]. In addition, the firm urges, the Commission to consider adopting many of the provisions of Regulation NMS including Rule 610 – Access to Quotations.

The firm also takes note of the reports by the Options Exchanges[7] that overall liquidity at the available quotation experienced a significant decrease for Pilot securities. While the firm feels there continues to be ample liquidity at the inside for its retail orders, the firm is concerned with the long term abilities of liquidity providers to continue to provide ample liquidity with a broad based expansion of the Pilot. The firm notes that spreads actually increased in non Pilot securities and feels that profits from one class of options is being supplanted to another class. The firm believes that it is prudent to alter the Specialist Guarantee Programs allowing for an increase from the current 40% to 60% post Pilot expansion. The firm feels without these caveats that reward Specialists for providing two sided markets for retail investors, execution quality will suffer and retail investors may well experience inconsistent executions & generate complaints to the firm and the Commission. The firm also feels there could be added benefits of increasing the guarantee by coaxing volume currently in the OTC markets to interact with the transparent market place. This could provide tremendous benefits to retail investors though increased price improvement opportunities.

Expansion of the Pilot and Considerations to the Current Pilot

Of the three (3) proposals referenced above relating to the expansion of the Pilot, the Firm feels the Chicago Board Options Exchange, SR-CBOE-2009-31, "CBOE Program" is the best program as it serves to provide the most benefit to Retail Investors with one glaring disagreement. The firm feels that based on the collective data of all the Exchange reports to the Commission, **the current breakpoint should be retained at the $3.00 price increment.** The firm agrees with the CBOE that the majority of contract volume is consolidated under $1.00, however the firm notes that the majority of its client trades occur at or below the $3.00 breakpoint. To illustrate our point, we analyzed our client trade data for the two most recent months available, April 2009 and May 2009 below:

4 "BATS plans to Enter Options Space: http://www.batstrading.com/resources/news/SecIndNews_2009-02-02_JRInterview.pdf; "PHLX Veterans plan new venue in crowded Options Market: http://www.securitiesindustry.com/issues/19_93/-23402-1.html

5 http://www.sec.gov/comments/sr-nysearca-2008-75/nysearca200875-3.pdf

6 Release No. 34-59647; File No. 4-546

7 ISE at 2.2 "Size at the BBO": http://www.ise.com/assets/files/investors/Penny_Report_5.pdf ; NASDAQ OMX PHLX page 3 "quote Size at the Inside –NBBO: http://www.nasdaqtrader.com/content/marketregulation/phlxreg/022709.pdf

TD AMERITRADE April 2009 May 2009 Trade/Contract split

Month	Category	% Trades	% Contracts
April	>1.00	37%	60%
April	1.01-3.00	34%	29%
April	3.01-5.00	11%	6%
April	>5.00	17%	6%
April	Total	100%	100%
May	>1.00	38%	57%
May	1.01-3.00	36%	31%
May	3.01-5.00	11%	6%
May	>5.00	15%	6%
May	Total	100%	100%

Clearly, while our data is consistent with the Exchange reports that the majority contract volume is centered below $1.00, the majority of trades are not. In fact, the CBOE proposal seemingly attempts to address this point in their proposal which states: 'the benefits of penny quoting and trading in those option contracts that customers actually trade[8]". The firm therefore believes that in the best interest of retail investors and consistent with the CBOE proposal to provide the most consistent Options investment experience, a breakpoint of $3.00 should be mandated. The firm notes that even the CBOE proposal acknowledges that modifying the breakpoint would be fairly easy to implement[9]. The firm also notes that the current pilot program carries a $3.00 breakpoint and thus changes to the pilot securities would be minimal, thus reducing any investor confusion related to the expansion of the Pilot.

The firm disagrees with the NYSE/ARCA proposal, SR-NYSEArca-2009-41 "Arca Proposal" on an expansion to 300 most actively traded securities. While the Arca Proposal would cover the great majority of Options volume today, the firm notes that the proposal lacks a stringent process to renew names that will be eliminated in the future due to delisting, merger or other circumstances. The firm feels that if the "Arca Proposal were passed by the Commission that it would represent an ongoing administration that would be costly to the firm and would lead to investor confusion as it would not be representative of all classes.

The firm also disagrees with the ISE proposal, SR-ISE-2009-32, "ISE Proposal" as it calls for the removal of five cent ($0.05) increments above $3.01 to be replaced by ten cent ($0.10) increments. The firm feels that today, all classes of Options trade with five cent increments above $3.00[10] and such a move would be a detriment to the retail investor. The firm also cites that the ISE Proposal offers little evidence as to why a move from five cent to ten cent increments should occur. The firm does reiterate that today, Specialist profitability retained in the higher spread classes (non-penny names) may be utilized to provide liquidity in the lower spread classes and thus believes that the ISE proposal attempts to address

8 CBOE-SR-2009-13 at page 7
9 CBOE-SR-2009-13 at page 3, bullet point 6.
10 Except the QQQQ penny Pilot Option which is quoted and traded in penny increments at all price points.

this issue in this regard. The firm feels that the best arrangement is to simply expand Specialist Guarantees on the ISE from 40% to 60% thus ensuring that retail orders will have adequate liquidity available at all price points.

The firm feels that if the SEC adopts a breakpoint of $3.00, then very little work need be done to change the current pilot. For the benefit of the retail investor and in the sake of consistency the firm would recommend that the QQQQ migrate to the same factors as other Option classes. Additionally, the firm agrees with the CBOE Proposal on the rollout schedule and believes that their approach provides a balanced approach by expanding securities while being mindful of operational issues such as Quote traffic.

Summary

- Accept the CBOE proposal with the modifications cited.
- Retain a $3.00 breakpoint with $0.01 increment below and $0.05 above $3.00
- Reject NYSE/ARCA 2009-13
- Reject ISE 2009-32
- Adopt Release No. 34-59647; File No. 4-546
- Adopt Rule 610 to the Options Market
- Increase Specialist Guarantees from 40% to 60%
- Expand the Pilot Program to all Option Classes
- Apply the program in a consistent manner across Option Classes

* * * *

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 Strategy

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