

January 31, 2011

Florence E. Harmon  
Deputy Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

RE: **File No. SR-NYSEArca-2010-97**

Dear Ms. Harmon:

TD Ameritrade, Inc. (“the Firm”)<sup>1</sup> welcomes the opportunity to comment on the above-referenced rule filing (the “Filing”) of the NYSE Arca, Inc. (“NYSE Arca”) relating to fees regarding its depth of book (“DOB product”), which became immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

The Firm believes that the filing should be immediately suspended under Section 19(b)(3)(C) of the Exchange Act, and institute proceedings to disapprove (or approve) under Section 19(b)(2)(B) of the Exchange Act, as the filing does not comply with NYSE Arca’s obligations under the Exchange Act for market data fee filings, as articulated in the recent decision of the United States Court of Appeals for the District of Columbia in *NetCoalition v. Securities and Exchange Commission*, (“*NetCoalition*”).<sup>2</sup> In its filing, NYSE Arca fails to address the Court order which, among other things, requires that exchanges assess market data that are “fair and reasonable,” as determined on the basis of a substantive justification of the costs of producing such data. NYSE Arca’s filing fails to meet these requirements and, therefore, suspending and instituting proceeding is in the public interest.

As the Firm references in its recent Petition For Rulemaking submitted to the U.S. Securities and Exchange Commission (“Commission”),<sup>3</sup> market data is long overdue for a

---

<sup>1</sup> 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 \$386 billion in assets. For the quarter ended December 31, 2010, the Firm averaged a total of 372,000 client trades per day.

<sup>2</sup> 615 F.3d 525 (D.C. Cir. 2010).

<sup>3</sup> Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian Global Head of Market Data TD Ameritrade, “Petition for Rulemaking Concerning Market Data Structure,” to the Commission, dated January 20, 2011.

Ms. Florence Harmon

January 20, 2011

Page 2

comprehensive review regarding the input and distribution of exchange data products. As a result, TD Ameritrade also strongly encourages the Commission to seek commentary and adopt proposals to modernize the long out dated market data regime.

\* \* \* \*

TD AMERITRADE appreciates the opportunity to comment on the Filing and respectfully submits that the Commission suspend the proposed rule changes therein and institute administrative proceedings to disapprove or approve the filing consistent with the requirements under the Exchange Act. Please feel free to contact Chris Nagy at 402-970-5656 or Rich Urian at 443-539-2216 with any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy  
Managing Director Order Strategy  
TD Ameritrade

/S/

Richard P. Urian  
Global Head of Market Data

cc: Robert Cook, Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Market