

January 28, 2011

VIA ELECTRONIC DELIVERY

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

RE: Petition for Rulemaking Concerning Market Data Structure

Dear Ms. Murphy:

TD Ameritrade, Inc.¹ (“TD Ameritrade” or “the Firm”) respectfully petitions² the U.S. Securities and Exchange Commission (“Commission”) to initiate a rulemaking concerning market data structure. Given dramatic changes in market structure generally, the Court decision in *NetCoalition v. Securities and Exchange Commission*,³ and recent market data filings, the Firm believes it is essential for the Commission to conduct a comprehensive rulemaking to address serious market data structure issues. In fact many of the discussion topics the firm will cover below in its petition are not new and were originally recommended over ten years ago by the Commission’s Advisory Committee on Market Information: “A blueprint for Responsible change”.⁴

Price Competition for Market Data is Nonexistent

TD Ameritrade disputes claims that there is effective price competition for market data products. Some exchanges argue that features of the market data business indicate that it is subject to competition. The Firm refutes this notion as while there are certain venues that provide low cost or even in some cases free access to their market data, market data, and in

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

² The petition is being submitted pursuant to Rule 192 of the Commission’s Rule of Practice (17 C.F.R. § 201.192).

³ 615 F.3d 525 (D.C. Cir. 2010).

⁴ <http://www.sec.gov/divisions/marketreg/marketinfo/finalreport.htm>

particular, depth of book (“DOB”) data, only can be obtained from the exchange. Since the exchange is the sole source of the desired, and often times, required data, the brokers and vendors must pay the price demanded by the exchanges.

This lack of price competition is not limited to the depth of book products. Arguably, the market for top of book data is subject to no price competition because brokers are obligated by the “display rule”⁵ to provide customer with a comprehensive, consolidated quotation at point of trade. Consequently, brokers are forced to purchase the top of book data from the exchanges in order to comply with their obligations to display it at the time investors place a trade.

Consistent with the 1975 Securities Acts Amendments, TD Ameritrade submits that as part of the requested rulemaking, the Commission complete a broad-based review of price competition of both the top of book and depth of book products being offered by the exchanges today. Regarding this issue, the Firm recommends that the Commission consider modifying the display rule to allow brokers the discretion to choose which types of data they display to customers pursuant to their own internal best execution practices.

The Tape Plans Must Change

The Firm believes that at the very heart of the matter, the system by which market data is consolidated and applied is outdated and in desperate need of revision. The Consolidated Tape Association and Unlisted Trading Privileges association (“CTA/UTP”), which oversees the dissemination of consolidated real-time trade and quote information, was created as a result of the Securities Acts Amendments of 1975. The structure of the CTA/UTP has not kept pace with the rapid changes to the overall national market system.

First, under the current the CTA/UTP structure, representatives from the exchanges possess exclusive voting rights to set rates and determine market data policy. Up until the 1990s, the exchanges were mutual, not-for-profit companies in which member firms had a voice in the operation of exchange data policy. Today, most exchanges are for-profit, publicly-traded companies where membership no longer carries an active voice. These changes effectively have eliminated the system of checks and balances that previously existed. The Firm requests that the Commission consider changes to the CTA/UTP membership composition to allow market data users to become full voting members and, thereby, give users a greater voice in market data policy.

Second, the CTA/UTP requires unanimous vote provisions to enact rules, which curtails the ability to effectuate change. TD Ameritrade believes a welcome change would be to revise the voting structure from unanimous to a simple majority.

Private Data Feeds Must be Examined for Appropriateness

⁵ See Rule 603(c) of Regulation NMS.

TD Ameritrade notes that many retail investors and institutional investors utilize the consolidated quote information disseminated through the CTA while other highly sophisticated firms can subscribe to newer and faster private data feeds, which by certain exchanges own admission, are faster than publicly available information.⁶ The Firm understands that exchanges disseminate the same consolidated information in addition to other metrics. TD Ameritrade's position is that comprehensive rulemaking is required to consider whether the practice of selling identical, but faster, information should be reviewed along with the associated pricing for appropriateness.⁷ As Chairman Schapiro recently noted during testimony before the United States Senate, “[b]ut I think we also need to have a look at whether there are regulatory changes that are necessary in order to create a stronger infrastructure... Looking again at the quality of exchange data feeds and whether the public data feed is sufficiently robust in comparison to the one they sell for a lot more money in their proprietary context.... We need to assess all the – the fee structures within the exchanges.”

Decimalization Has Reduced the Relevancy of Level 1 Data

As quote depth at the national best bid and offer (“NBBO”) has narrowed due to decimalization over the last decade, the relative informational value of the consolidated quote feeds disseminated pursuant to the CTA/UTP market data plans have decreased. This has given brokers and investors little choice but to either obtain multiple proprietary exchange DOB feeds – and incur related exchange market data fees – or provide investors with a view of the market that is increasingly incomplete. Accordingly the firm believes that Level 1 charges should be commensurate with the overall informational value provided.

The Market Data Fee Structure is No Longer Consistent with Industry Practices

In the 1970s computers were relatively new and few, if any, households in America had a personal computing device or traded without the assistance of a broker unless they were professional. Market quotes were displayed to brokers through dedicated terminals, and, as a result, when the CTA/UTP was established, charging for quotations was done on a “per terminal” basis. Today, although brokers continue to be charged based on their use of terminals, the CTA/UTP has expanded the definition of “terminal” to cover any usage by authorized individuals, including device, access, and even non-display access. Furthermore, the antiquated fee structure imposes higher fees on so-called professionals, including trust and corporate accounts, which are often used by the typical retail investor (*e.g.*, a small “mom and pop” business such as a delicatessen). Additionally, a broker with many users may actually be low

⁶ http://exchanges.nyse.com/archives/2010/11/data_latency.php

⁷ *See Transcript of the Joint Hearing on the U.S. Capital Markets Overview, Panel I, Comments by Mary Schapiro, Chairman, Securities and Exchange Commission, Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Securities, Insurance, and Investment and Senate Committee on Homeland Security, Permanent Subcommittee on Investigations* (Dec. 8, 2010).

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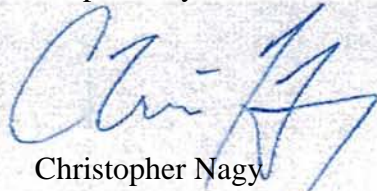
utilizer of data yet under the antiquated rules, these brokers bear the majority of the cost. Simply put, the manner in which the market data fees are levied is antiquated and leads to an irrational distribution of costs.

For the reasons stated above, the Firm respectfully requests that the Commission conduct a thorough review of market structure as it relates to the collection, distribution and costs of market data and petitions the Commission conduct rulemaking in this area.


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TD Ameritrade appreciates the opportunity to submit this request for comprehensive rulemaking concerning market data structure. Please feel free to contact Chris Nagy at 402-970-5656 or Rich Urian at 443-539-2216 with any questions regarding our petition.

Respectfully Submitted,



Christopher Nagy
Managing Director Order Strategy
TD Ameritrade



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