Statement of

Christopher Nagy, Managing Director, Order Routing Strategy

for the

Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues
August 11, 2010

Chairman Schapiro, Chairman Gensler and Members of the Joint Advisory Committee, thank you for the opportunity to participate on this panel concerning the May 6th market event. I'm Chris Nagy, Managing Director of Order Routing Strategy for TD Ameritrade.

TD Ameritrade, based in Omaha, Nebraska, was founded in 1975 and was one of the first firms to offer negotiated commissions to individual investors following the passage of the 1975 Amendments. Over the course of the next three decades, TD Ameritrade pioneered technological changes such as touch-tone trading and internet investing to make market access by individual investors more available, affordable and transparent. While TD Ameritrade clients trade predominantly equities and options, we also offer clients the ability to trade futures and forex through our thinkorswim division.

TD Ameritrade has long advocated for market structures that create transparency, promote competition and reduce trading costs for individual investors. As technology rapidly advances, it is ever more important that the regulators complete the comprehensive review they are now undertaking to ensure the U.S. markets remain among the greatest in the world.

It is our intent to present these comments on behalf of our 7 million client accounts, based upon the views that they regularly express to us and our experiences in providing services to them.

While the U.S. financial markets have experienced precipitous market declines during a single day, including the most famous 1987 market crash when the Dow Jones Industrial Average dropped 508 points, the May 6th market event in many ways was unique. First, in the speed of the decline – the market whipsawed over 1000 points in just 10 minutes. Second, the market decline was somewhat random and uneven, causing over 90% temporary declines in some stocks while others were relatively unchanged. Third, and perhaps most importantly, it appears that the very nature of how the U.S. markets are structured was a contributing factor to the precipitous decline. Although the causes may never be completely identified or understood, they appear to at least partially lie in the dispersed structure of the U.S. markets and the markets increasing dependence on liquidity providers who have no affirmative obligations to maintain two-sided markets.

Regardless of the exact cause, it is clear that the May 6th market event has had an impact on investor psychology, and their trust of the markets. How do you explain to an investor that a company with a market capitalization of $26 billion that trades at $40 per share and seconds later trades at a stub quote of one penny? Obviously, investors on the receiving end of executions filled against those stub quotes are going to question the fairness of the markets. Similarly, misgivings were voiced by investors who had executions that were less than 60% away from the market. Again, how do you explain to an investor that a trade 61% away from the market was deemed erroneous, but an order filled anywhere up to 59% away from market was not?

From our perspective, the answers for these clients will lie in the actions we in the industry and the regulators now undertake. Specifically, we may need to adjust the way in which the U.S. markets are currently structured so that investors can trust that the price displayed to them is valid; so that they have confidence in the liquidity available; and so that they do not believe the markets are somehow rigged against them.

The May 6^{th} event was a wake up call, and one that requires a comprehensive response. Today's panel is a part of the appropriate response – it is a response that requires looking across the equities, options and futures markets and approaching regulation holistically. It requires addressing not only the imposition of circuit breakers, but also must include a review of dark pools, flash orders, access fees, high frequency trading and naked access. For investors, we think the right approach is a combination of the following:

First, we agree with the adoption of the circuit breakers as a good first step. The regulators correctly identified an issue and took quick action to ensure trading took a pause during extreme market movements. But as everyone who has had to fumble around in the darkness of their basement searching to reset a circuit breaker knows, circuit breakers are a fail-safe and do little to address the underlying cause of the problem.

Second, TD Ameritrade believes that the regulators need to find ways to incentivize market centers to stay in the market, maintain two-sided quotes, and most importantly, to post size regardless of the market environment. The firm has noted previously that the May 6^{th} market event demonstrated that today's markets contain many players who use their liquidity opportunistically – applying it when in their favor, but pulling it during times of market duress.

Third, and particularly in the equities and options markets, the SEC should proceed with all due speed to move its Concept Release on Market Structure to a proposing stage, while at the same time addressing issues like co-location, access fees, flash and naked access.

Finally, as to the specific allegation that retail market orders and stop orders contributed to the downturn, I can tell you from TD Ameritrade's perspective, such orders are important to our clients, and looking at our own data, we do not believe there is any factual basis to assert that these types of orders contributed to the problem. In fact, TD Ameritrade clients' market and stop orders were within average daily volume, on a percentage basis. Prohibiting market and stop orders would be a significantly adverse, misguided, and unnecessary over-reaction to the underlying causes of the May 6th market event, which would unduly deny to retail investors the access to the markets that they enjoy today.

I look forward to answering any questions you have, thank you.