6/2/2011

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

RE: SR-NASDAQ-2011-059

Dear Ms. Murphy:

We are registering opposition to SR-NASDAQ-2011-059, a proposed rule change with the garish eponym The Mid-point Peg Post-only Order.

We track trading patterns for some of the largest companies traded in American equity markets. The average investor is not protected, his or her interests not advanced, by rules that permit orders that are not intended to match with others, that are non-displayed, and which avoid the NBBO.

Public companies use displayed pricing as a proxy for investor sentiment. The principal purpose of decades of regulation that created a National Market System is to bolster confidence in equity markets and their displayed prices. Public companies are likely to adopt a jaundiced view of displayed prices when the exchanges that list their shares and the regulatory body responsible for ensuring fairness support order types specifically designed to squirrel away in the weeds and provide liquidity, earning a make fee (thus enhancing exchange data revenues).

Lest one conclude that public companies are ill-informed participants, we realize that this rule-filing is the Nasdaq's response to massive market erosion through internalization and gaming of the NBBO. We know the NSX has Zero Display orders – approved by the SEC. We recognize that the Commission is implementing a National Market construct that dates back to 1972, and these attempts may have exhausted their useful shelf life against the backdrop of modern trading activity.

But nonetheless, free-market principles ought not be abandoned so that for-profit exchanges can incentivize monetizable data with nuanced order types that benefit neither the investing public nor the companies whose shares underpin those investments. After all, small investors have no reason to employ an order like this, and the order-type does not advance price-discovery.

In offering a statutory basis, the Nasdaq writes in its rule filing: "...the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest."

We have observed a blanket tendency by exchanges, when forming a statutory basis, to quote rules that demand the exact opposite of the actions taken. Here again that's true. The proposed rule allows those that provide liquidity to manipulate prices and market outcomes, thus enhancing quote-share and trade-share revenues for the exchange. Rules designed specifically for providers of liquidity are flatly in opposition to free and open markets. The statutory basis the Nasdaq provides should itself indict the rule filing; the order type undermines just and equitable principles of trade.

Instead of approving this order type, the Commission might question the validity of the NBBO. If so much effort is committed to avoiding it, perhaps it's not useful? We understand the ramifications of eliminating the NBBO – the implication for seas of volume predicated on add/remove fees and the entire exchange business model today.

The fact is that the majority of natural liquidity meets at prices other than those being displayed. Would it not be better for public companies and investors alike if prices were set by sentient thought rather than incentivized liquidity and the machines most capable of fleet compliance with rules – and in fact advantaged by the Order Protection Rule?

Markets should function simply when free. A regulatory construct that seeks an absence of impediment – a fundamental premise of 15 USC 78 – should find no place for securities orders with names like the Mid-point Peg Post-only Order.

Yours very truly,

Timothy Quast
Managing Director