

November 23, 2004

Hello there. I am an active day trader who trades the NASDAQ and NYSE markets on a daily basis. I have concerns regarding your vote for Regulation NMS on December 15th, so I'll cut right to the chase:

I am worried about the "best price" practices the SEC is aiming for in the attempt to gain "fair and orderly" markets for all investors. I agree that something has to be done on the NYSE, because that is where I have been treated unfairly as far as execution goes, but on the NASDAQ, I fear it would hurt a market that is extremely efficient for ANY and EVERY market condition. I fear that trying to help the average "long term" investor will hurt the day traders and institutional traders who trade for a living and make up most of the market. I do believe that your action against "payment for order flow" was called for. It is a very unfair practice. You did the right thing and I applaud for all for that. I guess I just do not understand why you feel that the NASDAQ market is not a fair and efficient market. Currently, I execute directly to these destinations based on my needs. I am VERY grateful that each execution destination is a little different than the other. I execute through, Archipelago, INET-INSTINET, Brut, Supermontage. I will outline where and why I execute through each and why for different reasons:

Supermontage, Archipelago and Instinet:

-These market centers offer a "proactive smart router" that will send my Limit order out to best price in the market". I have a level 2 screen, so I know that I am getting best price at the time I submit my order.

INET:

-When I am in an emergency situation and I have to GET OUT of the market because the stock I am trading is rising or falling at a ferocious pace, I use INET. This to me is the saving grace ECN because it does not route out to best price, but rather stays internal to its own book. If the market is tanking at say 3 points per second, which happens all the time, if I want to exit my position in a hurry, I usually send an order with INET and cross the market by 5 to 10 cents and I get an instant fill. When I used to use "best price" for these types of market events, I usually got the execution stuck or spit back to me. In some cases, the market was moving so violently, the critical miss caused me thousands of hard earned dollars when I should have been able to get out. When everyone in the world is trying to get out of a stock, best price does not cut it. It is very dangerous to rely on best price in ALL cases. Mind you, these failed executions were in a total automated market regarding current technology of ECN's (meaning, I traded through an ECN that had "proactive routing", not NYSE where it is partially manual). The problem is that nothing is perfect and you have to have a backup exit strategy if that is the case. It would be a shame if INETS capabilities went away and in my opinion, a step backwards for the markets. It should be an option that a trader can decide on their own. Now mind you, the flip side of all of this. If a trader makes an error where they cross the market and it was too far away from the current market state, there are effective erroneous transaction policies that protect the trader on that end. So to me it's a no brainer: Allow for there to be some sort of non-best price (non-proactive router) function to the disposal of the

market trader and investor. Sometimes best price can turn into disaster. I see it everyday.

I believe that INET has the best solution. It gives you both options as a trader: If you want a proactive smart router that will get you best price in the market, you select and trade your marketable limit order through INSTINET. If you want speed of execution without the “best price” function, you trade INET ECN. That’s the best of both worlds and the trader/investor has the power to decide!

My other example is trading NYSE stocks. In the 9:30 to 10:30 trading hours, NYSE stocks move very fast. A 30 to 60 cent move can happen with the blink of an eye. When I am holding a position that is a 3 letter NYSE listed stock and I want to exit, I ONLY use INET and my second choice is ARCA. Why? That is because all of my NYSE orders that are marketable limit orders (where the fill should be instant based on the price sent) get locked in for 30 seconds to almost 2 minutes in some occasions! That is called “backpocketing”, where the specialist holds onto your order and only fills it if the market during that period of time goes in their favor. That is based on the Trade Through rule that they are taking full advantage of, at the disposal of my order and my money! Arcapelago is not my first choice because they use the proactive smart router function. That would be a blessing most of the time except for the fact that the NYSE is one of the “proactive” markets that Arca scans for Listed. What that leads to is another situation where NYSE holds onto the order and it freezes the ARCA limit order until they send back some sort of confirmation of a fill or cancel, usually 30 seconds later and at my loss as the market has moved. That happens maybe 30% of the time on Arca. Now INET, is a pure ECN. I can place orders for listed securities that are limit orders and if I need to cancel and re-price in a hurry, I can do so with INET with NO DELAY. Arca delays confirmations and cancellations based on NYSE involvement. So what I end up doing, is giving away maybe 5 cents from best NYSE price to ensure a solid fill and have a high success rate of not losing money doing this practice for my listed stock trading.

This to me is serious business. If I am forced to execute “best price” all of the time, it will be a disaster. I know you will have a stipulation saying that “best price as long as it’s an instant fill”. The problem with that is that we are not in a perfect world with trading. Depending on where your broker is, there are latencies between broker and market center. When you have 200 traders all going after best price on a limited amount of shares, most will lose as a security sharply moves against them. In my opinion, the NASDAQ system is extremely efficient and gives traders, investors and institutions all different tools for different styles and situations. Taking that ability away from the markets will be a serious step backwards.

Thank you for your time.

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