

To: U.S. Securities and Exchange Commission
rule-comments@sec.gov

From:
MJA Capital
Jeremy Abelson
174 W. 4th St, Ste 371
New York, NY, 10014

Regarding: File Number SR-NASDAQ-2012-90

We have documented confirmation that NASDAQ accepted and recognized our "market on open" sell order of 7,500 FB shares on May 18th, 2012 the day of FB's IPO. NASDAQ claimed fills were delayed however NASDAQ never filled the order it accepted. I am contesting the fairness of NASDAQ's *Uniform Benchmark Price* accommodation proposal as it does not promote just and equitable principals of trade.

U.S. Securities and Exchange Commission,

On May 18th 2012, I submitted a market on open sell order of 7,500 FB shares through Triad Securities, one of our broker dealer relationships. Triad submitted the order to NASDAQ and NASDAQ accepted the order as a market on open order. Triad has documented confirmation of that order acceptance by NASDAQ. Based on previous experience and general market on open policy, NASDAQ, by accepting the order, communicated that my order would be part of the opening print that they were facilitating. I have submitted numerous identical orders for different IPO securities in the past through NASDAQ/Triad and have never had a problem participating in the opening print/cross through these channels.

Facebook stock opened at \$42 – the opening cross was \$42. Based on past experience and conventional wisdom, Triad and I had no reason to believe that our order (after being told that the order it was part of the opening print) was actually in fact not part of the opening print. The order was not filled but NASDAQ did not communicate to Triad that it would not be filled. Triad repeatedly inquired (called into NASDAQ) as to when we could expect the order would be filled and throughout the day on the 18th, we were repeatedly told by NASDAQ to wait but that the order would be filled. The market closed and we had still not received our fill and NASDAQ representatives continued to state by telephone and in writing (see Market System Status Message from 5/18/12 16:23:51 ET) their "intention is to reach resolution of those trades today through an offline matching process. This never happened.

Since NASDAQ did not call us, we called them again on Monday the 21st, and NASDAQ finally communicated that the order had not been filled and would not be filled and if we wanted to file a claim, we needed to do so by noon EST on the 21st. We immediately sold the 7,500 shares at a price of \$35.00. We filed a claim for the balance:

Quantity: 7,500 shares

Initial order accepted by NASDAQ – 05/18/2012: “market on open”

- opening print was \$42.00

Actual order filled – 05/21/2012: \$35.00

Discrepancy: \$52,500.00

All of our actions we based on the specific direction of NASDAQ:

1. NASDAQ accepted our market on open order
2. NASDAQ failed to fill order 05/18/12 and did not communicate that the order would not be filled rather that there was a delay in the fill
3. NASDAQ claimed there would be/was an after hours cross on Monday 05/18/12 – that did not happen
4. NASDAQ instructed us to file a claim by noon EST 05/21/12 so we immediately executed the identical order and filed a claim for the notional balance

We expect NASDAQ to compensate us fully for the \$52,500.00 based on just and equitable principals of trade. We expect full compensation based on NASDAQ’s failure to execute a standard order that NASDAQ has executed multiple times in the past.

Thank you,

Jeremy Abelson
MJA Capital