Turov Investment Group Inc., Registered Investment Advisers
Daniel Turov: CFTC Licensed Commodity Trading Advisor & Member, National Futures Association
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S7-10-04

March 26, 2004

54

RECEIVED
MAR 3 1 2004
OFFICE OF THE SECRETARY

Mr. Jonathan G. Katz -- Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Dear Mr. Katz:

At 3:07 PM on March 8, 2004 I entered an order with Ameritrade to purchase 2500 shares of QQQ at the market. The shares had been trading $35.91 bid to $35.92 offered for a few minutes, and even after the execution of my order, they continued to trade at that narrow spread. It was a dull, stable market and, as you know, the QQQ's are as liquid as water.

Ameritrade reported an execution at $35.95 ten seconds after receiving my order. Outraged, I called Ameritrade, spoke to their customer representative, Jessica Burgess, on extension 5981, who told me the execution took place three cents above the offered price pursuant to a proposed SEC regulation. I asked her for more information in writing, and she sent me the attached letter. I then went to the links she suggested.

As her letter clearly indicates, the SEC's position is that the proposed rule "doesn't relieve brokers of their obligation to obtain the best price for customer orders." Yet the rule, as proposed, provides no oversight for abuses of this rule under calm market conditions such as were the case on March 8. Clearly, market makers have both ample incentive and opportunity to abuse this rule for their own benefit. I therefore suggest that the SEC either (1) scrap this rule, (2) revise this rule to prevent similar abuses, or (3) mandate substantial penalties when the rule is abused. Thank you for your consideration of my comments.

Sincerely,

Daniel Turov

Daniel Turov

Important Message!

Subject to Ameritrade rules and policies, regular session orders placed after 4 p.m. ET will be routed for the next regular session. Please be sure to verify your order status.

Order Detail

Return to Orders • Help

Buy 2500 QQQ Market

Order	1062740862	**Status**	Filled
Fill Information			
Fill Qty	2500	**Fill Price**	35.95

Execution Information

	TimeStamp	Routing Information
Order	3:07:18 PM EST	Auto Routing
Received	03-08-2004	
Execution	3:07:28 PM EST	Auto Routing
Reported	03-08-2004	

Jessica Burgess / Ameritrade

XT 5981

35.91 - .92

3¢ rule -

Sending details

AMERITRADE

3/08/04

Dear Mr. Daniel Turov,

Here is the excerpt from the Wall Street Journal that you and I had discussed on the phone.

WASHINGTON - The Securities and Exchange Commission approved a nine-month test that will give electronic brokerage firms and markets limited relief from trade-through rules for exchange-traded funds.

The test, expected to take effect soon, affects trading of the NASDAQ-100 Index Tracking Stock, known as the QQQ, the Dow Jones Industrial Average, known as Diamonds, and the Standard & Poor's 500 Index, or SPDRs, also known as "spiders."

Under the test, brokers trading these products may execute orders at prices that are as much as three cents above or below the national best bid or offer at a time the order is filled.

So-called trade-through rules require customer orders to be routed to the market providing the best price. The test gives short-term relief from the rules, but doesn't relieve brokers of their obligation to obtain the best price for customer orders, the SEC said.

Investors won't lose any safeguards during the experiment and will gain new information, as prices from Island ECN Inc., a New York electronic-trading system, will be added to the consolidated-quote system. Island has grabbed a hefty share of the market for exchange-traded funds, accounting for as much as 40% of daily-trading volume in QQQs, Diamonds and spiders.

If you go to the below link:

http://www.sec.gov/rules/proposed/34-49325.htm and then scroll down to the table of contents under III. Trade-Through Proposal and then under C.Proposed Trade-through Rule and then go to 2.Types of Securities Subject to the Proposed Rule. There it will also explain the above excerpt from the Wall Street Journal.

Sincerely,

Jessica Burgess
Ameritrade Client Services
Xt. 5981

Street Address: 1005 North Ameritrade Place, Bellevue, NE 68005 Mailing Address: PO Box 2209, Omaha, NE 68103-2209
T (800) 669-3900 F (816) 243-3769 www.ameritrade.com

Dates: Comments must be received on or before May 24, 2004 .

Addresses: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-10-04. Comments submitted by e-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).[1]

For Further Information Contact: *Trade-Through Proposal*: Heather Seidel, Attorney Fellow, at (202) 942-0788 and Jennifer Colihan, Special Counsel, at (202) 942-0735; *Market Access Proposal*: John S. Polise, Assistant Director, at (202) 942-0068, Patrick M. Joyce, Special Counsel, at (202) 942-0779, and Ann E. Leddy, Attorney, at (202) 942-0795; *Sub-Penny Quoting Proposal*: Kevin Campion, Special Counsel, or Ronesha Butler, Attorney, at (202) 942-0744; *Market Data Proposal*: Sapna C. Patel, Special Counsel, (202) 942-0166; *Regulation NMS Proposal*: Yvonne Fraticelli, Special Counsel, at (202) 942-0197; all of whom are in the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-1001.

… the Commission believes that even in the current markets with linkages between markets and a range of execution speeds and fill rates, there is value in protecting a displayed price from trades occurring at inferior prices in other markets. This "price protection" encourages the display of priced orders and fosters the execution of customer orders. The Commission therefore is proposing a rule intended to preserve the benefits of price protection across markets, while addressing the tensions in the operation of the current ITS trade-through rule. The proposed rule would require an order execution facility (as defined below), national securities exchange, and national securities association to establish, maintain, and enforce polices and procedures reasonably designed to prevent the execution of a trade-through in its market.

Goal #1 of Commission: a uniform trade-through rule for all NMS market centers that would affirm the fundamental principle of price priority, while also addressing problems posed by the inherent difference in the nature of prices displayed by automated markets, which are immediately accessible, compared to prices displayed by manual markets;

an automatic execution alternative also supports the principle of price priority. It would not allow trades to occur at inferior prices, as could happen under the proposed opt-out exception. Such an alternative could maintain investor confidence that their orders will receive the best bids and offers displayed in any market.
For these reasons, the Commission requests comment on whether there is a continued need for the opt-out exception if it were to adopt an automatic execution requirement