the counterparty so that the platform still essentially functioned as a one-to-many platform.[29]

EOL began to accept limit orders from its customers to enhance the attractiveness of its trading platform and increase the flow of information available to it by providing a vehicle for potential orders by outside traders who did not want to execute at the current prevailing price. Enron did not bypass the limit orders provided to it (e.g., it did not sell from its own account at a higher price when a limit order to sell from an outside trader existed in the EOL stack at a lower price) and would execute these orders prior to executing orders from its own book at inferior prices, i.e., the platform executed positions at more favorable prices first and followed “price priority.”

The limit orders offered by outside traders provided to Enron an option to meet demands for immediate execution by others using these limit orders as a source of liquidity. The EOL market maker could also step ahead of the limit orders and trade from his own account, with the comfort that the additional demand to trade reflected in the limit orders would potentially move the price in a favorable direction. This would allow the EOL market maker to profit by positioning in the market prior to the impact on prices that the limit orders would generate when executed. These EOL customers, who provided limit orders to EOL, were not able to trade directly with one another using the platform. When matching buy and sell limit orders were provided to EOL, EOL would act as the counterparty to both.

The nature of the platform’s structure, particularly the absence of transparency (both with respect to trade reporting and the lack of knowledge by outside investors of the limit order book), the effective inability of public orders to trade directly with one another, and Enron’s inherent last-mover advantage (except for orders at the automatically executed quote), all contributed to Enron’s overall advantage vis-à-vis the limit orders supplied to it.

[29]The caveat with this interpretation is that investors placing orders on EOL derived a benefit from public limit orders during the period they were allowed, as if the public investors are trading directly with one another.