



September 26, 2016

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Disclosure of Order Handling Information Proposal [File No. S7-14-16]

Dear Mr. Fields:

The Financial Services Roundtable (“FSR”)<sup>1</sup> appreciates the opportunity to respond to the Securities and Exchange Commission’s (“Commission’s”) proposed amendments (“Proposed Amendments”) to Rule 606 of Regulation NMS and related conforming amendments as set forth in Release No. 34-78309, dated July 13, 2016 (“Proposing Release”). Generally, the Proposed Amendments would require broker-dealers to disclose detailed information regarding the execution and routing of orders on behalf of institutional investors and expand the information currently required to be provided regarding the routing of retail investors’ orders.<sup>2</sup> Although FSR generally supports greater transparency in the marketplace, we are commenting only on certain discrete aspects of the Proposed Amendments, and seeking clarification regarding a few of the proposed disclosure requirements.

FSR commends the Commission for undertaking a comprehensive evaluation of the current order handling disclosure requirements for institutional as well as retail orders. Further, FSR generally supports the concept of providing uniform order routing disclosure for equity orders as it will likely better enable investors to evaluate the impact that routing decisions have on the quality of their order executions and provide information regarding broker-dealers’ potential conflicts of interest. Similarly, FSR generally agrees that expanding the disclosure requirements for retail orders will allow investors to better identify financial incentives and other conflicts of interest that may influence their broker-dealers’ order routing decisions.

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<sup>1</sup> As advocates for a strong financial future, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

<sup>2</sup> Disclosure of Order Handling Information, Release No. 34-78309 (July 13, 2016).

## **I. Executive Summary**

FSR's comments on the Proposed Amendments are summarized below and subsequently discussed in more detail:

### **A. Disclosures for Institutional Orders – Proposed Amendments to Rule 606**

- We generally support the concept of requiring more specific and detailed institutional order handling information from broker-dealers.
- FSR believes that any distinction between orders should be based on whether an order is “held” or “not held.”
- There should be one combined report depicting order handling-related information for all sizes of orders; however, FSR does not advocate expanding the reports provided to retail investors upon request to match the detailed information proposed to be provided to institutional investors, which could result in information overload to retail investors.
- The Proposed Amendment would provide useful information on how orders interact in the marketplace.

### **B. Additional Metrics on Trade Execution Quality**

- The Commission should introduce a set of metrics designed to provide additional information concerning the execution quality of broker-dealers. FSR believes that such data would be useful because the data currently provided in the reports required by Rule 605 of Regulation NMS do not illustrate a broker-dealer's success in executing orders in specific market venues.

### **C. Uniform Disclosure for Orders that Provide Liquidity and Orders that Take Liquidity**

- Consistent disclosure should be required regardless of whether orders provide or take liquidity.

### **D. Actionable IOIs**

- The proposed definition of an actionable indication of interest (“IOI”) may unintentionally capture IOIs that require additional negotiation in order to be executable by the broker-dealer. In many cases, IOIs are communicated to broker-dealers with all of the information that would make them “actionable IOIs” under the Proposed Amendments. However, there is an understanding between the institutional investor and its broker-dealer that certain terms of the trade still need to be finalized prior to execution.

## E. Payment for Order Flow, Rebates, and Access Fees

- FSR urges the Commission to consider greater transparency with respect to payment for order flow, rebates, and access fees.

## II. Disclosures for Institutional Orders

Currently, Rule 606 of Regulation NMS requires a broker-dealer to publicly disclose order routing information for non-directed orders in NMS securities<sup>3</sup> that are in amounts less than: (i) \$200,000 for NMS stocks and (ii) \$50,000 for option contracts.<sup>4</sup> Therefore, most institutional orders are not currently captured by broker-dealers' Rule 606 reports. In the Proposing Release, the Commission acknowledged the limitations of the current reporting requirements by noting that an institutional investor's evaluation of a broker-dealer's order routing practices has become increasingly important as its orders are routinely routed and executed using complex algorithms. These algorithms frequently break up large institutional orders into smaller child orders which are then routed to various execution facilities. As a result of these order routing practices, institutional investors have increasingly required their broker-dealers to provide more specific and detailed order handling information.<sup>5</sup>

As proposed to be amended, Rule 606 would require a broker-dealer, upon request, to provide customer-specific reports regarding the venues to which it routes institutional orders in NMS stocks.<sup>6</sup> As proposed, an "institutional order" would be defined as any order to buy or sell a quantity of an NMS stock having a market value of at least \$200,000, provided that such order is not for the account of a broker-dealer.<sup>7</sup> Thus, a broker-dealer would be required to provide specific disclosures for the prior six months, broken down by calendar month, related to: (i) the handling of the customer's institutional orders at the broker-dealer; (ii) the routing of the customer's institutional orders to various trading centers; (iii) the execution of those orders and the quality of execution; (iv) the extent to which such orders provided liquidity or removed liquidity; and (v) the average transaction rebates received or fees paid by the broker-dealer.<sup>8</sup>

While FSR generally supports the notion of enhanced order routing disclosure, it recommends that any reporting requirements under Rule 606 be based on whether an order is "held" or "not held" rather than on the size of an order as orders do not always follow a prescribed dollar threshold indicative of that customer. In support, FSR notes that retail investors submit orders with values above \$200,000, and institutional investors submit orders with values below \$200,000. A retail customer is not transformed into an institutional customer

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<sup>3</sup> See Rule 600(b)(46) of Regulation NMS. NMS security means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

<sup>4</sup> Proposed Rule 600(b)(31) of Regulation NMS.

<sup>5</sup> Proposing Release at 9.

<sup>6</sup> An "NMS stock" is any NMS security other than an option. See Rule 600(b)(47) of Regulation NMS.

<sup>7</sup> Proposing Release at 51.

<sup>8</sup> Proposing Release at 13.

simply because it submitted an order in excess of an arbitrary threshold, nor is an institutional customer transformed into a retail customer.

If the Commission ultimately decides to make a distinction between large and small orders, FSR recommends that the Commission eschew categorization of orders as “retail” and “institutional,” which could create misinformation in the market. This is particularly the case because many institutional investors evaluate the quality of broker-dealers’ executions of smaller orders when making their order routing decisions. This stems from the trend of broker-dealers and institutional investors breaking larger (*i.e.*, parent) orders into smaller (*i.e.*, child) orders for a variety of reasons, including to obtain a better price, achieve faster executions, or avoid information leakage to the market regarding positions and strategies.

Accordingly, when institutional investors request order execution information from their broker-dealers, they do not expect that data to be limited to trades exceeding a specified dollar threshold. Instead, institutional investors wish to evaluate the execution quality of all transactions that are routed by their broker-dealers. As it is currently proposed, a broker-dealer would not have to provide the enhanced disclosure proposed to be required for institutional orders that have a market value less than \$200,000. By expanding the institutional order definition, FSR believes an institutional investor could more effectively evaluate the potential impact of a broker-dealer’s order routing decisions on execution quality on its orders, notwithstanding the size of the orders.

Furthermore, and as the Commission is aware, it’s common for large institutional orders, especially those managed by sophisticated algorithms to be executed in several smaller child orders. Although, the Commission notes that it does not want to create duplicative reporting requirements, FSR has concerns that under the Proposed Amendments, an institutional order that is executed in a quantity less than \$200,000 would have to be reported as both an institutional and retail order. If individual components of an institutional trade are reported as if they were also retail orders, such additional disclosure information would be meaningless to institutional investors that are only interested in analyzing the execution quality of the institutional order as a whole.

### **III. Additional Metrics on Trade Execution Quality**

As noted above, the Proposed Amendments would require broker-dealers to provide institutional investors with order routing data that includes information regarding the number of shares sent to, and executed at, a particular trading venue. Yet, FSR believes the Proposed Amendments fall short by not introducing a set of metrics designed to provide additional information concerning a broker-dealer’s execution quality. As you know, Rule 605 of Regulation NMS, requires market centers that effect transactions in NMS securities to publish monthly electronic reports that include standardized statistical measure of execution quality.<sup>9</sup> The data provided in Rule 605 reports only shows the execution of the market venue as a whole and does not provide any information regarding a particular broker-dealer’s execution success at that venue. Therefore, investors are faced with the challenge of drawing an inference that they

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<sup>9</sup> See Rule 605 of Regulation NMS.

will achieve the same performance as the average order sent to that venue. In a 2015 *Barron's* article, Bill Alpert, Senior Editor at *Barron's*, stated, “[a] fundamental problem with any resulting inferences is that a market maker’s average execution across all of its sending brokers may be better or worse than its performance on a particular broker’s flow.”<sup>10</sup> FSR believes that additional metrics should disclose, among other things, the displayed quote when a broker-dealer routes an order to an exchange as well as the execution price of that order. Having access to this type of order execution data would help an investor compare the execution quality that various broker-dealers obtained at a particular execution venue.

FSR notes that some wholesale market makers have already begun voluntarily providing more expansive information regarding order execution quality to investors. In particular, the Financial Information Forum (“FIF”)<sup>11</sup> established a 605/606 working group that has sought to improve the execution quality statistics for retail investors. The goal of the working group is to provide more meaningful disclosures regarding a broker-dealer’s order routing practices. The FIF reports are meant to provide additional insight into such practices beyond what is currently required to be published in Rule 605 and Rule 606 reports. The FIF template includes the following categories of information: (i) order size; (ii) average order size; (iii) shares executed at market quote or better; (iv) price improvement percentage; average savings per order; and (v) average execution speed.<sup>12</sup> Although the metrics do not have to mirror the FIF template, FSR recommends that the Commission consider revising the Rule 606 disclosure requirements to provide similar metrics that are output driven.

#### **IV. Uniform Disclosure for Orders that Provide Liquidity and Orders that Take Liquidity**

FSR believes that the order routing disclosure requirements should be uniform and not determined by whether an order is providing liquidity<sup>13</sup> or removing liquidity.<sup>14</sup> Under the Proposed Amendments, a broker-dealer would generally be required to provide the same information for orders removing liquidity and providing liquidity, which includes: (1) total number of shares executed; (2) percentage of shares executed; and (3) average net execution fee

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<sup>10</sup> Alpert, Bill, “Exclusive: Who Makes Money on Your Stock Trades,” *Barron's*, February 28, 2015); available at <http://www.barrons.com/articles/exclusive-who-makes-money-on-your-stock-trades-1425103695>.

<sup>11</sup> FIF ([www.fif.com](http://www.fif.com)) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Their participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

<sup>12</sup> FIF Wholesale Market Maker Template; available at [https://fif.com/images/Retail\\_Execution\\_Quality\\_Statistics/FIF\\_Rule\\_605-606\\_WG\\_-\\_Retail\\_Execution\\_Quality\\_Stats\\_Wholesaler\\_Template.pdf](https://fif.com/images/Retail_Execution_Quality_Statistics/FIF_Rule_605-606_WG_-_Retail_Execution_Quality_Stats_Wholesaler_Template.pdf).

<sup>13</sup> Proposed Rule 600(b)(55) defines “orders providing liquidity” to mean orders that were executed against after resting at a trading center.

<sup>14</sup> Proposed Rule 600(b)(56) defines “orders removing liquidity” to mean orders that were executed against resting trading interest at a trading center.

or rebate.<sup>15</sup> However, a broker-dealer would only have to disclose information related to the average time (in milliseconds) between order entry and execution or cancellation for orders providing liquidity.

With markets becoming increasingly complex, FSR believes that data on the average time between order entry and execution or cancellation for orders prior to execution or cancellation would also be useful for orders that are removing liquidity from the marketplace. In light of changes in order handling, which began with the Commission's approval of the IEX Group, Inc. as an exchange and are expected to grow, delays and speed bumps likely will become an area of distinction between trading centers. Accordingly, investors will likely place greater emphasis on execution delays when they are removing liquidity. Requiring this disclosure for orders removing liquidity would provide valuable information on the average length of time an order rested at a venue before it was filled or cancelled and then transmitted back to the broker-dealer for further processing. Ultimately, information regarding the average time that an order rests on an exchange can help investors further evaluate whether a broker-dealer is adhering to its desired order routing strategy.

## **V. Actionable IOIs**

The Proposed Amendments also would require certain disclosures with respect to the number of institutional shares that are exposed by a broker-dealer through an actionable IOI. Under the Proposed Amendments, an "actionable IOI" would be defined as any indication of interest that conveys all of the following information with respect to any order available at a venue sending the indication of interest: (i) symbol; (ii) side (buy or sell); (iii) price that is equal to or better than the NBBO for buy orders and the NBBO for sell orders; and (iv) the size of the order.<sup>16</sup>

Previously, the Commission addressed the concept of an actionable IOI in 2009.<sup>17</sup> Unlike the Proposed Amendments, the Commission did not propose a definition of an actionable IOI in 2009. Rather, the Commission provided as an example of an actionable IOI an IOI that "explicitly or implicitly conveys all of the following information about available trading interest at the IOI sender: (i) symbol; (ii) side (buy or sell); (iii) a price that is equal to or better than the NBBO (the national best bid for buy orders and the national best offer for sell orders); and (iv) a size that is at least equal to one round lot."<sup>18</sup>

The definition set forth in the Proposing Release is substantively the same as the example of an actionable IOI set forth in the 2009 proposal. In 2009, many commenters raised concerns that the definition of an actionable IOI was not precise or predictable. Commenters further noted that the ambiguity could lead to unfair, post-hoc contracts or regulatory actions imposed on

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<sup>15</sup> Proposing Release at 99.

<sup>16</sup> Proposing Release at 56.

<sup>17</sup> Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009).

<sup>18</sup> *Id.*

ATs that have structured their IOIs in good faith to avoid having their orders be deemed actionable IOIs.<sup>19</sup>

Further, FSR notes that the proposed actionable IOI definition may unintentionally capture IOIs that are not yet ready for execution because they require additional negotiation. IOIs containing all of the information that would render them actionable IOI under the Proposed Amendments are frequently communicated to broker-dealers; however, the broker-dealer and its customer clearly understand that certain elements of an order (*e.g.*, price) need to be finalized before the IOI becomes actionable and an order is placed.

## **VI. Payment for Order Flow, Rebates, and Access Fees**

FSR urges the Commission to consider greater transparency with respect to payment for order flow, rebates, and access fees of trading venues. FSR recognizes the Commission's Equity Market Structure Advisory Committee has put forth recommendations to further these efforts.<sup>20</sup>

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<sup>19</sup> Letters to Elizabeth M. Murphy, Secretary, Commission, from Senior Vice President – Legal & Corporate Secretary Office of the General Counsel, NYSE Euronext, dated February 22, 2010; from P. Mats Goebels, Managing Director and General Counsel, Investment Technology Group, Inc., dated February 22, 2010; from John A. McCarthy, General Counsel, GETCO, LLC, dated February 22, 2010

<sup>20</sup> U.S. Securities and Exchange Commission Equity Market Structure Advisory Committee, Regulation NMS Subcommittee Recommendations for an Access Fee Pilot (June 16, 2016), *available at* <https://www.sec.gov/spotlight/emsac/emsac-regulation-nms-recommendation-61016.pdf>.

If it would be helpful to discuss our specific or general views on the Proposed Amendments, please contact Richard Foster at [REDACTED]; or Felicia Smith at [REDACTED]. We appreciate your consideration and look forward to working with you on this important matter.

Sincerely yours,



Richard Foster  
Senior Vice President and Senior Counsel  
for Regulatory and Legal Affairs  
Financial Services Roundtable

*With a copy to:*

The Honorable Mary Jo While, Chair

The Honorable Kara M. Stein

The Honorable Michael S. Piwowar

**Members, United States Securities and Exchange Commission**