Consumer Federation of America

September 26, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-14-16
Disclosure of Order Handling Information

Dear Secretary Fields,

I am writing on behalf of the Consumer Federation of America (CFA)[1] regarding the Commission's proposed rules to require additional disclosures by broker-dealers to customers about the routing of their orders. We strongly support the premise of this rulemaking. Both institutional and retail investors need better information to properly assess whether their broker-dealers are providing best execution and to help them make informed choices about who they use to route their orders. The proposed disclosures are certainly an improvement over the current disclosures and they have the potential to provide that critical information to investors. They also have the potential to promote competition based on terms that benefit investors and reward not only the broker-dealers that best serve their clients but also the market centers that provide the best executions.

However, there are serious deficiencies in the proposal that must be addressed for the proposal to have these intended benefits. The following are the most serious:

- The proposal's artificial distinction between institutional and retail orders based on order size is likely to lead to orders being mischaracterized and the resulting disclosures being incomplete and potentially faulty. The distinction should be revised to better capture orders that are institutional and orders that are retail by looking at the account that is placing the order rather than the size of the order.
- The proposal neglects to include any meaningful retail disclosure requirements relating to execution quality, either on a customer-specific or publicly aggregated basis. Such disclosures must be added to enable investors, third-party analysts, academic researchers, and regulators to examine the extent to which retail brokers are best serving their clients. The metrics included in the Financial Information Forum ("FIF") voluntary templates provide a useful model for such disclosures.

[1] CFA is a non-profit association of nearly 300 national, state, and local pro-consumer organizations. It was formed in 1968 to represent the consumer interest through research, advocacy and education.

- The proposal inappropriately allows broker-dealers to satisfy their public disclosure requirements by merely making the disclosures available on a public website, thus allowing firms to bury the disclosures and putting the onus on those who use the disclosures to figure out where they are. This approach would make it unduly burdensome and inefficient for investors to seek out and compile various disclosures in order to effectively compare the different services of different broker-dealers. The Commission should instead require that these disclosures reside in a centralized public database. In addition, the Commission must do more to ensure that these disclosures are produced in a user-friendly, digestible format.

I. Current disclosures don't provide meaningful, high-quality data relating to broker-dealer order routing practices and the resulting execution quality, leaving investors incapable of adequately assessing how their orders are being handled.

There have been vast changes in the U.S. equity markets since the Commission first promulgated order routing disclosure rules in 2000.[2] Markets increasingly have become more automated, complex, and fragmented. Investors not only have a variety of options regarding which broker-dealer to choose to route their orders,[3] broker-dealers now have a variety of options regarding which venues to route customer orders to and how to route them.[4] Thus, the broker-dealer an investor chooses for order routing and execution services and, in turn, the venue that a broker-dealer chooses and the routing strategies the broker-dealer employs, may have a tangible effect on the execution quality of the investor's order. These decisions can mean the difference between the broker-dealer's serving the client's best interests or falling short of serving the client's best interests.

Increased market fragmentation has also led to increased competition among trading venues vying for broker-dealers' order flow. In order to attract order flow, venues often provide inducements to broker-dealers that create potential conflicts of interest that can influence broker-dealers' routing decisions, potentially at their clients' expense. These changes to the market and the concerns that stem from them make it more important than ever that meaningful data is available to assess broker-dealer routing practices and the resulting order execution quality. Unfortunately, current disclosures are ineffective at providing the information necessary to properly evaluate how investors' orders are being handled and how that ultimately affects them. Below are just a few of the ways in which deficiencies in current disclosure rules are likely to adversely affect investors.

A. Current disclosure rules do not require broker-dealers to provide useful customer-specific information to any investors.

Current broker-dealer routing disclosures fail to provide useful information. They merely require broker-dealers to disclose to customers who place orders under $200,000, and only if the customer requests such information, the identity of the venues to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed

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[2] Disclosure of Order Execution and Routing Practices, Securities and Exchange Commission, Release No. 34- 43590, 17 CFR 240 (November 17, 2000) http://1.usa.gov/1xXA2ex.

[3] The Commission estimates in this release that there are 266 broker-dealers that route retail orders and of those, the Commission estimates that 200 broker-dealers route institutional orders.

[4] The Commission estimates that there are 380 market centers to which Rule 605 applies.

or non-directed orders, and the time of the transactions, if any, that resulted from such orders. There is very little meaningful information in these disclosures about how the customer's orders were actually handled and how the handling of the orders ultimately affected the customer's transactions. Customers are thus left to guess the extent to which their broker-dealer actually met its best execution obligations.

B. Current disclosure rules don't require disclosure of the full range of orders that are used by investors, most particularly large orders typically placed by institutional investors.

As discussed above, under the current rule "customer order" is defined as an order having a market value less than $200,000. This means that orders of $200,000 and above are explicitly excluded from any disclosure requirements, either on a customer-specific or publicly aggregated basis. Institutional investors, including mutual funds and pension funds, which often invest on behalf of long-term retail investors most typically place large orders. However, because the current rule does not require information about these orders to be disclosed, institutional investors are left to their own devices to negotiate with their broker-dealer for their order routing and execution information.

As the release points out, larger institutional customers may be better able to leverage their market size and position to obtain more detailed and complete disclosures from their broker-dealers, whereas smaller institutional customers may lack sufficient bargaining power to do so, which places these small institutional customers at a competitive disadvantage. Furthermore, because any disclosures that are provided are based on individualized and ad-hoc negotiations between institutional investors and broker-dealers, the information that is provided is likely to vary in scope and detail depending on both the particular institutional customer and the particular broker-dealer. Thus, the same institutional investor may receive different information from different broker-dealers while different institutional investors may receive different information from the same broker-dealer. The lack of standardized, consistent order handling information makes it unnecessarily difficult for institutional investors to monitor and assess how their orders are being handled, including the extent to which their broker-dealer's routing decisions are influenced by conflicts of interest and the extent to which their orders are being exposed to information leakage. These factors could ultimately result in less favorable prices, higher transaction costs, and lower fill rates for their orders. A related concern is whether a broker-dealer is routing customer orders to an Automated Trading System (ATS) that the broker-dealer or one of its affiliates operates, which raises its own unique set of conflicts of interest, especially if the broker-dealer is trading against those orders.[5] Again, without proper disclosure of these practices, the institution may not know the extent to which these practices are happening and how they ultimately affect the customer's execution quality.

Furthermore, because there are no public disclosures for orders with a market value of $200,000 and above, it is impossible for institutional investors to effectively compare their broker-dealer's routing decisions and the resulting execution quality with the execution quality of other

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[5] CFA strongly supports prohibiting proprietary trading activity and the abuse of customer order information by the operator of an ATS or its affiliates. *See* CFA Comment on Regulation of NMS Stock Alternative Trading System, https://www.sec.gov/comments/s7-23-15/s72315-19.pdf However, if the Commission does not prohibit such practices, these disclosures become all the more critical.

broker-dealers with whom they do not have relationships. In addition, unless third-party analysts, academic researchers, or regulators receive access to this information independently, they are unable to undertake independent research and analysis of broker-dealer conduct and overall market quality. Without this information, our collective understanding of the market will be limited.

Thus, we strongly agree with the Commission's preliminary conclusion that the lack of meaningful data is likely to decrease broker-dealers' incentives to compete by offering better execution quality for their customers. Without this incentive, broker-dealers are more likely to route customer orders in ways that are inefficient and fail to live up to their best execution obligations. Furthermore, the lack of meaningful data shedding light on broker-dealers' routing practices also increases the likelihood that their routing decisions will be influenced by conflicts of interest for which they are not held accountable.

C. Current disclosure rules don't require disclosures to distinguish between marketable and non-marketable limit orders, which clouds their utility.

Evidence from current Rule 606 reports shows that certain broker-dealers handle marketable and non-marketable retail orders differently, based on the different pricing incentives that apply to those orders. For example, several high-profile broker-dealers route virtually all of their marketable orders to wholesale market makers that internalize orders pursuant to payment for order flow agreements, while they send a significant percentage of their non-marketable retail orders to venues that provide the highest rebates under the maker-taker pricing model.[6] However, investors are not able to completely decipher exactly how broker-dealers are handling orders because the current disclosures allow orders to be segmented in a way that fails to make clear what the specific routing practices are for particular subsets of orders. This is because Rule 606 currently only requires segmenting orders by market orders, limit orders, and other orders, despite the fact that limit orders are further segmented into marketable limit orders, which are executed immediately and non-marketable limit orders, which are not. Because both marketable and non-marketable limit orders are included within the limit order category, investors are unable to fully understand and evaluate the extent to which broker-dealer routing practices differ for these different order types.

Not having this information matters for several reasons. First, investors can't fully evaluate the extent to which inducements influence broker-dealer routing decisions. For example, if a broker-dealer routinely routes orders in ways that are favorable to its own economic interest, it raises serious questions about whether the conflict is driving the broker's routing decision, at the expense of the customer's best interest and in violation of the broker's best execution obligations.

[6] *See* Robert H. Battalio, Shane A. Corwin, and Robert H. Jennings, Can Brokers Have it All? On the Relation between Make-Take Fees and Limit Order Execution Quality, March 5, 2014, http://bit.ly/1gbR7N2 (finding that Ameritrade (96 percent), E*Trade (98 percent), and Fidelity (97 percent) routed the vast majority of their market orders to wholesale market makers pursuant to payment for order flow arrangements amd Ameritrade, E*Trade, Fidelity, and Scottrade routed a significant percentage of their limit orders to EDGX, the venue that offers the highest rebates.); *See also* Conflicts of Interest, Investor Loss of Confidence, and High Speed Trading in U.S. Stock Markets: Hearing Before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, 113th Cong. 48 (2014) http://bit.ly/2dbxR9p (finding that during one fiscal quarter a large retail broker-dealer routed all nonmarketable orders to one of two venues that "offered the highest rebates available in the market.")

Moreover, without this information investors can't evaluate whether the broker's use of a specific order type, routed to a specific venue, makes it less likely they'll get their order filled. For example, if a broker-dealer routinely routes non-marketable limit orders to the highest rebate venues that have "congested" limit order queues (due to others' also routing based on the rebate incentive), it makes it less likely those orders will be filled. Indeed, Professor Robert Battalio and his colleagues' research suggests that routing limit orders to the venue that offers the highest rebates is inconsistent with maximizing limit order execution quality and, therefore, likely to be inconsistent with the broker's responsibility to obtain best execution for customer orders. But again, the current disclosures don't provide properly categorized information to enable a thorough and complete evaluation of these practices.[7]

Furthermore, because there are no public disclosures for orders with a market value of $200,000 and above, even less is known about how broker-dealers handle marketable and non-marketable limit orders in the institutional context. Yet the same incentives broadly apply to the routing of institutional orders. In the institutional context, broker-dealers have an incentive to route orders based on the maker-take pricing model. For example, they may route their non-marketable orders to the venues that provide the highest rebates for providing liquidity and route their marketable orders to the venues that have inverted pricing models and provide the highest rebates for taking liquidity. Without this information, institutional investors, third-party analysts, academic researchers, and regulators can't properly evaluate how different institutional orders are being handled.

D. Current disclosure rules do not require disclosures to explain the nature and extent of broker-dealers' conflicts of interest.

As discussed above, increased competition among trading centers for order flow has led trading centers to provide incentives to broker-dealers for routing their orders to them in the form of payment for order flow and maker-taker rebates. While current disclosures are helpful in informing retail customers of potential conflicts of interest, they are insufficient to fully apprise customers of the nature and extent of those conflicts. They only require broker-dealers to provide a discussion of the material aspects of their relationship with the top venues to which they route orders, including a description of any arrangement for payment for order flow and any profit-sharing relationship. For example, a broker-dealer can express its payment for order flow arrangements in ways that appear to be trivial, such as, "Payments received from Citadel Securities, LLC averaged less than $0.0010 per share." Because the disclosure rules do not require more detailed explanations of the conflict, including, for example, the total payments received from or paid to each venue based on order type, customers can't properly assess the full extent of the broker-dealer's conflict of interest and the effect that conflict has on their routing decisions.

E. Current disclosure rules allow disclosures to be buried on firms' websites so they are typically extremely difficult to find, undermining the likelihood that they will be used effectively. They can also be indecipherable.

Rule 606 reports, which focus on broker-dealer routing information, are not easy to find. It is quite common for broker-dealers to bury these and other investor disclosures on their websites, including by requiring investors to click through a maze of several pages to find them or putting links to the disclosures in lightly shaded or tiny font, making them difficult to find. Moreover, it is

[7] *See Id.*

exceedingly burdensome and time consuming to search for multiple broker-dealers' reports in order to compare the different services offered. Rule 605 reports, which require market centers to publish monthly statistical measures of execution quality, can also be indecipherable.

The following is an actual example of how one such disclosure is currently presented.


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T|TCDRG|201607|A|13|21|45|6572|4794|1778|0|1778|0|0|0|0|0.0957|||||||||
T|TCDRG|201607|A|14|21|504|96180|87630|8550|0|7903|102|0|350|0|-0.0033|||||||||
T|TCDRG|201607|A|15|21|38|5413|2550|2563|0|0|0|365|802|306|0.0057|||||||||
T|TCDRG|201607|A|11|22|54|42000|0|42000|0|42000|0|0|0|0|0.007|0.0021|38958|0.0052|0|2112|0|930|0.01|0
T|TCDRG|201607|A|13|22|4|5100|3700|1400|0|1400|0|0|0|0|0.05|||||||||
T|TCDRG|201607|A|14|22|331|192828|191928|900|0|0|0|900|0|0|0.13|||||||||
T|TCDRG|201607|A|15|22|8|6803|5170|614|0|0|0|0|0|614|-0.0309|||||||||
T|TCDRG|201607|A|11|23|9|23158|0|23158|0|23158|0|0|0|0|0.0174|0.0071|23158|0.0019|0|0|0|0|0|0
T|TCDRG|201607|A|12|23|65|186691|170618|16073|0|16073|0|0|0|0|-0.053|0.0079|5100|0.0005|0|10973|0|0|0|0
T|TCDRG|201607|A|14|23|20|57198|54700|2498|0|2498|0|0|0|0|-0.07|||||||||
T|TCDRG|201607|A|15|23|1|4000|4000|0|0|0|0|0|0|0|0|||||||||
T|TCDRG|201607|A|11|24|1|5299|0|5299|0|5299|0|0|0|0|-0.052|0.008|898|0.006|0.1|4401|0.1|0|0|0
T|TCDRG|201607|A|12|24|11|75099|66639|8460|0|8460|0|0|0|0|-0.0329|0.0082|2276|0.0033|0|6184|0|0|0|0
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In this example, there is no header information for the respective columns so one is left to guess what each column means. Furthermore, there is no explanation of what any of the figures mean in any meaningful context. This is a prime example of how disclosure can be designed to be absolutely meaningless for the vast majority of users, including those who have considerable expertise in understanding financial disclosures. Such "non-disclosure" disclosure increases the likelihood of its being misinterpreted. As a result, for most users, it is useless at best, harmful at worst.

II. The proposal remedies several of the shortcomings in the current disclosure rules. However, there are also several serious deficiencies in the proposal that must be remedied for the rule to have a maximally beneficial effect on routing practices and execution quality.

We applaud the Commission for taking this issue on. It is well past time that these disclosures provide meaningful information to investors, third-party analysts, academic researchers, and regulators so that they can have a more comprehensive understanding of order routing and execution practices as well as overall market quality. If these disclosures are designed and presented correctly, they have the potential to greatly improve practices in the market by allowing market participants to make more informed choices, ensuring best execution, and promoting competition based on terms that are beneficial to investors. However, the deficiencies discussed below must be remedied for these disclosures' potential to be realized.

A. The proposal's artificial distinction between institutional and retail orders based on order size is likely to lead to orders being mischaracterized and the resulting disclosures being incomplete and potentially faulty. The distinction should be revised to better capture orders that are institutional and orders that are retail by looking at the account that is placing the order rather than the size of the order.

As discussed above, orders of $200,000 and above are explicitly excluded from the current order handling disclosure rules. The proposed rule appropriately eliminates this exclusion.

However, instead of applying the same disclosure regime to all orders regardless of their size, the proposal bifurcates the disclosure regime, creating an artificial distinction between disclosure for "institutional orders," defined as those having a market value of $200,000 or more, and "retail orders," defined as those having a market value of less than $200,000. Under the proposal, "institutional orders" are eligible for customer-specific disclosures as well as publicly aggregated disclosures covering the same information that is presented in the customer-specific disclosures. "Retail orders," on the other hand, do not receive any new customer-specific disclosures, and the public disclosures are mostly limited to information relating to conflicts of interest.

Because the distinction between "institutional" and "retail" orders is based on size rather than on who places the order, it is possible and indeed probable that many orders will be mischaracterized and the resulting disclosures will be incomplete and potentially faulty. This is because orders having a value under $200,000 placed by institutional investors would not be included in the institutional disclosures, despite the fact that it is not uncommon for institutional investors to send smaller orders to the same broker-dealer or to split up larger orders among several broker-dealers. Alternatively, a small institution whose orders are also relatively small may not hit the order threshold to receive the disclosures. Thus, a size-threshold may mean that a not insignificant amount of trades may not be captured in the resulting disclosures, making them less accurate and useful. The size-threshold also does not appropriately reflect the fact that different securities trade differently based on their available liquidity and their capacity to move the market. For example, an institution is more likely to split up into smaller sizes a less liquid stock than a more liquid stock. In fact, the Commission goes through some detailed analysis in the release examining these issues, including an analysis of the percentage of orders that would meet the definition based on the number of orders, market value, and activity level. Its analysis actually proves the point that a size-based threshold is an imperfect proxy for who is trading.

Further, the release acknowledges other potential problems with a fixed threshold approach, including the possibility that market participants may change their behavior or stock prices may change over time. The Commission accurately states, for example, that fixed thresholds generally provide an incentive for those affected by the threshold to alter their actions to control whether the action is above or below the threshold. With respect to the threshold in the definition of institutional order, customers may have an incentive to increase their order sizes to exceed the threshold if they can get better information about routing and execution quality for orders exceeding the threshold. For example, customers may no longer split orders into smaller sizes of less than $200,000. However, it's not clear whether that choice would benefit them or harm them in other ways. They may ultimately be left with the undesirable choice between placing orders of $200,000 or greater, in order to receive the disclosures but at the risk of paying higher market impact costs, or placing orders of less than $200,000, in order to better protect their order information while sacrificing their ability to receive disclosures on their order routing. Ironically, the latter choice would result in their not knowing whether that decision actually benefited or harmed them, still leaving them in the dark.

Ideally, a broadly applicable disclosure regime that required the same information for all orders would apply. However, we also understand that a lot of the information disclosed to institutional investors may not be especially useful or relevant in the retail context, given the fact that institutional investors typically use more complex routing strategies than retail investors and have unique concerns about information leakage that don't typically apply to retail investors. If the

Commission decides that different disclosures should be provided to different market participants, getting the dividing line right is absolutely critical to ensuring that those who are intended beneficiaries of the respective disclosures actually receive and benefit from them.

Assuming the Commission retains the distinction between institutional and retail orders, it should be revised to better capture those orders that are institutional and those that are retail by looking at the account that is placing the order rather than a sized-based threshold that acts as an imperfect proxy for who is trading. FINRA's and MSRB's recent proposals to enhance retail disclosures for fixed income transactions are instructive in this regard. In their original proposals, FINRA and MSRB proposed a size-based threshold as a proxy for retail trades, which triggered enhanced disclosures. However, they later revised their approach to instead look at the account that is trading the securities.[8] Specifically, the revised approach distinguishes institutional trades from retail trades by requiring enhanced retail disclosures for accounts that do not meet the definition of institutional account under FINRA Rule 4512(c)/MSRB Rule G-8(a)(xi). These parallel rules define an institutional account as an account of (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.[9]

We strongly encourage the Commission to adopt a similar approach to distinguish institutional from retail orders in this rule. Doing so would ensure that the disclosures are not prone to classification errors based on size, value, or another threshold amount. It would also ensure that those who are intended to receive and benefit from these disclosures actually do so. In addition, this is a workable approach. As FINRA stated in its re-proposal, the retail/institutional account identification is already used in broker-dealer firms' business processing and therefore would be simple to apply.

B. The contents of the institutional disclosures will provide significant utility, and these disclosures have the potential to drastically improve institutional investors' ability to assess broker-dealer routing decisions and the resulting execution quality. However, the contents of the retail disclosures, while an improvement over current disclosures, are still severely deficient, and we struggle to see how retail investors would truly benefit from them in practice.

Assuming the changes to the institutional/retail distinction are appropriately remedied, institutional investors, for the first time, will receive detailed customer-specific and publicly aggregated disclosures related to broker-dealers' order handling, including the routing of their orders to various trading centers, the execution of those orders, and the quality of the executions. Their ability to receive disclosures will no longer be based on their bargaining power, which will

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[8] FINRA Regulatory Notice 15-36, Pricing Disclosure in the Fixed Income Markets, October 2015, http://bit.ly/2cwIOfR; MSRB Regulatory Notice 2015-16, Request for Comment on Draft Rule Amendments to Require Confirmation Disclosure of Mark-ups for Specified Principal Transactions with Retail Customers, http://bit.ly/2d0QFIJ.

[9] FINRA Rule 4512, Customer Account Information, http://bit.ly/2dmvH78; MSRB Rule G-8(a)(xi*),* Customer Account Information, http://bit.ly/2depRmk.

put all institutions on a level-playing field so that they have the necessary information to make informed decisions about who they entrust with their orders.

The customer-specific information will help them review how their broker-dealer's incentives, routing decisions, and strategies ultimately affect their execution quality. Armed with this information, they will be able to better assess the extent to which their broker-dealer is meeting its best execution obligations. Notably, the proposal will now require disclosures to distinguish between marketable and non-marketable limit orders, which will improve institutional investors' understanding of whether their broker-dealers are using order routing strategies that raise concerns relating to conflicts of interest and result in inferior fill rates.

The publicly available disclosures will provide the same information that is presented in the customer-specific disclosures for each broker-dealer on an aggregated basis. These disclosures will improve institutional investors' ability to compare the routing services of their broker-dealer with others in the market, thereby promoting competition not only between broker-dealers but also between trading centers. The broker-dealers that can best minimize conflicts of interest, limit information leakage, lower transaction costs, and deliver the best executions for their clients will prosper, and so will the trading centers that can attract orders based on the cost and quality of their executions. Thus, broker-dealers and venues will be forced to compete on terms that benefit investors by offering them superior services, not on terms that serve their own financial interests. In addition, these disclosures will provide academics and third-party analysts with rich data that is not currently available, enabling further research on order routing and execution information as well as on overall equity market quality more broadly. Commission staff could also use these disclosures to determine whether to investigate potential best execution violations and to conduct further data-driven market structure analyses, both of which could inform future rulemakings.

Although the proposed retail disclosures suffer from significant deficiencies, discussed below, they do represent an improvement from current disclosures, particularly with regard to providing enhanced information relating to broker-dealer conflicts of interest. First, they are an improvement from current disclosures because they require firms to separate marketable and non-marketable limit orders, which will enable investors to have a less cloudy view of whether broker-dealers route to the venues that pay for order flow and provide the highest rebates. Second, the proposed retail disclosures will provide much more detailed and meaningful information relating directly to conflicts of interest. This includes requiring the disclosure of the net aggregate amount of any payment for order flow or rebates received from or transaction fees paid to each venue based on order type, both as a total dollar amount and on a per share basis, and requiring broker-dealers to describe in more meaningful terms any payment for order flow arrangements and profit-sharing relationships with certain venues that may influence their order routing decisions. This information will enhance current disclosures by not just showing that there may be a potential conflict but also by providing more information about the degree to which that conflict influences routing decisions. If, for example, a firm is routing all of its orders in ways that maximize its own revenue, that may suggest it is not routing based purely on what's best for the client.

Despite these improvements, the retail disclosures remain severely deficient in significant ways. Indeed, we struggle to see how retail investors would truly benefit from them in practice. First, the proposal neglects to include any new customer-specific, quantitative disclosures relating to retail order-handling practices. Second, it neglects to include any public disclosure of

aggregated retail order handling statistics. As a result, investors, third-party analysts, and academic researchers won't be able to understand how the disclosed conflicts, discussed above, actually influence the resulting execution. Irrespective of any conflict, they will not even be able to assess whether customers are being best served by their broker-dealer's routing decisions.

The only way to know this information is by requiring execution quality statistics. While the same disclosures that apply in the institutional context may not be entirely relevant or useful in the retail context, it does not excuse the Commission from requiring other disclosures that would be relevant and useful in the retail context. Furthermore, the fact that most retail investors may not use such disclosures directly does not mean they won't benefit indirectly. It is well established that disclosures can and do provide indirect benefits both through their ability to promote competition and through their use by third-party analysts and academics researchers to provide in-depth reviews of the disclosures that in turn affect retail investors' decisions.

Therefore, retail investor execution quality statistics must be added to enable market participants, academics, and regulators to examine the extent to which retail brokers are best serving their clients. We encourage the Commission to consider the metrics that are included in the Financial Information Forum ("FIF") voluntary templates as a useful model for such disclosures, both on a customer-specific and aggregated basis.[10] While these templates are voluntary, only three retail broker-dealers and three wholesale market makers currently participate. This is an indication that a regulatory solution is the only way to ensure that these disclosures are provided on a broad basis. And, the fact that several high-profile market participants provide such disclosures shows it is possible to do so, undercutting any argument that it is too costly or burdensome to do. We also encourage the Commission to add to the template the National Best Bid and Offer (NBBO) at the time a marketable order is received, NBBO at the time the order is executed, and any difference between them. This will give additional information about whether any delays in routing and execution affect the ultimate price the investor pays.

C. The Commission must do more to ensure that these disclosures are produced and presented in a user-friendly, digestible manner.

First, we commend the Commission for requiring the institutional disclosures to be presented in machine readable eXtensible Markup Language (XML) format, which will allow the disclosed information to be fully searchable, sortable, and downloadable. It will also enable software programs to recognize and process the data, making it easier for market participants to engage in high-quality analysis of the disclosures.

However, there are several other ways in which the proposed requirements for presentation of these disclosures would decrease the potential utility of these reports. For example, the proposal does not require the institutional disclosures to include header information for the respective columns and rows, explaining what each category means. Even though institutional investors are typically more sophisticated than retail investors, the Commission should not assume that every institutional investor is sufficiently sophisticated to know what each column and row signifies without such guideposts. Even if an institutional investor knows how to read this information, failing to include header information increases the likelihood it will be misinterpreted. The

[10] Financial Information Forum, FIF Rule 605/606 – Retail Execution Quality Statistics Template, Updated: June 12, 2015, http://bit.ly/2ddPal4.

presentation of Rule 605 reports is a cautionary tale that demonstrates the need for a clear statement by the Commission that such "non-disclosure" disclosure in this or any other context is unacceptable.

Even more disturbing, the proposal inappropriately allows broker-dealers to satisfy their public disclosure requirements by merely making the disclosures available on a public website, putting the onus on those whom the proposal is intended to benefit to figure out where the disclosures can be found. Experience tells us that it is quite common for broker-dealers to make investor disclosures difficult to find, including by burying them on their websites, by requiring investors to click through a maze of pages to find them or by putting links to the disclosures in lightly shaded or tiny font. In addition, one of the biggest potential benefits of these enhanced disclosures is that they would allow investors, third-party analysts, and academic researchers to compare different broker-dealers' activities. However, it would be unduly burdensome and inefficient for those who seek to compile these disclosures to have to track down and compile each one manually. The Commission should instead require that these disclosures reside in a centralized public database. This would make it easy and efficient to find, compile, and compare current and historic disclosures across broker-dealers. These disclosures could be housed on either the Commission's or FINRA's website.

Conclusion

Without high-quality data, we can't know for certain whether broker-dealers are complying with their best execution obligations at all times or even ever. These disclosures have the potential to provide that critical information, which investors can use to make more informed decisions about whom to use for routing services. In addition, these disclosures have the potential to drive broker-dealers' best execution standards and provide regulators evidence of potential violations of those standards. These disclosures also have the potential to promote competition on terms that benefit investors in the form of higher quality routing and execution practices and lower costs. But these benefits will only be realized if revisions along the lines of those suggested above are adopted.

Respectfully submitted,

Micah Hauptman
Financial Services Counsel