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February 3, 2017

By Electronic Mail

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

Re: *Disclosure of Order Handling Information; Proposed Rule*, Release No. 34-78309; File No. S7-14-16

Dear Mr. Fields,

I appreciate the opportunity to provide the Securities and Exchange Commission (“**Commission**”) with additional comments on its proposed rule regarding Disclosure of Order Handling Information (“**Proposal**”).¹

I have been directly involved in the design and construction of trading and analytical systems for the equity market for over 3 decades, most recently as head of quantitative equity products for IHS Markit. I believe that my expertise in U.S. equity market structure and in collecting, analysing and publishing execution statistics for retail, institutional and regulatory market participants provides a unique perspective on transparency around the handling and routing of institutional customer orders by broker-dealers. This letter addresses the recent comment letter by Healthy Markets²

I am very supportive of improving transparency into the equity market and agree with Healthy Markets that this rule should cover 100% of all order routing and provide meaningful information to all investor types. We also agree that professional investors, and registered investment advisors in particular, should have more information available to inform their decision-making. We do, however, believe that a simpler, more cost effective version of the rule would accomplish these goals in both a timelier and more effective manner. In particular, I believe that the original proposal I submitted while at IHS Markit for categorizing orders³ utilizing held vs not held and subdividing routed order disclosures by marketability, time in force, trading restrictions, and displayability is superior to a methodology that would require all routing brokers to determine the nature of the end investor and categorize strategies by level of aggression.

In short, basing order routing disclosures based on the held / not held distinction ensures that investors and their advisers have detailed order routing information on the orders that matter: those

¹ Disclosure of Order Handling Information; Proposed Rule, Securities Exchange Act Release No. 78309 (July 13, 2016), 81 FR 49,432 (July 27, 2016).

² Healthy Markets, RE: Disclosure of Order Handling Information (S7-14-16), Jan. 6, 2017, available at <https://www.sec.gov/comments/s7-14-16/s71416-1464340-130322.pdf>

³ IHS Markit, Re: Disclosure of Order Handling Information; Proposed Rule, Release No. 34-78309; File No. S7-14-16, Sept. 26, 2016, available at <https://www.sec.gov/comments/s7-14-16/s71416-13.pdf>

orders that the broker-dealer has exercised discretion, i.e. held orders. Order routing disclosure requirements, at their core, provide insight into a broker-dealer's exercise of discretion. This view is supported by the following four premises:

1) **Full coverage:** All orders are either held or not held, so categorizing based on that difference would cover 100% of orders, and would not, as asserted, leave gaps in reporting.

2) **Legal differentiation:** There are legal differences between held and not held that should impact reporting. Conflating the two will result in flawed statistics. First, Held orders confer an obligation to execute the entire order as soon as practicable, which means that brokers do not have discretion to break the orders up into smaller pieces over a period of time. This means that they can and should always be evaluated as a single order based on the market conditions immediately preceding the routing of that order. Not held orders, however, can be broken up into pieces and routed at the discretion of the broker receiving them. This is why categorizing the routed orders based on not held must be more granular. Second, held orders, when under 10,000 shares, must always be displayed in their entirety if the order is not marketable. There is no flexibility to hold back quantity, use a dark pool or even to use reserve quantity. This is why categorizing routed orders under not held needs to include "displayable" as a subcategory for limit orders. Third, broker-dealers in receipt of held orders must afford them "manning" protection, meaning that any executions received by a broker-dealer, even from a principal order placed on exchange before receipt of the order, must be applied to that order. This is why it does not make sense, and would be very difficult to show subsequent routing for held orders. Doing so would be both unnecessary and very difficult since manning executions come from completely unrelated orders in the brokers audit trail.

3) **Arbitrariness and cost of using strategy definitions:** While we agree that the idea of reporting on routed orders differently based on order strategy is fine in the abstract, it does not pass a cursory cost-benefit analysis. Such a requirement would create an entirely new and arbitrary compliance system to create and monitor those categories, and not add much value. The best method to ensure that reported statistics are statistically comparable would be grouping all orders routed by a hierarchy that includes the main differentiating features of the routed orders themselves. This would mean grouping them first by held / not held and then into constituent subcategories for comparison. The key subcategories of routed orders are:

- Marketable vs non marketable (as in Rule 605);
- Time in force including IOC vs Day (separating out extended market, premature, on open and on close orders);
- Unrestricted vs restricted (as in Rule 605 with the change to consider short sells outside of Rule 201 as unrestricted);
- Displayability, meaning orders sent that are fully displayable, fully dark, or partially displayable with a reserve quantity that is not displayed;
- Order size, meaning an expanded set of size categories to ensure all orders are reported.

4) **Difficulty of determining the nature of the end investor:** Unfortunately, the notion that all brokers "know" who the end customer is false. Brokers who execute orders sent from other brokers are rarely given information relating to the either the client of the first broker or the asset owner. In particular, exchange brokers, who route billions of shares per month, do not have access to this information. It is also worth noting that exchanges consider all orders they receive as held, which

is why it is vital to have full disclosure for the orders they route on behalf of those orders. As a result, the idea to categorize orders based on the end client is good in the abstract, but would be cost prohibitive with limited benefit. Most, if not all, of the benefit of a disclosure regime is the definition of statistically valid comparisons of routed orders, which can be done easily based on the order information itself. Categorizing based on investor will require a new compliance and monitoring system that will be extremely expensive at the current time. Perhaps, after the CAT is fully implemented, this can be revisited, since a primary feature of that system is to capture the asset owner and decision-maker that submits all orders.

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I would like to thank the Commission for the opportunity to submit these comments. If the Commission has any questions or would like additional information, please do not hesitate to contact us.

Respectfully submitted,

David M. Weisberger
President, Exquam LLC



Cc:

The Honorable Michael S. Piwowar, Acting Chairman

The Honorable Kara M. Stein, Commissioner

Gary Goldsholle, Deputy Director, Division of Trading and Markets

David S. Shillman, Associate Director, Division of Trading and Markets

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