

FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

Via Electronic Delivery

September 26, 2016

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

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

Dear Mr. Fields,

On behalf of the members of the Financial Information Forum (“FIF”)¹, we thank the Securities and Exchange Commission (“Commission” or “SEC”) for the opportunity to provide comment on this important proposal for rule changes related to disclosure of order handling information, the effects of which will impact firms’ internal policies, procedures and processes, as well as the customer experience. FIF is a proponent of enhanced disclosure to both institutional and retail clients; and, while our members are supportive of such disclosures, we stress that any information provided is helpful only if it can be easily understood. More information does not necessarily mean “better” disclosure. It is with the ultimate goal of providing meaningful disclosure that FIF responds to this rule proposal with comments reflective of our members’ views.

The content of this proposal and resulting rules are fundamental to firms’ core businesses and business models across the industry, and therefore should not be adopted without thorough consideration. FIF members do agree the positive outcome of increased disclosure has often been behavioral change, as broker-dealers are incented to provide quality executions when new light is shed on routing practices. We note that the 60 days allotted to address these critical issues is not sufficient to provide the level of thought and detail our members would have otherwise preferred; we would therefore welcome an opportunity to meet with Commission staff to further examine the details or ramifications of any aspect of this proposal or FIF’s recommendations.

This comment letter highlights FIF members’ overall views, primary concerns and recommendations related to this proposal, followed by appendices which include FIF members’ responses to selected questions posed by the Commission. The following is a summary of our five key comments and discussion

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact financial services and technology firms. Our 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 to arrive at productive solutions to meet the requirements of new regulations, technology developments, and other industry changes.

points, which are heavily focused on implementation challenges associated with various aspects of the proposal, and are not intended to address policy issues.

1. FIF members are not in agreement with the approach taken by the Commission to define retail and institutional customers for purposes of this proposal. As an alternative, FIF recommends using “held” or “not-held” orders² as the criteria for determining the content and format of the information customers receive. FIF will address many of the topics raised by the Commission from this perspective which we believe is the more appropriate method to differentiate these disclosures.
2. FIF believes quantifying the fees/payments passed to/from trading centers is not useful to “retail” investors, as such disclosure in the form of a data field is subject to misunderstanding and misinterpretation. Instead, the narrative currently included in a 606 report should be more clear, concise and consistently presented to describe material relationships.
3. FIF members believe the process of assigning a “strategy” (aggressive, passive, neutral) will result in an inaccurate description of the manner in which a specific “child” order was handled at the time it was routed. We are particularly concerned that the categorization of algorithms (“algos”) is subjective and will vary widely across the industry, producing a result that is counter to the spirit and intention of the rule. An alternate method that will accomplish the Commission’s goal of consistency is to report information at a more granular level, categorizing the information based on intent of orders at the time they are routed. Specifically, instead of aggressive/passive/neutral, the categories should be as follows: market orders, marketable limit orders, non-marketable limit orders, and other orders. Furthermore, directed orders should be excluded from the reports; or, if included must be unmistakably segregated from non-directed orders.
4. The narrow timeframe of seven business days allotted for a broker-dealer to respond to an institutional customer’s request for detailed information could be problematic, especially if the inquiry is received early in the monthly cycle before accurate fee and rebate information can be captured from the respective trading centers.
5. The current proposed rule has been interpreted to exclude broker-dealers acting as a customer of another broker-dealer from the definition of customer and therefore will not be included in the 606 statistics. The FIF members believe that activity received by a broker-dealer from another broker-dealer acting as a customer should be included in the order handling report. The same is true of exchanges routing orders to other market centers.

FIF members also note that the rule filing and proposed templates are heavily oriented toward cash equities. While options are currently included in Rule 606 reports, the additional data fields suggested by the proposed rule changes are not meaningful when applied to options, particularly complex order types. For that reason, FIF’s comments are focused on order handling disclosures for cash equities.

Tailor Information Disclosure to Order Handling Instructions

FIF members believe that defining retail and institutional customers based on order size, as set forth by this rule proposal, is not a suitable way to determine the form and content of information disclosure. Instead we suggest an alternative based on the customer’s request as to how his/her order should be

² A [‘Not-Held Order’](#) may generally be described as a market or limit order that gives the broker or floor trader both time and price discretion to attempt to get the best possible price. Investopedia defines a [‘Held Order’](#) as a market order that must be promptly executed so that the request is immediately filled. In most cases, the trader will be required to hit the bid for purchase orders or, in case of a sell, to take the offer.

handled; that is, “held” or “not-held”. This approach would more closely align disclosure reports with customers’ intentions. Referencing for example the templates proposed within this rule filing, held orders would be more conducive to the “retail” 606 report formats, while not-held orders that often utilize algorithms to determine optimal routing, could incorporate some of the more expansive concepts described in the proposed “institutional” format.

As proposed by the Commission, the 606 report formats (with suggested enhancements to separate marketable from non-marketable limit orders) assume that retail customers’ orders are small, straightforward market or limit orders, and routed to a single destination for execution. The proposal further assumes that institutional orders are essentially large (e.g. over \$200,000 in market value) and are routed to market centers for execution primarily via algorithms and other “smart” order routing mechanisms. The reporting requirements and enhancements proposed for retail-sized orders attempt to reflect the homogeneous nature of the order and execution, while the information defined for disclosure to institutional customers tries to capture the more complex order handling strategies employed by algorithms.

The proposed approach could ultimately create much confusion, as there are two scenarios that would cause investors to receive incomplete information: 1) many orders submitted by retail investors will exceed \$200,000, and therefore be omitted from the “retail” report, yet be required by the “institutional” report; and, 2) because many institutions split their orders into smaller pieces (less than \$200,000) before submitting to multiple broker-dealers, they will be omitted from the institutional report and be included instead on retail reports.

FIF members suggest it is not necessary to identify certain orders as retail and others as institutional to appropriately format order routing information. The held/not-held approach will alleviate the issues presented by the retail/institutional approach with a targeted, deterministic solution. However, if it is deemed necessary by the Commission to differentiate between retail and institutional orders, FIF points out that using order size of \$200,000 as the criteria diverges greatly from regulators’ rules for other purposes. For example, designation of a Larger Trader is required under Rule 13h-1, or OATS reporting and other rules promulgated by FINRA often reference FINRA 4512. FIF believes the distinction between retail and institutional customers should be made in one of two ways: 1) adopt a single definition across regulators (e.g. some modification to FINRA’s Rule 4512(c)³); or, 2) based on the account type assigned by the broker-dealer when establishing the account as part of the “Know Your Customer” requirements. The SEC’s proposal suggests yet another definition of retail and institutional that is completely unrelated to FINRA or any other SRO definitions (e.g. exchange Retail Liquidity Programs), which further supports FIF’s position that this proposal should avoid differentiating retail from institutional, and instead focus on the methods of handling the specific order.

Objective Categorization of Orders Provides Consistency

Orders categorized by held and not-held is the first step to establishing consistency; a second level of consistency is the uniform description of order types. The SEC-proposed institutional template requires

³ **FINRA 4512. Customer Account Information-** (c) For purposes of this Rule, the term “institutional account” shall mean the 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. All others are considered “retail”.

application of a “strategy” to each order routed, categorized as “aggressive”, “passive” or “neutral”. FIF members are strongly opposed to this approach as it introduces subjectivity that will result in statistical variances across broker-dealers. There could be substantial differences in the way different broker-dealers categorize their algos, and an investor would incorrectly compare route reports received from various dealers.

Also to be considered are the numerous situations where one firm uses the algos of another firm to service its customers. For example: Broker-Dealer A has institutional customers, and it uses algos provided to it by Broker-Dealer B. Does Broker-Dealer A report on those algos as if they were their own? Who determines to which category each algo belongs – the broker that created the algo or the broker that uses the algo? Is the degree of aggressiveness of an algo in the eye of the beholder? If Broker-Dealer B provides the same algos to a number of different brokers, it would be possible for different brokers to categorize the same algo in different ways.

Algorithms often use complex, multi-layered methodologies which may involve more than one tactic and fit into multiple categories. A strategy attached to a particular order is likely to present conflicting information, as aggressive, passive or neutral may reflect the algo at a high level, but not the specifics of the child order being routed. There could be differences in the characterization of an order for several reasons: a large size market order may be converted upon routing to marketable limit to reduce market impact; limit orders going out via a smart order router may become marketable limit by the time they hit the market; or algo orders with a limit on the parent may be submitted as market or marketable limit on the child order.

We must underscore the fact that routing must be reported at the “child” level, not at the “parent” level. This is important to clarify, as the fill rates will be different if a parent order or a child order is used to calculate the statistics being reported. More granular reporting of order type (marketable limit, non-marketable limit) will prevent these disconnects and be consistently more accurate in describing the way child orders are routed than would be possible with subjectively assigned strategies.

Report Format

Retail-oriented broker-dealers who are focused on the “customer experience” emphasize the importance of providing information that is easily understandable. Given that retail customers typically submit “held” orders, targeted metrics would be most suitable. FIF recommends that held orders be included in modified 606 reports (currently referred to as “customer” reports), *regardless of notional value*. In contrast to the rule proposal, this would require odd-lot orders⁴ as well as large orders (\$200,000 +) to be placed in their respective buckets based on order type (market, marketable/non-marketable limit, etc.), and reported in a single report format.

As proposed in the filing, if a natural person were to submit some orders that are less than \$200,000 and other orders in excess of \$200,000, the order statistics would be reflected in two different aggregate report formats. Any information sent to that customer upon request of the “retail” report would be incomplete, and he/she would need to also request the “institutional” report in order to receive the information related to the larger orders. This would surely cause confusion, as the investor’s information would be split across two reports, each presenting information in entirely different ways (different data

⁴ FIF recommends that “Odd Lots” should be removed from the “Other” category and placed in their respective categories based on order attributes such as Market, Marketable Limit, Non-marketable Limit, or Other, as applicable.

points and formats). A single report prepared for a “retail” customer describing how all “held” orders were handled, would be more self-explanatory, all-inclusive and easier to consume.

Including all “held” orders in a single report would also preclude the need for retail-oriented brokers to produce the broader set of institutional statistics that are not relevant to their customer base of retail investors. The requirement to generate the additional statistics would be an onerous task for retail broker-dealers who receive very few orders to which this information would apply. It would introduce a wholesale change to the current 606-methodology with significant added expense, and the expanded statistics would provide no added benefit to the retail client. Therefore, FIF recommends that broker-dealers be exempted from the “institutional” level of reporting where their customers’ “not-held” orders⁵ are de minimis to the total number of orders received.

There are many broker-dealers that handle a preponderance of “institutional” customers (e.g. a client base somewhat in alignment with the Commission’s definition provided in Footnote 1⁶, or FINRA’s definition under Rule 4512). These institutional customers are more apt to place “not-held” orders, which would fit well into an expanded template; however, they may also place a smaller portion of “held” orders. In that case, held orders should be grouped separately from the not-held orders, and only those fields that are applicable need to be populated.

There are many firms that service both retail clients that submit held orders, as well as institutional clients that submit not-held orders. Rather than generate reports in completely different formats as would be required under the rule proposal, it has been suggested that a single report format be designed that will allow firms to produce information in more consistent formats. Because our members are also concerned with the customer experience, and in order to achieve consistency (which is one of the Commission’s objectives in proposing this rule), a template for a “combined” report is being constructed by FIF and is currently under review by our members. The template will incorporate the abbreviated set of information that is useful to retail clients (with primarily held orders), as well as an expanded version for clients that submit not-held orders. This would allow broker-dealers to target their disclosures appropriately. FIF will soon submit to the Commission this alternative template for consideration, which would achieve the goals of the proposal and address issues discussed in this letter.

Report Content

Directed orders, including orders from customers who have given instructions that go against the broker’s default order routing behavior, should be excluded from the reports; or, if included, must be unmistakably segregated from orders that were routed according to the broker’s default routing behavior. This is especially important for the aggregate public report, where the inclusion of customized order flows could misrepresent the broker’s normal routing behavior.

⁵ FIF members wish to distinguish between algorithms and computerized methodologies that utilize real-time, dynamic market data to create and route an order, from others that use static data to create an order. The former is used with institutional orders, while the latter may be applied by a retail customer or investment advisor, for example, to create orders for portfolio rebalancing or asset allocation. These “retail” types of applications should not be categorized as “algos” because while they may generate an order, they do not dictate how an order should be executed. Similarly, a “smart order router” will rely on market data to determine where to route an order, but it does not determine how that execution is to be handled.

⁶ “An institutional customer includes, for example, pension funds, mutual funds, investment advisers, insurance companies, investment banks, and hedge funds.”

With respect to not-held (e.g. institutional) orders, FIF members note that there are cases where not-held orders are sent through broker-dealer-provided algos that enable the institutional customer to customize various parameters within a standard algo. This functionality frequently allows the customer to prioritize certain market center destinations. These types of orders may be considered by some to be directed orders and would continue to be excluded from 606 reporting, while others might include them in the not-held category. It is important that firms are consistent in identifying the orders generated by user-configurable algorithms that allow clients to control various aspects of the routing logic. If it is determined that these types of directed orders should be included, they should be segregated from held and not-held, and labeled accordingly.

Additionally, the FIF members question why the proposed institutional order handling report differs from the retail order handling report in the market centers that should be included. Specifically, the Retail version of the report is specifically updated to include only the top ten market centers receiving order flow for the orders in scope for the report. However, the institutional report includes no such filter, implying that all market centers should be included. The concern is that there are a large number of market centers that may receive de minimis order flow, and showing each market center will make it more difficult to review the report, without providing significant added benefit. The members recommend that a filtering methodology be applied to the institutional version that is consistent with the retail report and would limit the market centers being displayed to only the top ten, plus those receiving over 5% of the routed order volume.

FIF members also question why the proposed institutional order handling report is so heavily focused on strategies and execution quality. FIF believes that complete performance analytics would be a better demonstration of the relative success of an algorithmic strategy, and a 606 report should not be used for that purpose. While it is important that an institutional investor have full access to information about a broker-dealer's order routing practices, the 606 report is but one of several tools that should provide input to ongoing discussions between broker-dealers and their institutional clients.

The "Retail" Perspective

FIF members, particularly those that primarily service "retail" customers (natural persons), believe that the data fields reported for "held" orders should provide straightforward information that is self-explanatory and useful to customers. It is questionable whether quantifying the fees/payments passed to/from trading centers is helpful to retail investors, because without complete background information, the data presented may not be properly interpreted. Instead, FIF members recommend that the language currently included in a 606 report to describe financial arrangements should be more explicit and highlight the material relationships. The rule proposal suggests specifics related to the terms of payment for order flow arrangement or profit-sharing relationships that may influence a broker-dealer's order routing decision and would be required to be disclosed under the proposal:

- incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment;
- disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee;
- volume-based tiered payment schedules; and
- agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.

FIF strongly suggest that the fees and payments information for the held orders be removed from the proposed template and instead provided in a narrative format. FIF members believe that additional

regulatory guidance should be provided to ensure the “plain English” descriptions of the financial arrangements are sufficiently comprehensive without causing confusion and consistently presented industry-wide. The information disclosure regarding fees and payments is better handled in the form of a narrative than in a data field that can easily be misinterpreted.⁷

Our members also note that retail investors tend to take a more holistic view of their relationships with their broker-dealers, which may be influenced by many factors. Investors are not generally utilizing the data provided in 606 reports to make decisions regarding their brokers, regardless of the report format, content or accessibility. Similar to the enhancements made to simplify prospectuses for the benefit of retail investors, FIF members are not optimistic that added information or new formats will generate increased retail interest in 606 reports. Therefore, it is important that the increased cost of enhanced disclosure be carefully weighed against the added utility and usefulness the new information will provide to the retail investor.

Appendix 1 provides FIF members’ answers to specific questions posed by the Commission in the proposed rule related to “retail” 606 reports.

Institutional Considerations - Actionable Indications of Interest

FIF members generally agree with the proposed definition of Actionable IOIs; however, clarification is needed as to whether conditional IOIs are considered “actionable”. In responding to the notion of including IOIs, our members point out there are circumstances beyond the specific data elements associated with the offering that would cause an IOI to be “actionable”, or not. One of the determining factors is the level of automation involved in the process. For example, when the information related to an IOI is presented to a potential counterparty in an automated fashion, it can more easily be identified and captured as “actionable”. In contrast, a telephone conversation between a broker-dealer and a potential counterparty where the same required elements (symbol, side, price and size) are mentioned, would not be recorded as an actionable IOI. Furthermore, it would not be possible to match an order resulting from an IOI unless it was part of an electronic process flow such as a series of FIX messages or some other OMS application. Accordingly, FIF suggests that the Commission consider the addition of another element to the definition of an Actionable IOI; specifically, that the IOI is electronically communicated and capable of resulting in an automated, electronic execution.

Furthermore, broker-dealers are concerned that disclosing all the venues that were sent Actionable IOIs will be harmful from a competitive perspective. IOIs are often shared with institutional clients, so it would be detrimental to both broker dealers and their institutional customer to include those venues on the customer-specific report as proposed. FIF members believe the rule filing should explicitly state that this disclosure is limited to “market centers”, defined in Rule 11Ac1-5(a)(14) as “any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.”⁸

Reporting to Broker/Dealer Intermediaries

The proposed rule indicates that the customer placing the order with the broker-dealer, whether the account holder or an investment adviser or other fiduciary, would be viewed as the “customer” for purposes of the proposed amendments to Rule 606. FIF agrees that the approach taken by the Commission is appropriate. It is impractical and in some cases impossible to know the underlying

⁷ Please see answers to questions 94 and 95 in Appendix 1.

⁸ Also referenced in Footnote 63 of the [Final Rule: Disclosure of Order Execution and Routing Practices](#).

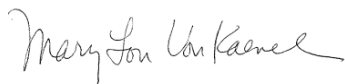
accounts for which the order was placed; and in fact, orders are routed and executed at the “master account” level, and not at the sub-account level. If allocations are known to the order receiving firm, they are most often provided after the fact for settlement purposes. For that reason, the entity placing the order, as the “master account”, should receive the report.

However, the current proposed rule excludes broker-dealers acting as a customer of another broker-dealer from the definition of customer and therefore from inclusion in the 606 statistics.⁹ The FIF members believe that activity received from another broker-dealer acting as a customer should be included in the order handling report. The same is true of exchanges routing orders to other market centers. We believe these broker-dealers and exchanges should be able to request routing reports as any other customers are entitled to request.

Appendix 2 provides FIF members’ answers to specific questions posed by the Commission in the proposed rule related to “institutional” 606 reports.

Thank you for the opportunity to provide feedback on these important regulatory initiatives, and to request additional clarity in certain areas. The issues FIF members have highlighted in this comment letter are of critical concern to the industry and investors alike, and we are hopeful the alternatives we have proposed will be seriously considered by the Commission before next steps are taken toward finalizing requirements. Also as mentioned, an alternative template will be forwarded shortly for consideration. Please do not hesitate to contact me with questions or to arrange follow-up discussions.

Regards,



Mary Lou Von Kaenel
Managing Director
Financial Information Forum

⁹ The rule proposal has been interpreted to mean that broker-dealers are excluded as possible recipients of 606 reports, and that broker-dealer orders will not be included in aggregate reporting, based on the definition of customer order as referenced in this rule filing. See [17 CFR 242.600\(b\)\(18\)](#). (Customer order means an order to buy or sell an NMS security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least \$50,000 for an NMS security that is an option contract and a market value of at least \$200,000 for any other NMS security.)

Appendix 1 – SEC questions related to “Retail” Disclosure

87. Do commenters believe that broker-dealers use Rule 606 reports as a means to assess how their order routing and execution services compare to other firms? Do commenters believe that the reports encourage competition among broker-dealers? Why or why not? If so, do investors in turn benefit from such increased competition? Please provide data to support your arguments.

There are many factors that broker-dealers consider in assessing their competitive positions and various tools are used to make such comparisons, including review of others’ 606 reports. Expansion of 606 reports to provide additional information would support broker-dealers’ competitive analysis, particularly with an increased ability to compare like services. To the extent that broker-dealers alter their business models and behaviors to compete on execution quality, investors would ultimately benefit from enhanced reporting.

88. Do commenters believe that Rule 606 quarterly reports continue to provide useful information for customers placing retail orders in assessing the quality of order execution and the routing practices of their broker-dealers? Why or why not? If not, how could the reports be improved to provide more useful information to retail customers? Please explain.

FIF members believe that 606 reports are not frequently utilized by retail investors and the information posted is seldom viewed by retail order senders. It is the position of FIF member firms that retail customers take a more holistic perspective of their trading experience, so although they may be aware of 606 statistics, they are not as significant a priority. In addition, the information presented under the current requirements can prospectively be improved. That said, FIF members are very concerned that there will be significant effort and expense incurred to improve 606 reports for retail investors, but the low level of customer engagement and infrequent access will likely remain, despite the investment.

89. Do commenters believe that the proposed definition of non-marketable limit order is appropriate to distinguish the types of limit orders? Why or why not? Should the proposed definition be modified in any way? If so, please explain how.

FIF members agree with the definition of marketable vs. non-marketable limit orders; however, we remind the Commission that this requires implementation effort, and it is unlikely to add value to retail clients reviewing 606 data.

90. Do commenters believe that separately reporting limit orders by marketable and non-marketable will enable customers placing retail orders to better understand broker-dealers’ routing decisions and impact on best execution? Are there other ways in which that information might be useful to customers? Do commenters believe that the separate disclosure of marketable and non-marketable limit orders will be useful to broker-dealers, and if so, how? Do commenters believe it will promote competition among broker-dealers? Please provide data to support your arguments.

FIF members believe that separating marketable limit orders from non-marketable limit orders will have minimal impact on retail investors’ interest in 606 data. While it will provide other broker-dealers with additional information with which to assess their competitors, it will not promote additional competition.

91. Do commenters believe that market orders and marketable limit orders should be combined in the quarterly retail order routing report? Would such combination be useful to customers? If so, how? Please explain and provide support, if possible.

Given the proposed requirement to separate marketable from non-marketable limit orders, it would not be helpful to subsequently combine market orders with marketable limit orders for purposes of aggregated reporting. Development work is required to first differentiate each of the categories; therefore, each category should be reported to provide the investor as much clarity as possible. Again, FIF members believe this information will add minimal value to retail investors since they do not typically access these reports.

92. Should the Commission require the same disclosures for retail orders that it is proposing to require for institutional orders? Why or why not? Would any or all of the disclosures proposed above for institutional orders be appropriate or useful for evaluating order routing of retail orders? If so, would the proposed disclosures need to be modified in any way to be applied to retail orders? Please explain. FIF members believe the proposed institutional metrics would not benefit retail customers' decision making process because "held" orders constitute the vast majority of orders placed by retail customers. Broker-dealers would typically direct that order flow immediately to obtain "best execution". The metrics proposed within the institutional disclosure are intended for industry professionals (e.g. investment managers). These metrics do not apply to the type of orders placed by retail clients, and therefore would be difficult for retail clients to understand and compare. We believe the expanded disclosures for retail orders would not be worth the significant expense that would be incurred to implement.

Building on FIF's recommendation that the level of data provided should be based not on order size, but on whether it is "held" or "not held"; in the limited cases where a retail order is not held, it would often have been placed by an intermediary such as an investment advisor. The detailed descriptions of institutional order routing and other execution quality statistics relevant to a not held order would then be furnished to the investment advisor (or whoever placed the not held order), who is likely sophisticated enough to understand the details being provided.

We also request that a de minimis exception be applied to allow broker dealers who receive a minimal number of not held orders to be exempt from this level of reporting.

93. Are the venues that are required to be included on retail order routing reports appropriate? Should the requirement cover more or fewer venues than are currently included (i.e., the ten to which the largest number of non-directed orders were routed for execution).

FIF members believe it is appropriate to indicate the top ten venues to which a broker-dealer routes its orders; however, there are concerns related to consistency in the naming conventions necessary to allow investors to make accurate comparisons, as firms tend to name the destinations they are routing to differently. FIF made similar recommendations in its comment letter of October 22, 2014 which highlighted "the need to establish a consistent naming convention for consolidators and other routing destinations. For options, destination should be defined as the destination where the BD routes an order as opposed to where the execution occurred (e.g., reporting the consolidator as opposed to the exchange where order was executed)."¹⁰

In addition, FIF members believe it is appropriate for the institutional order routing reports to similarly limit the venues that are required to be included to provide consistency with the retail order routing report and minimize the noise that would be included if all routing venues were displayed.

¹⁰ FIF Comment Letter, October 22, 2014.

94. Do commenters believe that requiring broker-dealers to disclose, for each Specified Venue, payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received would enable customers placing retail orders to better assess their broker-dealers' management of potential conflicts of interest and quality of routing and execution services? Should the Commission require such information to be disclosed? Is there additional information that a customer could use to better assess their broker-dealer's conflicts of interest and quality of routing and execution services? Would requiring such disclosure affect broker-dealers' routing decisions? Please explain and provide support for your argument.

FIF members believe it will be difficult for retail and institutional investors to understand the types of relationships described. For example, how would a broker-dealer describe a relationship where they are equity owners in an exchange, or if they own a dark pool? These are highly complex relationships, and without a clear definition of what is and is not a conflict, these disclosures would be subject to interpretation. This is best described in a narrative form, and cannot be properly reflected in a data field or table.

Furthermore, different regulatory examiners tend to interpret the relationships differently and are sometimes themselves unable to discern what may or may not be a "conflict of interest". Imagine the challenge for investors to determine whether or not their orders are being routed appropriately.

95. Do commenters believe that the proposal will permit customers placing retail orders to be able to better assess whether financial inducements impact their broker-dealer's order routing decisions for different types of orders and the execution quality of those orders? Why or why not?

FIF members believe the relationships and their impacts are complex and would be subject to misinterpretation, therefore, creating more confusion than clarity. Broker dealers currently provide descriptions of the overall relationships broker dealers have with exchanges and other execution venues, and FIF members believe that the information currently provided is generally adequate; however, it would be helpful for regulators to publish additional guidance to ensure descriptions of "Material Relationships" are clear, concise and more consistent across the industry.

Customers submitting not held orders may elect a "cost-plus" model, in which case they would likely receive additional detail about their orders and executions, including the payments and rebates that impacted their orders/executions.

96. Do commenters believe there are other specific categories of orders in addition to market orders, marketable limit orders, and non-marketable limit orders that should be included in the disclosure that would aid investors placing retail orders in assessing the quality of their order routing? Please provide support for your arguments.

The three categories named above likely accounts for most (approximately 95%) orders placed. However, FIF members believe there is an opportunity to increase transparency on order routing practices by categorizing odd-lot orders currently included as "Other" more effectively. For example: "Odd Lots" should be placed in their appropriate category based on order attributes, e.g. Market, Marketable Limit, Non-marketable Limit, or Other.

Please note, prior to market open, the marketable or non-marketable characteristics of a limit order cannot be determined. This might be handled in one of several ways.

Option 1: Limit orders entered prior to 9:30 am ET will be treated as Non-marketable and therefore reported in the Non-marketable bucket.

Option 2: MOO & MOC orders should be included within Other (as is currently the case) because they are de minimis and would add to the complexity of the report for too little possible benefit. Any pre-open market order (not marked as MOO) should be categorized as a market order.

107. Do commenters believe that it continues to be useful for options to be included in disclosures for retail orders pursuant to Rule 606, in light of the fact that the proposal with respect to institutional orders would exclude options?

Yes, FIF is in agreement with this position.

108. Should the Commission require retail order routing reports, both customer-specific and public, to be made available using an XML schema and associated PDF renderer? Why or why not?

109. Do commenters believe that broker-dealers should be required to provide the customer-specific and aggregated reports on retail order routing in the proposed format? Why or why not? Do commenters believe that it is useful to customers for broker-dealers to provide the reports in a structured XML format that would facilitate comparison of the data across broker-dealers? If not, why not? Should only the customer-specific report be provided in a structured XML format? Should only the aggregated report be provided in a structured XML format? Do commenters believe that it is useful to customers for broker-dealers to also provide the reports in an instantly readable PDF format? If not, why not? Are there other formats that would be more appropriate?

Answer to Q108 and Q109. FIF appreciates consistency and harmonization of reporting formats for all customers; however, FIF would note that broker dealers seldom receive customer-specific requests for detailed order level information that would be made available in these formats. This calls into question the value versus the cost of formalizing this format.

110. Do commenters believe that it is appropriate to remove the requirement to report retail order routing information by listing market (NYSE, NASDAQ, and the American Stock Exchange (n/k/a NYSE MKT LLC))? Why or why not?

111. Do commenters believe that the retail order routing report divided by the three listing markets continues to be relevant and useful to customers placing retail orders and/or analyzing their broker-dealer's routing practices? Why or why not?

Answer to Q110 and Q111. FIF is in agreement with the Commission's position that the requirement to report retail routing information by listing market should be removed.

112. Do commenters believe that alternative or additional criterion should be required in reports regarding retail order routing such as market capitalization or security type (e.g., exchange-traded products or NMS stocks)? If so, please explain why should such criterion be used to report retail order routing information? Please provide data to support your arguments.

113. Do commenters believe that retail order routing information organized by stocks included in the S&P 500 Index and stocks not included in the S&P 500 Index versus by listing market or by NMS stocks would be useful to customers? Why or why not? Please explain.

Answers to Q112 and Q113. Generally, FIF members believe that 606 reporting for held orders should be kept as simple as possible. While there are opportunities for segmenting instruments (e.g. S&P 500 Stocks, Other Exchange-Listed Stock, ETFs), FIF members reached consensus that such an approach would become increasingly complex for these purposes.

114. Do commenters believe that it is reasonable and appropriate to require that the retail order routing reports be broken down by calendar month? Should the Commission require the retail order routing

reports be produced on a different frequency than quarterly (e.g., monthly)? Why or why not? What are the incremental burdens or benefits of providing reports at a different frequency? Please explain.

FIF members believe that the current frequency of posting quarterly reports is adequate. Further breakdown by month would not improve or add value to the reports but could further confuse investors, particularly if information regarding payment and receipt of fees and rebates is required. This is especially an issue with exchanges who tend to have complex fee structures that change regularly.

115. Do commenters believe that the Commission should require each retail order routing report be publicly available for a designated amount of time, as proposed? If so, is three years a reasonable amount of time that the reports should be available? Would a shorter or longer disclosure period be useful to investors and/or onerous to broker-dealers? Please explain.

FIF members suggest that the data be made publicly accessible for two years, to be consistent with the §240.17a-3 requirement that books and records data be stored for the first two years in “an easily accessible place.”

116. Broker-dealers currently are required to make publicly available for each calendar quarter their quarterly reports on retail order routing and retain such reports for a period of not less than three years. Generally, broker-dealers will remove the previous quarterly report from their Web site and replace it with their most recent quarterly report. Since past quarterly reports are already required to be retained by broker-dealers, should the Commission require broker-dealers to make publicly available the prior three years’ worth of quarterly reports from the effective date of the rule? Why or why not?

FIF members are opposed to this suggestion as it would be an extremely large undertaking, and circumstances may have changed over the last two/three years that would make comparison of the data difficult and possibly misleading. For instance, the large order data that was previously excluded will now be included; or, broker-dealers may have switched data reporting vendors and it is possible that data is being interpreted or translated in a slightly different way.

FIF members are not opposed to maintaining the data over a longer period, but believe that the information should be accumulated going forward upon effective date, and not recreated retroactively.

117. Should the Commission require all broker-dealers to make their public retail order routing reports available on one centralized website? For example, should all broker-dealer reports be available on the SEC’s or an SRO’s website? Why or why not?

FIF previously recommended the following in its comment letter of October 22, 2014: “While Rule 605 and Rule 606 reports are publicly accessible, there is not a central repository of this information that allows for comparative analysis geared towards the retail investor. FIF recommends that the SEC include publicly available Rule 605 and 606 data as part of its data visualization tool.”¹¹

118. Do commenters believe that the proposed change (replace term “customer order” with “retail order”) is appropriate? Do commenters believe that such change would provide clarity to market participants? Are there alternative ways to distinguish small and large-sized orders? Please provide support for your arguments.

To reiterate, FIF does not believe that the proposed data disclosure should be based on order size, but should instead be based on the way the order is routed. There is no need to differentiate between a retail order and an institutional order for these purposes.

¹¹ FIF Comment Letter, October 22, 2014.

Appendix 2 – SEC questions related to “Institutional”

1. Do commenters believe Rule 606 should be expanded to include institutional orders? Why or why not? Should the Commission consider an alternative approach? Why or why not?

FIF members believe their “institutional” clients should be provided with relevant information regarding the way their orders are handled. Currently, broker-dealers typically customize information to meet their client requests. We do understand the rationale for proposing a standardized format is to meet one of the primary objectives of this rule proposal; that is, to enable customers to easily compare various broker-dealers’ handling of orders generally, and their orders specifically. Therefore, it is important that the report formats be designed in a manner that will allow “institutional” (and “retail”) customers to understand how orders are being handled, and to be able to easily compare the standard practices of various broker-dealers. FIF members do not believe that the approach outlined within the proposal will achieve that goal, particularly with respect to the “institutional” orders, as the report format has been defined. The proposal to identify “strategy” with each child order routed is an example of a concept that cannot be uniformly applied across the industry in order to produce consistent results that can be compared with any reliability.

2. Do commenters believe it is useful or necessary to define an institutional order? Do commenters believe that the proposed definition of institutional order should include securities other than NMS stocks? For example, should NMS securities that are options contracts be included? Why or why not? Should non-NMS securities, such as securities traded only in the OTC market, be included? Why or why not? Would including these types of securities in the definition of institutional order be useful to institutional customers? If so, how? Please explain and provide support for your view.

As stressed throughout this letter, FIF members strongly disagree with the concept of defining “institutional” orders based on size, and we instead recommend differentiating orders and determining report formats based on orders submitted as “held” vs. those submitted as “not-held”.

With respect to the above question related to options, FIF reminds the industry of the issues that became apparent with Rule 13h-1 large trader reporting requirements, when many “retail” investors were deemed “large traders” because the underlying value of the shares associated with an options contract triggered the threshold. Fortunately, exemptive relief was granted to rectify the situation, but it does demonstrate that unintended consequences may result from using order size and arbitrary thresholds to define types of customers or investors.

FIF members also believe OTC equities should not be included because there are limited opportunities for execution of OTC securities, as the same venues are not available for trading; they don’t use the same algos; they aren’t routed to the same dark pools; the same market data is not available; and, the routing patterns are completely different.

8. Do commenters believe that customers should be able to designate which orders qualify as an institutional order? For example, should a customer be able to designate smaller orders sent to a broker-dealer as an institutional order? If so, how would that be done? Should institutional order be defined as a combination of customers designating institutional orders and a threshold, i.e., if either requirement is satisfied, it would then be defined as an institutional order? Please provide support for your arguments.

FIF’s recommendation to differentiate orders that are “held” from “not-held” will avoid the consequences that would come as a result of the concepts presented within this question. The

information that is appropriate to describe routing a “held” order, is a subset of that which would apply to a “not-held” order. The content of the report a customer receives should be based on the types of orders the customer submits. Furthermore, the suggestion that customers could identify the order as retail or institutional on an order-by-order basis would exasperate the situation, and the inconsistencies could cause regulatory complications. The concerns raised by this question further support FIF’s argument for “held” vs. “not-held” which will avoid these issues completely.

10. Instead of defining institutional order, do commenters believe that there are alternative approaches that the Commission should consider in structuring order handling disclosures for large orders? If so, please explain the approach in detail, including the benefits and costs of the approach. Regardless of order size, reports should be broken down into meaningful parts, each containing the data fields necessary to describe how that order was handled such as held vs. not-held. If directed orders are included, they should be segregated as well.

A group of FIF members have suggested a “combined” report, that would include both held and not-held orders, regardless of size. This alternative approach would address the issue of sending two different reports, with different formats and content, to a customer who submits both large and small orders (and/or both held and not-held orders).

16. Do commenters believe the proposed scope of the institutional order handling report is practicable and appropriate? Why or why not? Please explain and provide data, if possible.

The proposed format does not distinguish between held and not held orders and other order attributes which are integral to determining routing strategy. Additionally, bills and statements related to fees and rebates received from trading venues will not be timely enough to be included in the proposed format within the timeframe set out in the proposal. Furthermore, the concept of associating one of the three “strategies” is wrought with issues that will ultimately undermine the goal of across industry comparisons.

There are numerous scenarios where a strategy will change with each child order as the trading day progresses and market conditions change. For example, the strategy assigned to the initial order when first received (e.g. the “parent” order) may not match the strategy assigned at the child level. The same is true for order types like market, marketable limit and non-marketable limit, as algos often send child orders that have different order types than the parent order type received from the customer. Because routing statistics are reported at the “child” level, the strategy and order type information reported may not match up with the information the institutional customer knew at the time the parent order was placed, or with the way the order was actually executed.

Second, “bucketing” an algo can be a subjective exercise. Even if the terms aggressive, passive and neutral are tightly defined, there is still a level of subjectivity and personal judgement that must be applied to determine in which category an algo would best fit. There are also complex algos that may contain multiple strategies within them that may be more difficult to assign to a single bucket. There are also numerous scenarios where one firm uses the algos of another firm to service its customers. For example: Broker-Dealer A has institutional customers, and it uses algos provided to it by Broker-Dealer B. Does Broker-Dealer A report on those algos as if they were their own? Who determines to which category each algo belongs – the broker that created the algo or the broker that uses the algo? Is the degree of aggressiveness of an algo in the eye of the beholder? If Broker-Dealer B provides the same algos to a number of different brokers, would it be possible for different brokers to categorize the same algo in different ways?

A more consistent approach to describing exactly how a customer order is routed can be based on the information contained in the order itself. For example, a “market” order, or a “market IOC” indicates an aggressive strategy. Similarly, a limit order priced away from the market is typically a passive strategy. The categorization of the market, marketable limit and non-marketable limit would match the order information provided to the execution venue with the child order and would be completely objective, would describe exactly how that child order was routed, and would provide consistent reporting across the industry.

Also with respect to scope of institutional reports, we note the following question was posed in the rule proposal regarding retail, but the same was not posed for institutional report formats. Therefore, we highlight question #93 and FIF’s response here in the institutional section as well:

93. Are the venues that are required to be included on retail order routing reports appropriate? Should the requirement cover more or fewer venues than are currently included (i.e., the ten to which the largest number of non-directed orders were routed for execution).

FIF members believe it is appropriate to indicate the top ten venues to which a broker-dealer routes its orders ...

In addition, FIF members believe it is appropriate for the institutional order routing reports to similarly limit the venues that are required to be included to provide consistency with the retail order routing report and minimize the noise that would be included if all routing venues were displayed.

17. Do commenters believe that it is appropriate to view the customer placing the order with the broker-dealer, whether the account holder or an investment adviser or other fiduciary, as the “customer” for purposes of the proposed amendments to Rule 606? Should entities other than the customer placing the order with the broker-dealer be entitled to receive the report? For example, if an investment adviser represents multiple underlying clients, should each underlying client be entitled to receive the report? Please explain.

FIF does agree that the approach taken by the Commission is appropriate, as it is impractical and in some cases impossible to know the underlying accounts for which the order was placed. In fact, orders are routed and executed at the “master account” level, and not at the sub-account level. If allocations are known to the order receiving firm, they are most often provided after the fact for settlement purposes. For that reason, the entity placing the order, as the “master account”, should receive the report.

However, if a broker-dealer has placed the order on behalf of an “institutional” client, there could be some gaps, as it is unclear in the rule proposal whether a broker-dealer trading with another broker-dealer would receive a routing report. That said, Footnote 125 does seem to indicate that if that broker-dealer is acting in a “fiduciary capacity” on behalf of a customer, a report would be appropriate. FIF members believe in the following scenario, it would be completely appropriate for one broker-dealer to send a routing report to another broker-dealer.

Assume Broker-Dealer A (“B/D A”) has institutional customers, as FIF has proposed that they be defined in the rule, and B/D A has an order routing agreement to send all of its order flow to Broker-Dealer B (“B/D B”) for handling and execution. B/D B may use an algo to handle orders received from B/D A. However, if under the proposed rule, B/Ds are excluded from the definition of “institutional customer”, B/D B is not obligated to provide any reporting to B/D A on how B/D B handled any specific order routed from B/D A to B/D B. Further, since any orders received by B/D B from B/D A are not from

customers of B/D B, B/D B would not have to include those orders in any reports it must produce relating to its order handling practices. In addition, B/D A couldn't or wouldn't put its client orders into the various algo buckets because it, B/D A, didn't use an algo to handle the orders; B/D B did.

18. Do commenters believe that broker-dealers should be required to provide the customer-specific report on institutional order handling in the proposed format? Why or why not? Do commenters believe broker-dealers should be required to provide the report in a structured XML format? Would such a format facilitate comparison of the data across broker-dealers? If not, why not? Do commenters believe broker-dealers should be required to also provide the report in an instantly readable PDF format? If not, why not? Are there other formats or alternative methods to provide the customer-specific reports that the Commission should consider? If so, please explain and provide data.

FIF members are in favor of the XML format; however, it is imperative that each field be explicitly defined and well-understood by all in order to achieve the level of consistency required for cross industry comparisons.

19. Do commenters believe that seven business days is a reasonable amount of time for a broker-dealer to respond to a customer request for institutional order handling information? If not, what would be a reasonable amount of time?

Seven business days may not be achievable, particularly depending on the time during the month when the request is made. Broker-dealers do not typically receive the rebate/fee information from an execution venue until the end of the first or second week of the month. The information received must then be processed and applied to the customer report. If fees and rebates are to be included in the customer-specific reports, the seven business day turnaround cannot be achieved if the request is made within the first half of a month.

20. The Commission notes that Rule 606(b)(2) requires that broker-dealers notify their customers annually, in writing, of the availability of a report on the routing of retail orders. Should the Commission include a similar requirement for a report on the handling of institutional orders?

Institutions that wish to see the information are fully aware of reporting requirements and it is unnecessary for a broker-dealer to notify its institutional customers of the availability of these reports on an annual basis.

23. Do commenters believe that the required disclosure regarding the handling of an institutional order should include the handling of all smaller (child) orders derived from the institutional order? Why or why not?

Orders are routed at the child level; therefore, a routing report should be prepared at the child level. Institutional customers typically rely on broker-dealers and other third party services to provide "TCA" (Total Cost Analysis) to measure the effectiveness of order handling and the performance of execution strategies at the parent level. 606 reports are not conducive to addressing the type of information an institution would seek regarding their orders at the parent level.

24. Do commenters believe that the rule should cover institutional orders placed both directly and indirectly with a broker-dealer? Should the rule only cover orders placed directly with a broker-dealer? Why or why not?

As highlighted in Question #17, there are numerous scenarios where one firm uses the algos of another firm to service its customers. FIF members believe the reports should be provided to the broker-dealer that is using the algos of the other, most likely under a service agreement. However, the outstanding questions remain as to which party determines which strategy would apply to the algo. For that reason,

FIF recommends that the route reports be equated to the actual order types, rather than applying an arbitrary label.

25. Do commenters believe that the rule should specify the number of times a broker-dealer is required by the rule to respond to a customer request for a report on the handling of its institutional orders? Why or why not? If yes, what should the number of times be? Alternatively, do commenters believe that broker-dealers should be required to provide customers with institutional orders ongoing access to order handling reports through a secure portal on their websites? Why or why not? How would this impact broker-dealers' compliance costs, or the accessibility to customers of order handling reports? Please explain.

It has been suggested that customer-specific information should be made available to authorized customers via a secure web portal, appropriately partitioned using customer-specific entitlements. This would allow complete, ongoing access and preclude the need for customers to specifically request their reports at certain intervals.

27. Is six months an appropriate timeframe for the reporting period for customer-specific order handling information? Would a longer or shorter time period (e.g., quarterly) be more appropriate? How soon after month-end should the customer-specific order handling report be provided (e.g., two-weeks after the end of the preceding month)? Please explain.

Broker-dealers do not typically receive the rebate/fee information from an execution venue until the end of the first or second week of the month. If fees and rebates are to be included in the customer level reports, sufficient time must be allowed for processing. Customer-level reports should not be required to be ready until the month following receipt of the fee/rebate information. (It is unclear that fees and rebates can be applied at the customer level due to the fact that various threshold and breakpoint schedules may be applied at the gross level.)