



Wells Fargo Advisors, LLC  
Regulatory Policy  
One North Jefferson Avenue  
St. Louis, MO 63103 H0004-05C  
314-242-3193 (t)  
314-875-7805 (f)

Member FINRA/SIPC

September 26, 2016

**Via e-mail: *rule-comments@sec.gov***

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

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

Dear Mr. Fields:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to provide this letter in response to the Securities and Exchange Commission’s (the “SEC” or “Commission”) rule filing to adopt SEC Rule for Disclosure of Order Handling Information (“Current Proposal”). The Current Proposal seeks to amend Rules 600 and 606 of Regulation National Market System (NMS), and make related conforming amendments that would require broker-dealers to disclose the handling of institutional orders to customers and expand the information included in existing retail order disclosures.<sup>1</sup>

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. We employ approximately 15,042 full-service financial advisors in branch offices in all 50 states and 3,900 licensed financial specialists in

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<sup>1</sup> SEC File No. S7-14-16 – Proposed Rule for Disclosure of Order Handling Information (July 13, 2016); available at: <https://www.sec.gov/rules/proposed/2016/34-78309.pdf>.

retail bank branches across the country.<sup>2</sup> WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

## I. EXECUTIVE SUMMARY

WFA recognizes the Commission's intent to "bring order handling disclosure in line with modern technology and market practice, providing valuable information to retail and institutional investors about how their orders are treated."<sup>3</sup> WFA supports the Commission in their efforts to modernize order handling disclosures by improving transparency to broker-dealer routing decisions. WFA supports a fair and competitive market through the analysis of objective execution quality data and believes that our customers are best served by providing meaningful information.

However, WFA believes there are substantive pieces of the Current Proposal which need to be improved to achieve the desired results. Specifically, WFA is requesting that the Commission reconsider the inclusion of strategy data (*i.e.*, passive, neutral, aggressive) as the requirement is subjective, complex and overly burdensome. We are concerned that the proposed strategy data may not provide meaningful information for institutional clients to compare order routing protocols across market centers due to the subjective nature of defining the strategies. We believe expanded Rule 606 disclosures should be limited to objective order data elements which would enable institutional clients to more readily compare market centers.

In addition, we believe that a \$200,000 threshold is not an appropriate proxy for determining institutional orders. Instead, WFA requests the alignment with definitions currently used within the industry and suggests that "held" or "not held" be used to define order routing. Lastly, WFA supports and encourages the Commission's consideration of the "de minimis" exemption in the proposal and recommends that it be applied more broadly.

## II. CURRENT REGULATIONS

Rule 606 of Regulation NMS (formerly SEC 11Ac1-6) requires that "broker-dealers that route customer orders in equity and option securities will be required to make publicly available quarterly reports that, among other things, identify the venues to which customer orders are routed for execution."<sup>4</sup> A customer order is generally defined as a non-broker-dealer (buy or sell) order that has a dollar value less than \$200,000 for equities or \$50,000 for options in an

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<sup>2</sup>WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo's retail brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 71 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

<sup>3</sup> Press Release, SEC Proposes Rules to Enhance Order Handling Information Available to Investors 2016-140 (July 13, 2016); available at: <https://www.sec.gov/news/pressrelease/2016-140.html>.

<sup>4</sup> SEC File No. S7-16-00 – Final Rule: Disclosure of Order Execution and Routing Practices (November 17, 2000); available at: <https://www.sec.gov/rules/final/34-43590.htm>.

NMS security.<sup>5</sup> Requirements under the current regulations do not require the disclosure of institutional orders by broker-dealers.<sup>6</sup>

Today, broker-dealer reporting obligations require quarterly disclosure of the most significant execution venues and are intended to provide a general overview of practices that are accessible to customers.<sup>7</sup> There is an exemption from preparing the disclosures if the execution venue received less than five percent of retail orders sent.<sup>8</sup> Additional requirements for broker-dealer reporting include a description of any payment of order flows or profit sharing relationships (with each venue) to be included and made available upon request in an online report format that provides the identity of the venue where customer's orders were routed for execution for the six months prior to the request.<sup>9</sup>

The Current Proposal introduces the requirement for broker-dealers to disclose the handling of institutional orders and expands existing retail order disclosures. The proposed rules would require broker-dealers, upon request from a customer, to provide a monthly report for the previous six-month period detailing the handling of such customer's institutional orders in exchange-listed stocks with an original market value of at least \$200,000.<sup>10</sup> The report would be required to include information such as shares sent to the broker-dealer, shares executed by the broker-dealer as principal and information with respect to venues to which the broker-dealer routed institutional orders for the customer.<sup>11</sup> Required information would have to be presented in the aggregate and broken down by order routing strategy (passive, neutral or aggressive). Broker-dealers will also have to make public aggregated reports pertaining to the handling of institutional orders on a quarterly basis for information pertaining to the three previous years.<sup>12</sup>

### III. DISCUSSION

#### A. Reporting Disclosures Should Not Contain Subjective Strategy Data

WFA believes that including strategy as an element of order disclosure adds complexity that is unduly burdensome to integrate within current reporting data due to the subjectivity of designating the orders as passive, neutral, or aggressive. As stated within the Current Proposal "the Commission is not aware of any generally accepted definitions or metrics to define [these] order routing strategies."<sup>13</sup> Further, the Commission does little but to offer a "general description" of strategy categories for which broker-dealers are then responsible to assign methodologies and maintain as part of the firms books and records consistent with 17a-4(b) under the Exchange Act.<sup>14</sup> Reporting disclosures should contain objective data for institutional

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<sup>5</sup> See *supra* note 1, p.12

<sup>6</sup> *Ibid.*, p. 27

<sup>7</sup> Division of Market Regulation: Staff Legal Bulletin No. 13A, Frequently Asked Questions About Rule 11Ac1-6 (October 16, 2001 revised); available at: <https://www.sec.gov/interps/legal/mrslb13a.htm>.

<sup>8</sup> See *supra* note 7, Question 2: Identifying Significant Execution Venues.

<sup>9</sup> See *supra* note 1, pp 13-15

<sup>10</sup> *Ibid.*, p. 13

<sup>11</sup> *Ibid.*, pp 13-14

<sup>12</sup> *Ibid.*, p. 14

<sup>13</sup> *Ibid.*, p. 75

<sup>14</sup> *Ibid.*, p. 76

order disclosures when being leveraged for comparison purposes as subjective data can be difficult to aggregate and interpret when compared across broker-dealers.

We believe disclosure data should not be driven by subjective interpretations. Additionally, some of the objective data elements required by the proposal do not exist in current order and execution message infrastructure. Currently, Rule 606 reporting requirements align with Financial Information eXchange (FIX) protocol that supports electronic trading platforms to communicate trade information.<sup>15</sup> The “FIX messaging standard” provides the trading community with a common language and supports Rule 606 reporting for those data elements that are made publicly available via broker-dealer quarterly reports.<sup>16</sup> However, the proposal introduces additional requirements and standards that are overly burdensome to broker-dealers as they must expand current reporting to incorporate additional data elements, such as: strategy, liquidity flags, and take fees or make rebates that are not required, standardized or currently present in FIX messaging protocol.

The Commission acknowledges that as proposed the “inconsistency could make it difficult for institutional customers to effectively compare institutional order handling reports across their broker-dealers.”<sup>17</sup> WFA agrees that consistent and objective information should be made publicly available on institutional type orders through “Execution Quality” reports and supports the Commission’s objective for increased transparency. However, including passive, neutral, and aggressive strategy categories as a required reporting element imposes significant and unnecessary burdens on firms. These burdens include: (1) adding constraints on budgets; (2) requiring additional development investment; (3) undergoing user acceptance technology testing; (4) redirecting subject matter resources; and (5) displacing funds designated for other firm initiatives. It begs the question: if the categorization of order routing strategies is not consistent for comparison of trading decisions, what is the real benefit to the customer?

## **B. Order Size Is A Poor Proxy for Institutional Order Type**

The Current Proposal seeks to allow “customers” (retail and institutional) to more effectively monitor the services provided by their broker-dealers and to compare the routing decisions and execution quality of multiple broker-dealers. As such, the Commission has proposed to amend Rule 600 and rename the defined term “customer order” to “retail order” and added the term “institutional order.”<sup>18</sup> The intent is that “the customer-specific disclosures would help customers assess their broker-dealers’ services, including the handling of potential conflicts of interest, risks of information leakage, and best execution.”<sup>19</sup>

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<sup>15</sup> FIX Trading Community, What is FIX?; available at: <http://www.fixtradingcommunity.org/pg/main/what-is-fix>.

<sup>16</sup> See *supra* note 4, IV. Rule 11Ac1-6 – Disclosure of Order Routing Information, B. Quarterly Reports.

<sup>17</sup> See *supra* note 1, p. 76

<sup>18</sup> *Ibid.*, pp 12-14

<sup>19</sup> See *supra* note 3, FACT SHEET, Highlights, Institutional Orders Disclosures.

Orders do not follow a prescribed dollar threshold indicative of the customer. Retail customers regularly submit orders in excess of \$200,000 and institutional customers regularly submit a substantial number of orders less than \$200,000. Defining customer type by notional order value conflates the reporting of customer entities and will weaken the effectiveness of the Current Proposal.

WFA prefers to define order routing and disclosure through common broker-dealer practices and believes “held” or “not held” designations better represent institutional order type rather than an arbitrary dollar value. As defined by Nasdaq, a “held” order is one “that must be executed without hesitation (hit the bid or take the offer in line) or if the stock can be bought or sold at that price (held limit order) in sufficient quantity.”<sup>20</sup> A “not held” order occurs where a “customer does not desire to transact automatically at the inside market (market held) but instead has given the trader or floor broker (listed stock) time and price discretion in transacting on a best-efforts basis.”<sup>21</sup> WFA routinely accepts orders greater than \$200,000 from retail customers and is concerned that this threshold represents an inappropriate benchmark that would produce false positives with required reporting. Therefore, WFA respectfully requests that the Commission consider the aforementioned definitions instead of leveraging a quantitative threshold for retail versus institutional.

### **C. The De Minimis Exemption Should Be Applied Broadly To Broker-Dealer Reporting**

The Commission requested comment regarding “if” a de minimis exemption for broker-dealers should be considered, then “what would be the appropriate threshold number or dollar value of institutional orders a broker-dealer should need to receive [from all customers] in the aggregate before it would be required to provide order handling disclosure to any customer?”<sup>22</sup> As stated above, WFA is in favor of providing additional information to assist customers in understanding the order routing and execution practices of broker-dealers, but we believe a five percent de minimis exemption should be applied that is consistent with the current de minimis thresholds in existing Rule 606.<sup>23</sup>

Under the current exemption “a broker-dealer is not required to identify execution venues that received less than five percent of non-directed orders for a section of the broker-dealer’s quarterly report, as long as it has identified the top execution venues that in the aggregate received at least ninety percent of the broker-dealer’s total non-directed orders for the relevant section.”<sup>24</sup> WFA believes that the purpose of a de minimis exemption is to provide relief so that reporting obligations for a given entity more closely match its actual core business and targeted customer profile. Lastly, we believe firms that receive less than five percent of orders from institutions should be exempt from requirements to provide disclosures for institutional orders, both at the individual client level and in the aggregate.

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<sup>20</sup> Nasdaq, Held order; available at: <http://www.nasdaq.com/investing/glossary/h/held-order>.

<sup>21</sup> Nasdaq, Not Held order; available at: <http://www.nasdaq.com/investing/glossary/n/not-held-order>.

<sup>22</sup> See *supra* note 1, pp 68-69

<sup>23</sup> See *supra* note 7, II. Questions and Answers, Question 2: Identifying Significant Execution Venues.

<sup>24</sup> *Ibid.* 23, II. Questions and Answers, Question 2: Identifying Significant Execution Venues.

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#### IV. CONCLUSION

WFA appreciates the opportunity to respond to the Commission's Current Proposal and remains committed to achieving greater order disclosure for retail and institutional investors. If you would like to discuss this issue further, please feel free to contact me directly at [REDACTED] or [REDACTED]

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy