March 26, 2023

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499–1090
rule-comments@sec.gov

File No. S7-29-22; Release No. 34-96493· Disclosure of Order Execution Information

Ms. Countryman:

The Commission is proposing changes to rule 605 of Regulation NMS to include more information about broker executions.

On July 28, 2000, the SEC proposed SEC 11Ac 1-5, order execution statistics & SEC 11Ac1-61, routing and material relationship aspects disclosures. The rules, now known as SEC Rules 605 and 606 were adopted in response to increasing competition and resulting fragmentation in the market. The SEC sought to assure investors that the U.S. National Market System continues to meet their needs by ensuring the practicability of Best Execution of all investor orders, including limit orders, no matter where they originate.

Brokers currently have to file 606 reports quarterly.

FINRA, along with the SEC, sent out risk alerts in Dec 2022 regarding the lack of compliance with the 606 reports.

In the report FINRA cited a list of issues with the 606 reporting compliance. The findings consisted of firms publishing inaccurate information in the quarterly report on order routing, such as (these are not all the findings in the report):

- incorrectly stating that the firm does not have a profit-sharing arrangement or receive PFOF from execution venues;
- inaccurately identifying reported execution venues as “Unknown”;
- inaccurately identifying firms as execution venues (e.g., identifying routing broker-dealer as execution venue, rather than the exchange where transactions are actually executed)

There were also issues with Incomplete Disclosures – Not adequately describing material aspects of their relationships with disclosed venues in the Material Aspects disclosures portion of the quarterly report, such as (these are not all the findings in the report):

- inadequate descriptions of specific terms of PFOF and other arrangements (e.g., “average” amounts of PFOF rather than specific disclosure noting the payment types, specific amount received for each type of payment, terms and conditions of each type of payment);
- inadequate or incomplete descriptions of PFOF received through pass-through arrangements;
- incomplete descriptions of tiered pricing arrangements, including the specific pricing received by the firm.

One would suspect that brokers will be as non-compliant with the new 605 reports, and this will provide little to no benefit to retail. The 605 reports are only as useful as the accuracy of data it contains.

Sincerely,

John Steven
Retail Investor