

FINANCIAL INFORMATION FORUM

February 14, 2024

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: File Number S7-29-22: Disclosure of Order Execution Information

Dear Secretary,

The Financial Information Forum (“FIF”)¹ would like to thank Securities and Exchange Commission Chair Gary Gensler and other representatives from the Securities and Exchange Commission (the “Commission”) for reaching out to FIF on January 18, 2024 to schedule discussions of the prior comment letters that FIF submitted on the above-referenced rule proposal.² The rule proposal by the Commission³ seeks to modernize the current Rule 605 reporting disclosures.⁴ FIF is submitting this supplemental comment letter as a follow-up to calls that FIF and FIF members participated on with Commission representatives on January 25 and 29, 2024.

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FIF and our members support the initiative of the Commission to modernize the current Rule 605. To date, Rule 605 reports have been a valuable tool for routing brokers in evaluating execution quality

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² FIF submitted comment letters on March 31, 2023 (available at <https://www.sec.gov/comments/s7-31-22/s73122-20162736-332127.pdf>) (“FIF March 2023 Letter”) and June 22, 2023 (available at <https://www.sec.gov/comments/s7-29-22/s72922-208579-421622.pdf>) (“FIF June 2023 Letter”).

³ Securities Exchange Act Release No. 96493 (Dec. 14, 2022), 88 FR 3786 (Jan. 20, 2023) (Disclosure of Order Execution Information).

⁴ 17 CFR §242.605.

across execution venues. The proposed Rule 605(a)(1) and (a)(2) reports⁵ can enhance the value of these reports for routing brokers in evaluating execution quality across execution venues, and they can also be a valuable tool for investors in evaluating execution quality across customer-facing brokers. For these reports to serve their intended purpose, it is important that the reports provide the most relevant data in a manner that can be readily processed and evaluated by the users of the report, and in a manner that allows for a fair comparison across customer-facing broker-dealers and execution venues based on the specific order types that they handle and the characteristics of these orders. The report can only achieve these objectives if the report is properly designed.

FIF members are focused on two key issues: the usability of the reports; and the ability for firms to implement the reporting requirements. By usability, we refer to the quality of the data in the reports, including the ability for market participants to aggregate the data in the reports across various order categories to reflect the types of order flow that are relevant for particular customers and reporting firms. FIF members also want to ensure that it is clear to industry members how to implement the reporting requirements. This includes clarity as to how different metrics should be calculated. These points are discussed in further detail below.

Consistent with the recommendations in the prior FIF member comment letter,⁶ FIF members recommend that the Commission publish proposed specifications (including order categories, file formats and formulas) before adopting a final rule. Given the complexity of order handling processes and the scope of the disclosures provided for in the report and, based on FIF members' collective experiences from the implementation of prior rules,⁷ FIF members are concerned that without a more collaborative and iterative process, there could be issues with the report that the Commission would not be able to address once the rule has been adopted.

If the Commission does not publish the proposed specifications before adoption of a final rule, it is important that the Commission carefully consider and address the comments on this rule proposal submitted by FIF on behalf of FIF members. While this letter is not intended to restate the recommendations in the 49 pages of comments set forth in the two prior FIF comment letters, FIF members highlight below some key principles that are very important for the Commission to consider and address in designing the final reports.

1. Definitions

For the reports to achieve their intended purpose, it is important that the various order categories and required statistical disclosures in the report are clearly and properly defined. As one example discussed in FIF's March 2023 comment letter, the Commission's proposed definition of "executability" for a stop order, if adopted, would result in the reporting of data that would not accurately reflect the trade execution performance of reporting firms for stop orders.⁸

⁵ In this letter, we sometimes refer to the proposed Rule 605(a)(1) report as the "detailed report" and sometimes refer to the proposed Rule 605(a)(2) report as the "summary report."

⁶ See, FIF June 2023 Letter, at 11.

⁷ See, for example, the discussion below of the Commission's 2018 amendments to Rule 606.

⁸ See, FIF March 2023 Letter, at 10-12.

2. Ability to aggregate data across sub-categories of orders

As discussed in our prior comment letters, given that a firm’s detailed report could contain hundreds of thousands of rows (and potentially more than one million rows), it is important that users of the report have the ability to aggregate this data, including all percentage-based statistics, across different sub-categories of orders (i.e., across different rows in the report).

As one example discussed in FIF’s March and June 2023 comment letters, the summary report as proposed by the Commission requires disclosure of “share weighted average percentage price improvement,” which FIF members understand to mean the share-weighted price improvement divided by the share-weighted midpoint. Because the detailed report does not include the share-weighted midpoint, the share-weighted percentage price improvement statistic, which is included in the summary report, cannot be computed for an individual row of the detailed report or aggregated across rows in the detailed report. To address this issue, FIF members have proposed adding the share-weighted midpoint to the detailed report.⁹

As a second example discussed in FIF’s March and June 2023 comment letters, the Commission’s proposed median and 99th percentile time to execution statistics do not allow for aggregation across rows in the report. In the FIF comment letters, FIF members have proposed alternative data for the report that would provide the time to execution disclosures that the Commission seeks to incorporate in the report in a manner that would allow for aggregation across rows.¹⁰

The ability for market participants to aggregate data across order categories (i.e., rows) of the detailed report is a critical element for market participants in deriving value from the report. It is critical that each market participant have the ability to aggregate the data in the detailed report across the various sub-categories of orders that match the characteristics of a market participant’s order flows. Industry members rely on Rule 605 data in fulfilling their best execution obligations and otherwise seeking best execution of customer orders across orders with different characteristics. Accurately crafted reports are critical for broker-dealers to comply with FINRA’s Best Execution and Interpositioning rule¹¹ and would also be critical for broker-dealers in complying with the Commission’s proposed Regulation Best Execution,¹² if adopted.

FIF members further note that if any statistic is important enough to be included in the summary report (i.e., aggregated for all orders), the statistic certainly should be included in the detailed report (or derivable from the data in the detailed report) such that the statistic can be aggregated across sub-categories of orders. Conversely, if a statistic is not included in, or derivable from, the detailed report, the statistic should be excluded from the summary report.

⁹ See, FIF March 2023 Letter, at 28-29, and FIF June 2023 Letter, at 9-11.

¹⁰ See, FIF March 2023 Letter, at 21-22, and FIF June 2023 Letter, at 7-9.

¹¹ FINRA Rule 5310.

¹² Securities Exchange Act Release No. 96496 (Dec. 14, 2022), 88 FR 5440 (Jan. 27, 2023) (Regulation Best Execution).

3. Order categories

For the reports to achieve their intended purpose, it is important that they designate the appropriate order categories. As one example discussed in FIF's March 2023 comment letter, the Commission proposes categories for market orders, marketable limit orders (excluding IOC orders), and marketable IOC orders. The Commission's proposal excludes reporting for IOC orders that are executable (as defined in the rule proposal) but not marketable.¹³ As a second example discussed in FIF's March 2023 comment letter, reporting is required for stop orders but there is no differentiation among types of stop orders.¹⁴ As recommended in our prior comment letters, the Commission can ensure that important order categories and order characteristics are not mistakenly excluded from the report by providing each order characteristic (for example, IOC vs. time-in-force and stop vs. non-stop) as a separate column in the report.¹⁵ This type of design for the report will also make it easier for the Commission to adopt, and for firms to implement, future amendments to the Rule 605 reports.

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FIF members also want to reiterate from our prior comment letters that while the initial rule proposal by the Commission provided a strong baseline for comment, and FIF members and other commenting parties provided detailed comments to enhance the disclosures proposed by the Commission, FIF members are concerned that without having the opportunity to review proposed specifications (including order categories, file formats and formulas), there is a risk of issues arising that will impact the usability of the reports.

One reason for the concern by FIF members is the experience with the amendments to Rule 606 that the Commission adopted in 2018.¹⁶ In adopting the amendments to Rule 606 in 2018, the Commission did not publish draft specifications prior to rule adoption. As a result, it became clear soon after publication of the file specifications that the amendments left a number of open questions for industry members on how to report various common routing scenarios. Because of these open questions, the Commission extended the initial implementation date for Rule 606.¹⁷ The Commission ultimately published a series of FAQs to provide clarity on reporting.¹⁸ Some of these FAQs were not consistent with the wording of Rule 606.¹⁹ These FAQs also significantly expanded the scope of reporting, which has had several effects.

¹³ See, FIF March 2023 Letter, at 13.

¹⁴ See, FIF March 2023 Letter, at 10-11.

¹⁵ See, FIF March 2023 Letter, at 15-17.

¹⁶ Securities Exchange Act Release No. 84528 (Nov. 2, 2018), 83 FR 58338 (Nov. 19, 2018) (Disclosure of Order Handling Information).

¹⁷ Securities Exchange Act Release No. 85714 (Apr. 24, 2019), 84 FR 18136 (Apr. 30, 2019).

¹⁸ Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, available at <https://www.sec.gov/tm/faq-rule-606-regulation-nms>.

¹⁹ See, for example, FIF letter to the Commission (Dec. 20, 2022) on File Number SR-FINRA-2022-031 (Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)) ("SR-FINRA-2022-031"), available at <https://www.sec.gov/comments/sr-finra-2022-031/srfinra2022031-20153223-320697.pdf>, at 2-3.

These effects have included a significant increase in implementation and ongoing maintenance costs for industry members (beyond what was contemplated in the Commission’s economic analysis for the rule), firms having to recode their reporting multiple times in response to the Commission issuing successive rounds of interpretive guidance, and increased regulatory risk for reporting firms. Another result has been a Rule 606(a)(1) report that omits important data from the tables and, under certain circumstances, does not allow for comparable reporting by similarly situated broker-dealers.²⁰ An additional result has been a Rule 606(b)(3) report that has been more costly to implement as compared to what was contemplated by the Commission in its proposing and adopting releases for the rule. FIF has also communicated to the Commission that, given the problems with how the Rule 606(b)(3) report has been designed, interest in the report from institutional investors (the intended beneficiaries of the report) has been limited.²¹

FIF members recommend that the Commission collaborate with the industry by publishing proposed specifications and making them available for public comment prior to adopting a final rule. This approach would not only enhance the quality of the reports that are adopted but would also reduce the risk of having to delay the scheduled implementation date based on the need for additional clarity as to the reporting requirements. If the Commission does not publish proposed specifications prior to adopting a final rule, FIF members recommend that any implementation timetable commence from the date that the Commission publishes guidance in response to interpretive questions from industry members relating to the reporting requirements that the Commission adopts.

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More generally, the Commission should consider potential modifications to the current rulemaking process to allow for a more iterative approach for technically-based rules -- like the Commission’s proposal to modernize Rule 605 reporting -- that involve detailed and complex disclosures. The Commission should consider how this type of iterative process could be implemented without delaying the rulemaking process, as this would enhance the quality of the rules that are ultimately adopted by the Commission.

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²⁰ See, for example, FIF letter to the Commission (Apr. 13, 2023) on SR-FINRA-2022-031, available at <https://www.sec.gov/comments/sr-finra-2022-031/srfinra2022031-20164181-334047.pdf>, at 1-5.

²¹ See, FIF letter to the Commission (Mar. 2, 2022) on Commission File No. 270–489; OMB Control No. 3235–0541 (Submission for OMB Review; Comment Request: Extension of Rule 606 of Regulation NMS), available at <https://fif.com/index.php/working-groups?start=0>.

FIF appreciates the opportunity to comment on the Commission's rule proposal on Disclosure of Order Execution Information. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum