



August 2, 2019

Mr. Brett Redfearn
Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *File No. S7-14-16 – Disclosure of Order Handling Information*

Dear Mr. Redfearn,

On behalf of the Financial Information Forum (“FIF”)¹ member firms and Security Traders Association (“STA”)², we would like to thank the Securities and Exchange Commission (“SEC” or “Commission”) Trading and Markets Staff for your continued cooperation in working with industry stakeholders to solidify SEC Rule 606(a) and SEC Rule 606(b) reporting expectations. The guidance that SEC Trading and Markets Staff (“Staff,” SEC Staff,” or “Commission Staff”) have drafted, when published, will prove essential as industry stakeholders work to implement Amended Rule 606³ (“Rule 606” or “the Rule”) in a manner that provides the end-customer (*i.e.* “Asset Manager” or “Buyside Institution”) with consistent and accurate order routing and execution data. During the implementation phase of Rule 606, FIF and STA acknowledge and appreciate that SEC Staff have been open and transparent in meeting with industry members to help provide stakeholders with clarity regarding Amended Rule 606 reporting expectations. While much progress has been made with respect to the industry’s implied understanding of the scope and breadth of data that the SEC Staff expects to be reported pursuant to Rule 606, there remain several open questions that the SEC is still considering.

FIF and STA strongly emphasize that the lack of: 1) written guidance; 2) adequate resolution of open questions; and 3) clarity pertaining to reporting look-through data is preventing industry stakeholders from moving forward with the implementation of Rule 606 in a manner that will provide end-customers with consistent and accurate data. Further, we note that despite best efforts by SEC Staff, FIF and STA to broadly communicate the Staff’s interpretation that the Rule

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 trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association’s founding principle, *Dictum Meum Pactum* – “My Word is My Bond.” For more information, visit <https://securitytraders.org/>.

³ <https://www.sec.gov/rules/final/2018/34-84528.pdf>

requires one level of “look-through data”⁴ (as opposed to no look-through) to be reported pursuant to Rule 606(b)(3), industry stakeholders have not been provided with the requisite official guidance and tools to consistently report look-through data. Therefore, given that the go-live date of the data collection period will commence in less than two months, we respectfully request the following:

- 1) 606(a): The industry be afforded *a minimum* of two months following the issuance of official guidance to apply such guidance and meet the full spectrum of the *enhanced Rule 606(a)* reporting expectations prior to the start of the data collection period. FIF and STA believe that (provided guidance (as described, *infra*) is publicly disseminated no later than November 1st) the *Rule 606(a) data collection* period should commence on January 1, 2020 (commensurate with the start of Quarter 1, 2020).
- 2) 606(b)(3) - non-look-through: The data collection period specific to *606(b)(3) non-look through information* be extended to a date 180 days *following* the issuance of industry member requested written guidance.⁵ Following the conclusion of the data collection period, broker-dealers handling customer orders would be responsible for providing customers with 606(b)(3) reports 1 month and 7 days following the conclusion of the data collection period⁶; and
- 3) 606(b)(3) – look-through: The Commission delay any implied requirement that broker-dealers handling customer orders are expected to provide look-through detail on 606(b)(3) reports.⁷ Until such expectations are clear and an amended 606(b)(3) template is provided, FIF and STA respectfully request that any requirements to provide *look-through information on 606(b)(3) reports* be delayed.

In FIF and STA’s view, continuing down the current path of implementation will result in customers obtaining inconsistent, incomplete, and inaccurate 606(b)(3) reports and inconsistent 606(a)⁸ public reports, obviating the original intent of the rule.⁹ We believe that both the SEC Staff and the industry have worked effectively in attempting to bridge the gap between the industry’s interpretation of the Rule/inherent implementation challenges and the Staff’s expectations.

⁴ For the purpose of this letter, we define “look-through” as any route or execution **beyond** the “first route” between the *broker-dealer handling a customer order* and another broker-dealer (*i.e.* BD2 or EB) or Execution Venue “EV” (*i.e.* exchange). The “first level” of look-through, as defined in this letter, consists of order routing/execution data derived from a route between BD2 (or EB) and another venue (*i.e.* BD3 or an exchange).

⁵ See *supra* note, 3 at 1. If the Commission publishes requested guidance on September 1st, we are requesting that data collection period begin on March 1, 2020 and end on August 31, 2020. The first 606(b)(3) requests would need to be fulfilled starting October 7, 2020. FIF and STA view the industry’s request for guidance as critical to the broker-dealer community’s ability to reasonably implement 606(b)(3) non-look-through requirements. Therefore, our recommendation that 180 days be provided for implementation following the publication of guidance is intended to align with the original compliance period as prescribed by the rule.

⁶ See *e.g. supra* note, 3 at page 46, Table A.

⁷ FIF and STA will provide greater detail as to why the industry views any implied expectation that broker-dealers are required to provide look-through data pursuant to the plain text of the Rule on pages 7-10 of this letter.

⁸ As will be discussed, *infra*, while FIF and STA believe that the industry is better positioned to implement 606(a), several open questions remain that may result in the inconsistent implementation of the rule and the lack of broker-dealer access to certain information required by the broker-dealer to be compliant with the rule (*i.e.* aggregated fee and rebate information).

⁹ See *supra* note, 3 at 8. (“By updating the Rule 606 disclosure regime, the rule as amended will provide disclosures more relevant to today’s marketplace that encourage broker-dealers to provide effective and competitive order handling and routing services, and that improve the ability of their customers to determine the quality of such broker-dealer services”).

However, it has become evident that due to several factors (discussed *supra*), the industry’s ability to meaningfully comply with Rule 606 cannot be achieved within the current implementation timeline.

Background

On November 2, 2018, the Commission approved amendments to Rule 606 that require, *inter alia*, a broker-dealer handling a customer order (*i.e.* IB¹⁰) to provide enhanced and enriched order routing and execution data to customers in the form of 606(a), 606(b)(1), and 606(b)(3) reports.¹¹

Following the publication of the final Rule, FIF formed a working group (with STA participation) to analyze the final Rule requirements and address any identified implementation issues. Shortly following the Working Group’s initial analysis of the final Rule, industry stakeholders identified several questions and ambiguities with respect to:

- 1) the definition of “discretion” in-scope pursuant to the final Rule;
- 2) the industry’s understanding of the depth and scope of order routing/execution and fee/rebate data required to be delivered to customers pursuant to Rule 606(b)(3);
- 3) the degree to which look-through order routing/execution data is currently available to the IB;
- 4) several additional questions related to specific fields within the reporting template, requests for definitional clarity, and data elements required to be reported pursuant to Rule 606(a), Rule 606(b)(1) and Rule 606(b)(3).¹²

Following FIF and STA’s identification of the abovementioned implementation challenges, FIF submitted two comment letters¹³ and met in-person with SEC Staff on five occasions.¹⁴ Industry stakeholders believe that the industry’s engagement with SEC Staff has resulted in a mutual understanding of the inherent challenges that the Rule poses to the industry members required to meet Rule 606 reporting obligations. This acknowledgment culminated in an extension of the compliance date by which broker-dealers must begin the data collection process pursuant to Rule 606(a) and 606(b), from May 20, 2019 until October 1, 2019.¹⁵ However, while we believe that the full scope of the industry’s identified challenges with respect to meaningfully meeting Rule 606

¹⁰ For the purposes of all descriptions below, please assume this scenario and terminology: A customer submits an initial order to an IB; the IB routes the order or part of the order to an EB; and the EB executes a trade(s), or takes further actions to split and/or route orders to further venues. Using this scenario, we use the term “downstream” to indicate the perspective of the IB looking toward the EB; and “upstream” to mean the opposite.

¹¹ See <https://www.sec.gov/news/press-release/2018-253>

¹² See Appendix A. Appendix A provides a list of critical industry questions posed to Commission Staff and FIF/STA’s recollection of verbalized responses to those questions.

¹³ See letter to Mr. Theodore Venuti, Assistant Director, SEC from Mr. Christopher Bok, Director, FIF and Ms. Son-Mi Lee, Senior Regulatory Advisor, FIF, *RE: File No. S7-14-16 – Disclosure of Order Handling Information* (January 30, 2019); letter to Mr. Theodore Venuti, Assistant Director, SEC from Mr. Christopher Bok, Director, FIF, *RE: File No. S7-14-16 – Disclosure of Order Handling Information* (February 20, 2019).

¹⁴ FIF met with SEC Staff on 1) February 5, 2019, April 11, 2019, June 4, 2019, June 20, 2019, and July 10, 2019.

¹⁵ <https://www.sec.gov/rules/final/2019/34-85714.pdf>

reporting obligations prior to the compliance date are known to Commission Staff, industry members have not yet been provided the critical written guidance required by firms to: 1) acquire the necessary data; 2) complete the business analysis process required to build and implement 606(a) and (606)(b) reporting infrastructures; and 3) build and test systems that will enable industry members to accurately and consistently report required 606(a) and 606(b) data elements to the public/customers.

Current Status of Rule 606 Implementation – Industry Member Perspective

In 2019, FIF held 25 Rule 606 Working Group meetings, comprising an average of 116 participants per call. Additionally, FIF and STA have engaged with industry stakeholders in several smaller, *ad hoc* working sessions and one-on-one meetings with individual firms with the goal of 1) eliciting feedback from industry stakeholders on Rule 606 implementation challenges; 2) gaining a better understanding of the availability of order routing/execution data currently provided to IBs (from EBs or EVs)); and 3) developing and promoting industry standards intended to allow for the consistent implementation of Rule 606. This will equip the sell-side entities subject to the provisions of the Rule with the tools to provide their customers with accurate order handling information.

During this process, it has become evident that: 1) identified rule ambiguities (*i.e.* lack of clarity with respect to a broker-dealer’s obligation to report look-through data); 2) inconsistent access to required downstream data; 3) lack of necessary guidance; and 4) an impractical Rule 606(b)(3) template will ultimately result in the inability of broker-dealers to meaningfully comply with Rule 606 obligations. The lack of synergy between the text of the Rule, SEC Staff’s verbalized expectations and the industry’s interpretation of the Rule has resulted in confusion, which has prevented the industry from moving forward with implementation of Rule 606(b) in a manner that will provide value to customers. Absent significant official guidance and the re-proposal of certain provisions of the Rule (*i.e.* expectations surrounding the reporting of look-through data), we believe the industry has no path forward to meet the Commission’s Rule 606(a) and Rule 606(b)(3) reporting requirements by the October 1 compliance date.

Challenges – Availability of Order Routing and Execution Data – 606(b)(3)

During the initial analysis phase of Rule 606, FIF and STA believed that the *prima facie* interpretation of the Rule directed IBs to obtain and report information pertaining to the first route data between the broker-dealer (*i.e.* IB) handling a customer order and any destination(s) to which the broker-dealer routed that order. However, following several follow-up discussions with Commission Staff, it became clear that the Commission Staff expects IBs to provide both the first and second level of order routing/execution data on 606(b)(3) reports.

The Commission notes in the Adopting Release that broker-dealers (EBs) handling another broker-dealer’s (IBs) order(s) are not mandated¹⁶ under the Rule to provide IBs with the look-through data

¹⁶ Although the Rule does not mandate that EBs provide IBs the order route/execution data, FIF and STA emphasize that even if the Commission does require EBs to provide IBs with necessary information, EBs have not been afforded sufficient guidance clearly understand exactly what information the EB is required to provide.

required to comply with the Commission's expectation that the IB provide the customer with first and second level data.¹⁷ It is especially noteworthy that while the Commission believes that "competitive forces in the market may enable a customer whose orders are routed by its broker-dealer to another broker-dealer to receive detailed order execution information,"¹⁸ it also acknowledges that in some cases, EBs may not provide IBs with second level data.¹⁹

In these cases, the Commission believes that "[even] if this type of information sharing [*i.e.* an EB sharing downstream order execution data with the IB] does not occur, a customer will still be entitled to receive information from *its* broker-dealer under Rule 606(b)(3) that illustrates how the broker-dealer is handling the customer's orders."²⁰ Because the rule explicitly states that EBs are not required by amended Rule 606(b)(3) to provide any data to IBs, and because the Commission acknowledges²¹ that in some cases, IBs will not be provided with such data from the EB in the near term, we believe it is not realistic to expect EBs to uniformly provide such information to the IB. Rather, under the Amended Rule, the decision to provide IBs with "look-through" data beyond the first route from the IB to the EB should rest with the EB, as some EBs may view providing subsequent route information to be in *their* best interest. FIF and STA believe that in its current state, requiring IBs to report look-through data will result in different IBs providing customers with various levels of order routing/execution detail capturing various levels of completeness will necessarily result in inconsistent and inaccurate information reported to customers.

Following public indications by, and various FIF/STA discussions with Staff pertaining to the expectation that IBs are required to derive and report second level order routing/execution data, FIF and STA engaged in several discussions with industry stakeholders to better determine if such data is currently available.²² To be compliant with Rule 606(b)(3), according to verbal guidance from Staff, IBs must be provided with downstream data pertaining to any and all orders routed to EBs or EVs. However, the degree to which such data is available to IBs spans a wide spectrum. Today, some EBs have mechanisms in place that allow for the delivery of order routing and

¹⁷ *Supra* note, 3 at 75 ("Because Rule 606(b)(3) requires a broker-dealer to provide the required information only with respect to "its" order handling, an IB's obligation under Rule 606(b)(3) does not extend to the order handling activities of another broker-dealer. Nevertheless, the Commission believes that competitive forces in the market may enable a customer whose orders are routed by its broker-dealer to another broker-dealer to receive detailed order execution information, such as that required by Rule 606(b)(3)(ii) through (iv), for such orders").

¹⁸ *Id.*

¹⁹ *Id.* at 75-76 ("Even if this type of information sharing does not occur, a customer will still be entitled to receive information from its broker-dealer under Rule 606(b)(3) that illustrates how the broker-dealer is handling the customer's orders. With that information, the customer should be in a better position to determine whether its broker-dealer is adequately serving its investing and trading need, as well as whether it would be better served by utilizing the services of a broker-dealer that is able to provide the full suite of detailed order handling information set forth in Rule 606(b)(3)."); FIF and STA have engaged in several discussions with industry members to better determine the current state of the EBs' readiness/willingness to provide IBs with necessary access downstream order routing/execution data from EBs. We believe the following: 1) a minority of EBs currently and will continue to provide order execution data to IBs; 2) some EBs do not currently provide downstream data, but are aware of Rule 606 expectations and are awaiting guidance before implementing business process changes; 3) several EBs are aware that their IB client requires downstream data, but have not put mechanisms in place to provide such data due lack of regulatory mandate; 4) some EBs are not aware of this obligation/do not interpret the Rule as requiring IBs to report second level order execution data. Further detail is provided, *infra*.

²⁰ *Id.* at 75 -76.

²¹ *See Id.*

²² *See supra*, footnote 19.

execution data in a format that will allow the IB (or their vendor) to provide their customer with both the first and second level of order routing/execution data.²³ However, we believe that the majority of EBs are currently not positioned to provide the IB with the downstream data required to provide customers with the first and second level of order routing/order execution data that the Commission Staff has indicated is required by the Rule.

We believe that there are several reasons why EBs are largely not in position, nor incentivized, to provide IBs with requisite data. First, in discussions with several EBs, FIF and STA understand that EBs have interpreted the Rule as not only indicating that *EBs are not required* to provide data to other brokers, but despite the Staff's verbal indications the contrary that there is no obligation under the Rule for IBs to provide customers with two-levels of order routing/execution data. Even if EBs do not view their treatment of orders as proprietary, providing such data to IBs requires EBs to build systems and reporting mechanisms at incremental cost, which many firms are unwilling to implement based upon unclear objectives within the Rule.

Second and more fundamentally, we understand that a significant number of EBs are unwilling/unable to provide IBs with downstream order routing/execution data due to their concern regarding the potential leakage of proprietary order routing strategies. As will be discussed, *infra*, the Rule's preamble notes that the Commission shares similar concerns as the EBs, as the Commission considered but rejected order-by-order reporting since it believes that such data is considered sensitive intellectual property.²⁴ While we recognize that there may be alternative mechanisms available to industry members tasked with providing downstream data (*e.g.* passage of masked/unmasked customer identifiers, masking of order IDs through a 3rd party vendor), each available solution is dependent upon negotiation, agreement between parties, and implementation; all of which requires significant time and is dependent upon the issuance of written guidance from the Commission.

Finally, it is worth noting that if the Commission decides that broker-dealers must provide look-through data on 606(b)(3) reports, direction from the SEC concerning the form and degree of data expected is critical to allow for the reporting of accurate information across the industry. Clear guidance from the Commission will allow for greater standardization of the format that IBs and/or their vendors receive downstream order execution/routing data. A certain level of standardization is necessary, as most if not all firms will not respond to 606(b)(3) requests on an *ad hoc* basis, but rather will build automated systems designed to ingest and subsequently report order route/execution data on an ongoing (*i.e.* monthly) basis (*i.e.* firms will build systems under the assumption that customer's will request 606(b)(3) reports every month). Therefore, for the reasons discussed, *supra*, FIF and STA continue to believe both a clear mandate directing EBs to provide IBs with downstream information and additional published guidance that provides EBs with greater

²³ As will be discussed, *supra*, we believe that while some IBs may be well-positioned to provide asset managers with both first and second level order routing/execution data, we do believe that the current 606(b)(3) template only supports the reporting of single level routing/execution data to be aggregated and reported.

²⁴ *See Id.* at 49-50 ("[Part] of the reason why the Rule 606(b)(3) information is provided in the aggregate for all orders sent to each venue, and not on an order-by-order basis, is to protect broker-dealers from potentially disclosing sensitive or proprietary information regarding their order handling techniques. If the rule allowed customers to request the disclosures for discrete not held orders or a de minimis level of not held order flow, there would be a heightened risk that customers could gain insight into the broker-dealer's order handling techniques by perhaps reverse engineering how the broker-dealer handled a particular order").

certainty as to what data elements must be provided is critical for the Rule to achieve its intended objective.

Challenges – Deriving Order Routing and Execution Data

As stated above, the ability of IBs to report look-through information pertaining to order routing/execution data is at times beyond the IB's direct control. Therefore, access to this data is contingent upon parties with no regulatory mandate agreeing to provide such information downstream (in the case of a Customer ID solution) or upstream (in the case of an Order ID solution) at significant cost and risk.²⁵ At a minimum, all industry stakeholders (*i.e.* EBs, IBs, and vendors) would be required to develop systematic and automated methodologies to derive and report all downstream information. Due to various parties' sensitivity regarding the dissemination of required identifiers to 2nd/3rd parties, we believe that any systematic means of reporting downstream order execution/routing data will need to be constructed on a case-by-case basis.

For example, we believe that in some cases, the asset manager will permit the IB to pass Customer ID information downstream, which should allow the required downstream order execution data to be first aggregated (which, as the Commission notes, is an important protection embedded in the Rule), and then passed back in aggregate form upstream for the purpose of Rule 606(b)(3) reporting. However, we understand that in most cases, asset managers will not permit Customer IDs to be passed to 3rd parties due to information leakage concerns and therefore, this solution cannot be applied uniformly. Similarly, IBs (and/or their vendors) may be able to mask Customer IDs prior to dissemination of a not-held order to an EB; however, this solution will involve the creation and development of novel and complex systems and mapping tables, which is untenable under the current timeframes and associated lack of guidance, and we understand still may be objectionable to many asset managers.

Finally, we believe that in most cases, the most reasonable solution involves the IB gaining access to order routing/execution data from the EB(s), Exchange(s) and ATS(s) linked either by a Customer ID or Order ID.²⁶ As discussed, *supra*, this information is not usually provided to IBs on an order-by-order basis today. Therefore, industry stakeholders (*i.e.* IBs, EBs, EVs, and Vendors) will be required to engage in significant reference data mapping exercises designed to allow EBs to derive all applicable 606(a) and 606(b)(3) information at the Customer ID or Order ID level by each venue. The IB would then need to match the applicable identifier to individual executions passed back from the EB in order to accurately report criteria such as payments/rebates, fill rate, etc... specific to its customer's original order.

²⁵ See *e.g. supra* note, 11.

²⁶ Data required to be reported which would need to be tied to each Order ID includes: 1) Total Shares Routed, 2) Total Shares Routed as IOC; 3) Total Shares Routed that were further Routable; 4) Total Shares Executed; 5) Aggregate Net Fee/Rebate for shares executed; 6) Total Shares executed at the Midpoint; 7) Total Shares executed that were priced at the Near Side; 8) Total Shares executed that were priced at the Far Side; 9) Total Shares that provided Liquidity; 10) Duration of routes that provided liquidity; 11) Aggregate Execution Rebate/Fees for shares providing liquidity; 12) Total shares that removed liquidity; 13) Aggregate net Execution Rebate/Fees for shares that removed liquidity.

The abovementioned solutions each not only require significant business process and systems changes, but will involve significant negotiation,²⁷ time, resources and coordination between the IB, EB, EVs, trading systems and vendors. As stated in our February 20th letter,²⁸ we believe the development effort required to provide all 606(b) reportable information in a format that is transferrable to end-customers will take, *at minimum*, four-to-eight months to implement.²⁹ Accordingly, we believe such significant systems re-design and coordinated industry-wide effort is *not possible* to be achieved by the October 1 compliance date.

Challenges – 606(b)(3) Template

FIF and STA understand that should look-through be required, firms are expected to populate two levels of venue on the Rule 606(b)(3) template (*i.e.* the venue the IB routed to AND the venue of a subsequent route). However, FIF and STA continue to believe that the XML format required by the rule exclude the ability to simultaneously report on both the IB-to-EB parent order route (*i.e.* primary venue) and the EB child order route (*i.e.* secondary venue).

To better understand whether reporting within the current XML template is workable, FIF and STA formed a subgroup with the intent of applying a typical order routing scenario to the current template. During that process, it became evident that in its current form, the specific XML templates and PDF renderer (collectively “606(b)(3) template”) only supports the aggregation and reporting of single level routing information. Therefore, we believe that the current prescribed 606(b)(3) template only anticipated non-look through data (*i.e.* first route information) to be populated pursuant to the original intent of the Rule.

We strongly believe, based upon significant analysis, that multi-level reporting is inconsistent within the prescribed 606(b)(3) template and therefore, it is not possible for IBs to utilize the Commission-provided templates without rendering the report all but useless to any customer. Therefore, we strongly emphasize that the 606(b)(3) template must be re-designed should the Commission require look-through data (and associated venues) to be populated within the 606(b)(3) template.

Industry Recommendation

FIF and STA continue to believe that given the fundamental challenges within the Rule, lack of written guidance, and a 606(b)(3) template that does not allow for the reporting of multi-level routing and execution data, the implementation of Rule 606(b)(3) is *not possible* within the current implementation timeframe. While SEC Staff have provided certain FIF and STA representatives with verbalized guidance that they have in turn provided to FIF and STA industry members regarding the

²⁷ We believe that given similar proprietary information leakage concerns amongst industry stakeholders (*i.e.* asset managers, EBs), IBs will be required to negotiate with *each* asset manager/EB separately to determine how the IB will gain access to downstream order execution detail. This concern also applies if the IB contracts with a vendor who may provide more granular masking methodologies.

²⁸ Letter to Mr. Theodore Venuti, Assistant Director, SEC from Mr. Christopher Bok, Director, FIF, *RE: File No. S7-14-16 – Disclosure of Order Handling Information* (February 20, 2019) at 3.

²⁹ Depending on the level of information an EB provides today as well as the degree to which OMS/EMS systems will be required pass Order ID information, we believe that that technology and process changes should the Amended Rule require look-through information could exceed 8 months.

Rule 606 implementation considerations, we emphasize that implementation cannot progress until written guidance is published and broadly disseminated by the Staff or the Commission itself. Bilateral discussions between select industry members and the Commission Staff, while productive, cannot be a replacement for a full notice-and-comment process, and cannot substitute for SEC-issued guidance. Therefore, given the fundamental challenges with the rule, and the lack of a clear path forward given the current open questions, FIF and STA recommend that the Commission consider the following implementation schedule and recommendations. We believe this will ultimately provide customers with consistent and accurate data, while affording brokers with requisite guidance to first meet the Rule's stated requirements for first level order routing/execution data, and subsequently the Staff's desire for second level order routing/execution details, to be provided on 606(b)(3) reports.

SEC Rule 606(a) - Implementation Timeframe and Recommendations

Pursuant to the November 2, 2018 Adopting Release, Rule 606(a) requires brokers to provide the following: 1) enhanced data regarding venue, order, and executions; 2) disclosure of all held NMS equities orders; 3) disclosure of NMS options orders less than \$50,000 notional; 4) the determination of marketability at the time of the route; and 5) detailed fee and rebate information.³⁰ While FIF and STA believe that the majority of 606(a) provisions are implementable within a relatively short timeframe, we also emphasize that full compliance with the newly-amended 606(a) reporting expectations hinges upon the industry's outstanding request for guidance pertaining to: options reporting expectations (*i.e.* whether an options consolidator should be reported as venue as opposed to an exchange); the determination of marketability for any order; and questions regarding how order-by-order information pertaining to aggregated fees will be passed downstream. FIF believes that the industry should be afforded a minimum of 2 months to apply the guidance required to meet the full spectrum of the enhanced Rule 606(a) reporting expectations. Because there is less than 2 months remaining until the start of the data collection period, FIF believes that (provided that guidance³¹ is provided no later than November 1) the Rule 606(a) data collection period should commence on January 1, 2020 (commensurate with the start of Quarter 1, 2020).

SEC Rule 606(b)(3) – Implementation of Non-Look-Through and Look-Through information - Recommendations

FIF and STA believe that if requisite guidance is provided, Rule 606(b)(3) can be implemented in a reasonable timeframe if (consistent with the Rule) *only first route* (*i.e.* non-look-through) data is expected to be reported. We acknowledge that the intent of the Commission is to provide customers with enhanced order execution data (including look-through data) to better inform customers (through standardized templates) regarding the treatment of their orders. However, we

³⁰ *Supra* note, 3.

³¹ *See e.g. id.* at 13 (“[The] Commission continues to believe that generally requiring more detailed, standardized, baseline order handling information to be made available to customers upon request for orders in NMS stocks should enable those customers — and particularly institutional customers — to more effectively assess how their broker-dealers are carrying out their best execution obligations and the impact of their broker-dealers’ order routing decisions on the quality of their executions, including the risks of information leakage and potential conflicts of interest”).

also believe the Commission's objective of providing customers with enhanced routing and execution data can be meaningfully improved through the IB providing the customer with first level order execution data.

Industry members continue to believe greater transparency into a broker-dealer's handling of a customer's order is not exclusively contingent upon IBs providing the customer with look-through information to the child order routes and executions. Rather, (as noted by the Commission itself in the Rule) information pertaining to the initial route from the IB to the EB or EV is valuable, as it provides customers with meaningful data concerning the treatment of their orders and potential conflicts of interest than what is prescribed today.³² Notably, the information provided to the customer on 606(b)(3) reports pertaining to the *initial route* from the IB to another venue (EB or EV) will provide the customer with a meaningful view on the treatment of their order, including all fee and rebates the IB derived from the handling of the customer's order.³³ Should the customer identify potentially conflictual or nefarious activity based upon the first level (*i.e.* ex-look-through) data provided by the IB through 606(b)(3) reports, that information can be leveraged to engage in further dialogue³⁴ with the EB to better determine how their order(s) are handled, including the request of additional, *ad hoc* information.³⁵

Requiring only non-look-through data to be reported pursuant to 606(b)(3) will also promote (provided that required guidance is issued) the consistent implementation of the Rule. Should only non-look-through information be required, IBs would only report order route/execution data that they have more direct access to.³⁶ Therefore, all customers would then be provided (pursuant to the Rule) the same level of data. Likewise, the entity (IB) that has 606(b)(3) obligations will no longer be dependent upon another entity (that does not have any obligation to provide the IB with data under the rule) to provide them with information required to be compliant with the rule. Should the customer require look-through data, the customer may request additional data from the IB, who will then be required to determine whether the EB is positioned to provide such information. If the EB is not willing or able to provide downstream data, the IB can then elect to: 1) not provide the customer with the requested data (at the risk of losing business); or 2) elect to contract with another EB who is positioned to provide downstream data. In either case, market forces will dictate that customers will ultimately be provided with look-through information if they believe it to be valuable, even if only first level order execution data is required pursuant to the Rule.

³² *Supra* note, 19 at 3.

³³ We believe that the fee and rebate information, fill rate, etc... that will be provided from the EB/EV to the broker-dealer handling the customer order will inform the customer how the broker-dealer handled *their* order.

³⁴ See *supra* note, 3 at 229. The Commission notes in the adopting release that a primary intention of amended rule 606(b)(3) is to "inform customer dialogues with their broker-dealers about the broker-dealers' order routing practices to better match the needs of the customers with the order routing practices of the broker-dealers to whom they send orders."

³⁵ See *e.g.* *supra* note, 3 at 75-76. The Commission notes that "[even] if this type of information [first level look-through] sharing does not occur, a customer will still be entitled to receive information from its broker-dealer under Rule 606(b)(3) that illustrates how the broker-dealer is handling the customer's orders. With that information [routing detail from the IB to the EB], the customer should be in a better position to determine whether its broker-dealer is adequately serving its investing and trading needs, as well as whether it would be better served by utilizing the services of a broker-dealer that is able to provide the full suite of detailed order handling information set forth in Rule 606(b)(3)."

³⁶ Please note that as discussed, *infra*, broker-dealers handing customer order are will still be required to obtain a certain degree of information from their EB pertaining to fee and rebate information. The current unavailability of this information, in many cases, provides partial justification for our request for a 180 day delay pursuant to 606(b)(3) non-look-through reporting.

It is also important to note that should the EBs ultimately provide IBs with look-through data in a format that allows the IB to be compliant with amended Rule 606(b)(3), there are currently no mechanisms in place that allows the IB to validate the completeness and accuracy of that data. Further, if the IB implements policies and procedures designed to validate the accuracy of the data received from the EB, FIF and STA believe that effort could ultimately delay customer access to 606(b)(3) reports as verification is dependent upon information provided by the EB. Because non-look through information *captures information only pertaining to the route* between the IB and an EB, IBs today have the means to not only validate the accuracy of the data they are reporting, but also allows the IB to “own” the information they are reporting. FIF and STA believe that the current inability of IBs to validate the accuracy of the data provided by the EB will result in additional risk of customers obtaining inaccurate and inconsistent data, as well as place IBs at risk of non-compliance with the rule. Thus, we recommend that even if IBs do have indirect access to look-through data, they may want to nevertheless report only “first route” data on 606(b)(3) reports until the Commission develop standards that give all IBs access to and the ability to validate the accuracy of all downstream information provided by all EBs.

FIF and STA strongly recommend that if second level routing/execution data is expected to be reported, the Commission should:

- 1) Clearly define the type of data that would be required to be reported;
- 2) Provide a means within the Rule by which all IBs may obtain access to the type of order routing/execution data it would need to receive from EBs in order to comply with second level (look-through) reporting requirements;
- 3) Clarify expectations/obligations of EBs and EVs;
- 4) Publish workable multi-level reporting templates; and
- 5) Publish a revised economic analysis reflecting the look-through requirement.

Until such a time that the Commission Staff’s expectations pertaining to the IB’s obligation of reporting look-through is made clear, we believe that customers will nonetheless be provided with valuable information derived from the IB’s reporting of detail pertaining to their direct relationship to their EB or EV, allowing customers to better gain transparency into potential conflicts of interest and the treatment of their order.

SEC Rule 606(b)(3) – Implementation of Non-Look-Through and Look-Through Information – Implementation Timeframe

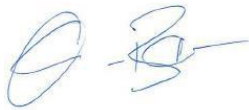
FIF and STA believe that IBs can implement Staff’s expectations pertaining to the reporting of the first level of order routing/execution data (*i.e.* the first route data between the IB and any destination to which the IB routes) within a reasonable timeframe subsequent to the issuance of written guidance from the Staff. However, this reporting cannot be achieved before the October 1, 2019 Compliance Date due to the lack of published guidance addressing the issues discussed above. Therefore, we respectfully request that the Compliance Date pertaining to non-look-through 606(b)(3) data be extended to 180 days following the publication of all required guidance (*see* appendix A).

Absent this 180-day extension, FIF and STA continue to believe that the Rule's ambiguities will result in fractured and inconsistent 606(b)(3) reports. Furthermore, given the unavailability of second level order execution data, a template that does not allow IBs to reasonably report look-through data, and lack of clarity regarding the full-scope of data that is required to be reported (and how to report such information), we emphasize the *fundamental need that all expectations pertaining to the reporting of look-through data* are clarified and that the industry be afforded a template that reasonably allows for the reporting of first and second level order execution data.

Conclusion

FIF and STA appreciate the Commission's willingness to engage in open and productive dialogue with industry stakeholders as firms continue to work through the challenges with respect to the implementation of the Rule. However, with less than two months remaining before the start of the data collection period, the issues and challenges raised in this letter represent significant hurdles to the industry's ability to implement the Rule in a manner that will provide customers with accurate and consistent order routing/execution data. Without access to complete and accurate data, the Rule will not be implemented across the industry in a manner that will provide customers with the value the Rule intends. Therefore, FIF and STA respectfully request that the abovementioned recommendations are strongly considered by the Commission to afford all affected parties with a reasonable opportunity to meaningfully comply with the Rule.

Regards,



Christopher Bok, Esq.
Director, FIF



James Toes
President & CEO, STA

CC: The Honorable Jay Clayton, Chair, SEC
The Honorable Robert Jackson, Jr., Commissioner, SEC
The Honorable Hester Peirce, Commissioner, SEC
The Honorable Elad Roisman, Commissioner, SEC
The Honorable Allison Lee, Commissioner, SEC
Mr. John Roeser, Associate Director, Division of Trading and Markets, SEC
Mr. David Shillman, Associate Director, Division of Trading and Markets, SEC
Mr. Theodore Venuti, Assistant Director, Division of Trading and Markets, SEC

Appendix A³⁷

Scope of Broker-Dealer Discretion:

1. FIF requests that the Commission publicize answers to the scenarios on discretionary order routing decisions FIF presented as part of our February 20th comment letter. FIF believes it is imperative to understand the specific scenarios when a broker routes customer orders to another broker yet exercises discretion over that order (thereby triggering 606(b)(3) obligations). FIF believes that Commission-provided answers to discretionary questions will promote a more uniform application of the rule across all Broker-Dealers.³⁸ [Discussion Response: Several FAQs have been drafted that clearly demonstrate cases in which a Broker-Dealer has exercised discretion. Because Staff has interpreted “discretion” pursuant to Amended Rule 606 extremely broadly, FIF suggested that Staff include a FAQ that indicates that all order routing decisions subject to caveats are considered discretionary order routing decisions].

Scope of Look-Through

2. FIF requests clear guidance regarding whether and in what circumstances look-through is required and how many levels of look-through are required in each circumstance (*e.g.* in the event all of part of an order is passed through to multiple broker execution venues before it is executed).
 - a. FIF requests that the SEC publish an FAQ clarifying that exchanges are considered terminal venues pursuant to Amended Rule 606 (*i.e.* should an exchange further route an order, broker-dealers are not expected to report execution data of those subsequent venues). [Discussion Response: Broker-Dealers subject to Rule 606 obligations are required to report the first two levels of order routing or execution data. For the purpose of 606(b)(3), Introducing Broker-Dealers are expected to report the primary routing destination (another Broker-Dealer, ATS, SDP, or Execution Venue) and secondary routing destination (subsequent route from the primary routing destination to another venue) on 606(b)(3) reports. Subsequent routes/executions are not reportable].
 - b. FIF requests that the SEC publish an FAQ specifying whether all market centers pursuant to the rule (*i.e.* exchange market maker, OTC market maker, ATS, national securities exchanges, national securities associations) are considered terminal venues? [Discussion Response: National Securities exchanges are considered terminal venues for the purpose of Rule 606].
 - c. If an Introducing Broker-Dealer’s Smart Order Router (“SOR”) utilizes different exchange order types, and the exchange subsequently reroutes those orders, is the Introducing Broker-Dealer responsible for reporting subsequent child routes (and executions) from the exchange [Discussion Response: No, pursuant to Amended Rule 606, Exchanges are terminal venues and therefore, Introducing Broker-Dealers are not required to obtain subsequent routes on orders sent to an Exchange].

³⁷ For further detail, please refer to FIF’s [January 30th](#) and [February 20th](#) comment letters. Please note that the “discussion responses” highlighted in red are FIF and STA’s recollection and interpretation of discussions between industry members and Staff pertaining to the enumerated questions contained in Appendix A and B.

³⁸ See Appendix B.

- d. If a Broker-Dealer routes an order through another firm's SOR (algo) and that order is routed to multiple exchanges that do not result in fills, are introducing Broker-Dealers expected to report information regarding unfilled orders sent to specific exchanges on their 606 reports? [Discussion Response: Unfilled/unexecuted orders are expected to be reported pursuant to rule 606].

Application of Prior Guidance

1. FIF requests clarity on whether the [guidance](#) (FAQs) published pursuant to the adoption of SEC Rule 11Ac1-6 will apply to Amended Rule 606? [Discussion Response: Yes, unless explicitly invalidated, the prior FAQs pursuant to Rule 11Ac1-6 applies to Amended Rule 606].

Fees/Rebates

1. FIF requests that the SEC provide greater detail on the following terms:
 - a. What is the expected definition of "fee/rebate" under Amended Rule 606? (*i.e.* do fees include pass through fees, exchange rebates, etc). [Discussion Response: All fees and rebates associated with the route and execution of an order should be included in 606 Reports (*i.e.* aggregate fee/rebate, including commissions).
 - b. What is the expected definition of "cost plus" (*i.e.* pass-through) under Amended Rule 606? [Discussion Response: Fees and rebates associated with the route to the Broker-Dealer are expected to be reported pursuant to Rule 606 include fees paid/rebates received from the broker/execution venue, which include pass-through].
2. May firms estimate fees per order based upon publicly available rate tables/liquidity codes and/or historical precedent? [Discussion Response – Actual fees paid/rebates received from the executing broker/execution venue are expected to be reported pursuant to Amended SEC Rule 606].
3. FIF would like to confirm that footnote 209 allows firms that do not have fee and rebate information available at the time of the customer request the flexibility to exclude the prior month (*i.e.* if a customer requested a 606(b)(3) report on July 14, 2020, and did not yet have the complete fee and rebate information for June, the BD would be permitted to provide 606(b)(3) information from December – May)[Discussion Response: Should the Broker Dealer not have the end-of-month fee and rebate information at the time of the customer request, the Broker-Dealer may provide the customer with the preceding 6 months of known fee and rebate information. Once the end-of-month fee and rebates tables are provided by the execution venues, the Broker-Dealer would be expected to provide the customer with an updated 606(b)(3) report capturing the complete data at the time of the request. FIF suggests that firms establish policies and procedures to clearly communicate to their customers the expectation that the Broker-Dealer will provide complete data when available].
4. Are the fees/rebates that are associated with a particular execution the fees that the reporting broker pays to its chosen execution service (*e.g.* first exchange, receiving broker, ATS that the order is routed to) or the fees that are incurred where the order was ultimately executed (*e.g.* last market). [Discussion Response: The aggregate fees (inclusive of commissions, regulatory fees, etc...) that the reporting broker pays/receives from its chosen execution service are the fees reported on 606 reports].
5. Are the added and removed (and other) liquidity indicators always supposed to be associated with the trade/order's last market? [Discussion Response: Yes, the add/remove liquidity indicators are in reference to a trade's final place of execution (last market)].

Actionable IOIs

1. A broker-dealer's IOI system does not have a market data feed and therefore cannot determine if a priced IOI is equal to or better than best bid or offer.
 - a. Can a BD default to all IOI that have symbol, side, quantity and price as actionable? **[Not explicitly answered].**
2. A broker-dealer does not have system for reporting manual IOI based on customer order.
 - a. Can a BD institute a policy in which all manual IOIs must be unpriced? **[Not explicitly answered. However, our indication is that Manual Actionable IOIs are 606 reportable. Industry Members would be required to devise mechanism to capture and report Manual Actionable IOI information].**
3. If a broker-dealer (desk) receives two orders on different ETFs that overlap (ETFs have overlap in the underlying holdings), are firms expected to report IOIs as actionable if the broker-dealer requests that the desk provide a bid on the combined order? **[Not explicitly answered].**

Agency, Principal, and Riskless Principal Trading **[Discussion Response: In general, the reporting of riskless principal workflows is the same as agency workflows].**

1. A broker-dealer executes a customer order as principal through the market (subject to Rule 611) or at the market.
 - a. Is this execution reported under 606(b)(3)(ii)?
2. A broker-dealer crosses two customers' orders as a principal and riskless principal executions.
 - a. Does this constitute shares executed as principal? **[Discussion Response: No, this does not constitute an execution as principal].**
3. A broker-dealer crosses two customers' in an agency cross, through the market (subject to Rule 611).
 - a. Are these shares reported in 606(b)(3)(ii)(iii)(iv) **[Discussion Response: Yes as a Broker's primary route to itself for the executed quantity, these shares would NOT be counted in the Principal fill total].**
4. A broker-dealer stops a client on a Not Held order and fills the customer on a principal basis. Is this execution reported in 606(b)(3)(ii)?
5. A broker-dealer receives a customer order to buy 50,000 shares of ABC. The BD enters a principal order in a third party BD algo/smart order router which routes multiple child orders to the market. After accumulating a 50,000 share position, the BD sells the position to the customer at the average price it bought to the customer as a riskless principal trade.
 - a. Should the sell to the customer be reported as a principal execution? **[Not explicitly answered].**
6. Same facts as above, except that the broker-dealer allocates each print immediately the customer order at the same price in a riskless principal transaction.
 - a. Should the sells to the customer be reported as principal executions? **[Not explicitly answered].**
7. A broker-dealer fills 30,000 share order partially against inventory and partially as agent using a third party algo provider. A principal trade of 10,000 shares executed, and 20,000 shares are

routed to a third party algo. The algo provider routes out a total of 25,000 shares in numerous child routes which generates fills totaling 18,000 shares. The leaves quantity is cancelled by broker-dealer and executed as principal.

- a. How is the fill rate calculated?
 - b. Which routes are included in the denominator?
 - c. Are shares executed as principal included in the numerator, or only those shares executed from routed orders? [from the customers perspective the fill rate was 100%- from a route perspective the fill rate is 90% (18k/20K) or 72% (18k/25k) assuming look through, or 40% (18k/45k) assuming all routes are counted- BD route to Algo provider(20K) and Algo provider routes to market (25k)].
8. Riskless Principal Transactions/Aggregated Orders/Representative Orders - Greater detail is required regarding how firms should report orders handled on a riskless principal/aggregated basis (see dated January 30th);
- a. Is there a difference in the reporting requirements for a one-to-one representative order versus a representative order that is created on behalf of multiple customer orders? [Not explicitly answered].
 - b. Is there a difference in the reporting requirements for Agency/Riskless Principal activity where the client is getting fills on a print-for-print basis v. a scenario where the firm accumulates a position (via multiple street-side trades) and allocates to the customer via a single Agency or Riskless fill? [Not explicitly answered].

Average Price Accounts

1. How are orders derived from Average Price Accounts expected to be reported? [Discussion Response: Orders derived from Average Price Accounts are expected to be reported on a pro-rata basis].

Options Reporting

1. Clarity is required regarding whether options contracts considered 1 share or 100 shares for Rule 606 reporting purposes; [Discussion Response: For the purpose of 606, one share is equal to 1 options contract (i.e. 100 shares)].
2. FIF requests greater clarity on the calculation of marketable/non-marketable limit orders for complex options orders; [Discussion Response: Complex options to be calculated based upon the October 16, 2001 FAQs applicable to 11Ac1-6 (FAQ 6) " Broker-dealers may adopt any reasonable procedure to determine the market value of an order. For example, firms could use the previous day's closing price for the security or the inside quotes at the time the order was placed. Orders linked together for execution by the customer, or single orders submitted for more than one account, may be considered a single order when calculating their market value. The fact that an order ultimately is executed in more than one transaction does not affect its status as an excluded order."]
3. How does the SEC expect the notional value to be calculated for options/complex options?
4. Should the value for options be calculated based on the parent or child order of an order? [Discussion response: The value should be calculated at the time the order was routed based upon the guidance provided in the FAQs pursuant to 11Ac1-6 (FAQ 6)].

5. What is the venue for an options order that is sent to a receiving broker that forwards the order to an exchange? The broker, the exchange, or both? [Discussion Response: For the purpose of Amended Rule 606, the consolidator should be considered the venue (as opposed to the exchange)].
6. A BD receives options orders that include 2 or more legs and or are tied to stock. How are these to be reported in terms of the four buckets- Market, Marketable Limit, Limit or Other? [Discussion Response: Multi-legged complex orders should be reported within the "other" bucket].
- 7.

Rule 606(b)(1) Report

1. In Section 3 of the Order Routing and Handling Data Technical Specification, does "Order ID" refer to the firm's identifier for the customer order (as opposed to a separate identifier for each route)? [Not explicitly answered].
2. In Section 3 of the Order Routing and Handling Data Technical Specification, is the reporting of Directed or Non-directed orders based on the customer's instruction for the parent order? [Discussion response: The reporting of Directed or Non-directed orders are based on the customer's instruction both with respect to the parent and child order, when applicable (i.e if the Broker-Dealer routes a parent order, the determination of whether the order was Directed or Non-Directed is determined at the parent level. In cases in which the Broker-Dealer routes a child order, the determination of whether the order was Directed or Non-Directed is determined at the child level)].

Additional Guidance

1. Total Shares Routed that were further Routable - Firms require additional guidance on which metrics should be used to determine whether an order is further routable. Are firms required to evaluate all order types to make that determination or does a best effort standard applicable? [Discussion response: Further routable is defined as "any order without explicit "do not route" instructions].
2. Directed v. Non-Directed Orders – A broker operates two ATSs. The customer instructs the broker that the order should be executed only in the two ATSs operated by the broker. Is this considered a directed order? [Not explicitly answered].
3. Definition of Venue – greater clarity is required regarding the definition of venue pursuant to Amended Rule 606. Does the footnote 63 of the November 17 Adopting Release to SEC Rule 11Ac1-6 still apply? [Discussion Response: For the purpose of 606(b)(3) reporting, Broker-Dealers are expected to report the venue associated with the primary route (i.e. route from the introducing broker to the executing broker) and the secondary route (i.e. route from the executing broker to another broker-dealer, ATS, SDP, or Executing Venue). Venues may include other Broker-Dealers, ATSs, SDPs or Executing Venues].
4. Obligation of Execution Venues - Are exchanges, ATSs and other execution venues obligated to provide data to routing brokers that the routing brokers require for compliance with their Rule 606 reporting obligations (for example, whether an executed order provided or removed liquidity, duration for an executed order that provided liquidity, best bid and best offer at time of execution, and execution fee information)? Are brokers (intermediary brokers) that route

orders received from other brokers (introducing brokers) obligated to provide data to the introducing brokers that the introducing brokers require for compliance with their Rule 606 reporting obligations? [Discussion Response: Executing Brokers, ATSS, and Execution Venues do not have a regulatory obligation to provide introducing brokers with routing/executing data. However, the SEC believes that market forces will dictate that routing/executing brokers will provide that data³⁹. The industry is expected to derive a solution to ensure that the introducing broker community is afforded the requisite data to meet Rule 606 obligations].

5. Immediate or Cancel (IOC) - Further guidance is required regarding whether not-held orders can be IOC; [Not explicitly answered].
6. Contingent Orders - A broker dealer handles contingent orders on its Options, Convertible Securities, and Arbitrage desks. – Are contingent order where one leg of the order is an NMS stock included under the scope of 606? [Not explicitly answered].
7. Inter-listed securities – Firms require further detail regarding whether non-US execution venues are required to provide data to routing brokers for the purpose of Rule 606; [Not explicitly answered].
8. Inter-listed securities - A routing broker in the US receives an order from a US customer to trade a security listed in a foreign market. The security is common stock. The customer instructs the routing broker to only execute the order in the specific foreign market designated by the customer and in the currency of that foreign market. The issuer also has common stock listed on a US exchange. Since US brokers cannot require foreign execution venues to provide certain data that the US brokers would require to comply with their Rule 606 reporting obligations (for example, whether an executed order provided or removed liquidity, duration for executed orders that provided liquidity, best bid and best offer at time of execution, and execution fee information), are these orders exempt from Rule 606 reporting? [Not explicitly answered].
9. Marketability v. Non-Marketability – Industry members require clear guidance/expectations regarding when firms are expected to make the determination of when an order is marketable (*i.e.* when the order is received *v.* when the order is routed). FIF further requests additional guidance on the concept of marketable/non-marketable limit orders as applied to options; [Discussion Response: Marketability is determined at the time that the order was routed by the Broker-Dealer (as opposed to when received by the Broker-Dealer)].
10. Removing/Providing Liquidity – Guidance is required regarding the expectations of reporting instances of providing/removing liquidity pursuant to 1) cancelled orders; 2) principal fills 3) venues that perform midpoint crossings, 3) adding/removing liquidity when no order is resting on the book or there is not book, etc.
 - a. Average Duration – Does “average duration of orders providing liquidity” refer to the average time between order entry on the execution venue and execution on the execution venue (as opposed to average time between order entry at the reporting broker and execution time on the execution venue)? [Discussion Response: If an order receives at least one execution, Duration is calculated as time of entry until time of fully filled or cxl. If an order did NOT receive an execution, it does not have a "duration"].
 - b. Order Cancellation – Rule 606 requires brokers to report information regarding the average time between order entry and execution/cancellation for orders that provided

³⁹ See *supra* note, 3 at 75-76.

liquidity. FIF believes that by definition, if an order provided liquidity, the order must have been executed and therefore, FIF requests additional clarity on what constitutes an order that provided liquidity and was then cancelled. [Not explicitly answered].

- c. Providing v. Removing Liquidity - Can there be scenarios where an executed order neither provides nor removed liquidity (for example, an ATS provides functionality for one-to-one negotiation between two ATS participants)? [Discussion Response: Yes, in certain cases, an executed order may neither add nor remove liquidity].
- d. Providing v. Removing Liquidity (non-display ATS) – The questions in this section all involve non-displayed orders in a non-display ATS:
 - i. Customer A has a non-displayed order resting in an ATS. Customer B’s opposite-side order executes against Customer A’s resting order. Would it be permitted to report these orders as follows:
 1. Customer A: Providing Liquidity;
 2. Customer B: Removing Liquidity
 - a.
 - ii. Customer A has a non-displayed order resting in an ATS as a conditional order. Customer B transmits a firm opposite-side order. Customer A firms-up its order, resulting in an execution. Would it be permitted to report these orders as follows:
 1. Customer A: Providing Liquidity;
 2. Customer B: Removing Liquidity
 - a. [Not explicitly answered].
 - iii. The following trading scenario occurs:
 1. Time 0:
 - a. NBBO: 10.00 – 10.04
 - b. Buyer: Limit price of 10.01 with a mid-peg instruction
 - c. Seller: No limit, with a mid-point instruction
 - d. Trade cannot execute because the current mid-point is above the buyer’s limit, and the seller can only execute at the mid-point or higher
 2. Time 1:
 - a. NBBO changes to: 9.99 – 10.03
 - b. Trade executes at 10.01
 3. Would it be permitted to report these orders as follows: Both customers are providing liquidity? [Not explicitly answered].
 - iv. Orders arrive in the following sequence within an ATS:
 1. Seller A: SL order – 20,000 shares; 10,000 minimum;
 2. Seller B: SL order – 20,000 shares; 10,000 minimum;
 3. Buyer C: BY order – 9,000 shares; no minimum;
 4. Buyer D: BY order – 11,000 shares; no minimum
- The ATS provides for proportional execution between A and B in this scenario rather than time priority. When the order from Buyer D is received, the ATS executes as follows:
 - **A vs C: 4.5K**

- **B vs C: 4.5K**
 - **A vs D: 5.5K**
 - **B vs D: 5.5K.**
 - Would it be permitted to report these orders as follows: 1) Sellers A and B and Buyer C: Providing liquidity; and 2) Buyer D: Removes Liquidity? **[Not explicitly answered]**.
8. Pre-Market Limit Orders - A BD receives Market and Limit Held orders prior to the open of the market. How are these to be reported in terms of the four buckets- Market, Marketable Limit, Limit or Other **[Discussion response: Broker-Dealers are expected to establish reasonable policies and procedures to determine the marketability of pre-market orders]**.
 9. 606(b)(3) Report Generation: Less than six months of data - How should 606 (b)(3) reports be generated prior to a broker-dealer possessing 6 months of data (*i.e.* April 2020)? FIF recommends that firms not be required to provide buy-side clients with 606(b)(3) reports until the broker-dealer can provide 6 months of data **[Discussion Response: Upon request, Broker-Dealers are expected to provide customers with 606(b)(3) Reports on November 7, 2019]**.
 10. Manual Orders – If a broker manually routes an order (*e.g.* by phone or chat) to another broker, smart router or algo, is there still a requirement to include the look-through information on its 606 report to customers considering that there is no mechanized way to have received this data back from the executing broker or market center? **[Discussion Response: Yes, manual routes are expected to be reported on 606 Reports]**.

Appendix B

Are Broker-Dealers deemed to have exercised discretion under the following scenarios:

1. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to use BD2's SOR with no other qualifications, parameters, or instructions. **No Discretion**⁴⁰
2. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to execute the order using BD2's algo engine with specific instructions to use a VWAP strategy and specific instructions telling BD2 to use its "Aggressive" VWAP configuration. **Discretion**
3. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to use BD2's SOR with no other instructions. However, in this case, BD1 and BD2 have an agreement that when BD1 targets BD2's SOR strategy, BD2 should never send a child order to BD3. **Discretion**
4. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to use BD2's SOR with instructions telling BD2 to only interact with a "lit" venue when executing the order. **Discretion**
5. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) a "Directed ISO" order targeting an NMS exchange. **Discretion**
6. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to execute the order using BD2's algo engine with no specific instructions regarding which algo strategy or parameters to use. **No Discretion**
7. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to execute the order using BD2's algo engine with specific instructions to use a VWAP strategy. **Discretion**
8. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to execute the order using BD2's algo engine with specific instructions to use a VWAP strategy and specific instructions telling BD2 to use its "Passive" VWAP configuration. In this scenario, BD1 and BD2 further have an agreement in place that when BD1 targets BD2's SMOR strategy, BD2 should never send a child order to BD3. **Discretion**
9. A client sends an order to an IB (BD1). BD1 then sends the order to an EB (BD2) with instructions telling BD2 to execute the order using BD2's algo engine with specific instructions to use a "Custom" strategy that 1) BD2 build exclusively for BD1; and 2) BD2 build based on feedback and instructions from BD1. **Discretion**
10. A client requests execution only on a primary and/or listing market but the BD (BD1) receiving the client order is a FINRA-only member. To satisfy the client's instructions, the receiving BD (BD1) routes the client's order to one or more of its executing BDs that offers a specific primary/listing market strategy. (Here, FIF believes the BD is not exercising discretion as it is simply executing upon their client's instructions). **No Discretion**
11. An IB requests that their clearing firm modify their profile in terms of urgency when taking liquidity for algorithms. **Discretion**

⁴⁰ Staff explained that the scenarios in which the BD has not been deemed to have exercised discretion are subject to two caveats: 1) If there is an economic arrangement that implies that the executing broker should handle an order in a specific manner; and 2) A general instruction from the introducing BD to the executing BD that through the normal course of dealing implies that there the executing broker should handle an order in a particular manner (i.e. using a specific routing strategy, algo, or targeting specific venues).

