January 6, 2017

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Disclosure of Order Handling Information (S7-14-16)

Dear Mr. Fields:

The Healthy Markets Association[1] appreciates the opportunity to supplement our August 2nd remarks before the Commission's Equity Market Structure Advisory Committee[2] (EMSAC) and our September 26th comments to the SEC's proposal to expand disclosure of order handling information (hereinafter, the "SEC Proposal").[3]

We applaud many of the recommendations provided by EMSAC[4] which are consistent with many of the recommendations provided by the Healthy Markets Association, including the need to centralize reporting and modify Rules 605 and 606 to reflect changes in market structure since the adoption of the rules. We caution the Commission however to examine more closely EMSAC's recommendation to adopt a held/not-held classification with respect to institutional and retail orders.

We begin our submission by reiterating our belief that the SEC should not arbitrarily determine some set of investors are able to have more and better information than others, as the proposal does. All investors deserve to know how their orders are handled and executed. Unfortunately, while the SEC Proposal make some significant strides for "institutional orders", its reforms for

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[1] The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. To learn more about Healthy Markets, or our Buyside and Working Group Members, please see our website at http://www.healthymarkets.org.

[2] Remarks of Christopher Nagy, Director Healthy Markets Association before the EMSAC, Aug. 2, 2016, *available at:* https://www.sec.gov/comments/265-29/26529-80.pdf.

[3] Letter from the Healthy Markets Association to Brent J. Fields, SEC, Sept. 26, 2016, *available at* https://www.sec.gov/comments/s7-14-16/s71416-19.pdf (hereinafter, "Healthy Markets September Letter"). See also, Disclosure of Order Handling Information, 81 Fed. Reg. 49432 (July 27, 2016), *available at*: https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-16967.pdf.

[4] EMSAC, *EMSAC Recommendations Regarding Data-Driven Approaches to Understanding & Improving Investor Confidence*, Nov. 16, 2016, *available at:* https://www.sec.gov/spotlight/emsac/customer-issues-subcommittee-final-fecommendation-1116.pdf.

so-called “retail” orders are inadequate to provide persons submitting those orders with sufficient information to make informed broker selection decisions.

Currently, the SEC Proposal would distinguish between “institutional orders” and “retail orders” based on what appears to be an arbitrary dollar size limit. Healthy Markets and numerous other commenters have, we think, clearly demonstrated why this distinction criteria is deeply flawed and should be abandoned.

If the Commission insists on making such a distinction between different types of investors, then we recommend that the reports should distinguish between orders submitted by registered investment advisers (institutional investors) and others.[5] This suboptimal solution seems to at least avoid some of the negative consequences of an order size or order type distinction.

Institutional investors want more and better information about their orders. As Capital Group put it, “the definition of an institutional order should be broad enough to include all (or nearly all) orders placed by an investment adviser with a broker-dealer.”[6] We agree.

Some commenters, including EMSAC, have recommended that the SEC should replace the deeply flawed proposed $200,000 order size distinction with a less-flawed distinction between “held” and “not held” orders. We agree that users of order handling information may want to distinguish between “held” and “not held” orders, and we also acknowledge that many institutions currently send mostly “not held” orders to the market.

However, this order type-based distinction is nevertheless an imprecise proxy for the status of the underlying customer. And that is what should control--given that it is the regulatory status of the customer that determines the customer’s obligations (e.g., for best execution).

An order type-based distinction will not cover all institutional orders, which is one of the most-important aspects of the rule. It is also unnecessary. Broker-dealers already have to know whether their customers are institutional investors or not. Since brokers already know this information, why not just make use of it directly, as opposed to turning to an artificial, imperfect, proxy?

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[5] Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, thousands of smaller investment advisers were pushed out of the SEC regulatory system into the states’ regulatory regimes. At the same time, larger advisers were compelled to register with the SEC. The net effect was that the total number of SEC-registered advisers decreased while the assets under management for registered advisers increased. See, e.g., SEC Division of Investment Management, *Dodd Frank Act Changes to Investment Adviser Registration Requirements*, (as of Jan. 2013), *available at* https://www.sec.gov/divisions/investment/imissues/df-iaregistration.pdf.

[6] Letter from Capital Group Companies, Inc. to SEC, (Sept. 30, 2016), *available at* https://www.sec.gov/comments/s7-14-16/s71416-25.pdf.

A "held" versus "not held" distinction may leave out many smaller investment advisers[7] that currently trade through or have some portion of assets under management through "retail" channels. These investment advisers would receive significantly different (and lower quality) information than larger institutional firms. By leaving them out of the benefits of the greater "institutional" order reporting regime, they would be denied the ability to undertake similar levels of execution quality reviews as other, larger firms. However, they would still have the same fiduciary duty, which includes a duty of best execution. So while their legal obligations to their customers would be the same, the information available to them and ability to comply with those obligations would vary significantly.

In addition, any order type-based distinctions (whether "held" vs. "not held" or something else) would also allow for potential gaming and other concerns. For example, an investor could send "held" orders to a broker to avoid the institutional reporting mechanism. Further, trading practices have evolved dramatically over the past several years. In recent years, amidst rising concerns with brokers' conflicts of interests, some institutional investors have come to use "held" orders. These investors would be denied the benefits of the additional institutional reporting regime for a portion of their orders. Again, institutions would not get this valuable information on all of their orders, and some investors may get none of this important information at all. Further, as trading practices evolve over time, institutional and retail order type usage may change, which may have dramatic impacts on the utility of the reports.

As we have said before, the SEC should abandon the ill-advised distinction between reporting regimes and require customized, enhanced reporting for all customers' orders. Then, to help customers make better use of the data, the SEC should require as part of the reporting a distinction between "held" and "not held" orders. That way, institutional investors would unquestionably receive all of their order information, and be well-equipped to analyze it. Without this approach, some institutional investors will lose the benefit of this information for a portion of their orders. That said, the sub-optimal "held" versus "not held" distinction is far more preferable than a dollar or share-size-based distinction.

[7] At the end of 2015, there were about 11,473 SEC-registered advisers with more than $66 trillion in assets under management. The relative sizes of these advisers runs from some very large advisers all the way down to many smaller advisers that custody assets and trade through more "retail" broker dealers, such as Charles Schwab, Fidelity and TD Ameritrade. See generally, Kelly O'Mara, *How many RIAs are there? No seriously, how many?* Nov. 11, 2015, *available at:* http://riabiz.com/a/2015/11/11/how-many-rias-are-there-no-seriously-how-many. Additionally, a recent report found that the RIA channel grew assets faster than any other advisor channel, experiencing growth of 6.2%. Marlene Y. Satter, *RIAs growing market share while wirehouses shrink: Cerulli*, Sept. 13, 2016, *available at*: http://www.benefitspro.com/2016/09/13/rias-growing-market-share-while-wirehouses-shrink (quoting Report from Cerulli Associates). Further, the report projects that the RIA and hybrid registered RIA's will increase their asset market share from 23% in 2015 to 28% in 2020. *Id.*

We would also like to take this opportunity to expand on our recommendation, which was reiterated by the EMSAC, to centralize reporting of Rules 605 and 606. We again applaud EMSAC for its recommendation to centralize reporting and believe that this is an important step that will further the Commission's original objective of the rule to get the information into the hands of investors. A centralized structure would aid investors in locating information about all reporting parties quickly and easily versus the fragmented and difficult to navigate system today. We also believe that centralized reporting will help with many of the inaccuracies and errors cited by Healthy Markets and others contained in the reports[8].

We would urge the Commission to consider FINRA as the central repository for Rules 605 and 606. While today, exchanges under the rule do not submit information to FINRA, broker-dealers and Alternative Trading Systems (ATS) currently do. As a result, FINRA has established methods for receiving and disseminating this information such as the FINRA ATS reporting mechanism, FINRA BrokerCheck and the regime of FINRA report cards. Investors frequently utilize FINRA's databases extensively when researching information about a particular broker or ATS. FINRA is also a far more widely utilized and known resource for investors and the industry than any other alternative host, such as the SEC.

Finally, we urge the Commission not to abandon the requirement to provide order routing strategy information based on aggressive, passive, and neutral designations. As we stated in the Healthy Markets September Letter, we would encourage the Commission to make the categorization as quantitative as possible using a metric such as the active-to-passive ratio rather than the current qualitative standard proposed by the Commission. Healthy Markets believes that without the information or an objective standard, firms will treat similar strategies differently, and thus dramatically reduce the quality of information and available comparisons.

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[8] *See e.g.*, Remarks of Bill Alpert, Senior Editor at Barron's before the EMSAC, Aug. 2, 2016, *available at:* https://www.sec.gov/spotlight/emsac/emsac-080216-transcript.txt.

Conclusion

Thank you again for the opportunity to comment on the SEC Proposal. We encourage you to revise it and finalize the rule without delay. By adopting much-needed reforms to order routing and execution reports, the SEC will be arming investors with the information they need to protect themselves and their customers. We thank you for undertaking this important task.

Sincerely,

Tyler Gellasch
Executive Director

Chris Nagy
Director

cc: Hon. Mary Jo White
Hon. Michael S. Piwowar
Hon. Kara M. Stein