



September 4, 2019

Via Electronic Mail

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

RE: Disclosure of Order Handling Information

Dear Director Redfearn:

We understand that the Commission is being pressured by some interested parties to again delay the implementation of certain basic order routing reforms. We write to urge you to resist that pressure.

After a lengthy multi-industry initiative, on October 23, 2014, the Investment Company Institute, the Managed Funds Association, and SIFMA jointly urged the Commission to adopt enhanced order routing disclosures, and submitted to the Commission a template of such a proposal.<sup>1</sup>

Since the launch of Healthy Markets Association in 2015, we have pressed the Commission to propose, adopt, and implement enhanced reporting requirements for order routing and order routing incentives.<sup>2</sup> At the urging of Healthy Markets Association and others, on July 13, 2016, the Commission unanimously proposed to require brokers to make significant new disclosures regarding how they route their orders, both to the public and to their specific customers.<sup>3</sup> On November 2, 2018, the Commission adopted some long-awaited order handling and routing disclosure reforms.<sup>4</sup>

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<sup>1</sup> Letter from Dorothy M. Donohue, Investment Company Institute, et al, to Mary Jo White, SEC, Oct. 23, 2014, *available at* <https://www.sifma.org/wp-content/uploads/2017/05/sifma-ici-and-mfa-writes-letter-to-sec-on-regulation-nm-s-prepares-order-routing-disclosure-template.pdf>.

<sup>2</sup> See, e.g., Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, SEC, Sept. 26, 2016, *available at* <https://www.sec.gov/comments/s7-14-16/s71416-19.pdf>; see also, Letter from Tyler Gellasch and Chris Nagy, Healthy Markets Association, to Brent J. Fields, SEC, Jan. 6, 2017, *available at* <https://www.sec.gov/comments/s7-14-16/s71416-1464340-130322.pdf>.

<sup>3</sup> *Disclosure of Order Handling Information*, SEC, 81 Fed. Reg. 49432 (July 27, 2016), *available at* <https://www.govinfo.gov/content/pkg/FR-2016-07-27/pdf/2016-16967.pdf> ("Proposed Rule").

<sup>4</sup> *Disclosure of Order Handling Information*, SEC, 83 Fed. Reg. 58338 (Nov. 19, 2018), *available at* <https://www.govinfo.gov/content/pkg/FR-2018-11-19/pdf/2018-24423.pdf>. ("Final Rule").

As we wrote in December 2018,<sup>5</sup> while the Final Rule offered some modest improvements over the Proposed Rule, it inexplicably dramatically scaled back the scope of the required public disclosures, and fundamentally weakened the utility of the final disclosures, as compared to several various alternatives, including several aspects of the Proposed Rule.

Nevertheless, the Final Rule still provides regulatory thrust and heightened value for investors. Perhaps most importantly, the Final Rule levels the playing field for investors, as some investors have essentially been able to obtain far more detailed information than is contemplated in the Final Rule for years, while others have not.

The Final Rule was initially scheduled to go into effect on May 20, 2019. That didn't happen.

While the comment file does not appear to reflect all of the relevant discussions, on February 20, 2019, the Financial Information Forum ("FIF") asked for clarifications and a delay of implementation until the last quarter of this year.<sup>6</sup> On April 24, 2019, the Commission delayed the implementation date for most key elements of the Final Rule until October 1, 2019, effectively granting FIF's request.<sup>7</sup>

On August 2, 2019, FIF joined the Security Traders Association ("STA") in asking the Commission for further clarifications and yet another lengthy implementation delay (for 180 days in some circumstances and an unspecified longer period in others).<sup>8</sup>

On August 16, 2019, the Commission staff offered extensive FAQs.<sup>9</sup> Perhaps we were unique, but we found none of the information provided in the FAQs to be new, and found them to be entirely consistent with and in no way different from the language in the Final Rule as it was adopted more than 10 months ago.<sup>10</sup>

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<sup>5</sup> Letter from Tyler Gellasch, Healthy Markets Association, to Brett Redfearn, SEC, Dec. 11, 2018, *available at* <https://healthymarkets.org/wp-content/uploads/2018/12/HMA-Order-Handling-Final-Rule-Comments-12-11-18.pdf>.

<sup>6</sup> Letter from Christopher Bok, FIF, to Theodore S. Venuti, SEC, Feb. 20, 2019, *available at* <https://fif.com/comment-letters/category/?download=2034:fif-follow-up-comments-on-sec-rule-606>

<sup>7</sup> *Disclosure of Order Handling Information*, SEC, 84 Fed. Reg. 18136 (Apr. 30, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-04-30/pdf/2019-08675.pdf>.

<sup>8</sup> Letter from Christopher Bok, FIF, and James Toes, STA, to Brett Redfearn, SEC, Aug. 2, 2019, *available at* <https://securitytraders.org/wp-content/uploads/FIF-and-STA-Comments-on-Amended-SEC-Rule-606.pdf>.

<sup>9</sup> *Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS*, SEC, Aug. 16, 2019, *available at* <https://www.sec.gov/tm/faq-rule-606-regulation-nms>.

<sup>10</sup> This consistency in messaging from the Commission in the Final Rule and the FAQs even applied to areas where we believed the Final Rule's language was erroneous and failed to fulfill the intent of Proposed Rule or the Commission's stated purposes for the rule. For example, despite the fact that an exchange may exercise significant discretion over how it may route and execute orders (like a broker), exchanges are nevertheless treated as venues under the rule, and do not need to provide detailed routing information. Exchanges may offer brokers complex "routing strategies" that may be based on "cost" or other parameters. See, e.g., *Cboe Routing Strategies*, Cboe, *available at*



Importantly, we do not understand the Final Rule, as adopted, to be particularly difficult to implement, as many of the requirements contained within the rule are already imposed by many investors on their broker dealers today.

While we are sensitive to some smaller firms who may need to negotiate with brokers to whom they may route orders (or their algorithm service providers), we are not aware of how this is new. Brokers have been far from blindsided, given that

1. similar expectations have been publicly circulating for more than five years;
2. investors have imposed far more onerous requirements on many institutional brokers for competitive and compliance reasons for several years; and
3. the Final Rule was adopted more than 10 months ago, and was entirely consistent with the recently-released FAQs.

Simply failing to take sufficient efforts to comply with the Final Rule is not an appropriate excuse for non-compliance, or adequate grounds to seek a delay. Any delay should be narrowly targeted to only those brokers who have demonstrated an objective need for a delay, and only for such information as the delay may be necessary. Further, brokers should be required to demonstrate good faith efforts to comply. Further, it should be time-limited in nature, and in no way extend beyond January 1st.

Implementing the much-needed order routing disclosure reforms will arm investors -- particularly smaller investors -- with the information they need to protect themselves and their customers. We thank you for undertaking this important task. Do not unduly delay it.

Sincerely,

Executive Director

cc: John Roeser

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[https://cdn.cboe.com/resources/features/Cboe\\_USE\\_RoutingStrategies.pdf](https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf) (viewed Sept. 4, 2019); see also *Routing Strategies Guide*, Nasdaq, available at <https://www.nasdaqtrader.com/content/ProductsServices/Trading/StrategyG.pdf> (viewed Sept. 4, 2019). This already large loophole, which may expand as a result of the enhanced transparency of brokers' order routing, should be closed.