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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86874]

Order Granting Application by The Financial Information Forum and Security Traders Association for an Exemption Pursuant to Rule 606(c) of Regulation NMS Under the Exchange Act from Certain Requirements of Rule 606 of Regulation NMS Under the Exchange Act

September 4, 2019.

I. Introduction

The Financial Information Forum (“FIF”) and Security Traders Association (“STA”) have filed with the Securities and Exchange Commission (“Commission”) an application for an exemption from certain requirements¹ of Rule 606 of Regulation NMS under the Exchange Act.²

This order grants the following exemptive relief from certain requirements of Rule 606, subject to certain conditions, which are outlined in greater detail below: (1) all broker-dealers are exempt from the requirement to comply with Rule 606(a) until January 1, 2020; (2) all broker-dealers that engage in self-routing activity are exempt from the requirement to comply with Rule 606(b)(3) until January 1, 2020; and (3) all broker-dealers that engage in outsourced routing activity are exempt from the requirement to comply with Rule 606(b)(3) until April 1, 2020.

II. Background

¹ See letter from Christopher Bok, Director, FIF, and James Toes, President & CEO, STA, to Brett Redfearn, Director, Division of Trading and Markets (“Division”), Securities and Exchange Commission (“Commission”), dated August 2, 2019 (“FIF/STA Letter”).

² 17 CFR 242.606.

On November 2, 2018, the Commission adopted amendments to Rules 600, 605, and 606 of Regulation NMS under the Exchange Act.³ The amendments to Rule 606(b) added a new disclosure requirement, set forth in paragraph (b)(3), that requires a broker-dealer, upon request of its customer, to provide specific disclosures related to the routing and execution of the customer's NMS stock orders submitted on a not held basis for the prior six months, subject to two de minimis exceptions. The Commission also amended the customer-specific disclosure requirement in paragraph (b)(1) of Rule 606 to apply to NMS stock orders submitted on a held basis, NMS stock orders that are submitted on a not held basis and the broker-dealer is not required to provide the customer a report under paragraph (b)(3), and NMS securities that are options contracts. In addition, the Commission amended the quarterly public order routing disclosure requirement in Rule 606(a) to apply to NMS stock orders submitted on a held basis, among other things. The Commission also amended Rule 605 of Regulation NMS to require that the public order execution report be kept publicly available for a period of three years.

On April 30, 2019, the Commission extended the compliance date for the amendments to Rule 606 to begin following September 30, 2019, to provide broker-dealers with time to implement fully the systems and other changes necessary to comply with amended Rule 606.⁴

FIF/STA request that: (1) the data collection period for Rule 606(a) be extended to commence on January 1, 2020; (2) the data collection period for Rule 606(b)(3) for broker-dealers that engage in "self-routing activity" (as defined below) be extended to 180 days following the

³ See Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) ("Adopting Release").

⁴ See Exchange Act Release No. 85714 (April 24, 2019), 84 FR 18136 (April 30, 2019) ("Rule 606 Compliance Date Extension Release"). The original compliance date set forth in the Adopting Release was May 20, 2019. The Rule 606 Compliance Date Extension Release did not extend the original compliance date for the amendment to Rule 605.

issuance of Commission staff responses to frequently asked questions regarding amended Rule 606 (“Staff FAQs”); and (3) the Commission delay the Rule 606(b)(3) reporting requirement for broker-dealers that engage in “outsourced routing activity” (as defined below).⁵

According to FIF/STA, broker-dealers and other industry stakeholders are unable to meaningfully comply with amended Rule 606 within the current implementation timeframe.⁶ FIF/STA set forth several implementation challenges that they state would affect a broker-dealer’s ability to comply, in particular, with the Rule 606(b)(3) requirement that it provide customer-specific reports of data regarding its handling of customers’ not held NMS stock orders.⁷ In addition, according to FIF/STA, these challenges are greater when a broker-dealer must report the information required under Rule 606(b)(3) for orders handled using the order routing systems of another broker-dealer (“outsourced routing activity”) than they are for orders handled using a broker-dealer’s own systems (“self-routing activity”).⁸ Self-routing activity for the purposes of this exemption is when a broker-dealer receives a customer’s order and routes it (or child orders thereof) to venues using its own systems. Outsourced routing activity is when a broker-dealer receives a customer’s order and utilizes the systems of another broker-dealer to route it (or child orders thereof) to venues.

⁵ See FIF/STA Letter, supra note 2, at 2. We note that Commission staff issued the Staff FAQs on August 16, 2019. See Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, <https://www.sec.gov/tm/faq-rule-606-regulation-nms>. The Staff FAQs are not a rule, regulation, or statement of the Commission, and the Commission has neither approved nor disapproved their content. The Staff FAQs have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

⁶ See FIF/STA Letter, supra note 2, at 1-4.

⁷ See id. at 4-8.

⁸ See id. (using the terms “look through information” or “look through data” and “non-look through information” or “non-look through data,” respectively).

With respect to the quarterly public reporting requirement in Rule 606(a), FIF/STA state that “the majority of 606(a) provisions are implementable within a relatively short timeframe” after the issuance of requested guidance.⁹

III. Order Granting Conditional Exemption

Rule 606(c)¹⁰ authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission, by the Division pursuant to delegated authority,¹¹ is granting a temporary exemption from reporting obligations under Rules 606(a) and 606(b)(3) to provide additional time for broker-dealers to complete the development of systems and processes necessary to begin collecting the data required by the rule. As described below, however, the length of time of the exemption from reporting obligations under Rule 606(b)(3) differs based on whether a broker-dealer is engaged in self-routing activity or outsourced routing activity.¹²

A. Amended Rule 606(a)

⁹ See id. at 2.

¹⁰ 17 CFR 242.606(c).

¹¹ 17 CFR 200.30-3(a)(69).

¹² The Commission is not issuing an exemption from any other provisions of Rule 606. Accordingly, compliance with Rule 606(b)(1) and the obligation to provide, upon request, customer-specific reports on routing of the following securities is still required to begin following September 30, 2019: (1) NMS stock orders submitted on a held basis; (2) NMS stock orders that are submitted on a not held basis and the broker-dealer is not required to provide the customer a report under paragraph (b)(3); and NMS securities that are options contracts. See Rule 606 Compliance Date Extension Release, supra note 4.

The Commission has determined that providing broker-dealers with an exemption from the quarterly public reporting requirements of amended Rule 606(a) relating to held orders and options orders until January 1, 2020 is necessary or appropriate in the public interest, and is consistent with the protection of investors. While the Commission previously extended the compliance date for the amendments to Rule 606(a), FIF/STA note that a few open items remain before implementation efforts are finalized.¹³ The Commission agrees with the importance of what FIF/STA describe as consistent, complete and accurate reporting across broker-dealers complying with all aspects of amended Rule 606(a). As FIF/STA state, complete and accurate data will “provide customers with the value the Rule intends.” Pursuant to this exemption, a broker-dealer has three additional months from the current compliance date to comply with amended Rule 606(a) and therefore must begin collecting the amended Rule 606(a) data for the first quarter of 2020, and the public report of first quarter 2020 data is required by the end of April 2020.¹⁴

B. Rule 606(b)(3) for Broker-Dealers Engaged in Self-Routing Activity

Further, the Commission has determined that providing a temporary exemption from reporting obligations under Rule 606(b)(3) for not held orders for a broker-dealer engaged in self-routing activity is necessary or appropriate in the public interest, and is consistent with the protection of investors because it will provide additional time to finalize development efforts. Specifically, the Commission believes that further time will allow the industry to complete implementation, ultimately allowing broker-dealers to provide customers with consistent,

¹³ See FIF/STA Letter, supra note 2, at 9 (noting that compliance efforts continue with, e.g., options reporting and the capture of aggregated fee information for orders).

¹⁴ The Commission is granting the exemption as requested by FIF/STA. See FIF/STA Letter, supra note 2, at 2.

complete, and accurate 606(b)(3) reports, as described above.¹⁵ Accordingly, a broker-dealer engaged in self-routing activity is exempt until January 1, 2020 from the requirement to start collecting the data required by Rule 606(b)(3) for such activity. For customer requests that are made on or before February 15, 2020, a broker-dealer is exempt from the requirement to provide a report for self-routing activity covering January 2020 data until seven business days after February 15, 2020. Pursuant to this exemption, a broker-dealer has three additional months from the current compliance date to prepare to collect the data required by Rule 606(b)(3) for self-routing activity, and has extra time in February 2020 to prepare the first report relating to self-routing activity for January 2020 data.¹⁶

While the Commission is not granting the specific relief requested by FIF/STA and is instead granting a shorter extension, the Commission believes that this new date should provide self-routing broker-dealers with sufficient time to finalize their internal development efforts.

C. Rule 606(b)(3) for Broker-Dealers Engaged in Outsourced Routing Activity

Finally, the Commission has determined that providing a temporary exemption from reporting obligations under Rule 606(b)(3) for not held orders for a broker-dealer engaged in outsourced routing activity is necessary or appropriate in the public interest, and is consistent with the protection of investors. This exemption will provide additional time to coordinate and finalize development efforts, including among third parties.

¹⁵ See FIF/STA Letter, supra note 2, at 9 (noting that compliance efforts continue with, e.g., options reporting and the capture of aggregated fee information for orders).

¹⁶ Under Rule 606(b)(3), if a customer requests a report on the first of the month for example, the broker-dealer is required to provide the report within seven business days of the customer's request. Under the relief provided herein, however, if a customer requests a report of January 2020 data on February 1, 2020, the broker-dealer is not required to provide the report within seven business days of February 1, 2020; instead, the broker-dealer is required to provide the report within seven business days of February 15.

As also is the case for broker-dealers engaged in self-routing activity, discussed above, the Commission believes that further time will allow the industry to complete implementation, ultimately allowing broker-dealers to provide customers with consistent, complete, and accurate 606(b)(3) reports.¹⁷ Specifically, to comply with Rule 606(b)(3), broker-dealers may need to develop systems to pass the data required by Rule 606(b)(3) from an executing broker to an introducing broker. To the extent that any broker-dealers that handle outsourced routing activity require additional time to complete development of specific portions of their systems, e.g. the required XML schema and PDF renderer, the Commission believes that the six-month exemption it is granting today provides sufficient time to finalize that development. Further, the Commission believes that this additional time should permit broker-dealers that outsource their routing activity to third parties the additional time needed to finalize updating their routing arrangements with such parties.

Accordingly, a broker-dealer engaged in outsourced routing activity is exempt from the requirement to start collecting the Rule 606(b)(3) data until April 1, 2020 for such activity. For customer requests that are made on or before May 15, 2020, a broker-dealer is exempt from the requirement to provide a Rule 606(b)(3) report for outsourced routing activity covering April 2020 data until seven business days after May 15, 2020. Pursuant to this exemption, a broker-dealer has six additional months from the current compliance date to prepare to collect the data

¹⁷ See FIF/STA Letter, supra note 2, at 9 (noting that compliance efforts continue with, e.g., options reporting and the capture of aggregated fee information for orders).

required by Rule 606(b)(3) for outsourced routing activity, and has extra time in May 2020 to prepare the first report relating to outsourced routing activity for April 2020 data.¹⁸

Accordingly, IT IS ORDERED, pursuant to Rule 606(c) of Regulation NMS under the Exchange Act,¹⁹ that:

- (1) Broker-dealers are exempt from the requirement to comply with amended Rule 606(a) by the current compliance date of October 1, 2019 and instead must begin collecting amended Rule 606(a) data for the first quarter of 2020. The public report of first quarter 2020 data is required by April 30, 2020.
- (2) Broker-dealers engaged in self-routing activity are exempt from the requirement to start collecting the data required by Rule 606(b)(3) until January 1, 2020 for such activity. For customer requests that are made on or before February 15, 2020, a broker-dealer is exempt from the requirement to provide a report for self-routing activity covering January 2020 data until seven business days after February 15, 2020.
- (3) Broker-dealers engaged in outsourced routing activity are exempt from the requirement to start collecting the Rule 606(b)(3) data until April 1, 2020 for such activity. For customer requests that are made on or before May 15, 2020, a broker-dealer is exempt from the requirement to provide a Rule 606(b)(3) report for outsourced routing activity covering April 2020 data until seven business days after May 15, 2020.

¹⁸ The Commission notes that FIF/STA did not request a specific alternative compliance date for the Rule 606(b)(3) reporting requirement for broker-dealers that outsource routing services. See FIF/STA Letter, supra note 2, at 2.

¹⁹ 17 CFR 242.606(c).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Jill M. Peterson,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(69).

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