

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240 and 242

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Disclosure of Order Handling Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date for certain requirements.

SUMMARY: The Commission is extending the compliance date for the recently adopted amendments to Rule 606 of Regulation National Market System (“Regulation NMS”) under the Securities Exchange Act of 1934 (“Exchange Act”), which require additional disclosures by broker-dealers to customers concerning the handling of customer orders. Specifically, the Commission is extending the compliance date for the recently adopted amendments to Rule 606. Following September 30, 2019, broker-dealers must begin to collect the information required by Rules 606(a) and 606(b) as amended. The compliance date remains May 20, 2019 for the amendments to Rule 605. The Commission is extending the compliance date for the recently adopted amendments to Rule 606 in order to give broker-dealers additional time to develop, program, and test for compliance with the new and amended requirements of the rule.

DATES: The effective date for this release is [insert date of publication in Federal Register].

The effective date for the amendments to Rules 600, 605, and 606 of Regulation NMS remains January 18, 2019. The compliance date for the recently adopted amendments to Rule 606 is extended, as discussed below. The compliance date remains May 20, 2019 for all other amendments not subject to this extension.

FOR FURTHER INFORMATION CONTACT: Theodore S. Venuti, Assistant Director, at (202) 551-5658, Michael Bradley, Special Counsel, at (202) 551-5594, Amir Katz, Special Counsel, at (202) 551-7653, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 2, 2018, the Commission adopted amendments to Rules 600, 605, and 606 of Regulation NMS under the Exchange Act.¹ The recently adopted amendments to Rule 606(b) added a new disclosure requirement, set forth in new 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 existing disclosure requirement in paragraph (b)(1) of Rule 606 to cover customer disclosure requests that are not covered by new paragraph (b)(3). In addition, the recently adopted amendments to Rule 606 amended the existing quarterly public order routing disclosure requirement in Rule 606(a) to apply to NMS stock orders submitted on a held basis and made targeted enhancements. In connection with these new requirements, the Commission amended Rule 600 to include certain newly defined and redefined terms that are used in the amendments. The Commission also amended Rule 605 to require that the public order execution report be kept publicly available for

¹ See Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) ("Adopting Release"). Unless otherwise specified, the terms used herein have the same meaning as set forth in the Adopting Release.

a period of three years. Finally, the Commission adopted conforming amendments and updated cross-references as a result of the recently adopted rule amendments.

The Commission understands that, as broker-dealers have worked to meet the May 20, 2019 compliance date set forth in the Adopting Release, some have determined that additional time is needed to complete the systems changes and implement business process changes necessary to comply with the amended rule. In this regard, the Financial Information Forum (“FIF”)² has submitted a letter requesting that the Commission extend the compliance date for the amended Rule 606 requirements to October 1, 2019.³ FIF requested this extension, among other things, to allow the requisite time for industry stakeholders to implement the full scope of the amended Rule 606 requirements including providing time to perform the systems and business process changes required by the amended rule.⁴

Regarding Rule 606(b)(3) in particular, FIF stated in its letter that broker-dealers subject to the rule will need to implement new systems and business processes in order to be able to obtain order execution data from other broker-dealers, exchanges and alternative trading systems, which currently is not obtained and not available on an order-by-order basis in most cases.⁵ FIF states that the system and business process changes necessary to provide all Rule 606(b)(3) reportable information in a format that is transferrable to end-customers would require four to eight developer months of effort and is “not possible” to achieve by the May 20, 2019

² FIF is an industry membership group that focuses on implementation issues affecting the financial technology industry across the order lifecycle. See <https://fif.com/aboutus/mission>.

³ See letter from Christopher Bok, Director, FIF, to Theodore S. Venuti, Assistant Director, Division of Trading and Markets, Commission, dated February 20, 2019 (“FIF Letter”).

⁴ Id.

⁵ Id. at 2-3.

compliance date.⁶ FIF indicated that the same systems and process changes would be necessary to comply with the amended Rule 606(a) requirements, which require a broker-dealer to make publicly available for each calendar quarter, within one month after that end of the quarter, a report disclosing certain order routing information.⁷

The Commission believes that an extension of the compliance date for the recently adopted amendments to Rule 606 is reasonable to provide broker-dealers with adequate time to implement fully the systems and other changes necessary to comply with amended Rule 606 and also would align the quarterly disclosure obligation of the rule with the natural beginning of a quarter.⁸ Accordingly, the Commission is extending the compliance date for the recently adopted amendments to Rule 606. Following September 30, 2019, broker-dealers must begin to collect the information required by Rules 606(a) and 606(b) as amended. As a result of this extension, October 1, 2019 is the date on which a broker-dealer must begin to collect the information required by Rules 606(a) and 606(b) as amended.⁹ The compliance date remains

⁶ Id. at 3.

⁷ Id. at 2-3 (describing the effort to develop a systematic and automated means for a broker-dealer to derive and report “all applicable 606(a) and 606(b)(3) information at the Order or Execution ID level by each venue” that is beyond the broker-dealer’s direct control).

⁸ We note that FIF requested guidance regarding a number of implementation issues. We will continue to evaluate those questions but believe that the extension is appropriate under these circumstances.

⁹ Rule 606(a)(2) requires a broker-dealer to make the Rule 606(a) quarterly report publicly available within one month after the end of the quarter addressed in the report. Thus, broker-dealers have until the end of October 2019 to make their Rule 606(a) report (which is not required to contain the information required by the amended rule) publicly available for the third quarter of 2019. To comply with the amended Rule 606(a) requirements as of the beginning of the fourth quarter, broker-dealers must be prepared to begin capturing the data required by amended Rule 606(a) on October 1, 2019.

May 20, 2019 for the recently adopted requirement in Rule 605 that public order execution reports be kept publicly available for a period of three years.

II. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation that could result from the extension of the compliance date for the recently adopted amendments to Rule 606.

While the extension of the compliance date for the amendments to Rule 606 will delay benefits of the Rule, it will not reduce the eventual benefits of increased transparency resulting from the enhanced Rule 606 reports. In addition, to the extent broker-dealers have begun building and modifying systems to produce the required reports, an extension of the compliance date will have minimal effects on those broker-dealers' overall compliance costs. The potential economic effects of the delay are discussed in more detail below.

B. Economic Baseline

Current Rule 606, as well as the changes in reporting and the reporting requirements brought by the recent amendments to Rule 606, serve as the baseline against which the extension's costs and benefits, as well as the effect on efficiency, competition, and capital formation, are discussed. The entities affected by the extension of the compliance date are generally customers that submit not held and held orders to their-broker dealers, and the broker-dealers that are required to prepare the 606 reports.

In the Adopting Release, the Commission discussed the limited ability of customers to compare their broker-dealers' performance and conflicts of interest under the current reporting

requirements.¹⁰ The Commission also stated that because the information on which broker-dealers offer better terms of trade may currently be nonstandardized, customers may not be able to efficiently compare broker-dealers to each other to identify which provide better execution quality. In turn, the lack of standardization may reduce the incentives for broker-dealers to compete by offering better execution quality or to innovate on execution quality.

In the Adopting Release, the Commission discussed broker-dealers' incentives to improve execution quality and its effect on execution quality. In addition, the Commission discussed the possibility that higher transaction costs may imply higher friction in the market, which ultimately may have an adverse effect on capital formation.¹¹

C. Economic Effects

In the Adopting Release, the Commission identified the benefits associated with the recently adopted amendments to Rules 600, 605, and 606.¹² The Commission believes that an extension of the compliance date for the amendments to Rule 606 will not reduce those benefits, including the eventual benefits to customers that submit not held and held orders to broker-dealers. Rather, the extension is reasonable to provide broker-dealers with adequate time to implement the systems and other changes necessary to comply with amended Rule 606. The Commission is not otherwise changing the reporting requirements.

In its request, FIF stated its belief that an extension is appropriate to provide the industry with additional time to perform the systems and business process changes required to implement

¹⁰ See Adopting Release, supra note 1, at 58393.

¹¹ See id.

¹² See Adopting Release, supra note 1.

the full scope of the amended Rule 606 requirements.¹³ The Commission believes that the delayed compliance date will not reduce the eventual benefits to customers and instead will provide all stakeholders with reasonable time to prepare to comply with the full requirements of amended Rule 606.

The Commission acknowledges that the extension of the compliance date for the amendments to Rule 606 will delay the benefits. In particular, the extension will delay the increase in the transparency of the amended Rule 606 reports and therefore will postpone the enhanced ability of customers to better compare and monitor broker-dealers' order routing practices. Specifically, customers that are interested in receiving additional information about their broker-dealers' order routing may have planned to request the newly adopted standardized customer-specific reports shortly after the May 20, 2019 compliance date. Similarly, customers seeking to receive more informative public order routing reports under amended Rule 606(a) shortly after the May 20, 2019 compliance date also would need to wait to receive the enhanced public reports. In both cases, the extension could delay the ability of customers to better compare and monitor broker-dealers' order routing practices.

However, as discussed above, the eventual benefits of amended Rule 606 will not change. Moreover, as discussed above, to the extent that the delayed compliance date helps provide all broker-dealers with reasonable time to modify their systems and business processes to comply with the requirements of amended Rule 606 and provide complete order routing reports to customers, the costs associated with the extension of the compliance date are likely to be mitigated.

¹³ See FIF Letter, supra note 2.

The Commission further believes that the extension will have minimal effects on some broker-dealers' overall compliance costs. To meet the amended reporting requirements by the original compliance date, broker-dealers would have already spent considerable time developing or modifying their systems, or may have hired a vendor to create the required reports. Specifically, the extension may not change the compliance cost for those broker-dealers that are already several months into the process of developing systems to comply with the amendments and who are nearly ready to comply or who already have systems in-house to capture the data and produce the required reports. Therefore, the Commission believes that the extension of the compliance will have minimal effects on those broker-dealers' overall compliance costs.

Further, the extension could potentially help facilitate some reductions in compliance costs for some broker-dealers. As discussed in the Adopting Release, some broker-dealers will need to build new reporting functionality or engage a third party vendor to comply with the adopted requirements.¹⁴ To the extent broker-dealers have not yet built or are in the process of building those reporting systems, the extension of the compliance date will provide additional time for them to consider ways to optimize their internal systems and potentially create a more cost-effective way to produce the required reports. Additionally, to the extent broker-dealers have not yet engaged a third party vendor, the extension of the compliance date may provide additional time to find a more efficient and cost-saving third party vendor to implement the requirements of the amended rule. Therefore, the Commission believes that the extension of the compliance date could help to facilitate cost reductions in complying with the reporting requirements for some broker-dealers.

¹⁴ See Adopting Release, supra note 1, at 58404, 58415.

Finally, in the Adopting Release, the Commission analyzed the effects of the amendments on efficiency, competition, and capital formation. The Commission believes that an extension of the compliance date for this short period of time will not materially alter these anticipated effects although the extension of time will delay them.

The Commission believes that the extension does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because, as discussed above, the extension will give all broker-dealers subject to the requirements of Rule 606 additional time to develop, test, and implement the systems and processes necessary to comply with amended Rule 606.

D. Alternatives

As an alternative to delaying the compliance date for the recently adopted requirements in Rule 606, we considered extending the compliance date for the amended Rule 606 requirements to July 1, 2019 as well as not extending the compliance date. However, to the extent that further system and business process changes will facilitate the ability of broker-dealers to provide the full scope of the amended Rule 606 requirements in a format that is transferrable to end-customers, a July 1, 2019 compliance date may not provide sufficient time, and, as discussed above, industry participants have asserted that in the absence of a compliance date extension, compliance is not possible for some broker-dealers.¹⁵

III. Administrative Matters

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date set forth herein are

¹⁵ See FIF Letter, supra note 3 (recommending that the data collection period begin on October 1, 2019).

impractical, unnecessary, or contrary to the public interest.¹⁶ The Commission notes that the compliance date is quickly approaching, and that an extension of the compliance date for the reasons cited above will help facilitate the orderly implementation of the recently adopted amendments to Rule 606. In light of time constraints, a notice and comment period could not reasonably be completed prior to the original adopted May 20, 2019 compliance date. Broker-dealers subject to the requirements of Rule 606 will have additional time to comply with the provisions of Rule 606 discussed above beyond the originally adopted compliance date. Further, the Commission recognizes that it is imperative for broker-dealers subject to the requirements of

¹⁶ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impractical, unnecessary, or contrary to the public interest”). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines”). Also, because the Regulatory Flexibility Act (5 U.S.C. 601 – 612) only requires agencies to prepare analyses when the Administrative Procedure Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

Rule 606 to receive notice of the extended compliance date, and believes that providing immediate effectiveness upon publication of this release will allow them to adjust their implementation plans accordingly.¹⁷

By the Commission.

Eduardo A. Aleman
Deputy Secretary

Date: April 24, 2019

¹⁷ The compliance date extensions set forth in this release are effective upon publication in the Federal Register. Section 553(d)(1) of the Administrative Procedure Act allows effective dates that are less than 30 days after publication for a “substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1).