

# FINANCIAL INFORMATION FORUM

March 2, 2022

**By electronic mail to PRA Mailbox@sec.gov**

David Bottom, Director/Chief Information Officer  
Securities and Exchange Commission  
c/o John Pezzullo, 100 F Street NE  
Washington, DC 20549

**Re: SEC File No. 270–489; OMB Control No. 3235–0541  
Submission for OMB Review; Comment Request: Extension of Rule 606 of Regulation NMS**

Dear Mr. Bottom,

The Financial Information Forum (“FIF”)<sup>1</sup> appreciates the opportunity to comment on SEC File No. 270-489, OMB Control No. 3235-0541.<sup>2</sup> This notice (the “Extension Request Notice”) by the Securities and Exchange Commission (the “Commission”) solicits comments on the request submitted by the Commission to the Office of Management and Budget for approval of an extension of the previously approved collection of information provided for in Rule 606 of Regulation NMS under the Securities Exchange Act of 1934.<sup>3</sup>

## I. Summary

As discussed in more detail below, the methodology used in the Extension Request Notice is deficient in its analysis of both the costs and benefits of Rule 606 for the following reasons:

- The Extension Request Notice computes the estimated costs for Rule 606(b)(3) compliance by multiplying the estimated number of customer requests for Rule 606(b)(3) reports that a firm receives per year by the estimated average cost per customer request. This cost, which we refer to as the “response” cost, is the only cost relating to Rule 606(b)(3) described in the Extension Request Notice. Based on the original requirements proposed, and ultimately adopted, this

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<sup>1</sup> FIF ([www.fif.com](http://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 broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

<sup>2</sup> 87 FR 4312 (January 27, 2022), available at [https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-01615.pdf?\\_cldee=YWxsYW4uY294QG9wY28uY29t&recipientid=contact-8c1e226138d9e911a2d302bfc0a8017c-d62ba2ab3b1b46d3aee1936903a0582f&esid=a52da59b-8f7f-ec11-8d21-002248216483](https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-01615.pdf?_cldee=YWxsYW4uY294QG9wY28uY29t&recipientid=contact-8c1e226138d9e911a2d302bfc0a8017c-d62ba2ab3b1b46d3aee1936903a0582f&esid=a52da59b-8f7f-ec11-8d21-002248216483) (“Extension Request Notice”).

<sup>3</sup> 17 CFR 242.606.

might be a reasonable approach, especially if a broker-dealer already had all the information needed to respond to a client request, and the only cost to the broker-dealer was assembling the information and processing the request.

- However, post-adoption the Commission issued extensive guidance that significantly expanded the type of data that broker-dealers must provide to institutional clients requesting an ad hoc 606(b)(3) report.<sup>4</sup> The majority of this new data is not typically part of a broker-dealer's workflow and instead needed to be acquired, processed, and aggregated from other broker-dealers, including some broker-dealers that were not subject to Rule 606(b)(3).
- Since such extensive cross-broker-dealer data needs to be aggregated, analyzed, and pro-rated to meet the Commission guidance, this data could not be collected on an ad hoc basis. Rather, new data acquisition systems, and even new data interchange formats, needed to be developed by the industry to facilitate the collection, normalization, aggregation, and transmission of the data.
- Moreover, this data must be collected, processed, and analyzed every day, in preparation for a potential ad hoc request from any client, regardless of whether or not any client does in fact request an ad hoc report. Importantly, the data required to meet the Commission's guidance on what needed to be provided in an ad hoc client report could not itself be collected on an ad hoc basis.
- The Commission did not contemplate these types of costs in the adopting release for the 2018 amendments to Rule 606 (the "2018 Adopting Release")<sup>5</sup> and the associated proposing release issued in 2016 (the "2016 Proposing Release")<sup>6</sup> since the guidance on such requirements was not provided until after the adoption of the 2018 amendments to Rule 606.
- In addition, these additional costs are borne by not only the broker-dealers that are subject to Rule 606(b)(3), but also by "downstream" broker-dealers that needed to build, and now must operate and maintain, on a continuous basis, systems and processes that provide to all broker-dealers who are subject to Rule 606(b)(3), detailed information, on a daily basis, regarding order routing, order executions, and fees, for all orders, so that the broker-dealers who are subject to Rule 606(b)(3) can process the information in preparation for responding to any ad hoc requests they might, or might not, receive.
- As a result of these additional requirements, the response costs represent only a small percentage of the actual costs that firms must incur for Rule 606(b)(3) compliance. The primary cost that firms must incur for Rule 606(b)(3) compliance is the ongoing work that firms must undertake to collect and process data from downstream broker-dealers so that firms are able to respond to customer requests when they are received; we refer to these costs as the "collection and processing costs". The Extension Request Notice is deficient because it fails to identify or discuss these collection and processing costs.
- In addition to customer-facing broker-dealers, downstream broker-dealers are required to incur significant costs for Rule 606(b)(3) compliance as they are required to collect, process and provide data to upstream broker-dealers on an ongoing basis. The Extension Request Notice is

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<sup>4</sup> See Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, available at <https://www.sec.gov/tm/faq-rule-606-regulation-nms>.

<sup>5</sup> Exchange Act Release No. 34-84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) ("2018 Adopting Release").

<sup>6</sup> Exchange Act Release No. 34-78309 (July 13, 2016), 81 FR 49431 (July 26, 2016) ("2016 Proposing Release").

deficient because it fails to identify or discuss the costs that these downstream broker-dealers must incur.

- The Extension Request Notice assumes that a broker-dealer will receive on average 200 customer requests per year for Rule 606(b)(3) reports. Based on a survey conducted by FIF (discussed in more detail below), for the most recent 12-month period, FIF members received on average requests for Rule 606(b)(3) reports from slightly fewer than two customers. The Extension Request Notice is deficient because it fails to accurately describe the volume of requests for Rule 606(b)(3) reports. It is important for this data to be accurate to ensure that a proper cost-benefit analysis of Rule 606(b)(3) can be performed.
- The Extension Request Notice fails to analyze why the actual volume of customer requests for Rule 606(b)(3) reports is significantly lower than the volume of requests that was projected in the 2018 Adopting Release. The Extension Request Notice is deficient because it fails to include this analysis.
- The Extension Request Notice fails to consider the “look-through” guidance provided by the Commission subsequent to the adoption of Rule 606 (discussed in more detail below) and the impact of this guidance on the costs that broker-dealers must incur for Rule 606(a)(1) and Rule 606(b)(3) compliance. The Extension Request Notice is deficient because it fails to address these costs.

FIF members recommend that the Extension Request Notice be revised to address each of these deficiencies. Further, based on the limited number of Rule 606(b)(3) customer requests that firms receive and the significant ongoing costs that firms must incur to collect, process and maintain the data that is necessary to respond to these requests (regardless of whether any requests are actually received), FIF members recommend that Rule 606(b)(3) be rescinded. At a minimum, the Commission should re-engage with institutional investors. Institutional investors will confirm that in 2022 customized reports relating to order routing and execution are readily available to institutional investors upon request and, thus, there is no need for Rule 606(b)(3) reports.

FIF members also believe that the specific cost estimates presented in the Extension Request Notice are significantly below the actual ongoing costs that firms must incur for Rule 606 compliance. However, the focus of this comment letter is on specific categories of costs and benefits that should be, but are not, discussed in the Extension Request Notice.

## **II. Rule 606 reports**

As a result of the 2018 amendments to Rule 606, Rule 606 comprises the following reporting requirements that relate to order routing:

- Rule 606(a)(1) reporting for certain not-held orders in equities
- Rule 606(a)(1) reporting for certain orders in options
- Rule 606(b)(1) reporting for options and certain orders in equities
- Rule 606(b)(3) reporting for certain not-held orders in equities.<sup>7</sup>

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<sup>7</sup> 17 CFR 242.606.

Our discussion below is focused on Rule 606(b)(3) and Rule 606(a)(1) reporting.

### **III. Rule 606(b)(3)**

#### **A. Rule 606(b)(3) requires the costly and ongoing collection and processing of data from downstream broker-dealers**

The Extension Request Notice does not identify the primary cost for Rule 606(b)(3) compliance, which is the ongoing work that firms must undertake to collect and process data from downstream broker-dealers. The Extension Request Notice computes the estimated annual cost for a firm to comply with Rule 606(b)(3) by multiplying the estimated number of customer requests that a firm receives per year by the estimated average cost per customer request. In reality, as discussed in more detail below, a firm must incur significant costs for Rule 606(b)(3) compliance whether or not it receives any customer requests for a Rule 606(b)(3) report.

For many broker-dealers, Rule 606(b)(3) compliance involves daily collection of data from downstream broker-dealers and exchanges, processing and validating this data, and transmitting this data to the broker-dealer's vendor for further processing. Broker-dealers also must incur ongoing costs to modify their processes in response to business workflow changes and new and updated regulations. A common example of a business workflow change that would require a firm to incur Rule 606(b)(3)-related costs would be adding a new broker-dealer to which a reporting broker-dealer routes orders. The costs for ongoing Rule 606(b)(3) compliance go beyond employee-related costs for responding to customer requests and include development, testing, product and project management, systems, archiving, operations, storage, legal, compliance and third-party vendor costs. It must also be emphasized that while firms have incurred significant development and other costs to date to achieve Rule 606(b)(3) compliance, firms continue to incur significant ongoing costs to comply with Rule 606(b)(3) and will continue to incur these costs for as long as Rule 606(b)(3) remains in effect.

A significant element of the cost for Rule 606(b)(3) compliance is compliance with the "look-through" guidance provided by the Commission subsequent to the adoption of Rule 606.<sup>8</sup> "Look-through" means that a customer-facing broker-dealer, instead of just reporting details relating to its own order routing activity, also must report details relating to the order routing activity of downstream broker-dealers. Consider the scenario where Broker-Dealer A (BDA) receives a customer order that is reportable under Rule 606(b)(3), and BDA routes portions of that order to Broker-Dealer B (BDB) and Broker-Dealer C (BDC). If look-through is not required, BDA is only required to report details relating to its routes to BDB and BDC. BDA also is required to report the fee arrangements that it has in place with BDB and BDC. This reporting is consistent with the intent of Rule 606, which is to highlight the potential conflicts faced by BDA when it makes routing decisions.

Because look-through now applies under Rule 606(b)(3), in addition to reporting its own routes to BDB and BDC, BDA also must report details relating to the routing actions of BDB and BDC. This includes

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<sup>8</sup> See Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, available at <https://www.sec.gov/tm/faq-rule-606-regulation-nms>.

reporting of details relating to the fee arrangements between BDB and the venues to which BDB routes orders, and between BDC and the venues to which BDC routes orders. This is not data that BDA would normally maintain in its books and records, which means that extensive work is required across the industry for upstream broker-dealers to collect this data on an ongoing basis from downstream broker-dealers. For many customer-facing broker-dealers, this means daily collection and validation of data from numerous downstream broker-dealers. Many customer-facing broker-dealers outsource this function to third-party reporting vendors, but the customer-facing broker-dealer that outsources this function must oversight this activity, has regulatory responsibility for data validation and reporting, and bears the cost for this reporting activity through fees paid to the service provider. To comply with look-through, the industry established a standard format (known as the interchange format) used by downstream broker-dealers and their vendors to communicate look-through and other data to upstream broker-dealers and their vendors. Firms continue to incur significant costs for the ongoing transmission, collection and processing of this data.

**B. The 2018 Amendments to Rule 606 and the Extension Request Notice fail to consider the ongoing costs that firms must incur to collect and process data from downstream broker-dealers**

Neither the 2018 Adopting Release nor the 2016 Proposing Release discusses the ongoing “look-through” and other ongoing data collection requirements described above or the resulting costs. In particular, the discussion of the annual reporting and recordkeeping burden on firms in the 2016 and 2018 releases makes no mention of the ongoing costs for collecting and processing data from downstream broker-dealers.<sup>9</sup> Instead, the 2016 Proposing Release and 2018 Adopting Release compute estimated ongoing annual costs by multiplying the estimated number of annual customer requests by the estimated hours required to respond per request. In reality, these response costs represent only a small percentage of the costs that firms must incur to comply with Rule 606(b)(3). The most significant costs for Rule 606(b)(3) compliance are the ongoing data collection and processing costs, and these costs must be incurred regardless of the number of customer requests that are received and regardless of whether any customer requests are actually received.

**C. The 2018 Amendments to Rule 606 and the Extension Request Notice fail to consider the ongoing costs that downstream broker-dealers must incur to process and report data to upstream broker-dealers**

The 2016 Proposing Release, the 2018 Adopting Release and the Extension Request Notice fail to consider the significant ongoing costs that downstream broker-dealers must incur to process and report data to upstream broker-dealers. These costs are significantly increased as a result of look-through.

**D. Customer requests for Rule 606(b)(3) reports have been minimal**

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<sup>9</sup> See 2016 Proposing Release, pp. 155-157, and 2018 Adopting Release, pp. 175-177.

The 2018 Adopting Release estimates that a firm will receive approximately 200 requests per year for Rule 606(b)(3) reports.<sup>10</sup> The Extension Request Notice provides the same estimate.<sup>11</sup> In connection with our review of the Extension Request Notice, FIF conducted a survey of FIF members as to the number of customers requesting Rule 606(b)(3) reports during the prior 12-month period. FIF conducted the survey in February 2022. Twenty-six broker-dealers responded to the survey. On average, during the prior 12-month period, the responding broker-dealers received requests from just under two customers per broker-dealer. The requesting customers represent a very small percentage of the total number of institutional investors.

There are various explanations as to why the volume of requests for Rule 606(b)(3) reports has been minimal. A primary reason is that the Rule 606(b)(3) reports relate to not held orders, which are typically institutional orders, and institutional firms can obtain order, routing and execution data directly from their broker-dealers upon request. They can obtain this data in a format that they request or in a format requested by vendors that they engage. Institutions can customize their requests in terms of the content and format requested, in contrast to the fixed Rule 606(b)(3) content and format. A second reason for the low volume of requests relates to problems with the content and format of the Rule 606(b)(3) report. As one of many examples, executions that result from more than two levels of routing are not included in the report, which means that a customer reviewing the report cannot reconcile the report to what the customer understands to be the number of shares that the customer has executed through the broker-dealer providing the report.

To the extent that the Commission found that customized order, routing and execution reports were not readily available to institutional investors in 2018, the Commission should re-engage with institutional investors on this point. Institutional investors will confirm that in 2022 customized reports relating to order routing and execution are readily available to institutional investors upon request.

#### **E. Rule 606(b)(3) should be rescinded**

Based on the minimal volume of requests for Rule 606(b)(3) reports and the significant ongoing costs for firms to maintain the infrastructure to comply with these requests, FIF members recommend that Rule 606(b)(3) be rescinded. Considering that broker-dealers receive minimal requests from customers for Rule 606(b)(3) reports, it is not reasonable to require that broker-dealers sustain the very substantial ongoing costs that are necessary for them to collect and process on an ongoing basis the data from downstream broker-dealers that must be included in a Rule 606(b)(3) report if a customer request is received.

#### **IV. Rule 606(a)(1)**

A number of the points made above relating to Rule 606(b)(3) also apply for Rule 606(a)(1) reporting. In particular, the 2018 Adopting Release does not discuss look-through for Rule 606(a)(1), but the regulators are requiring firms to apply look-through for Rule 606(a)(1) in designated circumstances. In addition, look-through adds significantly to the costs for Rule 606(a)(1) compliance, and these collection

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<sup>10</sup> 2018 Adopting Release, p. 175.

<sup>11</sup> Extension Request Notice, p. 4313.

costs are not discussed in the 2018 Adopting Release, nor are they discussed in the Extension Request Notice. The Extension Request Notice should be modified to include these costs. We note that industry members currently are engaged in a costly industry-wide project to implement look-through for Rule 606(a) reporting for options. The Extension Request Notice should be amended to incorporate discussion of the costs for implementing look-through for Rule 606(a)(1) reporting for options and the ongoing costs to comply with look-through for Rule 606(a)(1) reporting for both options and equities.<sup>12</sup>

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FIF appreciates the opportunity to comment on the Extension Request Notice. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com).

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum

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<sup>12</sup> This letter focuses on the costs that firms must incur for the ongoing collection of data from downstream broker-dealers (including to comply with look-through). FIF members have separately communicated their views that look-through obscures the relevant information that the Rule 606(b)(3) files and the Rule 606(a)(1) tables are intended to disclose and results in confusion and lack of clarity for the customer. Look-through also results in two firms with the same economic arrangements with their downstream broker-dealers reporting different data in their Rule 606(a)(1) tables. See, for example, Financial Information Forum Comment on FINRA Regulatory Notice 21-35 (December 2, 2021), available at [https://www.finra.org/sites/default/files/NoticeComment/Howard%20Meyerson\\_Financial%20Information%20Forum\\_21-35\\_12.2.2021%20-%20FIF%20comment%20ltr%20on%20606%20for%20OTC%20submitted%20dec2021.pdf](https://www.finra.org/sites/default/files/NoticeComment/Howard%20Meyerson_Financial%20Information%20Forum_21-35_12.2.2021%20-%20FIF%20comment%20ltr%20on%20606%20for%20OTC%20submitted%20dec2021.pdf).