

FINANCIAL INFORMATION FORUM

September 7, 2023

By electronic mail

Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Attn: Robert McNamee, Associate General Counsel,
Office of General Counsel

Re: FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)

Dear Mr. McNamee,

Financial Information Forum (“FIF”) members have the following comments and questions relating to Rules 6151 and 6470 recently adopted by the Financial Industry Regulatory Authority (“FINRA”).

1. Implementation period

The approval order by the Securities and Exchange Commission (the “Commission”)¹ provides as follows: “... FINRA has stated that it will announce the effective date of the proposed rule change in a Regulatory Notice and the effective date will be no later than 365 days following publication of the Regulatory Notice.”²

The Commission’s approval order further provides:

FINRA states that it intends to engage with members and other interested parties prior to implementation of the proposed rule change, including specifically to discuss order routing disclosures in scenarios involving OTC Link ATS, as well as provide guidance as appropriate on other interpretative questions.³

¹ Securities Exchange Act Release No. 98047 (Aug. 2, 2023), 88 FR 53560 (Aug. 8, 2023) (Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)).

² Id. at 88 FR 53565.

³ Ibid.

The Commission's approval order also provides:

... FINRA recognizes that members will require sufficient time to implement the new disclosure requirements, intends to provide an appropriate amount of time for implementation of the proposal, will work with the industry to publish technical specifications appropriately in advance of the implementation date, and will also publish interpretive guidance to the extent needed -- including on routing scenarios unique to certain platforms in the OTC Equity Security market -- with sufficient time allowed for implementation.⁴

Consistent with the statements above from the Commission's approval order, FIF members recommend the following:

- FINRA should provide a one-year period for implementation of new Rules 6151 and 6470
- The one-year implementation period should start when all of the following conditions have been met:
 - FINRA has published a Regulatory Notice, as described above
 - FINRA has published technical specifications, as described above (the technical specifications should include file formats for the symbol lists)
 - FINRA has provided written guidance with respect to reporting for trading activity on the OTC Link ATS (see discussion below)
 - FINRA has provided clarification with respect to the matters set forth in this letter and similar requests for clarification from industry members that are submitted within a reasonable time period after the Commission's approval of the new FINRA Rules.

FIF members note that many firms will require the same resources for implementing the new Rules 6151 and 6470 and any changes to Commission Rule 605, if adopted by the Commission. FIF members request that this be taken into account in setting implementation timelines in the event that the Commission adopts changes to Rule 605.

2. Providing a link to the FINRA website for Rule 606(a) reports

The Commission's approval order provides:

FINRA confirms that a member would satisfy the proposed requirement to publish the new OTC Equity Security reports on the member's website by including a link from its own website to the FINRA webpage hosting centralized publication of OTC Equity Security reports.⁵

Simultaneously with the submission of this letter, FIF is requesting confirmation from the Commission that if a firm provides a link from its own website to the FINRA webpage hosting centralized publication

⁴ Ibid.

⁵ Ibid.

of Rule 606(a) reports, the reporting firm would satisfy its publication obligations under the Commission's Rule 606.

3. Directed orders

The Commission's approval order provides: "... a member that accepted only not held orders in OTC Equity Securities from customers -- but no held orders in OTC Equity Securities from customers -- during a given calendar quarter would not be required to publish a report for that quarter."⁶

FIF members request confirmation from FINRA that if all of a reporting firm's customer orders in OTC equity securities for a calendar quarter are either directed or not held, the firm would not be required to publish a report for the quarter.

4. Firms exempt from reporting requirement for a calendar quarter

FIF members request confirmation that if a firm is exempt from the reporting requirement for a calendar quarter, the firm is not required to expressly indicate on its website that it is exempt for the quarter.

5. Reporting for trading activity on OTC Link

As noted above, FIF members recommend that the one-year implementation period for Rule 6470 not commence until FINRA has provided written guidance with respect to reporting for trading activity on the OTC Link ATS. This is necessary given the potential for different regulatory approaches as to how this activity should be reported.

As a follow-up to the comment letter submitted by FIF on February 3, 2023,⁷ FIF members recommend the following guidelines for reporting trading activity on OTC Link. We are modifying our recommendations for reporting based on the fact that FINRA will require the reporting of a participating market maker as the execution venue. The steps for Workflows 1 through 6 below are the same as set forth in the February 3 letter. Workflows 7 and 8 are new.

Workflow 1: Market maker executes against order from customer of introducing broker

Steps: A market maker (MM1) posts a proprietary quote in the IDQS; an introducing broker (IB1) receives a buy order from a customer; IB1, acting as agent, directs a trade message via the IDQS to lift (execute against) MM1's quoted offer; the IDQS delivers the trade message to MM1; MM1 executes the order.

Proposed Reporting: IB1 should report MM1 as the venue for execution.

⁶ Id. at 88 FR 53561.

⁷ Available at <https://www.sec.gov/comments/sr-finra-2022-031/srfinra2022031-20156482-324634.pdf>.

Workflow 2: Introducing broker executes customer order against counter from market maker

Steps: MM1 posts a proprietary quote in the IDQS; IB1 receives a buy order from a customer; via the IDQS, IB1, acting as agent, directs a trade message to lift MM1's quoted offer; the IDQS delivers the trade message to MM1; via the IDQS, MM1 directs a trade message directed to IB1 (this is a counter-offer by MM1); the IDQS delivers the trade message to IB1; IB1 agrees to the counter, resulting in a trade execution.

Proposed Reporting: IB1 should report MM1 as the venue for execution. Reporting should be based on the initial routing action taken by IB1.

Workflow 3: Three market makers execute against order from customer of introducing broker

Steps: Each of three market makers (MM1, MM2 and MM3) posts a proprietary quote in the IDQS; the offer-side quantity of each quote is 100 shares; IB1 receives a buy order from a customer; IB1, acting as agent, directs three separate trade messages via the IDQS to lift the quoted offers of MM1, MM2 and MM3; the IDQS delivers each trade message to the applicable market maker; each market maker executes against the customer order.

Proposed Reporting: IB1 should report three routes (one to each market maker). IB1 should report a route directed to a market maker whether or not the market maker executes against the customer order. If we change this workflow such that only MM1 executes against the customer order, IB1 should still report three routes (one to each market maker).

Workflow 4: Market makers executes against MAX order from introducing broker

Steps: Each of three market makers (MM1, MM2 and MM3) posts a proprietary quote in the IDQS; the offer-side quantity of each quote is 200 shares; IB1 receives a buy order from a customer; IB1, acting as agent, directs a MAX order for 400 shares to lift the quoted offers of MM1, MM2 and MM3; with a MAX order, IB1 is willing to execute against any of the three market makers quotes, but the maximum total quantity that IB1 can execute is 400 shares; the IDQS delivers the MAX order trade message to each market maker; MM1 executes against the customer order for 200 shares; MM2 executes against the customer order for 200 shares.

Proposed reporting: IB1 should report three routes (one to each market maker). IB1 should report a route directed to a market maker whether or not the market maker executes against the customer order.

Workflow 5: Market maker executes customer order against order from customer of introducing broker

Steps: MM1 receives a sell order from a customer; MM1 represents the customer order as an offer-side quote on the IDQS; IB1 receives a buy order from a customer; via the IDQS, IB1, acting as agent, directs a

trade message to lift MM1's quoted offer; the IDQS delivers the trade message to MM1; MM1 executes the order from IB1 against the order from MM1's customer.

Proposed reporting: IB1 should report MM1 as the venue for execution. MM1 should report this event as a route to itself. This type of reporting is discussed in FAQ 2.02 of the Commission's Rule 606 FAQs in relation to Rule 606(b)(3) reporting.⁸ MM1 is only reporting a route for the order received from its own customer. MM1 has no reporting obligation for the trade message directed by IB1 because IB1 is a broker-dealer.

Workflow 6: Introducing broker executes customer order against counter from market maker representing customer order

Steps: MM1 receives a sell order from a customer; MM1 represents the customer order as an offer-side quote on the IDQS; IB1 receives a buy order from a customer; via the IDQS, IB1, acting as agent, directs a trade message to lift MM1's quoted offer; the IDQS delivers the trade message to MM1; via the IDQS, MM1 directs a trade message directed to IB1 (this is a counter-offer by MM1); the IDQS delivers the trade message to IB1; IB1 agrees to the counter, resulting in a trade execution.

Proposed reporting: IB1 should report MM1 as the venue for execution. MM1 should report IB1 as the venue for execution.

Workflow 7: Introducing broker counters against counter from market maker

Steps: MM1 posts a proprietary quote in the IDQS; IB1 receives a buy order from a customer; via the IDQS, IB1, acting as agent, directs a trade message to lift MM1's quoted offer; the IDQS delivers the trade message to MM1; via the IDQS, MM1 directs a trade message directed to IB1 (this is a counter-offer by MM1); the IDQS delivers the trade message to IB1; via the IDQS, IB1 directs a trade message directed to MM1 (this is a counter-offer by IB1); the IDQS delivers the trade message to MM1.

Proposed reporting: Even though IB1 directed two trade messages to MM1, IB1 should only report this as one route to MM1. This is appropriate to avoid over-reporting.

Workflow 8: Market maker counters a second time

Steps: MM1 receives a sell order from a customer; MM1 represents the customer order as an offer-side quote on the IDQS; IB1 receives a buy order from a customer; via the IDQS, IB1, acting as agent, directs a trade message to lift MM1's quoted offer; the IDQS delivers the trade message to MM1; via the IDQS,

⁸ FAQ 2.02 provides: "If the broker-dealer executes orders in its ATS and also executes orders elsewhere internally, such as (but not limited to) in a single dealer execution platform or an internal execution desk for crossing customer orders, the ATS must be reported as an execution venue for the executions that occur therein and the broker-dealer entity must be reported separately as an execution venue for the executions that occur internally at the broker-dealer but not in the ATS." Securities and Exchange Commission, "Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS," available at <https://www.sec.gov/tm/faq-rule-606-regulation-nms>.

MM1 directs a trade message directed to IB1 (this is a counter-offer by MM1); the IDQS delivers the trade message to IB1; via the IDQS, IB1 directs a trade message directed to MM1 (this is a counter-offer by IB1); the IDQS delivers the trade message to MM1; via the IDQS, MM1 directs a trade message directed to IB1 (this is a second counter-offer by MM1); the IDQS delivers the trade message to IB1.

Proposed reporting: Even though IB1 directed two trade messages to MM1, and MM1 directed two trade messages to IB1, IB1 should report one route to MM1, and MM1 should report one route to IB1. This is appropriate to avoid over-reporting.

6. Principal fill of customer held order by market maker

FIF members request confirmation that where a market maker executes a customer held order as principal for an OTC equity security, the market maker should report a route to itself on its Rule 6470 report.

7. Producing multiple routing reports that correspond to functional differences in a firm's order routing practices

FIF members request written confirmation that it would be acceptable for a reporting firm to produce multiple Rule 6470 OTC order routing disclosure reports that correspond to functional differences in the firm's order routing practices. The Commission has provided guidance that this is an acceptable practice as it relates to Rule 606 reporting:

Question 5: Multiple Reports by a Broker-Dealer

Q: Is it permissible for a broker-dealer to prepare two or more reports that correspond to functional differences in the firm's order routing practices?

A: A single firm may prepare two or more reports that correspond to functional differences in the firm's order routing practices, but only if the separate reports will provide a clearer picture of the firm's practices and the basis for the separate reports is fully disclosed to customers and the public. Each report should clearly explain the orders to which it applies, as well as identify the other reports for the firm and the orders to which they apply. Customers must be able to determine which report applies to their type of orders.

For example, a broker-dealer with two divisions, each with its own customers and order routing practices, may generate a separate report for each division. Each report should explain that it applies only to orders submitted by customers of that division, and that another report has been issued that applies to orders submitted by customers of the other division.⁹

Similarly, an introducing broker whose customer accounts are carried by two different clearing firms, with customers assigned to only one of the two firms, may generate a separate report for each clearing firm. Each report should explain that it applies only to orders submitted by customers whose accounts are carried by the particular clearing firm, and that a separate report has been issued that applies to orders submitted by customers whose accounts are carried by the other clearing firm.

⁹ <https://www.sec.gov/interps/legal/mrslb13a.htm#q5>.

8. Period for posting reports

Does FINRA intend to post a Rule 6151 or Rule 6470 report on the FINRA website for three years or for more than three years?

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Please contact me at howard.meyerson@fif.com after you and your colleagues have had the opportunity to review the comments and questions set forth in this letter.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum