DASH

September 26, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

RE: Release No. 34-78309; File No. S7-14-16

Dear Mr. Fields:

Dash Financial LLC ("Dash") appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "Commission") on its proposal to amend Rules 600 and 606 of Regulation NMS of the Securities Exchange Act of 1934 (the "Disclosure of Order Handling Information Proposal")[1] to require broker-dealers to provide specific disclosures related to the routing and execution of its customers' orders.

By way of background, Dash is a technology solutions provider to the institutional trading community providing pure agency, conflict free, specialized trading technology with a focus on highly customizable solutions delivering exceptional client-specified performance, radical transparency, reporting and analysis.

As a FINRA broker-dealer and member of all U.S. equity and options exchanges, Dash innovates superior execution tools, solutions and reporting that empower institutions to exceed their goals when sourcing liquidity in the U.S. equity and options markets.

Dash is a strong supporter of regulations that seek to address one of the largest areas for improvement in the world of institutional brokerage – the need for greater transparency.

As such, we are very much in favor of the goal behind these proposed changes that would enhance order handling information available to investors including the requirement to provide specific metrics and statistics concerning the routing and execution of orders. Moreover, we are in favor of applying the Disclosure of Order Handling Information Proposal to listed options as well.

As the Commission considers finalizing the proposed requirements, we believe there are several areas where the Disclosure of Order Handling Information Proposal may be further enhanced:

- The Disclosure of Order Handling Information Proposal should be applied to listed options;
- The distinction between institutional and retail orders as proposed in the Disclosure of Order Handling Information Proposal should be removed entirely;
- The Rule 606 reporting requirements should be inclusive of orders routed and executed for the account of a broker-dealer;

[1] 81 Fed. Reg. 49431 (July 27,2016) (the "Disclosure of Order Handling Information Proposal").

- The proposed categories, "passive", "neutral", and "aggressive" for the categorization of a broker-dealer's routing strategies should be reduced to just two categories, "Scheduled" and "Non-Scheduled"; and
- Broker-dealers should be required to provide disclosures on the Rule 606 report concerning its methodology for classifying its order routing strategies into the proposed categories.

I. The Disclosure of Order Handling Information Proposal Should Include Listed Options

Under the current Rule 606 reporting scheme, broker-dealers are required to report order routing information concerning an NMS security, which Rule 600 generally defines as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."[2] Listed options are included in this definition and under the current Rule 606, broker-dealers are required to disclose order handling information regarding listed options.

The Disclosure of Order Handling Information Proposal would exclude NMS securities that are options contracts from the requirement for broker-dealers to provide standardized routing and execution metrics. The Commission has stated that it believes that, "at this time the current listed options market structure does not present the same concerns regarding fiduciary responsibilities, information leakage, and conflicts of interest as the market structure for NMS stocks"[3] primarily because there are only 14 registered options exchanges[4] versus over 253 venues for NMS stocks and due to the differences in the levels of market structure complexities between NMS stocks and listed options.

We disagree with the Commission's observation that there are significantly fewer venues for listed options contracts than for NMS stocks and the observation that the listed options market structure doesn't present the same concerns expressed by investors concerning the routing and execution of NMS stocks. In fact, many of the same issues that are present in the NMS stock market are present in the listed options market such as potential conflicts of interest, internalization of customer orders by broker-dealers, and information leakage. As proposed, the Disclosure of Order Handling Information Proposal identifies and highlights many of the metrics that institutional investors have expressed interest in receiving for NMS stocks[5] and would enable investors to perform an intelligent analysis of a broker-dealer's ordering routing methods for listed options as well as NMS stocks.

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[2] *See* 17 CFR 242.600(b)(46).
[3] *See* Disclosure of Order Handling Information Proposal at 49431.
[4] It is important to note that there are a number of Alternative Trading Systems ("ATS") that handle orders in listed options.
[5] *See* Letters to Mary Jo White, Chair, Commission from Richie Prager, Managing Director, Head of Trading & Liquidity Strategies, et al., BlackRock, Inc., dated September 12, 2014 ("BlackRock Letter") at 3 (stating that Rule 606 disclosures should provide greater transparency and provide metrics in a standardized template); from Dorothy M. Donahue, Deputy General Counsel, Investment Company Institute, Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, and Randy Snook, Executive Vice President, Securities Industry and Financial Markets Association, dated October 23, 2014 (''Associations Letter'') at 2 (stating that there is a buy-side interest in enhancing transparency in equity market structure and execution quality and that standardized statistical data should be provided by broker-dealers at regular intervals).

Additionally, investors are using smart order routing systems on daily basis as part of sophisticated trading strategies and for hedging large positions in NMS stocks. For example, during the month of August 2016, investors traded close to 167 million equity options contracts alone.[6] We feel strongly that investors should have access to the proposed order routing and execution metrics for listed options in the same respect as NMS stocks.

II. Investors Would Benefit if All Orders Were Included in the Disclosure of Order Handling Information Proposal

A. *The Disclosure of Order Handling Information Proposal Should Not Distinguish between Institutional and Retail Order Flow*

We support the Commission's proposal to require broker-dealers to provided standardized, detailed metrics concerning order routing and execution to retail and institutional investors. Currently, Rule 606 requires that the Rule 606 report contain order handling information disclosures regarding customer orders. Rule 600 generally defines a customer order as an order to buy or sell an NMS security that is not for the account of a broker-dealer and would exclude certain orders that do meet market value thresholds.[7]

The Disclosure of Order Handling Proposal seeks to separate retail order flow and institutional order flow based solely on the market value of the order, and generally defines an institutional order as an order that is not for the account of a broker or dealer and is an order for a quantity of an NMS stock having a market value of at least $200,000.[8] The Commission noted that it preliminary estimated that at least 5% of the total executed volume in NMS securities would meet this threshold.[9] Moreover, the Commission indicated the inclusion of the market value of $200,000 in the definition of an institutional order "would dovetail with the definition of the retail order such that all customers' orders would be covered by order routing disclosure rules" and would ensure that, "there would be no overlap in the definitions of retail and institutional orders".[10]

We see no value in classifying certain orders as "retail" versus "institutional" for the purposes of Rule 606. Using an arbitrary market value when determining which orders to include in a Rule 606 report and providing metrics on a select number of orders will result in the exclusion of certain institutional orders from the Rule 606 report and will result in orders being inaccurately categorized as "institutional" or "retail". Specifically, we are concerned that by virtue of the market value of an order, an order submitted by what is considered a traditional "institutional" investor such as a private fund, will be inaccurately classified as a "retail" order because the larger order was split into multiple smaller child orders by a smart order routing system or that this order would excluded from the institutional order handling report.

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[6] *See* Options Clearing Corporation Monthly Statistic Report for Equity Options – August 2016 at http://www.optionsclearing.com/webapps/monthly-volume-reports?reportClass=equity.
[7] *See* 17 CFR 242.600 (b)(18).
[8] *See* Disclosure of Order Handling Information Proposal at 49444.
[9] *Id* at 49483.
[10] *Id.*

Moreover, the removal of the market value threshold and inclusion of all orders would address many of the concerns expressed by commenters regarding the exclusion of large orders from the Rule 606 reports[11] and would capture significantly more of the total executed volume in NMS stocks than approximately 5% as estimated by the Commission.

The Commission indicated that it had considered another alternative to the proposed definition of institutional order, which would require customers to identify their orders as institutional but had noted its concern that there would be a risk that customers may apply different criteria in identifying institutional orders. We agree with this concern and feel that allowing the customer to classify orders would lead to inconsistencies and potential abuse in the application of the proposed definition as there currently exists no standardized methodology for stocks that allows a customer to indicate whether the order is retail or institutional.[12]

Our suggestion to eliminate the distinction between institutional and retail order flow addresses the institutional community's concern that larger orders will be excluded, eliminates the risk for erroneous categorization of orders or exclusion of certain orders from the Rule 606 report, and enables all investors to receive standardized metrics for their orders.

B. *Rule 606 Reports Should Include Those Orders Routed and Executed for the Account of a Broker-Dealer*

As indicated by the Commission, institutional customers "have a compelling interest in the order handling decisions of their executing brokers as they monitor the execution quality of their orders, both from the standpoint of the price received and to evaluate the potential negative effects of information leakage and conflicts of interest."[13]

We urge the Commission to include broker-dealer orders in the Rule 606 report. Orders executed by executing broker-dealers on behalf of other broker-dealers represent a significant amount of institutional trading activity. We believe that continuing to exclude broker-dealer orders from the Rule 606 report discriminates against a large sector of the institutional trading community and that broker-dealers who utilize third-party technology solutions to execute on behalf of their customers should have access to the same information as their peers in the institutional trading community.

Broker-dealers are already considered to be institutional investors in common practice and including such orders would be consistent with industry protocol.

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[11] *See* Letters to Secretary, Commission, from Janet. K. Kissane, SVP – Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext , dated April 23, 2010, ("NYSE Euronext Letter") at 12, Appendix I at 3-4 (stating that U.S. equity market structure has changed substantially resulting in Rule 606 becoming outdated, and that the rule should be amended to include such information); from Christopher Nagy, CEO and Dave Lauer, President, KOR Group LLC, dated September 23, 2014 ("KOR Trading Letter II") at 2 (stating that Rule 606 reports have significant shortcomings, including no coverage of large orders).

[12] Unlike options transactions which carry an origin code and communicates the type of account that the order is routed and executed on behalf of, we are unaware a similar standardized methodology for equities.

[13] *Id* at 49433.

In addition to being consistent with industry protocol, including broker-dealer orders will result in greater accountability by executing broker-dealers and in turn, assist other broker-dealers in assessing the quality of their executions received. As the Commission correctly notes, many institutional customers such as investment advisers rely on their broker-dealers to execute their orders. However, the Commission should consider that it is common practice in the institutional community for broker-dealers to rely on the technology of other broker-dealers for execution. For example, an investment adviser routes orders to its broker-dealer ("Broker A") for execution, which subsequently routes the orders to an executing broker-dealer ("Broker B") for execution using Broker B's smart routers and algos. As drafted, the Order Handling Disclosure Proposal: (i) would not require Broker B to include the orders received from Broker A on its Rule 606 report; and (ii) would not require Broker B to provide Broker A, a report containing the proposed routing and execution information for Broker B's orders since Broker B's orders are currently out-of-scope for Rule 606. Furthermore, should the investment adviser choose to request the proposed information from its broker-dealer, Broker A, the report would simply reflect that orders were ultimately routed to Broker B for execution, without the level of detail that is necessary for the investment adviser to determine whether its broker-dealer's routing decisions are influenced by incentives offered by trading centers to attract order flow, whether inefficiencies exists in order execution algorithms and smart order routing systems and the quality of executions received in general.

Finally, we feel strongly that such information as proposed in the Disclosure of Order Handling Information Proposal is vital to broker-dealers in evaluating the execution quality that they receive from executing brokers on behalf of the underlying customer.[14]

III. The Categorization of Orders by Routing Strategy Should Be Reduced to Two Categories to Minimize Room for Interpretation

Rule 606 currently requires broker-dealers to categorize orders as "market", "limit" or "other".[15] As the Commission correctly notes, "institutional orders tend to be routed and executed using sophisticated order execution algorithms developed by broker-dealers or others that break up large institutional orders into smaller 'child' orders, and smart order routing systems to route those child orders to the full range of trading centers in the national market system, including exchanges, 'dark pool' alternative trading systems ("ATS"), other ATSs and internalizing broker-dealers."[16] As a result of the evolution of, and enhancements to trading technology as well as the increase in the complexity of execution algorithms, it has been difficult to categorize orders into these three broad categories.

The Disclosure of Order Handling Information Proposal would require broker-dealers to assign order routing strategies into passive, neutral, and aggressive categories. A passive order routing strategy is generally defined as a strategy that emphasizes the minimization of the price impact over the speed of execution of the entire institutional order. A neutral order routing strategy is one that is relatively

[14] Many of Dash's broker-dealer clients request customized 606 data to assist them in their best execution assessments and Dash provides these individualized reports to our clients upon request.
[15] *See* CFR 17 242.606 (a)(i-ii).
[16] *See* Disclosure of Order Handling Proposal at 49433.

neutral between the minimization of price impact and the speed of execution of the entire order. An aggressive order routing strategy is one that emphasizes the speed of execution of the entire institutional order over the minimization of price impact. [17]

We agree with the Commission's concern that there is the potential for differences among broker-dealer in how they classify orders into the three strategy categories, which could make straight comparisons between broker-dealers difficult. However, we feel strongly that the three proposed strategy categories create the potential for large differences in how broker-dealers "assign each order routing strategy that it uses for institutional order to one of [the] three categories in a consistent manner for each report prepares"[18], particularly in the classification of strategies into the passive and the neutral categories. We feel that there is very little difference between the definition of the passive and neutral categories when applied to order routing strategies.

Accordingly, we feel that the proposed definitions of the order routing strategies should be reduced to just two categories, "Scheduled" and "Non-Scheduled". We suggest that the term, "Scheduled" be generally defined as any strategy that has an execution profile based on a pre-defined metric such as time, volume, or favorable price action over price impact. We suggest that the term, "Non-Scheduled" be general defined as any strategy that an execution profile that emphasizes price impact over any other pre-defined metrics. Our suggested approach would still make comparisons of broker-dealers' order routing strategies possible and would provide meaningful categorization of order routing strategies across broker-dealers.

Moreover, greater standardization in the order routing strategies is important for data consumption by investors or third-parties for transaction cost analysis in order ("TCA") in order for investors to assess the quality of their executions and for third-parties to produce meaningful reports for their customers.

IV. The Methodology Used by Broker-Dealers to Categorize Order Routing Strategies Should Be Published on a Broker-Dealer's Website

As proposed, broker-dealers would be required to document the specific methodology that they rely upon for making assignments of institutional orders to the three order routing strategies, preserve a copy of the methodologies used to assign its order routing strategies and maintain such copy as part of its book and records. Additionally, broker-dealers would be required to update these assignments any time an existing strategy is amended or a new strategy is created that result in a change of such assignments.[19]

We agree with the Commission's proposal regarding the requirement to document the assignment of institutional orders to the order routing strategies. However, we feel that such documentation should be available to investors in a publicly available format because this information functions as a "key"

[17] *Id* at 49450.
[18] *Id* at 49485.
[19] As discussed above, we believe that the proposed three order routing categories should be reduced to two categories.

to an investor's ability to understand the order routing and execution metrics proposed and allows for a "meaningful comparison of order handling practices across broker-dealers."[20]

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We appreciate the opportunity to provide comments on the Commission's Disclosure of Order Handling Information Proposal. Please feel free contact the undersigned at [redacted] regarding any questions regarding these comments.

Sincerely,

Erin K. Preston
Chief Compliance Officer
Associate General Counsel

[20] *See* Disclosure of Order Handling Information Proposal at 49451.