

December 6, 2021

Submitted electronically to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 21-35, FINRA Requests Comment on Proposed Order Routing Disclosure Requirements for OTC Equity Securities and Potential Steps to Facilitate Investor Access to Current Order Routing Disclosures for NMS Securities

Dear Ms. Mitchell:

On behalf of LPL Financial (“LPL”), I am pleased to offer our comments in response to the Financial Industry Regulatory Authority (“FINRA”) Regulatory Notice 21-35¹. LPL commends FINRA for seeking feedback from member firms on the potential order, which would require quarterly reports for OTC equity securities.

I. Overview of LPL

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment advisor custodian. We serve more than 19,000 independent financial professionals and over 800 financial institutions by providing them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow thriving practices. LPL enables them to provide guidance to millions of American families seeking wealth management, retirement planning, financial planning and asset management solutions.

II. Comments in Response to Regulatory Notice 21-35

Regulatory Notice 21-35 asks for comment on requiring routing information for held orders in OTC equity securities through quarterly reports. While LPL supports efforts to provide greater transparency as to the handling of orders, this proposal would impose a significant burden on firms without providing useful information to investors. Additionally, the proposed rule should have an exemption for firms that do not receive payment for order flow (PFOF) in order to minimize unnecessary business expenses that could discourage firms from taking orders for OTC equity securities in general.

Limited Benefits

The proposed order would require quarterly public reports with four disclosures intended to increase transparency and make information more accessible to investors. Often, investors are only aware of direct trading costs like commissions and do not have greater insight into other fees. We understand FINRA’s desire to provide more insight into costs incurred by the end investor. However, when combined with the existing disclosure rules, this proposal will not lead to additional information for OTC equity securities being made easily accessible to consumers in the same way that it’s accessible for NMS securities.

¹ See FINRA Regulatory Notice 21-35 available at: <https://www.finra.org/rules-guidance/notices/21-35>

For NMS securities, the routing disclosure required by SEC Rule 606(a)² can provide investors with useful information because it can be combined with order execution information available pursuant to SEC Rule 605. However, the disclosures proposed by FINRA would not have a parallel provision for disclosure of execution quality. This ultimately means that less information would be available to investors. The proposal would give information about only one aspect of order execution: the amount of PFOF received by the routing firm.³ While relevant, PFOF is not the equivalent of the robust discourse provided by Rule 605⁴. Further, if firms do not receive PFOF then the information disclosed will be limited and not useful.

Increased Burden on Firms

The proposed disclosures would subject firms who take orders for OTC equity securities to additional and costly obligations. These burdens would include internal technology costs to identify and gather the needed data, vendor costs to prepare quarterly reports, and employee time to implement and supervise the disclosure. LPL expects that the initial costs to implement the proposed rule would be similar to the cost of complying with recent amendments to Rule 606.⁵

- When revisions to Rule 606 were enacted in 2018, LPL spent more than \$100,000 on internal technology changes to gather and transmit the needed data.
- Employees from trading, compliance, technology and legal spent hundreds of hours to meet the requirements of amended Rule 606.
- Overall, it took LPL more than a year to come into compliance with Rule 606.
- Our current cost for vendor support for Rule 606 disclosure is \$6,200 per year.

While the proposed rule might entail a smaller effort than Rule 606, the burden would still be significant and increase the cost of doing business. OTC equities are a very small part of LPL's core business; LPL does not allow the purchase of OTC securities classified as Limited Information, No Information, Grey Market or Caveat Emptor and generally prohibits transfers of many OTC equities into LPL accounts. If these disclosures are required, additional burdens for this limited business may have a chilling effect and cause firms to stop accepting orders for OTC equities.

Exemption

Although there has been a lot of recent attention paid to firms that receive PFOF, there are a number of firms that do not receive PFOF, including LPL. Furthermore, LPL does not engage in proprietary trading of OTC equities, except for trade corrections. Imposing the added costs of this proposed disclosure on firms that do not receive PFOF would be both unfair and unproductive. The premise of the proposed rule seems to be to allow investors to judge how PFOF is influencing the routing decisions of the member. Current disclosures inform investors with adequate disclosure that a firm does or does not receive PFOF. If adopted, we ask FINRA to amend the proposed rule to include an exemption from the reporting described Attachment A for firms that do not receive PFOF.

Conclusion

Disclosures are an important way to increase transparency in the markets and provide investors with more information. LPL supports transparency in this area, but we are concerned that the proposed rule would not provide investors with any material information if a firm does not receive PFOF. We urge

² See SEC Rule 606(a) of Regulation NMS, available at: <https://www.sec.gov/rules/final/2018/34-84528.pdf>

³ See Request for Comment #1.

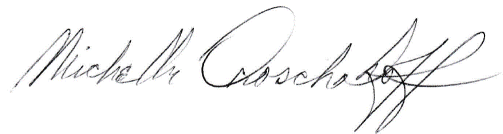
⁴ See SEC Rule 605 of Regulation NMS, available at: <https://www.sec.gov/interps/legal/slbim12a.htm>

⁵ See Request for Comment #2.

FINRA to provide an exemption in the order for firms that do not receive PFOF in order to ease the burden on firms and prevent a chilling effect on the OTC equities market.

Thank you for your consideration of this letter. If you have any questions, please contact Richard Wallace at Richard.Wallace@lplfinancial.com.

Sincerely,



Michelle Bryan Oroschakoff
Chief Legal Officer