

## Order Execution Information for NMS Stocks

### FINRA Requests Comment on a Proposal to Require Members to Provide Rule 605 Order Execution Quality Reports to FINRA for Centralized Publication

Comment Period Expires: July 31, 2023

#### Summary

FINRA requests comment on a proposal to facilitate centralized access to members' order execution quality reports for NMS stocks that are required to be published by market centers under Rule 605 of Regulation NMS. Under the proposal, FINRA members would be required to provide their Rule 605 reports to FINRA, which FINRA would publish in a centralized location on the FINRA website.

Questions regarding this *Notice* should be directed to:

- ▶ Dave Chapman, Vice President, Market Regulation, at (240) 386-4995 or [dave.chapman@finra.org](mailto:dave.chapman@finra.org); or
- ▶ Robert McNamee, Vice President & Associate General Counsel, Office of General Counsel, at (202) 728-8012 or [robert.mcnamee@finra.org](mailto:robert.mcnamee@finra.org).

Questions regarding the Economic Impact Assessment in this *Notice* should be directed to Abbigale Kim, Senior Economist, Office of the Chief Economist, at (202) 728-6908 or [abbigale.kim@finra.org](mailto:abbigale.kim@finra.org).

#### Action Requested

FINRA encourages all interested parties to comment on this proposal. Comments must be received by July 31, 2023.

May 31, 2023

#### Notice Type

- ▶ Request for Comment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

#### Key Topics

- ▶ Disclosure of Order Execution Information
- ▶ NMS Stocks
- ▶ Order Execution
- ▶ Order Handling

#### Referenced Rules

- ▶ Exchange Act Rule 600
- ▶ Exchange Act Rule 605
- ▶ Exchange Act Rule 606

Comments must be submitted through one of the following methods:

- ▶ Online using FINRA's comment form for this *Notice*;
- ▶ Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- ▶ Mailing comments in hard copy to:

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

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.<sup>1</sup>

Before becoming effective, a proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).<sup>2</sup>

## Background and Discussion

Rule 605 of Regulation NMS requires market centers<sup>3</sup> to publish monthly reports of statistical information concerning their order executions in NMS stocks<sup>4</sup> (Rule 605 Reports).<sup>5</sup> These reports must be published in a consistent, usable, and machine-readable electronic format on an internet website<sup>6</sup> that is free and readily accessible to the public for a period of three years from the initial date of publication.<sup>7</sup> As the SEC explained when adopting the predecessor rule to Rule 605, the purpose of the Rule 605 Reports, together with order routing disclosures required to be published by broker-dealers under Rule 606 of Regulation NMS, is to “spur more vigorous competition among market participants to provide the best possible prices for investor orders” by “making visible the execution quality of the securities markets.”<sup>8</sup>

To further facilitate the accessibility of Rule 605 Reports, the Rule 605 Plan (of which FINRA and the NMS stock exchanges are participants, each a “plan participant”) requires each market center to make arrangements with a single plan participant to act as such market center’s “designated participant,” and to send to such plan participant a hyperlink to the location of the Rule 605 Reports on the market center’s website for purposes of facilitating access to the Rule 605 Reports.<sup>9</sup> Each designated participant in turn maintains a website that includes a list of links to the websites for all of the market centers for which it functions as the designated participant.<sup>10</sup>

The designated participant framework has been helpful in simplifying the process of locating Rule 605 Reports. However, investors, regulators, academics, firms, and other interested parties (collectively, “users”) seeking to analyze and compare Rule 605 Reports must still first visit each individual designated participant’s website—spanning FINRA and up to 16 current NMS stock exchanges—and navigate from there to each individual market center’s website to access and download the actual data files.

FINRA believes that the accessibility of Rule 605 Reports would be enhanced if users were able to locate and download reports at a single, central location.<sup>11</sup> Accordingly, to make Rule 605 Reports for market centers that are FINRA members more accessible for users seeking to analyze and compare the data, FINRA is proposing to require that members provide their Rule 605 Reports to FINRA for central publication on the FINRA website. This requirement would supplement, not replace, firms’ current obligations under Rule 605.<sup>12</sup> FINRA would in turn publish the Rule 605 Reports it receives in a centralized location on the FINRA website, free of charge and with no restrictions on use of the data.<sup>13</sup> FINRA believes that centralizing publication of the data files on FINRA’s website would improve upon the existing designated participant framework because users would be able to locate all Rule 605 Reports for market centers that are operated by FINRA members on FINRA’s website and directly download the data files from a single location.<sup>14</sup>

## Economic Impact Assessment

Based on the regulatory need discussed above and summarized below, FINRA has undertaken an economic impact assessment to analyze the potential economic impacts of the proposal, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

### Economic Baseline

FINRA estimates that 71 FINRA member firms currently operate 83 “market centers,” as that term is defined in Rule 600(b)(46) of Regulation NMS. Some of these members operate more than one market center each, and as discussed further below, some may operate market centers that are not currently required to publish Rule 605 reports because they have not executed “covered orders” within the rule’s look-back period. Firms are required to provide a designated participant, such as FINRA, with URL links to their required Rule 605 reports and, currently, 61 members provide their URL links to FINRA (corresponding to 73 market centers).<sup>15</sup> Because Rule 605 applies only to “covered orders” in NMS stocks, Rule 605 Reports would not be available for a market center within the three-year publication period required by Rule 605 if no covered orders were executed on that market center within such period. FINRA understands that 10 of the 83 total market centers currently operated

by FINRA member firms have not executed any covered orders within the prior three years. For these 10 market centers, which are operated by 10 different FINRA member firms, FINRA does not currently maintain a URL link for the market centers' reports on FINRA's public website. These numbers do not include any market centers that may be operated by non-FINRA member firms.

Public users can access and download the Rule 605 Reports by visiting each market center's website (or through third-party websites that collect and maintain the URL links to Rule 605 Reports). Users can also visit FINRA's website and, for market centers that use FINRA as their designated participant, navigate from there to each individual market center's website to access and download the actual data files.

### **Anticipated Benefits**

FINRA believes that centralized access through FINRA's website to members' Rule 605 Reports would make it more efficient for users (whether retail and institutional investors, academic researchers, the press, regulators or other market participants) to access the reports.

Furthermore, centralization would enable users to more efficiently collect, analyze and compare execution quality statistics in a more comprehensive manner since the proposal would require all FINRA member firms to provide Rule 605 Reports to FINRA regardless of whether FINRA is their designated participant. The proposed change thus would reduce the search costs for collecting Rule 605 Reports across FINRA members.

### **Anticipated Costs**

Members may incur initial fixed costs, such as programming, to create a system to send the Rule 605 Report to FINRA each month. Furthermore, members that use third party vendors to create the 605 Reports would need to arrange for reports to be submitted directly to FINRA. In addition, once the system to provide the proposed reports is built, there would be variable costs for maintaining the system and on-going compliance costs. To the extent that FINRA members are already sending the links to their Rule 605 Reports to FINRA, these initial fixed costs may be relatively lower for those member firms.

### **Alternatives Considered**

No other alternatives were considered.

## Request for Comment

FINRA requests comment on all aspects of the proposal. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. In addition to general comments, FINRA specifically requests comments on the following questions.

- ▶ Would the proposal to centralize publication of Rule 605 Reports on the FINRA website provide benefits to the marketplace? Why or why not?
  - ▶ As stated above, FINRA believes that the proposal would be beneficial to users of the data, including investors, regulators, academics, firms and other interested parties. Do commenters agree with this statement? What types of parties would most benefit from the proposal? Might certain users of the data benefit more than others? If so, why?
  - ▶ Do commenters believe Rule 605 Reports currently can be readily found, accessed, compared and analyzed today by users of the data and if not, what are the challenges associated with access to Rule 605 Reports?
  - ▶ Are there currently widely available resources that centralize or consolidate the Rule 605 Reports free of charge?
- ▶ What costs would be associated with the proposal? Please be specific.
  - ▶ What costs would members incur to provide the reports to FINRA?
  - ▶ What operational or other challenges might be associated with implementing the proposal?
  - ▶ How much time would member firms need to make systems and other changes to implement the proposal?
- ▶ Rule 605 Reports must be published by any market center that receives covered orders in NMS stocks during a given calendar month. A “market center” is defined under Regulation NMS to mean any exchange market maker, OTC market maker, ATS, national securities exchange or national securities association. The proposal described in this *Notice* would require market centers that are FINRA members to send their Rule 605 Reports to FINRA for centralized posting on the FINRA website.
  - ▶ FINRA requests comment on whether the benefits of FINRA’s centralization of members’ Rule 605 Reports would be limited given that Rule 605 Reports prepared by non-FINRA members would not be a part of FINRA’s centralization efforts (including Rule 605 Reports by national securities exchanges).

- ▶ FINRA is not aware of any market center (whether operated by a FINRA member firm or otherwise) that has currently identified a national securities exchange as its designated participant. Do commenters share this understanding? Other than national securities exchanges, are there any market centers subject to Rule 605 (e.g., exchange specialists) that are operated by non-FINRA members? Do commenters believe there are any other potential gaps that could limit the usefulness of the centralization sought to be achieved under the proposal?
- ▶ Are there any other steps FINRA should consider taking to consolidate or otherwise facilitate investors' ability to access Rule 605 Reports? Are there any other steps that FINRA should consider taking to provide investors more education about Rule 605 Reports or otherwise facilitate the usefulness of the reports for investors?
- ▶ If FINRA were to centralize the publication of Rule 605 Reports on the FINRA website, are there any basic tools that FINRA should consider to facilitate use of the data by public investors? For example, should Rule 605 Reports be grouped and presented by categories, such as market center type, and if so, what categories do commenters suggest? Are there any additional steps FINRA could take to present Rule 605 Reports in a manner that fosters investor use of the data?

## Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Some proposed rule changes take effect immediately upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
3. Under Rule 600(b)(46) of Regulation NMS, a “market center” means any exchange market maker, over-the-counter (OTC) market maker, alternative trading system (ATS), national securities exchange, or national securities association. FINRA notes that the SEC recently proposed amendments to Rule 605 that, if adopted, would expand the scope of entities that would be required to publish Rule 605 Reports to also encompass broker-dealers that introduce or carry 100,000 or more customer accounts, as well as requiring separate reports for executions on single dealer platforms (SDPs) and market centers operating qualified auctions. See Securities Exchange Act Release No. 96493 (December 14, 2022), 88 FR 3786 (January 20, 2023) (Disclosure of Order Execution Information) (“Rule 605 Proposal”). If the SEC expands the scope of entities required to report under Rule 605, FINRA would similarly require such additional entities that are FINRA members to send their Rule 605 Reports to FINRA for central publication on the FINRA website pursuant to this proposal.
4. Generally, “NMS security” includes listed stocks and options, and “NMS stock” means any NMS security other than an option. See Regulation NMS Rule 600(b).
5. Specifically, Rule 605(a) requires every market center to publish a Rule 605 Report for each calendar month, within one month after the end of the month addressed in the report, on the “covered orders” in NMS stocks that it received from any person. Such Rule 605 Reports must be in electronic form, categorized by security, order type, and order size, and include the statistical information specified in Rule 605(a). Among other things, the reports must include information about each market center’s quality of executions on a stock-by-stock basis, including how market orders of various sizes are executed relative to the public quotes; information about effective spreads (the spreads actually paid by investors whose orders are routed to a particular market center); and information about the extent to which a market center provides executions at prices better than the public quotes to investors using limit orders.  
  
Under Rule 600(b)(22) of Regulation NMS, a “covered order” means any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours, but excludes any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted

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- on a “not held” basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price of the security at the time of execution.
6. A market center can maintain its own website at which its files can be downloaded or may arrange for another person to maintain the website at which the market center’s files can be downloaded (as well as potentially the files of other market centers). See Joint Industry Plan; Order Approving Plan Establishing Procedures Under Rule 11Ac1-5 by the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Exchange, and Philadelphia Exchange, Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001) (“Rule 605 Plan”), at 19817 n.3.
  7. See Rule 605(a)(2) of Regulation NMS.
  8. See Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75414 (Dec. 1, 2000) (adopting new Exchange Act Rules 11Ac1-5 and 11Ac1-6, redesignated as Rules 605 and 606, respectively, when Regulation NMS was adopted in 2005), at 75414.
  9. The “designated participant” framework under the Rule 605 Plan was intended to make market centers’ Rule 605 Reports easier to find than if investors and other interested parties needed to locate each individual market center’s separate website on their own. See Rule 605 Plan at 19815. In addition to establishing the designated participant framework, the Rule 605 Plan also specifies the electronic data file formats that market centers must use to prepare their Rule 605 Reports, in accordance with Rule 605(a)(2).
  10. For example, FINRA maintains a list of the market centers for which it functions as designated participant, along with links to each such market center’s website where the [Rule 605 Reports](#) can be downloaded.
  11. FINRA notes that the SEC’s Equity Market Structure Advisory Committee (EMSAC) recommended, among other things, that “the SEC could consider centralizing [Rule 605 and 606] report creation in an unbiased and trusted source such as FINRA.” See EMSAC, Recommendations Regarding Modifying Rule 605 and Rule 606 (November 29, 2016), at 2.
  12. Under the proposal, members would be required to provide the reports to FINRA, in the manner prescribed by FINRA, within the same time and in the same format that such reports are required to be made publicly available pursuant to Rule 605 and the Rule 605 Plan (*i.e.*, electronic data files in the format prescribed by the Rule 605 Plan would be required to be provided directly to FINRA within one month after the end of the month addressed in the report). FINRA notes that the SEC has proposed to require, in addition to the detailed Rule 605 data files, that reporting entities also publish monthly summary reports in specified PDF and XML formats. See Rule 605 Proposal at 3905. This FINRA proposal would require members to provide any reports to FINRA that are required to be made publicly available pursuant to Rule 605 and the Rule 605 Plan. Therefore, if the Rule 605 Proposal is adopted, this proposal would likewise require such additional summary reports to be provided to FINRA for centralized publication on the FINRA website.



13. FINRA notes that, for similar reasons, it also recently filed with the SEC a proposed rule change to, among other things, centralize publication of order routing reports for NMS securities that are required to be published by broker-dealers under Rule 606(a) of Regulation NMS. See Securities Exchange Act Release No. 96415 (November 30, 2022), 87 FR 74672 (December 6, 2022) (Notice of Filing of File No. SR-FINRA-2022-031).
14. While the SEC's Rule 605 Proposal did not require centralization of Rule 605 Reports, the SEC requested comment on whether the new summary reports, or both the summary and detailed reports, should be posted in a centralized location. See Rule 605 Proposal at 3825. The Rule 605 Proposal also discussed potential alternative approaches to centralize availability of the reports, including requiring the reports to be published through the SEC's EDGAR system or requiring the reports to be centrally published through the Rule 605 Plan. See Rule 605 Proposal at 3894-96. As discussed above, FINRA believes that centralization of the reports would improve the accessibility and usefulness of the reports for users of the data, and further believes that the proposal described in this *Notice* represents an efficient and comparatively simple solution for improving access to Rule 605 Reports through centralization on the FINRA website.
15. See *supra* note 10.