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NASAA

September 25, 2026

By email to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006

RE: Regulatory Notice 26-15: *Best Execution*

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to Financial Industry Regulatory Authority, Inc. ("FINRA") Regulatory Notice 26-15: *Best Execution* (the "Notice"), which seeks commentary on how FINRA can modernize its best execution guidance to facilitate investor protection and market integrity. We appreciate the opportunity to comment at this stage and support FINRA's continued reliance on a strong, principles-based best execution obligation under Rule 5310.

For purposes of these comments, we assume that the Securities and Exchange Commission's (the "Commission") proposal to rescind Rules 611 and 610(e) of Regulation NMS will be adopted. Should that be the case, greater weight will be on FINRA's investor protection obligations, reinforcing the need for a strong, substantive, and adaptive best execution obligation. The proposed rescissions will elevate the importance of Rule 5310 as a safeguard against inferior executions and require heightened scrutiny of retail orders, internalization practices, and routing incentives. FINRA should therefore resist broad safe harbors that convert best execution obligations into a compliance checklist, ensure that blanket "not held" provisions do not override retail customers' reasonable expectations, and apply these protections with equal force to emerging technologies, including artificial intelligence-driven systems and tokenized securities.

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

I. The Importance of Rule 5310 Will Increase in a Post-Rule 611 Rescission Environment.

Rule 611 of Regulation NMS, also known as the Order Protection Rule, has provided a structural protection against trade-throughs for more than twenty years, and as FINRA has pointed out, it has operated alongside, rather than replaced, the pre-existing best execution obligations of broker-dealers.[2] As the Commission stated in adopting Regulation NMS, the trade-through rule "in no way lessens a broker-dealer's duty of best execution."[3] Rule 611 provides a market-wide protection requiring trading centers to maintain policies and procedures reasonably designed to prevent trade-throughs of protected quotations.[4] Rule 5310 serves a different purpose: it requires a broker-dealer to exercise reasonable diligence to obtain the most favorable terms reasonably available for its customer.

In a post-Rule 611 rescission environment, FINRA's best execution obligation under Rule 5310 will become an even more important structural safeguard against inferior executions, particularly for small retail orders. The Commission has acknowledged that "best execution obligations should continue to ensure brokers use reasonable diligence to secure the most favorable terms for customer orders" and that "a broker's duty to provide best execution would apply regardless."[5] FINRA has expressly recognized and reiterated the Commission's position that "simply obtaining the best bid or best offer ("BBO") may not satisfy a firm's best execution obligation, particularly with respect to small orders."[6]

NASAA is concerned that the removal of the backstop provided by the Order Protection Rule could lead to an environment in which economic incentives, primarily payment for order flow ("PFOF"), become more influential in routing decisions. This does not mean that PFOF is inherently inconsistent with best execution; rather, if firms have greater discretion to determine which venues to connect to or route orders to, PFOF and other financial considerations could become more influential in those decisions. At a minimum, firms should be expected to demonstrate that routing decisions remain based on execution quality and the firm's independent best execution analysis, rather than on self-interested economic benefits associated with particular venues.

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2 Notice at 2.

3 *See* Notice at 5.

4 17 CFR § 242.611.

5 The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS at 28-29, SEC Release No. 34-105655 (June 17, 2026).

6 Notice at 4; FINRA, Regulatory Notice 15-46, *Best Execution* at 2 (Nov. 2015).

As the securities markets move toward accommodating 24-hour trading, FINRA should provide guidance and take steps to ensure that retail investors will continue to receive best execution during extended and overnight trading sessions. As Commissioner Peirce recently observed, market participants have expressed ambivalence about the shift to extended hours trading, viewing it as "an inevitable, but not entirely welcome complication, rather than as an exciting new opportunity," and expressing concern about "the thinner order books overnight, wider spreads, and the resulting increased price volatility."[7] These conditions may heighten execution risks for retail investors and warrant corresponding adjustment to FINRA's oversight and surveillance responsibilities. FINRA should consider how to adapt to a 24-hour trading environment including how to address the reduced competitive pressure that may arise during thinly traded sessions, which could create greater opportunities for trading platforms to internalize order flow or otherwise adjust pricing in ways that disadvantage retail investors.

FINRA should also consider conducting targeted examinations as post-Rule 611 rescission market conditions develop. Such examinations should assess whether firms have appropriately recalibrated their routing practices, compared execution quality across competing markets and additional sources of liquidity, and evaluated opportunities for price improvement, accounting for PFOF and other routing inducements.[8] Such examinations would reinforce Rule 5310's core principle that best execution remains an ongoing obligation as market structure evolves. FINRA should guard against a potential post-Rule 611 rescission "race to the bottom," particularly with respect to new trading venues and platforms, as well as anticipated changes to firms' internalization practices, by periodically assessing and publicly reporting on execution quality and order routing practices during the first six months, one year, and two years after issuance of updated guidance. Such periodic analysis would help instill retail investor confidence in the quality of their executions while enabling FINRA to monitor execution quality and order routing practices and detect gamesmanship among trading venues and firms.

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7 SEC Commissioner Hester M. Peirce, *Stock Around the Clock: Remarks at the Roundtable on Preparations for 24-Hour Trading* (Sept. 17, 2026).

8 See FINRA Rule 5310, Supplementary Material .09 (requiring procedures to ensure that the member conducts regular and rigorous reviews of execution quality); FINRA, Regulatory Notice 15-46 at 5, *Best Execution* (Nov. 2015) (reiterating the obligation of firms to compare execution quality across competing markets and consider price improvement and other execution-quality factors); 2026 FINRA Annual Regulatory Oversight Report (identifying as an examination finding failures to compare execution quality with competing markets, including alternative trading systems and additional sources of liquidity).

II. Small Retail Orders and Internalization Decisions Should Receive Heightened Protection and Scrutiny.

A. Retail Customers have Different Expectations and Vulnerabilities.

Retail customers have materially different expectations and vulnerabilities than do institutional customers.[9] As FINRA has observed, retail orders generally are entered with the expectation of full and prompt execution at the best available price, whereas institutional customers may balance execution price against other considerations.[10] Retail customers also generally lack the information, sophistication, bargaining power, and ability to monitor execution quality to the same extent as institutional investors.[11] They may be less likely or able to select or switch broker-dealers based on quantitative differences in execution quality.[12] As a result, a retail investor may bear incremental execution costs for some period before recognizing that execution quality differs across firms, making retail customers particularly vulnerable to order handling practices that benefit the broker-dealer at the investor's expense. This concern supports heightened scrutiny of execution practices involving retail orders, rather than assuming competitive forces or customer mobility will adequately discipline execution quality.

B. Internalization Deserves Heightened Scrutiny.

Internalization presents an inherent conflict of interest because the firm may have an economic incentive to execute the customer's order itself rather than route it to another venue that could provide a more favorable execution. NASAA has supported heightened attention to conflicted transactions, emphasizing that robust best execution policies are particularly appropriate where the broker-dealer stands in a conflicted position and may profit from the handling of retail orders.[13] NASAA recommends that FINRA retain its existing order-by-order best execution analysis for internally executed orders, particularly retail orders. Without Rule 611's protected quotation requirement, an internalizing firm could have greater discretion to

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9 Notice at 11 ("What are the most important differences between retail and institutional customer expectations that FINRA should take into account in updating its best execution guidance?").

10 Notice at 11.

11 *Regulation Best Execution*, SEC Release No. 34-96496 at 313 (Dec. 14, 2022) (generally, "institutional customers have better access (compared to retail customers) to data, which they utilize to monitor and analyze the execution quality that various broker-dealers offer.").

12 *Regulation Best Execution*, SEC Release No. 34-96496 at 312-313 (Dec. 14, 2022) ("[I]nstitutional customers often utilize multiple broker-dealers in the handling of their orders, which lowers the costs of switching brokers if they exhibit poor execution quality.").

13 *See* NASAA, Letter to the SEC RE: File Nos. S7-29-22, Disclosure of Order Execution Information; S7-30-22, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders; S7-31-22, Order Competition Rule; and S7-32-32, Regulation Best Execution (Mar. 31, 2023).

execute a customer order internally despite superior displayed liquidity elsewhere. Order-by-order review under FINRA Rule 5310 therefore remains necessary to determine whether the internalized execution provided the customer with a price and other terms as favorable as those reasonably available under prevailing market conditions.

Further, FINRA should require member firms to demonstrate that an internalized execution was at least as favorable to the customer as reasonably available alternatives, taking into account price improvement opportunities, execution speed, fill probability, execution size, transaction costs, and other relevant customer expectations, not merely that the customer received the National Best Bid and Offer ("NBBO") or a nominal amount of price improvement. In addition, if the quality of reasonably available alternatives deteriorates generally following the rescission of Rule 611, FINRA should not allow any such deterioration to redefine best execution standards downward. At a minimum, an internalized retail order should not be executed at a price inferior to the best reasonably available market price, and firms should bear the burden of demonstrating why an internalized execution was at least as favorable as reasonably available alternatives under the prevailing market conditions.

Currently, the NBBO and the Rule 611 trade-through framework provide an important regulatory reference point for evaluating an internalized execution. If Rule 611 is rescinded, the NBBO would no longer have the same regulatory significance as a protected quotation, and a firm could potentially execute against a customer order internally even when another venue displayed a better quotation without implicating a trade-through prohibition. The rescission of Rule 611 would also eliminate associated filing and disclosure obligations, further underscoring the need for greater transparency to retail investors regarding how firms satisfy their best execution obligations. FINRA should require member firms to provide greater transparency to retail customers regarding how the firm achieves best execution, what factors it considers, and how it determines and measures price improvement while maintaining order quality for retail investors. The NBBO should remain an important benchmark following any rescission of Rule 611, particularly for retail orders, but it should function as a floor or reference point rather than a safe harbor.

III. "Not Held" Retail Orders Should Not Become a Backdoor Limitation on Best Execution.

NASAA shares FINRA's concern regarding the use of blanket "not held" provisions in retail customer account agreements. As FINRA recognizes, broad categorization of retail customer orders as "not held" may be inconsistent with the reasonable expectations of retail customers who expect that, once an order becomes executable, it will be promptly and fully executed at the best reasonably available price in the marketplace.[14] The "not held" designation, while appropriate for

[14] Notice at 14.

institutional customers seeking the broker-dealer's discretion when handling large orders, is a practice not particularly associated with, and should not be applied to, retail orders where the customer reasonably expects prompt execution at the best available price.[15]

FINRA should make clear that a firm is not permitted to rely on standardized account-opening documentation to override the reasonable expectations of a retail customer when executing an order. This approach is consistent with FINRA's long held recognition that a "not held" designation does not relieve a broker-dealer of its "clear responsibility to work to obtain the best fill considering all of the terms agreed to with the customer and the market conditions surrounding the order."[16] Any legitimate use of "not held" treatment should be determined based on the substance of the customer's instruction and the circumstances surrounding the order, rather than solely on language contained in a boiler-plate customer agreement.[17] This approach would better align the treatment of retail orders with the customer's actual instructions and reasonable expectations while preserving appropriate flexibility where a customer has genuinely directed the firm to exercise discretion over the timing or manner of execution.

IV. **Safe Harbors and Oversight: Do Not Convert Best Execution Into a Checklist.**

A. Safe Harbors Should be Tailored.

FINRA should be cautious in adopting safe harbors under Rule 5310.[18] Best execution, as FINRA has acknowledged is an inherently facts-and-circumstances obligation that must evolve with changing market conditions, trading technologies, liquidity, and customer needs. FINRA's

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15 *See* NASD Notice to Members 97-57 at 460 ("A broker/dealer with [a discretionary] order must use its brokerage judgment in the execution of the order, and if such judgment is properly exercised, the broker is relieved of its normal responsibilities with respect to the time of execution and the price or prices of execution of such an order."); *Disclosure of Order Handling Information*, SEC Release No. 34-84528 at 249 (referencing Commission staff analysis confirming that orders received from institutional accounts are more likely to be not held orders than orders received from individual accounts).

16 NASD Notice to Members 97-57 at 460. The Commission has similarly provided guidance supporting the principle that orders should be categorized as held or not held based on whether the customer "reasonably expects" the firm to attempt to execute the order immediately. *See Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS*, Issue 15: Categorizing Customer Orders as Held or Not Held, SEC.

17 Notice at 14 ("What considerations, if any, may warrant such a blanket provision, and what modifications of the best execution obligation should result, if any?").

18 Notice at 8 ("Do commenters believe that one or more Rule 5310 safe harbors should be developed, such that activity falling within their scope would be considered to be in compliance with a firm's best execution obligations? If so, what specific circumstances or scenarios should such safe harbors address (*e.g.*, firms routing a directed order to a specified venue; executions pursuant to documented regular and rigorous methodologies; large order executions meeting a specified benchmark(s))? What would be appropriate parameters or conditions for safe harbor relief in each instance?").

existing framework appropriately emphasizes regular and rigorous reviews of execution quality rather than adherence to a single prescribed outcome or methodology.

Safe harbors are typically static and do not account for the full range of circumstances that bear on whether a particular execution was as favorable as reasonably possible. Broad safe harbors could unintentionally encourage firms to optimize for compliance with a prescribed methodology rather than for the actual interests of customers. This concern is particularly acute for small retail orders and transactions involving conflicts of interest, where a routing methodology may appear facially compliant while producing systematically inferior outcomes for customers. Accordingly, if FINRA adopts safe harbors, they should be narrow, clearly defined, and subject to continuing review for efficacy and abuse. Safe-harbor protection also should not be available where evidence demonstrates that customers received materially inferior execution. A safe harbor should provide regulatory certainty for well-designed practices without becoming a substitute for the underlying best execution obligation.

B. FINRA Should Strengthen its Data-Driven Oversight.

In a post-Rule 611 and 610(e) rescission environment, FINRA should rely more heavily on empirical execution-quality information to identify firms or routing practices that systematically produce inferior customer outcomes. The rescission of Rules 611 and 610(e) could, however, create some risk of reduced comparability in execution-quality data, particularly if the removal of protected quotations changes routing behavior, market structure, or the benchmarks against which executions are evaluated.[19] That risk does not justify maintaining outdated requirements, but it does reinforce the need for FINRA to ensure that firms continue to collect sufficiently granular and reliable execution-quality information.[20]

FINRA should build on its existing "regular and rigorous review" framework by emphasizing data-driven analysis of execution quality across meaningful populations of orders, rather than focusing primarily on isolated transactions. Oversight should identify systematic patterns that may affect many small retail orders, including patterns associated with venue selection, routing practices, conflicts, and differences in realized execution quality. This approach would preserve the principles-based nature of Rule 5310 while giving FINRA a stronger means of

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[19] The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS at 165, SEC Release No. 34-105655 (June 17, 2026) (stating that rescission could cause more order flow to be executed off exchange, which could also reduce displayed liquidity); SEC Commissioner Mark Uyeda, Statement on the Proposed Amendments to Regulation NMS (June 11, 2026) (stating that rescission would "unsettle long-standing assumptions in our market structure and inevitably raise questions regarding best execution, transparency, trading mechanics, and investor confidence.").

[20] 2026 FINRA Annual Regulatory Oversight Report at 64-65. (identifying firms' failure to consider certain Rule 5310 execution quality factors when conducting "regular and rigorous reviews," inaccurate quarterly reporting, and incomplete disclosures).

identifying practices that may technically satisfy a prescribed methodology but nevertheless fail to serve customers' best interests.

V. Existing Investor Protection Measures Should Be Applied Rather Than Replaced by New Mechanisms.

A. Artificial Intelligence and Automated Routing

The emergence of artificial intelligence ("AI") does not diminish firms' best execution obligations. FINRA has appropriately recognized that its rules "continue to apply when member firms use AI, including Gen[erative] AI or similar technologies, in the course of their business, just as they apply when member firms use any other technology or tool."[21] Firms remain fully responsible for the performance and outcomes of any systems they deploy in the order handling, routing, and execution process, including AI-driven or automated systems. The scope of the best execution duty has long been understood to "evolve as changes occur in the market that give rise to improved executions, including opportunities to obtain more advantageous prices."[22] AI-driven routing tools represent precisely such a market development; if these technologies are demonstrably capable of achieving superior execution quality, then firms deploying them must ensure they are configured and monitored to serve that objective for customers, not merely to optimize the firm's own economics.

FINRA should make clear that artificial intelligence, smart-order routers, and other automated systems are tools that firms may use to assist in fulfilling their existing obligations.[23] The deployment of such technologies should not be construed as a substitute for the judgment, supervision, and oversight of registered persons. Automation may enhance a firm's ability to evaluate execution opportunities and route orders efficiently, but the responsibility for complying with the duty of best execution remains with the member firm. FINRA should also make clear that the use of automated routing technology does not diminish a member firm's responsibility for the systems it deploys or the outcomes those systems produce. Firms should remain responsible for appropriately validating, monitoring, and supervising AI-enabled systems, smart-order routers, and other automated technologies used in connection with customer orders.

At the same time, the regulatory framework should recognize that effective oversight does not require firms to eliminate automation or duplicate manually every function performed by an automated system. Rather, firms should maintain reasonable controls and supervisory processes

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[21] Regulatory Notice 24-09 at 2 (June 27, 2024).

[22] FINRA, Regulatory Notice 15-46 at 2, *Best Execution* (Nov. 2015).

[23] Notice at 17 ("Should FINRA consider providing any best execution guidance specific to the use of AI?").

appropriate to the technology and its intended use, and should be able to demonstrate that their systems are operating as intended and producing competitive outcomes for customers.

B. Tokenized Securities and Digital Assets

The fundamental best execution obligation and how it is implemented should remain technology neutral. FINRA's principles-based standard should apply based on the economic substance and function of the activity, rather than the technology used to create, trade, route, or settle a security.[24] Tokenized securities markets may present challenges for best execution, including fragmented liquidity, limited visibility into competing markets, and opaque pricing and fee structures that make it difficult for investors and intermediaries to determine whether an execution reflects the best terms reasonably available. Such challenges, however, should not displace the important investor protections underpinning the best execution rule. As FINRA has noted, "the fundamental duty of best execution is applicable irrespective of the manner in which the security is created and the technology on which it is traded or settled."[25]

FINRA should consider supplemental guidance addressing the particular market conditions that will evolve surrounding the trading of tokenized securities. Such guidance could provide greater clarity regarding the reasonable diligence required when liquidity is fragmented across multiple platforms, including the extent to which a firm should evaluate liquidity and pricing across alternative venues rather than relying on a single platform. It may also be useful for FINRA to address the reliability of market-data sources in digital markets, including what diligence is appropriate when firms rely on particular platforms, pricing feeds, or other sources of execution-quality information. Additionally, the obligation to seek the best execution reasonably available across alternative platforms should be no less stringent in digital-asset markets than in traditional securities markets. Customers should be able to expect the same fair treatment whether their security is traded through a conventional exchange or broker-dealer infrastructure or through newer technology-enabled market structures including distributed ledger technology.[26]

Retail investors should not receive a lower level of execution protection simply because a security is created, traded, or settled using one form of technology versus another. Tokenization

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24 The Securities Industry and Financial Markets Association ("SIFMA") has advocated a similar approach, with which we agree, that securities should receive the same core protections regardless of whether they are traditional or tokenized and that the regulation of platforms relevant to the digital asset ecosystem should remain technology neutral. *See* Letter Re: Automated Market Makers and the Consistent Application of Securities Market Regulations (Mar. 30, 2026).

25 Notice at 16-17.

26 *See* SIFMA, Re: Requests for Exemptive Relief from the Federal Securities Laws for Tokenized Securities at 1 (Nov. 26, 2025) ("The success of tokenized securities markets rests…on ensuring that they are subject to the same fundamental investor protection and market integrity principles that have helped make the U.S. securities markets the largest, deepest, most liquid, most vibrant and reliable in the world.").

may provide meaningful efficiencies and innovations, but those benefits should not come at the expense of fundamental investor protections.

VI. Conclusion

FINRA should ensure that its modernization of best execution standards under Rule 5310 preserves and strengthens the fundamental protections owed to investors. In a post-Rule 611 environment, where Rule 5310 stands as the principal safeguard against inferior executions, any framework that permits broad safe harbors, tolerates blanket “not held” designations that override retail customers’ reasonable expectations, or fails to hold firms accountable for the outcomes of their routing and execution systems, regardless of the technology employed, risks sacrificing investor interests to the very conflicts of interest that best execution obligations are designed to address. FINRA's guidance should reaffirm that best execution is a substantive, evolving obligation rooted in the genuine pursuit of the most favorable terms reasonably available, not a static compliance exercise susceptible to erosion by economic incentives or technological complexity.

NASAA appreciates the opportunity to comment on the Notice. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA’s General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Marni Rock Gibson

Marni Rock Gibson
NASAA President