

COMMITTEE ON CAPITAL MARKETS REGULATION

September 25, 2026

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

VIA ONLINE PORTAL

Re.: FINRA Regulatory Notice 26-15 – Modernizing FINRA’s Best Execution Guidance

Dear Ms. Mitchell:

The Committee on Capital Markets Regulation (the “**Committee**”) appreciates the opportunity to respond to Financial Industry Regulatory Authority (“**FINRA**”) Regulatory Notice 26-15, requesting comment on modernizing FINRA’s best execution guidance (the “**Notice**”).¹

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-six leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

The duty of best execution requires broker-dealers to seek to execute customer orders on the most favorable terms reasonably available under the circumstances.² FINRA is responsible for supervising broker-dealer compliance with the duty of best execution and issues guidance to its broker-dealer members regarding how to satisfy that duty.³ The duty of best execution has been highly successful as a key component of U.S. equity market structure regulation, as U.S. equity markets are increasingly efficient and deliver the lowest transaction costs for investors globally.⁴

¹ FINRA, *Regulatory Notice 26-15* (Jul. 24, 2026), <https://www.finra.org/rules-guidance/notices/26-15>.

² FINRA Rule 5310.

³ FINRA, *Customer Order Handling: Best Execution and Order Routing Disclosures*, <https://www.finra.org/rules-guidance/guidance/reports/2026-finra-annual-regulatory-oversight-report/best-execution> (last visited Sept. 25, 2026).

⁴ COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to SEC Re. The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS* (File No. S7-2026-20) (Aug. 17, 2026), <https://capmktreg.org/wp-content/uploads/2026/08/CCMR-Letter-on-SEC-Trade-Through-Rule-Proposal-08.17.26.pdf> [“**CCMR Letter**”].

The Notice requests comment on the implications of the Securities and Exchange Commission’s proposal (the “**SEC Proposal**”)⁵ to rescind Rule 611 of Regulation NMS (the “**trade-through rule**”) for the duty of best execution. Although the SEC Proposal does not alter the duty of best execution framework directly, it would raise fundamental issues for FINRA’s supervision of best execution compliance and broker-dealers’ ability to meet their best execution obligations. The SEC and FINRA must address these issues to ensure that investors continue to receive the best terms for their orders.

These issues also present an important question of process. The SEC Proposal remains pending, and the scope and nature of any final changes to Rule 611 and related provisions affecting the NBBO remain uncertain. FINRA should therefore coordinate closely with the SEC and avoid finalizing changes to its best execution framework based on assumptions about a market structure that has not yet been determined. Moreover, given the significance and complexity of these issues, FINRA should provide market participants an opportunity to comment on any specific proposed changes to Rule 5310 or material changes to FINRA’s interpretations or guidance before they are finalized. This will allow FINRA to consider industry input informed by the Commission’s ultimate action and the market structure that will actually exist.

This letter proceeds in three parts. First, we explain that the SEC Proposal would potentially harm best execution compliance and supervision by reducing the integrity of the “national best bid and offer” (“**NBBO**”) as a baseline measure of execution quality. Second, we explain how the SEC Proposal would make it more difficult for FINRA to identify trade executions where a broker-dealer does not achieve best execution for their customer. Third, we explain that rescission of the trade-through rule would likely not achieve the SEC’s goal of reducing unnecessary fragmentation in U.S. equity market structure without further FINRA guidance on best execution compliance. We set forth recommendations that would seek to mitigate these concerns.

1. Preserving the Integrity of the NBBO as a Benchmark for Execution Quality

Best execution depends on all terms of an execution, including speed, size, and price.⁶ The NBBO currently provides a critical benchmark for assessing execution price because it reflects the best publicly displayed quotation. However, as we explain below, the SEC Proposal would undermine the ability of FINRA, broker-dealers, and customers to rely on the NBBO for this purpose, because the NBBO would become a less reliable indicator of the best price available at a given time.

⁵ SEC, *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS*, 91 FED. REG. 36,656 (Jun. 17, 2026), <https://www.federalregister.gov/documents/2026/06/17/2026-12163/the-trade-through-rule-and-locked-and-crossed-markets-provisions-of-regulation-nms> [the “**SEC Proposal**”].

⁶ See SEC, *Disclosure of Order Execution and Routing Practices*, 66 FED. REG. 15,028 (Mar. 9, 2001), <https://www.sec.gov/rules-regulations/2001/03/disclosure-order-execution-routing-practices> (“A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution (which is particularly important for customer limit orders), the speed of execution, and the trading characteristics of the security, together with other non-price factors such as reliability and service.”)

Although the trade-through rule and the duty of best execution serve distinct purposes, there are important intersections between the two requirements. Most prominently, the trade-through rule has played an important practical role in preserving the accessibility and reliability of the quotations that constitute the NBBO. Rule 611 protection is only available to quotations that satisfy the automated quotation requirements, including standards governing accessibility and automatic quotations.⁷ As a practical matter, exchanges have therefore had a strong incentive to ensure that their best quotations satisfy those requirements in order to receive protected quote status. The result is that, although the NBBO is not formally limited to automated quotations, the quotations constituting it today satisfy those standards.

The SEC Proposal would eliminate that incentive by rescinding Rule 611 and the associated definition of “automated quotations,” without establishing comparable minimum standards for quotations eligible for inclusion in the NBBO.⁸ Absent such standards, venues could introduce quotations subject to asymmetric delays or other restrictions without sacrificing Rule 611 protection because that protection would no longer exist. Similarly, quotations displayed through the ADF could contribute to the NBBO without satisfying the accessibility standards that apply today. The result would likely be an NBBO that increasingly includes quotations that do not represent immediately and reliably accessible trading opportunities.⁹

FINRA, broker-dealers, and customers evaluate broker execution quality based on Rule 605 reports that rely on the NBBO as the standard benchmark for price performance.¹⁰ If the NBBO were to include inaccessible quotations or quotations subject to asymmetric delays, then it would no longer be an appropriate benchmark for execution quality, as the NBBO would not in fact be available to all brokers at the time of execution.

For example, suppose the NBBO reflects a \$10.00 offer to sell, but that quotation is inaccessible to a broker-dealer because of a trading venue restriction. Rule 605 would nevertheless compare an execution of a bid at \$10.01 against the \$10.00 offer to sell, thus indicating that the broker-dealer executed at a price worse than the NBBO, even though the broker could not have obtained the \$10.00 price. The resulting comparison would provide little meaningful information about execution quality.

The lack of minimum standards for inclusion in the NBBO would therefore limit the ability of FINRA and brokers to evaluate compliance with best execution and the ability of customers to assess execution quality on the basis of Rule 605 reports. Moreover, if broker-dealers and customers were less able to rely upon Rule 605 reports to compare execution quality across brokers, then there would be reduced market discipline that could further impair execution quality.

⁷ 17 CFR § 242.600.

⁸ CCMR Letter at 6-7.

⁹ *Id.*

¹⁰ 17 C.F.R. § 242.605.

FINRA and the SEC must therefore coordinate to preserve the integrity of the NBBO as a benchmark for evaluating best execution. As we recommended in our letter on the SEC Proposal, the SEC should establish minimum standards for quotations eligible for inclusion in the NBBO, including requirements that markets contributing quotations provide immediately accessible, firm quotations and fair and impartial access to those quotations.¹¹ FINRA should ensure that its best execution guidance is consistent with those standards.

2. Distinguishing Trade-Throughs from Best Execution Compliance Issues

Today, the trade-through rule prevents a trading venue from executing an order at a price inferior to the NBBO. The trade-through rule was intended to encourage the public display of orders and reduce the likelihood of “trade-throughs,” where investors do not receive the best publicly available price for their order.¹² If the trade-through rule were rescinded, trade-throughs would likely become substantially more prevalent. This would significantly complicate FINRA’s supervision of best execution by requiring it to distinguish potentially large numbers of trade-throughs that nevertheless provide customers with favorable aggregate execution quality from those that reflect genuine best execution concerns.

For example, a broker-dealer handling an order that is larger than the size displayed at the best price could execute the entire customer order at a price that is inferior to the best displayed quotation but equal to or better than the aggregate price the customer would have received by accessing the better-priced quotation and then executing the remainder of the order at the next available price. In that circumstance, the displayed quotation has been traded through, but the customer may nevertheless have received an equivalent or better overall execution price. Similar considerations arise today with respect to odd-lot quotations that are not protected under Rule 611 and during trading sessions in which Rule 611 does not apply.

This would require a materially more complex approach to best execution surveillance. Surveillance premised on identifying executions at prices inferior to better displayed quotations would generate potentially large numbers of transactions that do not themselves indicate inferior execution quality. FINRA would instead need to evaluate the all-in execution available for the customer order, including the size available at each relevant price level, and compare that outcome with the execution actually received by the customer. FINRA should therefore explain how its surveillance and examination framework would distinguish trade-throughs that provide favorable aggregate execution quality from executions that raise genuine best execution concerns.

Trade-throughs could also create customer confusion as to whether a customer received the best available terms. FINRA should therefore clarify how it will weigh factors such as execution speed, likelihood of execution, order size, and price when assessing trade-throughs for compliance with the duty of best execution and seek to minimize customer confusion regarding trade-throughs.

¹¹ CCMR Letter at 7.

¹² *Id.* at 3-4.

3. Reducing Fragmentation

The principal rationale for the SEC Proposal is that rescission of the trade-through rule would reduce unnecessary fragmentation of U.S. equity market structure and thereby reduce trading costs for investors.¹³ The SEC Proposal reasons that the trade-through rule is encouraging unnecessary fragmentation by effectively requiring broker-dealers to connect to all exchanges. As a result, exchanges with very low trading volume can charge high connectivity fees and share in market data revenue that would otherwise not be possible.¹⁴ It concludes that rescinding the rule would give broker-dealers greater flexibility to determine whether particular exchanges or other venues warrant routing customer orders to them, potentially reducing the costs associated with accessing low-volume venues.¹⁵

However, FINRA's best execution guidance does not address when a broker-dealer may decline to route customer orders to a particular trading venue consistent with its duty of best execution. Without clear guidance and clarification, broker-dealers may continue to route customer orders to low-volume exchanges as a precautionary measure notwithstanding rescission of the trade-through rule. Rescission of the trade-through rule would therefore not produce the anticipated reductions in routing, connectivity, and related costs or address the regulatory incentives contributing to the proliferation of low-volume exchanges. The SEC Proposal does not fully consider the potential impediment posed by the duty of best execution to the goal of reducing fragmentation.

FINRA should therefore coordinate with the SEC to clarify that the duty of best execution does not necessarily require a broker-dealer to route customer orders to every exchange displaying a potentially better price. Instead, broker-dealers should be permitted to make reasonable venue connectivity and routing decisions based on factors such as high access and connectivity fees, and to account for their own transaction costs in making order routing decisions, provided these practices are fully disclosed to customers. FINRA should provide guidance identifying the factors relevant to that assessment.

¹³ SEC Proposal.

¹⁴ *Id.*

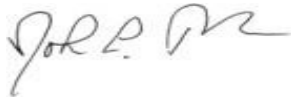
¹⁵ *Id.*

COMMITTEE ON CAPITAL MARKETS REGULATION

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Thank you for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Professor Hal S. Scott (hscott@capmksreg.org) or its Executive Director, John Gulliver (jgulliver@capmksreg.org) at your convenience.

Respectfully submitted,



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