Regulatory Notice 26-15

July 24, 2026

Best Execution

FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance

Comment Period Expires: September 25, 2026

Summary

A broker-dealer's duty of best execution is a key investor protection and safeguard of market integrity. FINRA Rule 5310, together with its related body of interpretive guidance, provides principles-based standards for member firms in connection with their duty to ascertain the best market for their customers' orders. As part of its FINRA Forward rule modernization initiative, and in light of significant market structure developments—including the SEC's proposal to rescind the trade-through rule under Regulation NMS—FINRA is reviewing its best execution guidance to ensure that Rule 5310 remains durable and effective in an evolving marketplace.

This *Notice* requests comment on how FINRA can modernize its best execution guidance to facilitate investor protection and market integrity under the existing principles-based standard, and provide member firms with additional interpretive insights and approaches to structure their processes to serve their various customers.

Questions concerning this *Notice* may be directed to:

- Robert McNamee, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8012 or by email; or
- Mia Zur, Associate General Counsel, OGC, at (202) 728-8339 or by email.

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Systems
- Technology
- Trading and Market Making

Key Topic

- Best Execution
- Equity Securities
- Fixed Income Securities
- NMS Stocks
- Order Handling
- OTC Equity Securities
- Regular and Rigorous Review
- Regulation NMS
- Standardized Options

Referenced Rules & Notices

- FINRA Rules 0160, 2121, 2265, 2360, 3110, 5310, 6240 and 6437
- Notice to Members 97-57
- Notice to Members 99-12
- Notice to Members 01-22
- Notice to Members 06-58
- Regulatory Notice 15-46
- Regulatory Notice 21-12
- Regulatory Notice 21-23
- Regulatory Notice 22-04
- Regulatory Notice 24-09
- SEC Regulation NMS
- Securities Exchange Act of 1934

FINRA

Action Required

FINRA encourages all interested parties to comment. Comments must be received by September 25, 2026.

Comments must be submitted through one of the following methods:

- online using FINRA's comment form for this *Notice*;
- emailing comments; or
- mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Note: 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.[1]

A. Background

The duty of best execution is a core, long-standing broker-dealer obligation. Rule 5310 (Best Execution and Interpositioning) and its predecessors—together with their related body of interpretive guidance—have provided robust, principles-based standards for FINRA members in attaining best execution of customer orders since 1968. FINRA's best execution rule supplements the common law duties of agents.

FINRA's best execution rule had been in place for nearly forty years when the Securities and Exchange Commission (SEC or Commission) adopted Regulation NMS in 2005. At that time, a relatively small number of national securities exchanges competed for order flow in listed stocks, trading was concentrated within a standard trading day bound by the opening and closing of the primary listing markets, and trading in fractional shares, odd lots, and notional amounts was limited or non-existent. In adopting Rule 611 of Regulation NMS,[2] the Commission stated that the trade-through[3] prohibition "in no way lessens a broker-dealer's duty of best execution."[4] Rather, structural protection against trade-throughs in NMS stocks has operated for more than twenty years alongside the pre-existing duties of broker-dealers under Rule 5310 and the antifraud provisions of the securities laws. Over the years, both before and after Regulation NMS, FINRA has published an extensive body of interpretive guidance regarding members' best execution obligations, supplementing the principles-based standards found in Rule 5310.[5]

The Commission recently proposed changes to Regulation NMS, including to rescind the trade-through prohibition under Rule 611.[6] In this proposal, the Commission noted that "best execution obligations should continue to ensure brokers use reasonable diligence to secure the most favorable terms for customer orders" and that Rule 611 "is not needed as a backstop to best execution given today's highly automated, interconnected and competitive equity markets, where retail investors have widely available access to market data and execution quality information, and a broker's duty to provide best execution would apply regardless."[7]

In addition to rescinding the trade-through rule, the SEC also proposed to rescind Rule 610(e) of Regulation NMS, which generally requires self-regulatory organizations (SROs) to establish, maintain and enforce written rules that: (1) require their members to reasonably avoid displaying quotations that lock or cross any protected quotation in an NMS stock, and displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective NMS Plan; (2) are reasonably designed to assure the reconciliation of locked and crossed quotations in an NMS stock; and (3) prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an NMS stock, or from displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective NMS Plan.[8]

FINRA believes that its time-tested, principles-based approach to the duty of best execution under Rule 5310 continues to serve investors and the market well, as it did prior to the adoption of Regulation NMS. Further, FINRA believes the guidance provided in its previous body of interpretations remains generally sound and continues to apply amidst rapidly evolving markets and trading technologies. However, in recognition of the significant changes in market structure in recent years, and in particular in light of the SEC's proposal to modify certain Regulation NMS requirements, FINRA is seeking comment on ways it should update its best execution guidance to ensure Rule 5310 continues to serve its key investor protection and market integrity goals.[9]

B. Best Execution Standards Under Rule 5310 and Related Guidance

A broker-dealer's obligation to obtain best execution of a customer's order is based in part on the common law agency duty of loyalty, which obligates an agent to act in the principal's best interest, and has been incorporated explicitly in FINRA rules.[10] As such, any broker-dealer, when acting as agent on behalf of a customer in a transaction, is under a duty to exercise reasonable care to obtain the most advantageous terms for the customer.[11] Best execution duties also arise when a broker-dealer is trading in a principal capacity with a customer.[12]

Rule 5310 provides that "[i]n any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions."[13]

The determination as to whether a firm has exercised reasonable diligence under Rule 5310 necessarily involves a facts and circumstances analysis. As set forth in Rule 5310 and FINRA guidance, the factors considered in determining whether a firm used reasonable diligence include the character of the market for the security (*e.g.*, price, volatility, relative liquidity, pressure on available communications); the size and type of transaction; the number of markets checked; accessibility of the quotation; and the terms and conditions of the order as communicated to the member and its associated persons.[14]

FINRA guidance has further identified a set of execution quality considerations that member firms should evaluate as part of their regular and rigorous reviews of execution quality: 1) the price obtained, including the extent to which an execution results in price disimprovement; 2) the extent to which an order may obtain price improvement at other venues; 3) the likelihood that an order will be partially or fully executed; 4) the speed of execution; 5) the size of execution; 6) transaction costs; and 7) customer needs and expectations.[15]

The SEC and FINRA have long recognized that the scope of the duty of best execution must evolve as changes occur in the market that give rise to improved executions for customer orders.[16] When a firm routes order flow for automated execution, or internally executes such order flow on an automated basis, obtaining the best bid or offer may not satisfy the firm's best execution obligation, particularly with respect to small orders.[17] A firm also cannot transfer its best execution obligations to another firm, and a broker-dealer routing all of its order flow to another broker-dealer without conducting an independent review of execution quality violates the duty of best execution.[18]

The requirement to regularly and rigorously examine execution quality likely to be obtained from different markets has been incorporated into Rule 5310.[19] A firm choosing not to conduct an order-by-order review must conduct a regular and rigorous review on a security-by-security, type-of-order basis at a minimum on a quarterly basis.[20] Any orders a firm determines to execute on a proprietary basis from the firm's inventory (*i.e.*, internalize) historically are subject to an order-by-order analysis.[21] A firm must compare the quality of executions obtained via current routing arrangements to the quality available from competing markets and may not limit its review only to markets to which it currently routes.[22]

C. Rule 611 and its Relationship to Rule 5310

Since the adoption of Regulation NMS in 2005, Rule 611 has prohibited trade-throughs of protected quotations in NMS stocks, providing a structural baseline for execution pricing in the market for listed equities. A trade-through occurs when one market executes an order at a price inferior to the best displayed price available in another market.[23] Generally, Rule 611 requires trading centers to establish policies to prevent trade-throughs of protected quotations. Importantly, the trade-through rule applies only to "protected" quotations, which currently are limited to automated quotations that are the round lot best bid or best offer displayed on a national securities exchange.[24]

As the Commission stated in adopting Regulation NMS, Rule 611 "in no way lessens a broker-dealer's duty of best execution."[25] Rather, Rule 611 "undergirds" a firm's best execution obligation and serves as a minimum requirement, but compliance with Rule 611 does not equate to satisfaction of best execution.[26] The SEC and FINRA have emphasized that obtaining the best bid or best offer may not satisfy a firm's best execution obligation. Thus, the reasonable diligence standard and related interpretive guidance under Rule 5310 apply regardless of the existence of a trade-through rule.

However, while the trade-through rule and a broker-dealer's best execution obligations are separate and distinct requirements, FINRA recognizes that the national best bid and offer (NBBO) is used by firms as a key benchmark for evaluating order routing and internalization decisions. Firms have also adapted their order handling and routing processes to account for compliance with Rule 611. Further, firms may be required to connect and route to venues that display protected quotes for purposes of compliance with Rule 611, regardless of any independent analysis of such venues' execution quality for best execution purposes. The rescission of Rule 611 may therefore raise questions for firms as they review the operationalization of their best execution policies.

D. Request for Comment

As part of its FINRA Forward rule modernization initiative, FINRA is reviewing Rule 5310 and requests comment on all aspects of the rule and related guidance to ensure that members continue to have effective, consistent and clear standards for obtaining best execution of their customers' orders.

FINRA preliminarily believes that the best execution rule text in Rule 5310 and its supplementary material remains appropriately calibrated and that its principles-based framework remains effective. However, as noted previously, over the years FINRA has published an extensive body of interpretive guidance regarding members' best execution obligations,[27] and FINRA believes that updates to this guidance may be warranted in light of changes to the market landscape and the SEC's proposed changes to Regulation NMS, among other developments.

Discussed below are potential areas for consideration that have been identified through FINRA's review, as well as through initial feedback from FINRA's member firms. FINRA seeks comment on these areas in particular but welcomes comment more broadly on any topics related to best execution that members believe may require modernization or clarification. Please provide data or other factual support wherever possible.

1. Best Execution Post-611 and 610(e)

Assuming that the trade-through rule and related definitions in Regulation NMS are rescinded as the SEC proposes, FINRA requests comment below on associated changes that may be warranted to its best execution guidance.

a) How should FINRA's best execution guidance address member firms' processes for making decisions to connect, not connect or disconnect from specific execution venues in the absence of the trade-through rule protecting certain venues?
   i. Are there specific standards that members may apply or should be required to apply, or factors to consider, when making venue connection decisions (*e.g.*, volume or liquidity thresholds, access fees or rebates, connectivity or data costs, order types, latencies or speed bumps)?
   ii. In the absence of defined "automated quotations" and "automated trading centers" for trade-through rule purposes, under what circumstances would firms consider quotes to be or not be immediately accessible?
   iii. Should best execution guidance distinguish between displayed and non-displayed liquidity, or between venues that offer displayed liquidity, non-displayed liquidity or both? If so, how?
   iv. Should FINRA consider additional guidance regarding routing to affiliated venues? If so, what issues are of concern?
   v. Is there additional data that would be informative to firms in making these determinations?

b) Do members anticipate making significant changes to their NMS stock order handling, routing, and execution policies, procedures, or processes in the absence of a trade-through requirement? If so, what changes and why?

c) The trade-through rule under Rule 611 applies only to protected quotations, generally limited to displayed round lot quotations in NMS stocks on automated trading centers. However, FINRA understands that many firms today also actively participate in equity markets that are not subject to a trade-through rule, including orders for odd lots in NMS stocks (including fractional share orders), and over-the-counter (OTC) equity securities.

i. How do member firms' order handling, routing and execution practices for odd lots in NMS stocks and OTC equity securities differ from such policies, procedures and processes for round lots in NMS stocks? Are these differences due to the absence of a trade-through requirement or the characteristics of the market?

ii. Are there elements of firms' best execution processes for odd lots and OTC equity securities that commenters intend to leverage in connection with round lots in NMS stocks in a post-611 environment? If so, what specific elements and why?

d) If the trade-through rule is rescinded, there would no longer be protected quotations under Regulation NMS. However, the Securities Information Processors (SIPs) would continue to publish the NBBO.

i. Will the NBBO remain an important benchmark from which to measure price improvement for best execution purposes, including when internalizing orders?

ii. Other than the NBBO, what would be appropriate alternative benchmarks to measure execution quality (*e.g.*, short term average prices such as time-weighted average price or volume-weighted average price), or appropriate principles for use in selecting alternatives? Would such alternative benchmarks be more or less appropriate than the NBBO in particular circumstances for particular types of orders? Is there additional data that would be informative to firms in making these determinations?

iii. FINRA understands that many firms today actively participate in equity markets without a centralized, consolidated cross-market quote like the NBBO, including OTC equity securities and in the overnight hours for NMS stocks when the SIPs are not currently operating. How do firms currently benchmark and assess execution quality in these markets in the absence of an NBBO? Are there aspects of these processes that commenters believe should be explicitly noted in best execution guidance, including for NMS stocks when the NBBO is no longer protected?

e) In the absence of a trade-through rule, members would no longer be required by Regulation NMS to route to automated market centers displaying the best available round lot price. However, FINRA expects that a number of venues—including national securities exchanges—will continue to provide displayed round lot quotes.

i. For what reasons or under what circumstances might it be consistent with a firm's best execution obligations not to access displayed liquidity?

   ii. For what reasons or under what circumstances might it be consistent with best execution to route a customer's order to access displayed liquidity that is at a price inferior to the best displayed price in the market?
   iii. Should FINRA consider providing more specific guidance regarding best execution standards for routing and internalization decisions? If so, what guidance and why?
   iv. Is there additional data that would be informative to firms in making these determinations?

f) Should FINRA consider articulating standards for firms in providing price improvement to different customer orders?
   i. If so, what considerations or factors should be included? Please be specific.
   ii. Should guidance address scenarios involving decisions to route an order to another venue or internalize an order when paying for order flow, or more generally the decision to internalize orders? If so, what guidance would be helpful?

g) Should FINRA provide additional clarification regarding the "prevailing market conditions" that may affect the execution of a customer's order, for example the liquidity, price discovery, reference price reliability, venue characteristics and market participant composition specific to the trading session in which the order is received and executed?

h) FINRA has discussed the role of order handling disclosures in the context of extreme market conditions, noting that, while meaningful disclosures may inform customers' expectations in extreme conditions, they do not excuse order handling procedures that are unfair or otherwise inconsistent with a member firm's best execution obligations.[28] Should FINRA consider providing any additional guidance regarding order handling in extreme conditions, and the role of customer disclosures in those conditions?

i) 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?

j) How should FINRA approach oversight for compliance with best execution obligations in the absence of a trade-through rule? For example, what types of data should FINRA consider in overseeing compliance with Rule 5310?

k) What policies, procedures, and processes should FINRA members have in place to assess their best execution compliance assuming rescission of Rules 610(e) and 611?

FINRA has implemented Rule 610(e) through FINRA Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks).[29] The SEC stated that it anticipates that most, if not all, SROs would seek to amend their locking and crossing rules.[30]

l) If SROs rescind their locked and crossed rules, what scenarios do members believe may present the potential for challenges in meeting their best execution obligations if the SEC adopts its proposal?

m) Is there a need for further order handling guidance regarding locked and crossed markets? If so, what guidance would be appropriate, and should it differ for locked vs. crossed markets? For example, should FINRA provide best execution guidance that addresses members crossing the market in executing a customer order?

n) How would access fees or other transaction costs impact order handling decisions in the potential presence of locked or crossed markets?

2. Access Fees and Transaction Costs

FINRA has long recognized that the costs of a venue may not inappropriately affect a firm's order routing decisions.[31] At the same time, the reasonable diligence standard under Rule 5310 requires firms to consider, among other things, the character of the market for the security and the accessibility of quotations, and "transaction costs" is explicitly listed as a factor members should consider in conducting their regular and rigorous reviews of execution quality.[32]

In light of market structure developments, including the Commission's indication that it plans to review the access fee caps under Rule 610(c) of Regulation NMS by the end of this year,[33] FINRA is soliciting comment on whether new, modified or supplemental guidance may be appropriate with respect to the interplay between transaction costs—including venue access fees—and a firm's best execution obligations.

a) Should FINRA supplement or modify its best execution guidance to address the costs involved with connecting to and accessing liquidity on particular venues, including access fees, when determining where to route customer orders? If so, how?

b) How do member firms view access fees as affecting their ability to obtain best execution? Should costs, such as access fees, be reflected in the price obtained for the customer? If so, how?

c) How should a firm's decision to pass through access fees and rebates—or, alternatively, to absorb them—factor into a firm's best execution obligations? How do member firms assess the relationship between transaction fees and opportunities for price improvement? For example, where a superior displayed price is available on a higher cost venue, should FINRA provide more specific guidance regarding how a member should weigh the better price against the higher access fee? Should the analysis turn on the displayed price or the net cost of execution to the customer?

d) Would the modification or elimination of access fee caps under Rule 610(c) of Regulation NMS affect these considerations? If so, how?

3. Best Execution Review Standards

As discussed above, Supplementary Material .09 to Rule 5310 requires regular and rigorous reviews of execution quality if a firm does not conduct an order-by-order review. FINRA has stated in prior guidance that regular and rigorous review alone (as opposed to an order-by-order review) may not satisfy best execution requirements when routing or internally executing larger-sized orders.[34] Further, in recognition of the unique conflicts that may arise, FINRA has also stated in prior guidance that any orders that a firm determines to execute internally (*i.e.*, on a proprietary basis out of the firm's inventory) would be subject to an order-by-order analysis of execution quality.[35]

a) Should order-by-order reviews continue to be required for internalized order flow? If not, what additional measures could be part of a firm's regular and rigorous reviews that would help ensure that potential conflicts of interest do not interfere with a firm's duty to its customers?

b) Under what circumstances do firms believe an order-by-order best execution review is practicable given developments in order routing technology? Conversely, under what circumstances is an order-by-order review not practical or justified when considering investor outcomes?

c) Where a firm conducts an order-by-order review, what specific processes should a firm undertake in executing its order-by-order review, and how would such processes differ from a regular and rigorous review? Should FINRA consider a smarter order router (SOR) with built-in best execution logic to constitute an order-by-order review and, if so, under what circumstances or conditions? Should some form of aggregate periodic review be explicitly required as a complement, or alternative, to the order-by-order standard?

d) Consistent with Rule 5310.09, FINRA has described execution quality considerations that member firms should evaluate: 1) the price obtained, including the extent to which an execution results in price disimprovement; 2) the extent to which an order may obtain price improvement at other venues; 3) the likelihood that an order will be partially or fully executed; 4) the speed of execution; 5) the size of execution; 6) transaction costs; and 7) customer needs and expectations. Are there other considerations that would be useful to explicitly acknowledge in revised FINRA guidance, such as where customer interests and expectations also involve information leakage concerns or where there was urgency to execute? Please be specific.

4. **Institutional Orders**

Rule 5310 applies to transactions "for or with a customer or a customer of another broker-dealer." Under FINRA Rule 0160(b)(4), the term "customer" does not include a broker-dealer. Rule 5310 thus applies to transactions with all customers.

A key element of best execution's reasonable diligence standard that members must observe when handling a customer order is considering the expectations of the customer (along with other factors, such as the terms and conditions of the order that result in the transaction, as communicated to the member and persons associated with the member). While small, retail orders are generally entered with the expectation of a full and prompt execution at the best available price, institutional customers with larger orders and more complex trading strategies may be balancing additional considerations (such as protecting against information leakage).

a) Would additional guidance regarding best execution obligations be helpful for firms with institutional customers?

b) What are the most important differences between retail and institutional customer expectations that FINRA should take into account in updating its best execution guidance?

c) What execution quality factors under Supplementary Material .09(b) to Rule 5310 do institutional customers find most important to execution of their orders? What factors, if any, do institutional customers not find as important as retail customers?[36]

d) How do members' order handling, routing and execution policies, procedures or processes differ with respect to institutional customers' order flow? Is specific guidance needed to address orders handled via algorithmic trading strategies? If so, what guidance would be helpful?

e) Some members have indicated that price-oriented best execution standards may not adequately account for challenges experienced when printing pre-negotiated block trades with institutional customers. Do commenters agree? Should FINRA provide further guidance regarding the application of best execution obligations to larger trades?

f) FINRA understands that some institutional customers may seek liquidity (whether through direct access or through a broker-dealer acting as agent) on request-for-quote (RFQ) platforms or single dealer platforms (SDPs) operated by broker-dealers.

i. How should use of such platforms be considered from a best execution perspective, both for the operator of the RFQ platform or SDP and the broker-dealer providing access to the platform, if applicable? Is there a need for further guidance regarding best execution in the context of these platforms?[37]

ii. Where an institutional customer directly accesses an SDP or RFQ platform (not through another broker-dealer), do firms believe that the platform operator owes the institutional customer best execution obligations beyond the requirements in Supplementary Material .08 to Rule 5310?[38]

g) Supplementary Material .08 to Rule 5310 clarifies best execution standards when a customer gives instructions regarding order handling, including for directed orders.[39] Is further guidance needed regarding the best execution treatment of directed orders, or orders with special handling instructions or customer-specific customizations?

h) How do members view their best execution obligations in the context of larger "parent" orders that may be broken into multiple smaller "child" orders for execution? What, if any, supplemental or modified guidance should FINRA consider for parent-child orders?

5. Introducing and Receiving Firm Obligations

By its terms, Rule 5310 applies to any transaction "for or with a customer or a customer of another broker-dealer."[40] Supplementary Material .04 to Rule 5310 further states that a member firm's duty to provide best execution to a customer of another broker-dealer does not apply where another broker-dealer is simply executing a customer order against the member's quote. Rather, the duty arises only when an order is routed to the member for purposes of order handling and execution.[41]

FINRA has reminded firms that they cannot wholly transfer to another person their best execution obligations, although other firms may also acquire that best execution obligation.[42] Accordingly, when a firm receives customer orders from a routing firm for purposes of order handling and execution, both the routing firm and the executing firm have best execution obligations, although the routing firm and the executing firm may have different best execution obligations.[43] FINRA has also repeatedly stated that payment for order flow may not interfere with a broker-dealer's duty to obtain best execution, and inducements such as payment for order flow and internalization may not be taken into account in analyzing market quality.[44]

a) Should FINRA provide additional guidance regarding the best execution obligations of different firms in the routing chain for an order? If so, what scenarios or issues should such guidance address?

b) Supplementary Material .09(c) to FINRA Rule 5310 provides that a member that routes its order flow to another member that has agreed to handle that order flow as agent for the customer (*e.g.*, a clearing firm or other executing broker-dealer) can rely on that member's regular and rigorous review as long as the statistical results and rationale of the review are fully disclosed to the member and the member periodically reviews how the review is conducted, as well as the results of the review. Should FINRA provide any additional guidance regarding a routing firms' best execution obligations in this scenario? If so, what should such guidance address?

c) Rule 5310 specifically prohibits interpositioning, stating that no member or person associated with a member shall interject a third party between the member and the best market for the subject security in a manner inconsistent with best execution.[45] Do commenters believe any additional guidance would be helpful with respect to the interpositioning aspects of Rule 5310?

6. Extended Trading Hours

A firm's best execution obligations apply to all transactions for or with customers, regardless of the time when an order is received or a transaction is executed. Firms that participate in extended hours trading—generally meaning trading outside of regular trading hours, which are 9:30 a.m. to 4:00 p.m. on business days—must comply with all FINRA and SEC rules applicable to such trading, including without limitation Rule 5310, and must ensure they meet their supervisory obligations for extended hours activity under FINRA Rule 3110.

As described in the model risk disclosure that firms are required to provide under FINRA Rule 2265 (Extended Hours Trading Risk Disclosure), extended hours trading may present unique risks, including lower liquidity, higher volatility, changing prices and wider spreads. FINRA has observed increasing retail participation in extended hours trading over the past few years, including in the overnight hours as alternative trading systems (ATSs) have offered trading during the overnight session, and such participation may continue to grow as several national securities exchanges have announced plans to begin offering overnight trading sessions. In light of these developments, FINRA requests comment generally on what additional guidance regarding best execution obligations for extended hours trading may assist firms in navigating best execution obligations in this evolving landscape.

a) Supplementary Material .06 to FINRA Rule 5310 sets forth specific considerations for orders involving securities with limited quotations or pricing information, which may be applicable to trading during extended hours. Do commenters believe additional guidance would help firms apply the considerations in Supplementary Material .06 to extended hours trading, and if so, what should such guidance address?

b) How do members' current order handling, routing and execution policies, procedures or processes differ with respect to extended hours trading? Do these processes distinguish between retail and institutional order flow in extended hours? If so, how?

7. **Held and Not Held Orders**

In the equity securities market, a "not held" order generally refers to a market or limit order for which the customer has given the broker-dealer time and price discretion in handling the order. A not held order allows the broker-dealer to exercise judgment to "work" the order to obtain a better fill for the customer, rather than requiring immediate execution of the order. By contrast, a "held" order is said to be "held" to the market, meaning that the broker-dealer must attempt to execute the order immediately. Generally, not held orders are characteristic of institutional order flow—which may involve, for example, relatively large orders for which the institutional customer may seek to minimize price impact—while held orders typically characterize retail orders which seek immediate executions and rely less on broker-dealer order handling discretion.

Rule 5310 does not, by its terms, distinguish between held and not held orders. However, FINRA has previously stated that if the broker-dealer's judgment is properly exercised, the broker-dealer is relieved of its normal time of execution responsibilities with respect to the not held order.[46] In such circumstances, FINRA has clarified that the broker-dealer has a 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.[47]

FINRA is concerned regarding the broad categorization of small, retail customer orders as not held when the customer expects these orders to be immediately and fully executed at the best price available in the marketplace (once executable).[48]

a) FINRA has observed some firms including "blanket" provisions in new account agreements or other customer documentation, including retail customers, stating that all or a subset of the customer's orders will be treated as not held. FINRA is considering the need for guidance regarding the use of such blanket disclosures in customer documentation, given that these orders remain subject to best execution requirements. What considerations, if any, may warrant such a blanket provision, and what modifications of the best execution obligation should result, if any?

b) FINRA has also observed instances where a firm receives held orders from retail customers but routes the orders away for handling and execution as not held. FINRA is considering the need for guidance regarding when, if ever, such change in categorization of order should affect the applicable best execution obligations. What considerations should be taken into account?

c) Is there any other specific best execution-related guidance that FINRA should consider regarding the treatment of orders as held or not held?

d) FINRA understands that firms may implement processes to help combat fraud, such as account takeovers, that could involve holding orders that would otherwise be executed immediately. Should FINRA consider providing flexibility or specific guidance regarding the application of best execution obligations in the context of firms' efforts to protect customers from fraud-related risks? If so, what circumstances would warrant flexibility and what considerations should be taken into account?

8. Listed Options

FINRA notes that best execution obligations under Rule 5310 apply broadly to transactions in any security, including without limitation listed equities, OTC equity securities, fixed income securities, security futures, security-based swaps, listed options and OTC options. FINRA has provided guidance on best execution obligations that apply when firms receive, handle, route or execute customer orders in equities, options and fixed income securities, and also provided specific guidance regarding additional considerations for best execution for fixed income securities.[49] In that vein, FINRA welcomes comment on any additional or clarifying guidance that members believe would be helpful regarding best execution for any other specific types of securities.

In particular, FINRA recognizes that the market structure for listed options differs from the market structure for listed equities, which may warrant additional considerations for best execution standards.[50] For example, unlike NMS stocks, listed options are traded only on national securities exchanges, not on ATSs or through wholesalers, and there are many more listed options than listed equities. In the listed options market, introducing firms typically route retail options order flow to consolidators for further routing to exchanges for execution, and executions on options exchanges can be executed in multiple ways, including by initiating auctions, in the context of a quote-driven rather than order-driven market.

a) Do commenters believe that further best execution guidance specific to listed options would be useful? If yes, what specific scenarios do firms believe exist with respect to order handling, routing and execution in the listed options market that the guidance should address (*e.g.*, unbundling)?

b) Execution quality disclosures under Rule 605 of Regulation NMS apply only to covered orders in NMS stocks, not to listed options. In the absence of Rule 605 reports for options, what information is available to firms to evaluate execution quality for listed options? Is there additional data that would be informative to firms in making these determinations?

c) Is further guidance needed on how introducing firms should evaluate execution quality for customer orders in listed options, both across consolidators and across the options exchanges to which consolidators route orders for execution? Should such guidance consider the responsibilities of order entry firms vis a vis consolidators and the circumstances under which customer orders are exposed for price improvement opportunities? If so, what should such guidance address?

d) As the SEC noted in its proposal to rescind Rule 611 and the locked and crossed provisions of Rule 610(e), which are only applicable to NMS stocks, listed options have their own rules prohibiting trade-throughs and locked and crossed markets, as set forth in the Options Order Protection and Locked/Crossed Market Plan.[51] If these requirements for listed options were to be modified or eliminated, do commenters believe additional or modified best execution guidance for listed options would be required?

9. Emerging Technologies

FINRA has observed the rapid evolution of new and emerging technologies in recent years that may impact firms' order handling, routing and execution processes. For example, artificial intelligence (AI), including large language models (LLMs) and other generative AI (Gen AI) tools, has rapidly evolved in the last few years. FINRA has previously recognized that AI presents promising opportunities for members to enhance their products and services for investors and achieve operational and compliance efficiencies, while also reminding members to be mindful of the potential implication of the use of AI for their regulatory obligations.[52] In particular, FINRA has reminded member firms that FINRA's rules continue to apply when member firms use Gen AI or similar technologies in the course of their businesses, just as they apply when member firms use any other technology or tool.[53] Similarly, the development of tokenized securities and other crypto asset innovations involving blockchain or other distributed ledger technologies may present both opportunities and challenges for firms in the course of their businesses.

FINRA recognizes that emerging technologies like AI and tokenized securities implicate a range of complex regulatory questions. While a full consideration of issues related to these topics is beyond the scope of this *Notice*, FINRA welcomes any feedback from commenters regarding the application of best execution obligations in the presence of such new technologies, including with respect to tokenized securities and member firms' use of AI in their order handling, routing, and execution decisions and processes.

a) FINRA notes that best execution is as fundamentally important for investors in tokenized securities as it is for investors in traditional securities, and therefore 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. Nonetheless, there are market differences that may come to bear on the manner in which firms execute their best execution duties due to the mechanics of how securities are traded or the information available to broker-dealers. Should FINRA consider providing any best execution guidance specific to tokenized securities?

b) Do members currently use AI to facilitate their order handling, routing or execution decisions? If so, how? If not, do members plan to incorporate AI technology in these processes in the future? Should FINRA consider providing any best execution guidance specific to the use of AI?

Endnotes

1 Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters. FINRA also reserves the right to redact or edit personally identifiable information from comment submissions.

2 *See* 17 CFR 242.611 (Order Protection Rule).

3 A "trade-through" is the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer. *See* 17 CFR 242.600(b)(105).

4 *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37537 (June 29, 2005) ("Regulation NMS Adopting Release").

5 *See, e.g.*, *Regulatory Notice 22-04* (January 21, 2022); *Regulatory Notice 21-23* (June 23, 2021); *Regulatory Notice 21-12* (March 18, 2021); *Regulatory Notice 15-46* (November 20, 2015); *Notice to Members 06-58* (October 9, 2006); *Notice to Members 01-22* (April 2001); *Notice to Members 99-12* (February 1, 1999); *Notice to Members 97-57* (September 1, 1997).

6 *See* Securities Exchange Act Release No. 105655 (June 11, 2026), 91 FR 36656 (June 17, 2026) ("611 Rescission Proposal").

7 *See* 611 Rescission Proposal, at 36664.

8 Generally, a locked market occurs when the best bid price equals the best offer price, and a crossed market occurs when the best bid price is higher than the best offer price. *See* 611 Rescission Proposal, at 36657. The SEC's proposal would also make conforming changes to other provisions of Regulation NMS and other SEC rules, including deleting certain terms defined in Rule 600 of Regulation NMS.

9 The Commission also queried whether best execution guidance should be updated in light of the proposed amendments to Regulation NMS. *See* 611 Rescission Proposal, at 36669 ("Given best execution obligations and the current level of automation and interconnectedness of the U.S. equity markets, is Rule 611 still needed? Will a broker-dealer's processes to fulfill its best execution obligations be affected by rescission of Rule 611? What steps should be taken by the Commission and/or SROs with respect to best execution if the Commission were to rescind Rule 611? Is there a need for additional best execution guidance concerning retail order handling? Institutional order handling? If so, what should that guidance include and should that guidance be principles-based or more prescriptive?").

10 *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48322 (September 12, 1996) ("Order Execution Obligations Adopting Release") ("A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated both in SRO rules and, through judicial and Commission decisions, in the antifraud provisions of the federal securities laws."); *see also* Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266, 270 (3d Cir. 1998). *See also, e.g.*, *Notice to Members 06-58* (October 9, 2006); *Notice to Members 01-22* (April 2001); *Notice to Members 99-12* (February 1, 1999); *Notice to Members 97-57* (September 1, 1997); *Regulatory Notice 15-46* (November 20, 2015).

11 *See* Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55007 at n.15 (November 2, 1994) ("Payment for Order Flow Adopting Release"); *Regulatory Notice 15-46* (November 20, 2015).

12 *See* Rule 5310(e); *Regulatory Notice 15-46* (November 20, 2015). *See also* Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266, 270 (3d Cir. 1998) ("[T]he best execution duty 'does not dissolve when the broker/dealer acts in its capacity as a principal.'"); accord E.F. Hutton & Co., Exchange Act Release No. 25887, 49 S.E.C. 829, 832 (1988).

13 *See* Rule 5310(a)(1).

14 *See* Rule 5310(a)(1)(A)-(E); *Regulatory Notice 15-46* (November 20, 2015).

15 *See* Supplementary Material .09 to Rule 5310; *Regulatory Notice 15-46* (November 20, 2015).

16 The SEC further has articulated a non-exhaustive list of factors that firms should consider as part of their best execution analysis as markets evolve: (1) the size of the order; (2) the trading characteristics of the security involved; (3) the availability of accurate information affecting choices as to the most favorable market center for execution and the availability of technological aids to process such information; and (4) the cost and difficulty associated with achieving an execution in a particular market center. *See* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75418 (December 1, 2000) ("Disclosure of Order Execution and Routing Practices Release"); *see also* Order Execution Obligations Adopting Release, at 48322-23; *Regulatory Notice 15-46* (November 20, 2015).

17 *See Regulatory Notice 15-46* (November 20, 2015); Order Execution Obligations Adopting Release, at 48323.

18 *See Regulatory Notice 15-46* (November 20, 2015); *Notice to Members 01-22* (April 2001).

19 *See* Supplementary Material .09 to Rule 5310; *Regulatory Notice 15-46* (November 20, 2015).

20 *See* Supplementary Material .09 to Rule 5310; *Regulatory Notice 15-46* (November 20, 2015).

21 *See* Supplementary Material .09 to Rule 5310; *Regulatory Notice 15-46* (November 20, 2015).

22 *See* Supplementary Material .09(b) to Rule 5310; *Regulatory Notice 15-46* (November 20, 2015).

23 There are exceptions for certain order types and circumstances, such as intermarket sweep orders and benchmark trades. *See* SEC Rule 611(b); *see also* Regulation NMS Adopting Release, at 37620.

24 The trade-through rule also applies to protected quotations displayed on a national securities association. FINRA is the only registered national securities association, and it operates the Alternative Display Facility (ADF) for the display of quotations in NMS stocks. However, the ADF currently has no active quoting participants.

25 *See* Regulation NMS Adopting Release, at 37537; *Regulatory Notice 15-46* (November 20, 2015) at n.8.

26 *See* Regulation NMS Adopting Release, at 37538; *Regulatory Notice 15-46* (November 20, 2015) at n.8.

27 *See, e.g.*, *Regulatory Notice 22-04* (January 21, 2022); *Regulatory Notice 21-23* (June 23, 2021); *Regulatory Notice 21-12* (March 18, 2021); *Regulatory Notice 15-46* (November 20, 2015); *Notice to Members 06-58* (October 9, 2006); *Notice to Members 01-22* (April 2001); *Notice to Members 99-12* (February 1, 1999); *Notice to Members 97-57* (September 1,1997).

28 *See Regulatory Notice 21-12* (March 18, 2021).

29 *See* FINRA Rule 6240. The national securities exchanges have also implemented Rule 610(e) in their respective rulebooks. *See, e.g.*, Cboe BZX Rule 11.20 (Locking or Crossing Quotations in NMS Stocks). FINRA has also adopted a separate rule that establishes similar requirements for OTC equity securities. *See* FINRA Rule 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities). Given the differences in market structure between the listed and OTC equity security markets, FINRA preliminarily believes that it will not immediately rescind or modify Rule 6437 for OTC equity securities but will separately observe and determine whether changes may be appropriate in that area.

30 *See, e.g.*, 611 Rescission Proposal, at 36662 n.75.

31 FINRA has noted that firms "should not allow access fees charged by particular venues to inappropriately affect their routing decisions, and, in general, a firm's routing decisions should not be unduly influenced by a particular venue's fee or rebate structure." *See Regulatory Notice 15-46* (November 20, 2015); *see also Regulatory Notice 21-23* (June 23, 2021).

32 *See* Rule 5310(a); Rule 5310.09(b)(6).

33 *See* Chairman Paul S. Atkins, Statement Regarding Minimum Pricing Increments and Access Fee Caps (June 11, 2026) ("In light of the Commission's proposed rescission of Rule 611 of Regulation NMS, the exemptive relief issued today, and the pending application by MEMX LLC for exemptive relief and comments received thereon, I have directed the staff to prioritize a review of Rules 610(c) and 612 of Regulation NMS by the end of the year, including whether potential changes to the access fee caps and minimum pricing increments may be appropriate.").

34 *See Regulatory Notice 15-46* (November 20, 2015).

35 *See* generally *Regulatory Notice 15-46* (November 20, 2015).

36 FINRA notes that it received a comment on this topic in response to *Regulatory Notice 25-04*, which broadly requested comment on modernizing FINRA rules. *See Regulatory Notice* 25-04 (March 12, 2025); letter from Bernard V. Canepa, Managing Director and Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA dated June 11, 2025, Attachment at 5 ("SIFMA Letter") ("Amend Supplementary Material (SM) .09, which lists certain factors that should be considered when performing a regular and rigorous review of execution quality. While these factors may be appropriate for assessing smaller retail orders, each factor is not necessarily appropriate or effective in assessing the execution quality of larger institutional orders, in particular those handled via an algorithm.").

37 FINRA also received a comment related to this topic in response to *Regulatory Notice 25-04*. *See* SIFMA Letter, Attachment at 5 ("Clarify that existing guidance (S[upplementary] M[aterial] .04) exempts single-dealer platforms from Rule 5310.").

38 Supplementary Material .08 to Rule 5310 provides that if a member receives an unsolicited instruction from a customer to route that customer's order to a particular market for execution, the member is not required to make a best execution determination beyond the customer's specific instruction. Members are, however, still required to process that customer's order promptly and in accordance with the terms of the order. Where a customer has directed that an order be routed to another specific broker-dealer that is also a

FINRA member, the receiving broker-dealer to which the order was directed would be required to meet the requirements of Rule 5310 with respect to its handling of the order. *See* Supplementary Material .08 to FINRA Rule 5310. FINRA notes that firms also have obligations to customers under Rule 2121 (Fair Prices and Commissions).

39 *See also Regulatory Notice 15-46* (November 20, 2015).

40 *See* Rule 5310(a)(1).

41 *See* Supplementary Material .04 to Rule 5310.

42 *See Regulatory Notice 15-46* (November 20, 2015).

43 *See Regulatory Notice 15-46* (November 20, 2015).

44 *See Regulatory Notice 15-46* (November 20, 2015); *Regulatory Notice 21-23* (June 23, 2021).

45 *See* FINRA Rule 5310(a)(2); *see also* FINRA Rule 5310(b), (c), and (d).

46 *See Notice to Members 97-57* (September 1,1997). In addition to recognizing that a broker-dealer does not owe the same best execution obligations under Rule 5310 to not held orders, not held orders are not subject to Manning obligations under Rule 5320 (Prohibition Against Trading Ahead of Customer Orders). *See also* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (Order Approving File No. SR-FINRA-2009-090) (further clarifying that not held orders are not subject to Manning obligations). The SEC has also adopted different requirements for what firms must disclose about their handling and execution of not held and held orders for NMS stocks. Under Rule 605 of SEC Regulation NMS, market centers, brokers, and dealers must publish execution quality reports on their "covered orders" in NMS stocks, which exclude orders for which the customer requests special handling for execution, including orders submitted on a not held basis. *See* Rule 600(b)(27) of Regulation NMS (definition of "covered order"). Under Rule 606 of SEC Regulation NMS, broker-dealers are required to post public reports on their routing practices only for held orders in NMS stocks, while customers may separately request customer-specific reports on the routing of their not held orders. *See* Rule 606 of Regulation NMS.

47 *See Notice to Members 97-57* (September 1, 1997).

48 The SEC has provided guidance in the context of Rule 606 order routing disclosures that orders should be categorized as held or not held depending on whether the customer reasonably expects the firm to attempt to execute their order immediately (for held orders) or, instead, reasonably expects the firm to use its discretion in determining when to execute their orders (for not held orders). *See* SEC Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, Questions 15.01 through 15.04.

49 *See Regulatory Notice 15-46* (November 20, 2015).

50 Under FINRA Rule 2360, generally, listed options are referred to as "standardized" options, while OTC options are referred to as "conventional" options. *See* FINRA Rule 2360(a).

51 The Commission further noted that the differences between the equities and options markets necessitate a separate review of the options markets to determine if any structural changes are warranted. *See* 611 Rescission Proposal, at 36661 n.72.

52 *See Regulatory Notice 24-09* (June 27, 2024).

53 *See Regulatory Notice 24-09* (June 27, 2024).