

September 24, 2026

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

Re: Regulatory Notice 26-15: FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance

Dear Ms. Piorko Mitchell:

Jane Street Group, LLC ("Jane Street") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") review of its best execution guidance under Rule 5310.¹ Jane Street welcomes FINRA's engagement with market participants on how to preserve strong investor protections as markets evolve, including if the Securities and Exchange Commission (the "Commission") rescinds Rules 611 and 610(e) of Regulation NMS.

Jane Street is a global market maker and trading firm active across equities, options, bonds, currencies, commodities, and futures. The firm makes markets continuously on more than 200 trading venues in over 40 countries. In the United States, Jane Street provides liquidity as an on-exchange market maker, institutional liquidity provider, and wholesale market maker handling retail order flow.

Regulatory guidance should preserve the robust liquidity, execution, and price discovery of U.S. equity markets, while providing firms with the flexibility to improve how they serve customers. Our responses focus on selected questions concerning best execution following the potential rescission of Rules 611 and 610(e), best execution review standards, and listed options.

Executive summary

Jane Street supports rescinding Rules 611 and 610(e), and suggests several best execution clarifications alongside these changes to Regulation NMS.² Providing these explicit clarifications will help prevent an implicit trade-through prohibition from persisting if Rule 611 is repealed. More broadly, Jane Street supports enhancements to the principles-based best execution framework that preserve flexibility, while maintaining accountability for customer outcomes. Firms should retain discretion over connectivity, routing, and execution methods, coupled with reasonable contemporaneous controls and rigorous review of outcomes. Internalized order flow continues to warrant heightened, data-driven scrutiny.

¹ FINRA, Regulatory Notice 26-15, FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance (July 24, 2026).

² See Jane Street's letters to the Commission concerning the Trade-Through Prohibitions Roundtable (Sept. 23, 2025), and The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS (Aug. 17, 2026) ("Jane Street's August 2026 Letter").

In response to this specific request for comment, we suggest FINRA:

- Provide clear guidance on venue-selection criteria in the absence of Rule 611, including the circumstances in which declining to access better-priced displayed liquidity is consistent with a firm's best execution obligations.
- Coordinate with the Commission in working to preserve a meaningful National Best Bid and Offer ("NBBO") benchmark.
- Provide specific guidance and examples, or consider a narrowly drawn safe harbor for venue-connectivity decisions.
- Retain order-by-order review for internalized flow, clarify how automation and surveillance can satisfy that requirement, and require complementary review of aggregate outcomes.
- Clarify that execution-quality considerations in Note .09(b) of Rule 5310 are a non-exhaustive list of illustrative factors that may guide judgment, but are not a mandatory procedural checklist.
- Provide options-specific guidance on unbundling, prompt execution, and meaningful comparisons of execution quality.

The question excerpts below follow the numbering within Sections 1, 3, and 8 of FINRA Regulatory Notice 26-15.

1. Best execution post-611 and 610(e)

Rule 611 and best execution impose distinct regulatory obligations. Compliance with Rule 611 does not, in and of itself, satisfy a firm's best execution obligations. Rescinding Rule 611 would allow firms to continue to pursue best execution without the constraints of a mechanical routing requirement. As noted in our comment letters to the Commission on Rule 611³, rescission should be paired with clear best execution guidance from FINRA. This would give firms the confidence to allow the rule change to take full effect: firms will be empowered to exercise judgment when deciding which venues to route to without sacrificing important customer protections.

Question 1.a. Venue connectivity

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?

Firms should be permitted to make connectivity decisions based on their assessment of a venue's potential to meaningfully improve the execution outcomes of a particular routing strategy. FINRA's guidance should specify that the obligation to evaluate execution

³ See Jane Street's letters to the Commission concerning the Trade-Through Prohibitions Roundtable (Sept. 23, 2025), and The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS (Aug. 17, 2026).

opportunities is not a de facto obligation to connect to every venue. Further, a venue occasionally displaying the best price, or showing promising signs of having competitive quotes in the future, should not alone compel connectivity. This is important when evaluating new venues that may not have sufficient liquidity to justify costs of connectivity.

Relevant considerations for a firm deciding whether to connect to a venue include the venue's available size, fill rates, reliability, quotation accessibility, and latency. Costs borne by intermediaries, such as connectivity and market data costs, also merit consideration, even when they are not passed directly to customers. FINRA should clarify how firms should balance these cost considerations against their obligation to seek favorable customer outcomes.

Importantly, guidance should include practical examples of reasonable decisions not to connect or to disconnect. This could involve a narrow safe harbor for when disconnecting or not connecting is appropriate, as discussed below in Question 1.i. Firms may be reluctant to update their practices if FINRA merely reiterates that firms may consider multiple factors. Periodic reassessment using reasonably available information should allow firms to respond as venues develop and execution opportunities change.

Question 1.a.iii. Displayed and non-displayed liquidity

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?

FINRA should recognize the distinct role of accessible displayed quotations. Accessible displayed quotations are observable execution opportunities and a reference against which a broker-dealer's routing decisions, including decisions to fill an order principally, can be assessed. Comparison of outcomes achieved to those implied by prevailing displayed quotations is the primary means by which a firm can reasonably perform order-by-order review of best execution for marketable held orders. Displayed quotations should retain a prominent role in the best execution analysis after trade-through protection is removed.

While displayed liquidity is valuable, firms should not be obligated to route to every displayed quotation. Firms should be free to seek liquidity at venues other than those displaying the best-priced interest when they reasonably expect that doing so will result in a better overall outcome for the customer. Non-displayed liquidity also plays a role in achieving best execution, and should be evaluated for the price and size improvement it offers. Broadly accessible non-displayed order flow represents a substantial enough liquidity source in modern U.S. equity markets that in certain contexts, a broker-dealer is unlikely to achieve best execution by routing to displayed quotations alone. Awareness of the differences between displayed and non-displayed liquidity should inform FINRA analysis and guidance without resulting in a fixed routing sequence.

Question 1.d.i. The NBBO as an execution-quality benchmark

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

The NBBO should remain an important, common benchmark for measuring execution quality. Its usefulness depends on reasonable eligibility standards for the quotations it includes. As explained in Jane Street's August 2026 Letter, the Commission should clarify those standards, including the treatment of fair access and material access delays, in coordination with FINRA.⁴

Firms should not be permitted to replace this common benchmark with individualized versions of the NBBO based on their chosen set of venues. A common and observable benchmark, provided its inputs are high quality, is valuable for objectively measuring execution quality and supporting customer protection. At the same time, and consistent with expectations that exist today, simply executing at the NBBO does not, in and of itself, establish best execution. For clarity in a post-Rule 611 world, FINRA should explain when executions outside the NBBO are reasonable.

Furthermore, if changes to fees or the frequency of locked and crossed markets cause nominal quotations to diverge from executable economic prices, execution-quality measures should be reviewed to ensure that they remain meaningful.

Question 1.e.i. and 1.e.iii. Displayed liquidity and principal executions

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

Should FINRA consider providing more specific guidance regarding best execution standards for routing and internalization decisions? If so, what guidance and why?

A better displayed price is important evidence of available liquidity, but it is not the only dimension of execution quality. For example, accessing a small amount of better-priced interest may delay execution of the remaining order or expose it to contemporaneous adverse market moves, producing a worse result for the customer overall. Guidance should explain how firms can support their judgment not to access displayed liquidity, and this exercise of judgment should be supported by execution evidence.

More specific guidance would be particularly useful when a broker-dealer fills an order as principal or routes it to an affiliate. These arrangements warrant stronger evidence that the firm's own economic interest has not disadvantaged the customer. Firms should use rigorous comparisons, including execution experiments where appropriate, to demonstrate outcomes on par with reasonably available alternatives. FINRA should establish that expectation without prescribing a singular method for every business.

⁴ See Jane Street's letters to the Commission concerning the Trade-Through Prohibitions Roundtable (Sept. 23, 2025), and The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS (Aug. 17, 2026).

Question 1.i: Rule 5310 safe harbors

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?

FINRA should provide guidance that gives firms confidence that a reasonable decision to decline to connect to a venue will not be treated, by itself, as a violation of their best execution obligations. Since best execution requires firms to seek the best available terms for a customer's order, it may be the case that in order to be aware of execution opportunities across venues, firms feel inclined to connect to new venues or retain connectivity to existing venues that have not demonstrated sufficient value for their costs.

To address the concern that firms may feel compelled to connect to essentially all lit venues, we are open to a narrowly tailored safe harbor for venue-connectivity decisions. Under this safe harbor, FINRA could provide specific examples of circumstances where disconnecting or not connecting is acceptable. These could include establishing a consolidated volume threshold for fair access venues, which would be applicable to both exchanges and non-exchange trading venues. Under this approach, firms could compliantly elect not to connect to venues below the threshold and would not be required to monitor those venues for better priced liquidity. Conversely, firms that found value for certain orders or customer flows on a particular low volume venue would still be able to connect, but should not be required to do so. Above the threshold, firms would use judgment, as is the current practice, to determine whether to connect and consider the venue in their routing.

While numerical thresholds may encourage gaming or become outdated as markets evolve, objective criteria for this narrow safe harbor could promote consistency and address a common-sense concern about connectivity to venues with de minimis levels of trading activity. This narrow safe harbor would still encourage firms to evaluate broader execution improvement opportunities through regular and rigorous review, but would create a narrow protection against compelled connection. This approach is tailored to the connectivity and venue proliferation dynamics underlying the proposed rescission of Rule 611, and can be consistently applied across market participants.

Other approaches, such as a purely disclosure-based safe harbor, would be less effective. If publicly identifying the venues a firm accesses served as sufficient justification to exclude other venues from consideration, firms could potentially narrow their substantive best execution obligations to the detriment of customers. If instead, a disclosure-based approach still left the scope of obligations uncertain, firms might continue to connect to venues broadly out of enforcement concerns. A narrowly defined, objective safe harbor provides clearer relief from the

burdens of de minimis venues, while preserving the obligation to evaluate meaningful opportunities to improve customer outcomes.

3. Best execution review standards

Question 3.a. Order-by-order review of internalized flow

Should order-by-order reviews continue to be required for internalized order flow?

FINRA should retain order-by-order review for internalized flow. Principal executions warrant heightened, data-driven scrutiny from both order-by-order, and regular and rigorous review of aggregate execution quality. FINRA should also clarify how firms may satisfy order-by-order requirements in automated markets. A firm's order-by-order review is necessary, but not sufficient, for demonstrating best execution. The order-by-order review should serve as an outer bound on execution quality, and is enhanced by the complementary regular and rigorous review of aggregate execution outcomes.

For automated marketable equity orders, order-level review can be fulfilled by checks or surveillance against the displayed contemporaneous best bid and offer reasonably accessible on markets to which firms maintain connectivity, with appropriate consideration of each order's size and terms.

Question 3.c. Automated review and aggregate assessment

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?

'Order-by-order' and 'regular and rigorous' review standards evaluate execution decisions through different lenses. Order-by-order is a surveillance based standard that reviews executions against knowably available liquidity at a firm's accessible markets and surveils for demonstrably worse outcomes. Automated routing logic, supported by surveillance that confirms routing is working as intended, can satisfy order-by-order review. This order-by-order review should reflect information reasonably available when the order was handled, rather than a reconstructed ideal execution using information the firm could not then observe.

Regular and rigorous review, in the form of aggregate periodic review, should be a required complement. This review tests the broader execution approach, including whether routing to additional venues or employing credible alternative routing strategies (e.g. attempting to access non-displayed liquidity) could improve customer outcomes.

In the case of customer orders that may be divided into child orders, best execution review should focus on parent order outcomes. While individual, child order fills may inform that assessment, performance tests for each fill can obscure whether the overall customer objectives were met. The analysis should account for the terms and instructions governing the customer parent order.

Question 3.d. Application of execution-quality factors

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.

The existing factors are reasonable and should remain non-exhaustive. Urgency, information leakage, and size improvement also deserve explicit recognition as factors for evaluating execution quality. Treating these factors as an illustrative and non-exhaustive set of considerations for evaluating execution quality creates a framework that encourages sound judgment and preserves the flexibility to adapt to other relevant execution factors that may emerge in the future.

FINRA should clarify that these considerations are not a mandatory checklist applied identically to every business, order flow, and order type. Treating the factors as a procedural checklist can reward completeness of process without demonstrating that customers received favorable executions. The emphasis should instead be on whether the firm's approach produces results consistent with its duty to seek the best reasonably available terms. To that end, analysis of outcomes achieved for customers is paramount.

Different customers have different needs, and the relevance and weight of each factor vary by security, order, and business context. Guidance on trade-offs between execution speed and costs, including intermediary costs, would be useful, particularly for non-marketable orders. Firms should have discretion to apply the relevant factors, explain their judgments, and support their conclusions through analysis of outcomes.

8. Listed options

Question 8.a. Options-specific guidance and order handling

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)?

Further guidance would be useful. The listed options market includes exchanges with different auction mechanisms, allocation models, and other trading rules. Guidance should account for those features, particularly where they affect routing discretion and prompt execution.

Unbundling – Best execution is a separate obligation from unbundling, and dividing a parent order among exchanges is not, by itself, evidence for or against best execution. Reviews instead should assess whether the customer was disadvantaged or unduly delayed.

As Jane Street explained in its comment letter in response to Nasdaq filing SR-NASDAQ-2025-103, legitimate cross-exchange routing should not cause a broker-dealer to violate one exchange's rules because it acted in compliance with the rules on another venue.⁵ Exchanges may establish allocation rules for their own markets for commercial reasons, but unbundling rules for a particular exchange should not restrict a broker-dealer's ability to route to competing venues, nor should they be mischaracterized as motivated by concerns about best execution. It is the responsibility of FINRA, working with the Commission, to provide consistent cross-market guidance rather than leave firms subject to divergent interpretations by individual exchanges with competing commercial interests.

Capital commitment, prompt execution, and exposure mechanisms – Guidance should also confirm that an order-handling broker-dealer is not required to commit its own capital. Best execution review should consider reasonably available mechanisms accessible on an agency basis. However, when evaluating routing decisions, a PIM is not a reasonably available alternative execution mechanism because it requires the broker-dealer to commit capital to an order to initiate an auction.

A brief price-improvement auction in which the initiating firm commits upfront to fill the customer order should be consistent with prompt handling of a held order, as required by Supplementary Material .01. The exposure period allows other participants to improve the price without removing the immediate execution commitment.

Non-guaranteed exposure mechanisms present a different balance between potential improvement, delay, and execution certainty. Firms should retain discretion over whether they use an exposure mechanism for a particular order, but should consider relevant exposure mechanisms in their execution-quality analysis. Reasonably available mechanisms for non-displayed price improvement, such as complex order auctions, should be part of regular and rigorous review. However, given complex order auctions do not provide certainty of execution, using these mechanisms on an order-by-order basis should not be required.

⁵ Jane Street, Letter concerning Nasdaq's proposed options unbundling rule, File No. SR-NASDAQ-2025-103 (Jan. 8, 2026) ("Jane Street Unbundling Letter").

Furthermore, firms should also consider whether the exposure period would induce delays for held orders. Repeated unsuccessful exposures warrant scrutiny where they delay execution without a reasonable prospect of customer benefit.

Conclusion

FINRA's principles-based framework is well suited to an evolving market, but FINRA guidance should be updated if Rule 611 and 610(e) are rescinded. Clear expectations should protect customers without replicating the prescriptive routing that rescinding Rule 611 seeks to remove, and should encourage trading venues to compete on innovation and execution quality.

Beyond updated guidance post 611, FINRA should modernize best execution standards. Clear guidance complements a principles-based framework; it preserves firms' discretion in pursuing best execution, while still holding them accountable for customer outcomes.

Respectfully submitted,

/s/ Raz Tirosh and Calvin Hayes

Jane Street Group, LLC