



September 25, 2026

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

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

Dear Ms. Mitchell:

Better Markets¹ appreciates the opportunity to comment on the above-referenced notice, which concerns the duty of best execution imposed on brokers in FINRA's rules.² FINRA's rules require that brokers "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."³ FINRA considers numerous factors in evaluating whether a broker used reasonable diligence, which allow brokers to highlight factors other than price in asserting that they obtained best execution for their customers. Moreover, FINRA guidance provides that brokers need not conduct an order-by-order review of their execution quality but rather need only conduct a regular and rigorous review of their execution quality on a quarterly basis. The notice requests comment on how FINRA can modernize its best execution guidance to facilitate investor protection and market integrity. The impetus for the notice appears to be the Securities and Exchange Commission's proposed rescission of Rule 611 of Regulation NMS—the "trade-through rule," which "undergirds" a firm's best execution obligation.⁴

As FINRA states, a trade-through occurs when one market executes an order at a price inferior to the best price available in another market. The trade-through rule generally prohibits trade-throughs, so the rule ensures that investors receive the best prices on their trades. The SEC's proposed rescission of this rule thus threatens investors' ability to receive the best prices.

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

² FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance, Regulatory Notice 26-15 (July 24, 2026), <https://www.finra.org/rules-guidance/notices/26-15>.

³ *Id.*

⁴ *Id.*

In proposing to rescind the trade-through rule, the SEC stated that “best execution obligations should continue to ensure brokers use reasonable diligence to secure the most favorable terms for customer orders” and that as a result Rule 611 “is not needed as a backstop to best execution” because “a broker’s duty to provide best execution would apply regardless.”⁵ Because this means that FINRA’s best execution rule will now be the primary mechanism for ensuring that investors receive the best available prices on their trades, FINRA notes that the rescission of Rule 611 may raise questions for firms as they review the operationalization of their best execution policies. FINRA seeks comment on the ways it should update its best execution guidance so its rule continues to serve its key investor protection and market integrity goals.

I. FINRA’s current best execution standard is insufficient to protect investors.

The most important change FINRA should make to update its rules regarding the duty of best execution is to require that brokers ensure their compliance on an order-by-order basis. The current standard, which allows brokers to conduct a quarterly review of their compliance with their best execution obligations in the aggregate, is insufficient. The fact that FINRA’s request for comment includes an interminably long list of questions regarding how FINRA could improve its best execution requirements makes this plain. FINRA needs a rule that clearly prescribes that brokers must do everything in their power to try to obtain the best execution on their customers’ trades and that FINRA can easily enforce. The proposed rescission of the trade-through rule makes it all the more important that FINRA adopt a standard that requires brokers to try to obtain the best prices for their customers on every trade their customers make.

FINRA’s own enforcement record under the current standard proves the point. In the last ten years, FINRA has only brought ten cases against a retail equity routing firm for best execution violations.⁶ In these cases, FINRA did not find a failure to obtain the best price for customers; rather, it found the firms’ review of their best execution obligations was not regular enough, rigorous enough, or documented enough.⁷ As a result, these cases yielded no restitution to customers.⁸ So FINRA’s enforcement record regarding best ex violations is exceedingly thin.

FINRA itself has described its difficulty in determining whether a broker has violated its duty of best execution with respect to a trade as akin to “nailing jello to a wall.”⁹ This explains its poor enforcement record. Exchanges have also suggested that the duty of best execution as set

⁵ *Id.*

⁶ <https://wetheinvestors.org/best-execution-now/>.

⁷ *Id.*

⁸ *Id.*

⁹ J.W. Verret, Efforts to Sue the SEC Over Broker-Inducement Regulation Unlikely to Succeed, 17 Ohio St. Bus. L.J. 180, 196 (2023) (quoting *Meeting of the Securities and Exchange Commission Investor Advisory Committee*, SEC (Mar. 28, 2019), https://www.sec.gov/video/webcast-archive-player.shtml?document_id=iac032819).

forth in FINRA's rules is "too vague a concept, hampering FINRA's enforcement."¹⁰ Other commenters agree.¹¹ So if the idea is that the trade-through rule is not needed because FINRA's rules require that brokers obtain best execution for their customers, FINRA's enforcement record does not support the idea that its current best execution rule provides the requisite backstop.¹²

II. FINRA must require best execution on an order-by-order basis and establish a presumption that for retail customers best execution means the best price.

The fact that FINRA's enforcement of its principles-based best execution standard has been notoriously weak demonstrates that a stronger rule requiring that brokers obtain best execution on an order-by-order basis is needed. A duty of best execution that applies whenever brokers handle customer orders and that requires that they document their compliance on an order-by-order basis is easily doable in today's marketplace. Indeed, the tools that brokers now have available to ensure their customers receive the best execution means that FINRA should make this update to its rules regardless of the proposed rescission of the trade-through rule.

More than five years ago, FINRA "reminded regulated parties that 'order-by-order review of execution quality is increasingly possible for a range of orders in equity securities and standardized options.'"¹³ Technological advances, and the increasing ability to use artificial intelligence, mean that brokers can no longer say it is infeasible to do an order-by-order review of execution quality. So the issue isn't that brokers are unable to attempt to obtain the best execution for their customers on all of their securities trades; the issue is that currently "the SEC and FINRA do not judge best execution on a trade-by-trade basis, though they arguably should even under current rules."¹⁴ Current rules aside, and especially in light of the proposed rescission of Rule 611, FINRA should adopt a best execution rule requiring brokers to attempt to trade in the best market for their customers on an order-by-order basis. Such a rule would ensure that investors receive the best possible execution on their securities trades, as they should.

¹⁰ Merritt B. Fox, et al., Distributed Ledger Technology and the Securities Markets of the Future: A Stakeholder Survey, 2021 Colum. Bus. L. Rev. 651, 698 (2021).

¹¹ See, e.g., Jeremy Schara, Knowledge is Salvation: Informing Investors by Regulating Disclosures to Safeguard Best Execution, 43 Hofstra L. Rev. 1231, 1248 (2015) (citing Jonathan R. Macey & Maureen O'Hara, The Law and Economics of Best Execution, 6 J. Fin. Intermediation 188, 190 (1996)).

¹² Arpan Chakrabarti, Broker-Dealer Blues: A Comparison of SEC, FINRA, and CFTC Retail Investor Regulation with Historical Approaches in Antitrust and Telecommunications Regulation, 27 U. Pa. J. Bus. L. 310, 363-64 (2025) (stating that the "SEC, FINRA, and CFTC must be more decisive in their rulemaking--simply requiring brokerages to engage in best execution and best interest practices is not enough and demonstrates weak regulation," and that rules should be "better defined, easier to understand, and enforced strictly so as to discourage brokerages from engaging in damaging practices").

¹³ Verret, 17 Ohio St. Bus. L.J. at 197 (quoting FIN. INDUS. REGUL. AUTH., REGULATORY NOTICE ON BEST EXECUTION AND PAYMENT FOR ORDER FLOW, 3 (June 23, 2021), <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-23.pdf>).

¹⁴ *Id.*

FINRA should also establish a presumption, at least for retail orders, that brokers fulfill their best execution obligations by routing orders so that retail customers receive the best price. Part of the problem with FINRA's existing rules is that the numerous factors FINRA says brokers can invoke to satisfy their best execution obligations means that, even for retail orders, brokers are able to assert that they satisfied their duty even though they did not obtain the best price. Institutional customers may well be more concerned about routing orders to venues that will allow them to execute larger orders even if a better price is available elsewhere. That is not usually a concern for retail investors. There is no reason brokers should not be subject to a strong presumption that for retail customers they must route to whatever market has the best price.

In this respect, FINRA should provide that brokers must use the national best bid and offer (NBBO) as a benchmark. The proposed rescission of Rule 611 risks degrading the NBBO, and the SEC should guard against this result. Assuming the SEC takes the steps necessary to maintain the NBBO as part of that rescission, FINRA's best execution standard should provide that the NBBO is the starting point for determining where to route an order, especially retail orders. FINRA should clarify that brokers should not be executing retail orders outside of the NBBO unless there is a specific reason for doing so with respect to a particular trade. Institutional orders may necessitate more flexibility, but it is hard to envision many scenarios where executing an order outside of the NBBO for a retail customer would be appropriate.

These suggested changes to FINRA's best execution rules simply reflect the need to recognize that brokers should be held to a higher standard than the one FINRA holds them too currently—both generally and as a result of Rule 611's proposed rescission. The current rule, requiring only a periodic assessment of whether brokers are obtaining the best prices on their customers' trades in the aggregate, is remarkably similar to the Commission's statement to the brokerage community in 1979: that a broker's obligation was "to make at least periodic assessments of the quality of competing markets in order to assure that it was taking all 'reasonable steps under the circumstances' to seek best execution of customer orders."¹⁵ It cannot be the case that, over 45 years later, this remains all brokers must do in furtherance of ensuring that their customers are able to execute transactions in the best market at the best prices. This standard is so inadequate that FINRA has "periodically been forced to remind the industry" of the obligation to comply with the best execution standard in its rules "as a key instrument in protecting investors, mainly because the regulation is not specific enough."¹⁶ Indeed, over 25 years ago in 1999, SEC Chair Levitt stressed that "with more market centers than ever before, the duty of best execution must be woven more fully into the fabric of our markets."¹⁷

So the SEC has long recognized that FINRA's rule is insufficient to ensure best execution. It is certainly not sufficient if the SEC is going to rescind Rule 611. A real best

¹⁵ David A. Lipton, *Best Execution: The National Market System's Missing Ingredient*, 57 Notre Dame Law. 449, 462 (1982) (quoting Securities Exchange Act Rel. No. 15671, 44 Fed. Reg. 20,360, 20,366 (1979)).

¹⁶ Chakrabarti, 27 U. Pa. J. Bus. L. at 335.

¹⁷ Schara, 43 Hofstra L. Rev. at 1248 (citing Arthur Levitt, Chairman, Sec. Exch. Comm'n, Speech at the Securities Industry Association: Best Execution: Promise of Integrity, Guardian of Competition (Nov. 4, 1999), <http://www.sec.gov/news/speech/speecharchive/1999/spch315.htm>).

execution rule—one that would ensure customers receive the best prices on their trades if the Commission is determined to rescind Rule 611—would require that brokers attempt to get their customers the best execution on their securities trades on an order-by-order basis and establish a presumption that for retail investors best execution means obtaining the best available price.¹⁸

III. The proposed rescission of Rule 611 makes updating the best execution standard imperative.

The SEC is supposed to oversee self-regulatory organizations such as FINRA and monitor the enforcement of their rules. It is unclear, given FINRA’s paltry record of bringing cases for violations of the best execution obligation, on what basis the SEC believes FINRA is adequately enforcing its best execution standard. Regardless, in light of the SEC’s proposed rescission of Rule 611, it is clear that FINRA must strengthen that standard to protect investors.

Market participants agree that, if the Commission is to rescind Rule 611, best execution requirements must be strengthened. For example, in response to the roundtable the SEC held on the future of Rule 611, Nasdaq “encourage[d] the SEC to consider whether a rescission of Rule 611 necessitates the SEC offering new best execution guidance to ensure that best execution operates as a backstop for investors when Rule 611 is gone.”¹⁹ Similarly, MEMX noted that best execution is “intertwined” with the trade-through framework and said the Commission “should provide best execution guidance so that interested parties can fully evaluate the impact” of rescinding Rule 611.²⁰ And CBOE said that, to the extent the SEC rescinds Rule 611, “it would be prudent for the Commission to clarify the best execution expectations of brokers.”²¹ Even market participants that support rescinding Rule 611 urged the Commission to enhance “best execution standards with explicit guidance to maintain and strengthen investor protections.”²² Yet the Commission did nothing to bolster best execution duties in its proposal to rescind Rule 611. That makes it incumbent on FINRA to bolster its rules governing the duty of best execution.

¹⁸ See Benjamin Schiffman, *A Capital Markets Agenda that Puts Investors First*, Better Markets (Aug. 6, 2026), <https://bettermarkets.org/wp-content/uploads/2026/08/Cap-Formation-Hearing-Positive-Agenda-FS.pdf>, at 2.

¹⁹ Nasdaq, Comment Letter re: SEC Roundtable on Trade-Through Prohibitions (Sept. 24, 2025), <https://www.sec.gov/comments/4-862/4862-662547-1977554.pdf>, at 6.

²⁰ MEMX, Comment Letter re: Roundtable on Trade through Prohibitions (Sept. 18, 2025), <https://www.sec.gov/comments/4-862/4862-660167-1970114.pdf>, at 9-10 n.9.

²¹ Cboe, Comment Letter re: Roundtable on Trade-Through Prohibitions (Sept. 15, 2025), <https://www.sec.gov/comments/4-862/4862-657907-1963914.pdf>, at 3.

²² Jane Street, Comment Letter re: Trade-Through Prohibitions Roundtable (Sept. 23, 2025), Cboe, Comment Letter re: Roundtable on Trade-Through Prohibitions (Sept. 15, 2025), <https://www.sec.gov/comments/4-862/4862-662107-1976334.pdf>, at 1-2.

The SEC did propose a best execution rule in 2022,²³ but it withdrew that proposal a year ago.²⁴ FINRA should consider incorporating elements of that proposal in its update to its best execution standards.²⁵ The SEC's proposed Regulation Best Execution required that brokers comply with the best execution standard by obtaining necessary information, identifying suitable markets, and incorporating potential liquidity sources into their order handling practices. The policies and procedures also had to address how the broker will determine the best market by accessing timely information, assessing the attributes of customer orders, and determining the numbering and sequencing of markets to be assessed. These requirements stand in contrast to the rudimentary list of factors that must be considered under FINRA's current rule when assessing "reasonable diligence" or that brokers must consider in their regular reviews of execution quality.

By rescinding the trade-through rule, and failing to update its rules policing brokers, the SEC is leaving investors to fend for themselves when buying and selling securities in the market. The result will be worse prices for people saving for retirement and more profits for securities firms. That is why it is so important that FINRA update its best execution rules so that they have the intended effect of ensuring that retail customers receive the best prices on their trades.

Finally, FINRA acknowledges the impact that the proposed rescission of Rule 611 will have on the duty its rules impose on brokers to obtain best execution of their customers' orders. Any modification that FINRA deems necessary should involve filing a proposed rule change with the SEC. This will ensure that the public receives notice and an opportunity to comment. That should be a prerequisite to FINRA making any changes to its best execution standard.

Conclusion

We hope these comments are helpful as FINRA considers this matter.

Sincerely,

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²³ Better Markets, *SEC Market Structure Reforms: Regulation Best Execution* (Apr. 3, 2023), <https://bettermarkets.org/impact/sec-market-structure-reforms-regulation-best-execution/>.

²⁴ Better Markets, *SEC's Withdrawal of Pending Rule Proposals Endangers Investors* (June 16, 2025), <https://bettermarkets.org/newsroom/secs-withdrawal-of-pending-rule-proposals-endangers-investors/>.

²⁵ See Chakrabarti, 27 U. Pa. J. Bus. L. Rev. at 374 (calling Regulation Best Execution "dynamic regulation").