CITADEL | Securities

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FINRA
1700 K Street, NW
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Re: Modernizing FINRA's Best Execution Guidance

We appreciate the opportunity to provide comments to FINRA on modernizing its best execution guidance.[1] FINRA's best execution regime serves as a key investor protection for those transacting in our U.S. equity markets, helping investors ensure their broker-dealers deliver superior execution quality and creating a highly competitive environment where transaction-based commissions have been largely eliminated and billions of dollars in price improvement is delivered to retail investors annually. These rules, and related interpretative guidance, have been updated over decades to account for technological change and industry best practices, and we welcome FINRA's efforts to further refine the best execution regime.

However, best execution is only one part of the regulatory framework that has contributed to cementing the U.S. equity market as the most liquid and competitive in the world, and cannot serve as a stand-in for other key investor protections, such as the Order Protection Rule, which prohibits market participants from bypassing the best prices publicly displayed on an exchange. Eliminating the Order Protection Rule—as recently proposed by the Securities and Exchange Commission (the "Commission")—will reduce displayed liquidity, significantly increase off-exchange trading, and decrease investor confidence in the fundamental fairness of our markets. In addition to being ineffective in preventing these negative consequences of repeal, the FINRA best execution regime risks being undermined, as the re-emergence of significant trade-throughs and the degradation of the market-wide NBBO will challenge monitoring and enforcement. We recommend that FINRA oppose drastic market structure changes, such as repeal of the Order Protection Rule, that risk significant unintended consequences for its best execution regime.

I. Eliminating OPR Will Undermine the FINRA Best Execution Regime and Harm Investors

As detailed in our response to the Commission, eliminating the Order Protection Rule will result in material and damaging U.S. equity market structure changes.[2] Two are particularly relevant for FINRA's best execution regime.

First, trade-throughs will significantly increase. Prior to the adoption of the Order Protection Rule in 2005, the Commission found that "[f]or many active Nasdaq stocks, approximately 1 of every 11 shares traded is a significant trade-through."[3] While the Order Protection Rule has

[1] https://www.finra.org/rules-guidance/notices/26-15 (the "RFI").

[2] https://www.sec.gov/comments/S7-2026-20/s7202620-1007840-3211889.pdf.

[3] Regulation NMS, 70 Fed. Reg. 37496, 37502.

effectively eliminated trade-throughs of protected quotes for the last twenty years,[4] its repeal would immediately reintroduce them at scale. Importantly, the occurrence of a trade-through does not suggest that a violation of best execution has occurred—consider the following example:

- A retail investor places a limit order to sell 100 shares at $10.03, which is the best offer posted on-exchange.
- Next best offer posted on-exchange at $10.05 for 200 shares.
- A broker-dealer receives a customer order to buy 200 shares.
- Broker-dealer internalizes the entire customer order at $10.04.

With the Order Protection Rule in place, the customer buy order could not be internalized at $10.04 because a better-priced offer is displayed on-exchange at $10.03. Instead, the broker-dealer would have to interact with the retail investor limit order at $10.03 before executing the remaining 100 shares at $10.05. However, without the Order Protection Rule, there is no requirement to interact with the retail investor limit order and the entire customer buy order can be executed off-exchange. Note that, in the example above, the customer buy order is not negatively impacted *at all* by the choice to internalize, as the "all-in" execution price is exactly the same ($10.04) in both scenarios; but the retail investor using a limit order to effectuate a sell order not only bears the brunt of this regulatory change but also rightfully feels cheated when seeing the stock trade at $10.04. This underscores that best execution requirements cannot serve as a substitute for the Order Protection Rule and will not prevent the re-emergence of significant trade-throughs. Witnessing displayed limit orders constantly being traded-through will cause significant investor confusion and lead to material negative consequences, including fewer limit orders, wider spreads as the number of "inside-the-quote" non-marketable limit orders significantly decrease, and decreased market liquidity.

The re-emergence of significant trade-throughs will stress FINRA's surveillance and enforcement of best execution requirements, as FINRA must be able to efficiently sort through the massive number of trade-throughs and identify those where a best execution violation may have occurred. In doing so, FINRA must grapple with the fact that smaller-sized displayed quotes, including those resulting from retail non-marketable limit orders, are at significant risk of being traded-through. Trade-throughs will occur not only when market participants route more orders off-exchange as detailed in the example above, but also when participants prioritize size over price on-exchange—without the Order Protection Rule, exchanges are likely to, for the first time, allow market participants to bypass and trade-through the top-of-book price, thus overriding price-time priority in favor of size priority, as nothing will force institutional orders to interact with smaller retail limit orders. These frequent trade-throughs—both by on-exchange and off-exchange executions—will cause significant investor confusion and spark justified concerns about the fundamental fairness of the U.S. equity market.

[4] We note that even odd-lot orders cannot trade through a protected quote, and therefore are handled the same as round lot orders. *Cf.* Question 1(c)(i) in the RFI.

Second, the elimination of the Order Protection Rule will erode the reliability of the NBBO. At the moment, both exchanges and ATSs[5] must satisfy the definition of an "automated quotation"—which sets forth minimum accessibility and reliability standards—in order to obtain a protected quote. The removal of the Order Protection Rule will facilitate the inclusion of quotes in the market-wide NBBO that do not meet these standards.[6] These less reliable and accessible quotes could include: (i) exchange quotes that are subject to even more pernicious access delays,[7] minimum resting periods, or other mechanisms designed to favor certain types of market participants over others (including mechanisms heretofore only approved for non-displayed liquidity) and (ii) ATS quotes displayed on the FINRA Alternative Display Facility ("ADF") that are subject to pernicious access delays or are otherwise inaccessible to certain market participants.[8]

Eroding the reliability of the NBBO will severely disrupt the FINRA best execution regime. The NBBO is central to assessing whether firms satisfy best execution requirements, and FINRA must detail how firms will be evaluated if the market-wide benchmark includes quotes that are not reliably accessible or are only accessible to certain types of market participants or orders.

II. Recommended Enhancements to the FINRA Best Execution Regime

We first set forth several enhancements to the FINRA best execution regime that we recommend implementing irrespective of whether the Order Protection Rule is repealed. These include:

- Expressly clarifying that broker-dealers may consider their own transaction costs (including exchange fees and rebates) as part of order routing decisions, as long as these decisions are fully disclosed to customers;

- Providing a clearer definition of a "not held" order for purposes of best execution and Rule 605 execution quality reports. Certain ATSs have attempted to automatically deem all orders sent to the venue as "not held."[9] This means that retail orders that are otherwise treated by market participants as "held" can be routed to, and executed on, the ATS (including via private rooms) without triggering Rule 605 execution quality disclosure requirements. FINRA should clarify that ATSs cannot use blanket "not

[5] FINRA Rule 6250 governs display on the ADF and cross-references the definition of an "automated quotation" to establish minimum accessibility standards.

[6] This is because exchanges will no longer have an incentive to meet the "automated quotation" definition and FINRA Rule 6250 is expected to be amended such that ATSs can display on the ADF and be included in the NBBO without meeting the "automated quotation" definition.

[7] Intentional access delays would no longer have to be considered "de minimis." Interpretation Regarding Automated Quotations Under Regulation NMS, 81 FR 40785 (June 23, 2016), available at: https://www.govinfo.gov/content/pkg/FR-2016-06-23/pdf/2016-14876.pdf.

[8] To make matters worse, the vast majority of ATSs are not subject to fair access requirements either. *See* our longstanding concerns with IntelligentCross's attempts to display quotes on the ADF at https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032.htm.

[9] *See, e.g.,* IntelligentCross ATS-N Part III, Item 7 ("All orders entered into the ATS by Subscribers are Not Held"), available at: https://www.sec.gov/Archives/edgar/data/1708826/000170882626000023/xslATS-N_X01/primary_doc.xml.

held" designations to circumvent best execution requirements or deprive retail investors of execution quality transparency.

- Ensuring that best execution is rigorously enforced across the full spectrum of securities products. This includes:

    - Applying best execution requirements to firms handling customer orders in tokenized equities and incorporating tokenized equities into Rule 605 execution quality reports;[10]

    - Coordinating with the NFA to ensure firms trading security futures products provide impartial and nondiscriminatory access and are subject to equivalent best execution requirements;

    - Recommending that Rule 605 execution quality reports be expanded to include listed equity options in order to support applicable best execution requirements;

    - Providing greater clarity regarding the application of best execution to customers transacting in fixed income products; and

    - Resisting blatant attempts to circumvent best execution requirements by creating look-a-like substitute products that can be transacted by firms that are not subject to the FINRA best execution regime.

Fundamentally, it is not possible to consider the full scope of modifications that may be required to best execution requirements without knowing how the Commission intends to proceed on the Order Protection Rule. Therefore, these initiatives cannot proceed on separate tracks and must be considered together. If the Commission ultimately elects to eliminate the Order Protection Rule, FINRA will need to address several additional issues. These include:

- Coordinating with the Commission to ensure that displayed quotes must meet minimum accessibility and reliability standards in order to be included in the market-wide NBBO. In establishing these standards for inclusion in the NBBO, regulators should carefully consider how to treat quotations from exchanges that impose high connectivity costs or have *de minimis* volumes, including whether a minimum volume threshold should be established. Maintaining a consistent and high-quality market-wide benchmark is critical to objectively monitoring order routing practices, and FINRA should reject any attempts to transition to less rigorous benchmarks, such as short-term average price.

[10] *See Five Things to Know About Tokenized Stocks*, WSJ (Oct. 7, 2026) available at https://www.wsj.com/finance/stocks/tokenized-stocks-equities-explained-1cc02741?st=uePus4&reflink=article_copyURL_share.

- Explaining how the order-by-order best execution review requirements apply in a world where broker-dealers may no longer be connected to every venue and where a far broader range of displayed quotes may become part of the market-wide NBBO, including exchange quotes that are subject to even more pernicious access delays, minimum resting periods, or other mechanisms.

- Addressing how best execution applies to customer limit orders that are required to be displayed under the limit order display rule of Regulation NMS. The Commission previously made the determination that customer limit orders that match or improve the NBBO deserve to be protected and therefore should be displayed on-exchange. If the Order Protection Rule is eliminated, it is not clear what benefit is achieved by requiring customer limit orders to be displayed on-exchange if they can just be traded-through (while there is a clear cost in terms of customer information leakage).

- Considering additional guidance on locked markets. As detailed in our response to the Commission, we expect that many low-priced "tick-constrained" symbols, including many ETFs, will have locked markets for almost the entirety of the trading day if the Commission were to remove the prohibition on locked markets. As a result, best execution and Rule 605 must take into account the future prevalence of locked markets and appropriately consider the impact of fees and rebates.

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We thank FINRA for considering our comments on the RFI and look forward to continuing to engage on these important market structure topics.

Respectfully,

/s/ Stephen John Berger

Managing Director

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