



September 25, 2026

VIA ELECTRONIC SUBMISSION

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street NW
Washington, D.C. 20006

Re: *Regulatory Notice 26-15: Best Execution*

Dear Ms. Piorko Mitchell,

Goldman Sachs & Co. LLC (“Goldman” or “we”) appreciates the opportunity to provide FINRA with comments on Regulatory Notice 26-15 (the “Notice”), which requests industry input on potential updates to FINRA’s best execution guidance under Rule 5310.¹ We commend FINRA for undertaking this review as part of its FINRA Forward initiative, and for doing so now rather than waiting for the outcome of the U.S. Securities and Exchange Commission’s (the “Commission’s”) recent proposal to rescind Rules 611 (the “Trade-Through Rule”) and 610(e) and certain defined terms of Regulation NMS (the “SEC Proposal”).²

We recognize that rescission of the Trade-Through Rule would mark a significant moment for the U.S. equity markets, and that investors are entitled to confidence in the framework that governs the handling of their orders in its absence. We believe that confidence will continue to be well-placed in FINRA’s principles-based best execution framework, which has remained durable across decades of market structure change. As explained in our August 17, 2026 comment letter to the Commission, Goldman supports the Commission’s proposal to rescind the Trade-Through Rule in part because rescission of Rule 611 will “restore the ability of the core and long-standing duty of best execution to govern a broker-dealer’s order-handling obligations to its customers unfettered by the Trade-Through Rule’s flawed mechanical price test.”³ Potential rescission of the Trade-Through Rule does not warrant a significant revision to, or overlay on, FINRA’s existing best execution framework.

¹ FINRA, Regulatory Notice 26-15, *Best Execution: FINRA Requests Comment on Modernizing FINRA’s Best Execution Guidance* (July 24, 2026), available at <https://www.finra.org/sites/default/files/2026-07/Regulatory-Notice-26-15.pdf>.

² See *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS*, Securities Exchange Act Release No. 34-105655, 91 Fed. Reg. 36,656 (June 17, 2026).

³ See Letter from Jameson Schriber, Managing Director, Goldman Sachs & Co. LLC, to Vanessa A. Countryman, Secretary, SEC, re: File No. S7-2026-20, *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS* (Aug. 17, 2026), available at <https://www.sec.gov/comments/S7-2026-20/s7202620-1006159-3202952.pdf>.

At the same time, regardless of the fate of Rule 611, Goldman believes FINRA's review provides a valuable opportunity to modernize certain aspects of its interpretive guidance to reflect today's evolved and largely systematic order-handling environment for Regulation NMS stocks, including by revisiting the order-by-order review requirement for internalized orders and clarifying that "held" and "not held" order designations should not be determinative in assessing whether a firm has satisfied its duty of best execution.⁴

I. Rescission of Rule 611, if Adopted, Will Not Warrant Any Significant Revision or Overlay to FINRA's Principles-Based Best Execution Framework

As the Notice recognizes,⁵ a broker-dealer's duty to seek best execution in customer order-handling is independent of and predates the Trade-Through Rule, which has served since its adoption as a national best bid or offer ("NBBO") price protection rule for better-priced, "top of book" orders posted on exchanges. The longstanding duty of best execution, rooted in common law agency principles and embedded for decades in the rules of FINRA and its predecessor, NASD, establishes an independent and enduring obligation that stands on its own regardless of the fate of the SEC Proposal.⁶

The use of the NBBO and its midpoint as useful price references also long predates the adoption of the Trade-Through Rule. While rescission of Rule 611 may potentially lead to changes in the NBBO—including changes in pricing, spread, and available liquidity—we expect the NBBO will remain a useful reference point for evaluating various orders if Rule 611 is rescinded.⁷

Of course, both before and after Rule 611's adoption, the NBBO has never defined the duty of best execution. Indeed, both the SEC and FINRA have explained that obtaining the NBBO price for a customer's order may not satisfy best execution.⁸ Importantly, FINRA's framework recognizes that obtaining best execution for a customer order frequently depends on factors *beyond price*—whether measured by reference to the NBBO or otherwise. These factors include available liquidity, the mitigation of market impact, information leakage, likelihood of execution, order completion, and the customer's objectives, needs, and expectations. Accordingly, the absence of

⁴ We generally support the comments made in the letter submitted by the Equity Markets and Trading Committee of the Securities Industry and Financial Markets Association (SIFMA) in response to FINRA's Notice. Accordingly, we have limited our comments in this letter to select aspects of FINRA's best execution guidance.

⁵ Notice at 5.

⁶ *Id.* at 2, 5.

⁷ We note that, as liquidity has increasingly moved off-exchange, *see, e.g.*, U.S. Securities and Exchange Commission, Division of Trading and Markets, Memorandum to File No. S7-2026-20, Re: Rule 611 of Regulation NMS, at tbl. 1 (June 11, 2026), <https://www.sec.gov/comments/S7-2026-20/s7202620-831659-2544033.pdf> (comparing venue market share from Feb. 2005 with Feb. 2014 and Jan. 2026), the NBBO has increasingly become an imperfect, less-than-robust pricing benchmark. Rescission of Rule 611 could potentially facilitate the development of more economically meaningful price benchmarks incorporating, for example, actual fill probabilities and real-time accessible liquidity.

⁸ Notice at 5. *See also Regulation NMS*, Securities Exchange Act Release No. 34-51808, 70 Fed. Reg. 37,496, 37,537 (June 29, 2005) (noting that adoption of the trade-through prohibition "in no way lessens a broker-dealer's duty of best execution").

Rule 611's mechanical price protection will not lessen the effectiveness of FINRA's best execution framework.

Moreover, under FINRA's current framework, the duty of best execution is principles-based and satisfaction of the duty is facts-and-circumstances dependent. We expect this time-tested framework will remain wholly viable should Rule 611 be rescinded as the SEC proposes. The core requirement that a broker-dealer exercise reasonable diligence in order-handling, followed by regular and rigorous review of the results, should remain unchanged with or without the Trade-Through Rule. The framework's durability through decades of ever-evolving market structure is itself proof of its strength.

II. Regardless of Rule 611 Rescission, Certain Aspects of FINRA's Best Execution Guidance Merit Re-evaluation

Beyond the potential impact of Rule 611's rescission, the Notice invites market participants to comment regarding whether any aspect of FINRA's best execution guidance should be updated as a result of changes in the marketplace or otherwise. Below we highlight two areas meriting re-evaluation for change and clarification.

a. An Aggregate, Regular and Rigorous Review, Not Order-By-Order Review, Is Better Suited for Evaluating Internalized Order Executions

Question 3.a of the Notice requests comment on whether order-by-order review should continue to be required for internalized order flow.⁹

Today, principal liquidity in Regulation NMS stocks is largely provided through the combined functioning of smart order routers, algorithms, models, and other systematic methodologies designed to apply consistent order-handling logic to orders with similar characteristics. Much of a broker-dealer's exercise of reasonable diligence in its order-handling decision-making is incorporated into the functioning of these systematic methodologies. These methodologies operate consistently across similarly situated orders under similar market conditions, with the result that similar orders receive similar handling, executions, and principal liquidity treatment.

In these circumstances, we believe that an aggregate, regular and rigorous review process more effectively evaluates execution quality than an order-by-order review. For systematic, logic-driven order execution methodologies where principal liquidity provision is a component of the execution, FINRA should clarify that an order-by-order review of execution quality is not required and that a reasonably designed aggregate, regular and rigorous review is sufficient.

An aggregate review of execution quality achieved by these execution methodologies is more effective because it permits firms, whether handling institutional flow, retail flow, or both, to (i) group orders and evaluate execution results based on similar order characteristics and customer

⁹ Notice at 10.

objectives, (ii) evaluate results over meaningful time periods and across differing market conditions, and (iii) compare order flows receiving principal liquidity against comparable flows that do not. If parent-order performance, including principal fills, produces average execution quality as good as or better than that which might be achieved by routing the order to the marketplace in its entirety, then the broker-dealer has satisfied its duty of best execution.

Separately, with respect to negotiated block trade executions and other agreed-upon capital commitment transactions with clients, FINRA should update its guidance to make clear that such principal executions need not be subject to an order-by-order review and should confirm that, because such transactions do not involve any order-handling or routing decision-making, they are outside the scope of a firm's required best execution reviews.¹⁰

b. “Held” and “Not Held” Designations Should Not Govern the Determination or Retrospective Evaluation of Best Execution

In Section 7 of the Notice, FINRA has requested comment on “Held and Not Held Orders” in the context of the duty of best execution.¹¹ As a general matter, in evaluating whether a firm has satisfied its duty of best execution with respect to orders bearing a “held” designation, we believe FINRA should recognize that not all held orders are alike and that the execution quality obtained for held orders should not be measured solely against an inflexible standard of being “fully and promptly” executed.¹²

For example, some held orders are large and significantly outsize displayed liquidity. In such cases, FINRA should recognize and clarify that a firm will satisfy its duty of best execution if, for example, it exercises reasonable diligence in promptly searching for both non-displayed and displayed liquidity for some or all of the order. By contrast, simply routing the order immediately to the displayed quotation would likely result in poorer execution quality and cause price dislocation in the market for the security. Indeed, the SEC's Market Access Rule requires that firms have reasonably designed controls to prevent routing orders that may result in undue market disruption.¹³ In recognition of this obligation, in addition to its best execution responsibilities, many firms will assign a marketable limit price to a held market order prior to routing it to the marketplace.

FINRA should clarify that “held” and “not held” designations are not determinative for best execution purposes. Held order-handling and execution can be evaluated in accordance with FINRA's principles-based standard such that all relevant factors may be taken into account in the firm's exercise of reasonable diligence—including order size relative to displayed liquidity and prevailing market conditions.

¹⁰ Goldman recognizes that, as a general matter, there may be some internalized order executions for which an order-by-order review may be warranted.

¹¹ See Notice at 14.

¹² See FINRA Rule 5310.01 (“A member must make every effort to execute a marketable customer order that it receives fully and promptly.”).

¹³ See 17 CFR § 240.15c3-5.

III. Conclusion

For the reasons set forth above, Goldman respectfully urges FINRA to retain the existing principles-based framework of its best execution rule and guidance. That framework has demonstrated remarkable durability through successive changes in market structure and will continue to serve investors well.

Goldman recommends that FINRA update its interpretive guidance to (1) clarify that, for internalized orders in Reg NMS stocks executed through systematic execution methodologies, a reasonably designed aggregate, regular and rigorous review is sufficient and that an order-by-order review is not required, and (2) reflect that “held” and “not held” order designations are not determinative for purposes of evaluating best execution. We thank FINRA for the opportunity to comment on these important matters and look forward to continued engagement.

Sincerely,



Jameson Schriber
Managing Director
Goldman Sachs & Co. LLC

cc: Robert W. Cook, President and Chief Executive Officer, FINRA
Robert L.D. Colby, Chief Legal Officer, FINRA
Racquel H. Russell, Senior Vice President and Director of Capital Markets Policy, FINRA
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