

September 25, 2026

Via Electronic Mail (pubcom@finra.org)

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA 1735 K Street, NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 26-15 – Request for Comment on Modernizing FINRA's Best Execution Guidance¹

Dear Ms. Mitchell,

The Healthy Markets Association² writes to submit comments in response to Regulatory Notice 26-15, which requests feedback on modernizing Guidance for FINRA Rule 5310. We appreciate FINRA's effort to review its best execution obligations for brokers in light of significant market structure and regulatory developments,

For years, the Rule 5310 has been insufficient to ensure brokers are effectively executing their fiduciary obligations of seeking "best execution" for their customers. That said, FINRA's Best Execution Rule has been supplemented by key elements of Regulation NMS, most notably, Rule 611. Rule 611, when combined with other elements of regulation NMS and existing practices, has provided a critical order-by-order backstop for execution pricing in listed equities – for both on- and off-exchange trading.³

¹ *FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance*, Reg. Notice. 26-15, Jul. 24, 2026, available at <https://www.finra.org/rules-guidance/notices/26-15> ("Proposal").

² Healthy Markets Association ("HMA") engages asset owners, asset managers, brokers, exchanges, data providers, policymakers, regulators, and other stakeholders to increase capital markets transparency and reduce conflicts of interest, risks, and costs for investors. To learn about HMA or our members, please see our website at <http://healthymarkets.org>.

³ In its own comments, FINRA explicitly acknowledges that if the SEC rescinds Rule 611, firms will lose the "regulatory backstop" that currently requires routing to venues with protected quotations. Additionally, in the SEC's comment file related to its proposed rescission of Rule 611, several following commenters cite the critical nature that the order-by-order protection rule 611 provides. See, e.g., Letter from Chris Nagy, HMA, to Vanessa Countryman, SEC, Aug. 17, 2026, available at <https://www.sec.gov/comments/S7-2026-20/s7202620-1005839-3202509.pdf>; Letter from Benjamin Tecmire and Hubert De Jesus, BlackRock, to Vanessa Countryman, SEC, Aug. 17, 2026, available at <https://www.sec.gov/comments/S7-2026-20/s7202620-1006559-3203570.pdf>; and Benjamin Schiffrin, BetterMarkets, to Vanessa Countryman, SEC, Aug. 17, 2026, available at <https://www.sec.gov/comments/S7-2026-20/s7202620-1005119-3201347.pdf>.

If the SEC repeals this best execution protection, as it has proposed,⁴ FINRA's principles-based rules will carry the full weight of ensuring best execution, a burden the current framework is ill-equipped to handle.

It is imperative that FINRA set forth a clear order-by-order standard for best execution that prioritizes the investors' best interests. Further, the rule should establish a default top priority of minimizing the investors' total order cost. Costs (including trade throughs) should be disclosed to customers on their trade confirmations. And if investors choose to prioritize other factors over price, such as speed of execution, those should be documented, and those factors and costs also disclosed.

FINRA has already adopted significant guidance under Rule 5310 that could – if tweaked, pulled into the direct rule text, and enforced – materially improve the efficiency of the markets and better protect investors.

Below, we propose a number of substantive enhancements to Rule 5310, which will help modernize the rule to ensure brokers are fulfilling their critical roles as fiduciaries for their customers when seeking to execute their customers' orders. We urge FINRA to implement the proposed reforms without delay and irrespective of the SEC's ongoing consideration of changes to Regulation NMS.⁵

Background

A broker's duty of best execution "is based, in part, on the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal's best interest, and also has been incorporated explicitly in FINRA rules."⁶ Broadly speaking, the duty requires any broker acting as an agent to a customer to "exercise reasonable care to obtain the most advantageous terms for the customer under the circumstances."⁷

⁴ See *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS*, SEC, 91 Fed. Reg. 36656 (June 17, 2026), available at <https://www.govinfo.gov/content/pkg/FR-2026-06-17/pdf/2026-12163.pdf>.

⁵ We note that merely updating its "Guidance" to Rule 5310 would be inadequate. Substantive best execution obligations should be clearly set forth in enforceable rule text.

⁶ FINRA, *Best Execution: Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets*, Reg. Notice 15-46 (Nov. 2015), available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

⁷ Reg. Notice 15-46 (citing *Payment for Order Flow, Confirmation of Transactions*, SEC, 59 Fed. Reg. 55006, 55007 at n.15 (Nov. 2, 1994), available at <https://www.govinfo.gov/content/pkg/FR-1995-03-17/pdf/95-6576.pdf>).

Certainly, price is an important consideration. But that is not just the explicit price for the security.⁸ To look at the total price to the customer, a broker must also consider various fees charged throughout the execution chain.⁹

While a number of SEC and FINRA rules touch upon best execution, FINRA Rule 5310 provides the most concrete requirements and actions. Rule 5310 requires a broker acting as agent to use reasonable diligence to ascertain the best market for the subject security.¹⁰ Specifically, brokers must consider the:

- character of the market for the security (e.g., price, liquidity, and volatility);
- size and type of transaction;
- number of markets checked;
- accessibility of the quotation; and
- terms and conditions of the order.¹¹

The subjective nature of these considerations allows a broker to fulfill its best execution obligations even if it uses an execution channel with higher built-in transaction fees, provided that the other facts and circumstances ostensibly justify it.

In addition, regulators historically have allowed broker-dealers to evaluate execution quality on an aggregated basis pursuant to “regular and rigorous review” of its routing and execution arrangements, including what it could have received at other markets.¹² In laying out the standards for this “regular and rigorous review,” FINRA has stated that brokers should consider:

- price improvement opportunities (i.e., the difference between the execution price and the best quotes prevailing at the time the order is received by the market);

⁸ In this regard, brokers’ routing decisions are backstopped by Rule 611 of Regulation NMS, the “Order Protection Rule.” Rule 611 requires an exchange to implement policies and procedures that are reasonably designed to prevent trade-throughs or orders from executing orders at prices outside the National Best Bid and Offer. Further, Rule 611 only protects the top of the book, and many larger orders will clear multiple levels. Unfortunately, guidelines and practices after the first price level has been cleared are inconsistent.

⁹ See FINRA, *Best Execution: NASD Regulation Reiterates Member Firm Best Execution Obligations And Provides Guidance To Members Concerning Compliance*, Reg. Notice 01-22 (Apr. 2001), available at <http://www.finra.org/sites/default/files/NoticeDocument/p003889.pdf>.

¹⁰ See FINRA, *Rule 5310: Best Execution and Interpositioning*. However, several other FINRA rules supplement this “Best Execution” rule, most notably Rule 2121, which governs commission rates and fees, including markups and markdowns. FINRA Rule 2121, *Fair Prices and Commissions*.

¹¹ See FINRA, *Rule 5310: Best Execution and Interpositioning*.

¹² FINRA, Supplemental Material 0.09 to Rule 5310, *Rule 5310: Best Execution and Interpositioning*.

- differences in price disimprovement (i.e., situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);
- the likelihood of execution of limit orders;
- the speed of execution;
- the size of execution;
- transaction costs;
- customer needs and expectations; and
- the existence of internalization or payment for order flow arrangements.¹³

Collectively, FINRA rules do not require brokers to actually make trading routing decisions on an order-by-order basis, nor do they typically require brokers to analyze best execution after the fact on an order-by-order basis.¹⁴

In June 2021, FINRA released Regulatory Notice 21-23,¹⁵ which was pitched as a “reminder” for member firms, asserted that:

best execution obligations apply to member firms that receive customer orders from another member firm for purposes of order handling and execution, including wholesale market makers, in addition to member firms that receive orders directly from customers.¹⁶

Further, the Reg. Notice 21-23 explicitly declares that “**inducements such as payment for order flow and internalization may not be taken into account in analyzing market quality.**”¹⁷ As a corollary, it would thus seem that a broker could not include “inducements” as a factor in its order routing decision-making for customers. Similarly, one might think that brokers cannot reasonably make routing and execution decisions based on their self-interested desires to avoid or minimize trading center fees, but yet, those considerations are widespread amongst not just brokers through retail execution channels, but institutional brokers as well.

¹³ Id.

¹⁴ See Reg. Notice 15-46.

¹⁵ FINRA, *Best Execution and Payment for Order Flow*, Reg. Notice 21-23, June 23, 2021, available at <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-23.pdf> (Reg. Notice 21-23).

¹⁶ Reg. Notice 21-23.

¹⁷ Id., at 4 (emphasis added).

Recent Enforcement History of Best Execution

Recent FINRA and the SEC actions related to “best execution” help illustrate some of Rule 5310’s material weaknesses. Critically, to date, best execution enforcement actions have focused on misleading claims or failure to maintain an adequate process, and not the substantive quality of the executions resulting from any process.

Put another way, if a broker has even a terrible process that consistently results in poor execution quality for investors, but accurately describes it and checks the boxes, that broker is unlikely to face any regulatory action. On the other hand, brokers must “check the boxes” on the process.

For example, in 2019, FINRA settled with Robinhood Financial for violating its duty of best execution for routing retail orders.¹⁸ Robinhood, which routed to just for market makers, “did not exercise reasonable diligence to ascertain whether these four broker-dealers provided the best market” for its customers’ orders, and the firm further didn’t review large swaths of its customers executions as part of its best execution reviews.

Similarly, in 2022, FINRA settled an action against Deutsche Bank Securities Inc. in which it alleged that the broker:

routed marketable orders first to [its own ATS] prior to routing any part of the order to an exchange, unless customers opted out of this routing preference. DBSI did not consider whether alternate routing arrangements might have provided better price improvement, fill rates and speed of execution. Similarly, when routing orders to dark pools, DBSI routed more orders to SuperX than any other dark pool during some of the relevant period. The firm failed to consider alternate routing arrangements even though, according to the firm’s own ranking model, other dark pools consistently ranked higher than SuperX for execution quality.¹⁹

Other regulatory actions focus on misleading customers about their execution quality. For example, the SEC settled an action against Robinhood Financial for best execution violations in December 2020. That SEC settlement order noted that “after media outlets raised questions about whether Robinhood’s payment for order flow rates negatively affected the execution prices that Robinhood customers received on their orders, Robinhood responded by claiming [on its website] ... that its order execution quality matched or beat that of its competitors,” even though the firm’s “extensive internal

¹⁸ *FINRA Letter of Acceptance, Waiver, and Consent re: Robinhood Financial LLC*, FINRA, No. 2017056224001, Dec. 19, 2019, available at <https://www.finra.org/sites/default/files/2019-12/robinhood-awc-121919.pdf> (2019 Settlement).

¹⁹ *FINRA Letter of Acceptance, Waiver, and Consent re: Deutsche Bank Securities Inc.*, FINRA, No. 2014041813501, Mar. 7, 2022, available at https://www.finra.org/sites/default/files/2022-03/deutsche-bank-awc-030722.pdf?utm_source=MM&utm_medium=email&utm_campaign=O%5FNewsRelease%5F030822%5FFINAL.

analysis that found Robinhood's execution quality and price improvement metrics were substantially worse than other retail broker-dealers' in many respects."²⁰

But the poor execution quality wasn't identified as a best execution violation. The misleading claim was the regulatory problem. And the concerns were apparently remedied by simply removing the misleading claim that it was at least as good as its competitors. Concerns with misleading execution quality claims – as opposed to substantively poor execution quality – was also the heart of an SEC settlement with a large retail market maker.

Put simply, FINRA Rule 5310, in practice, is focused on nothing more than a broker having and following a "reasonable" process designed to lead towards reasonable execution "quality." It does not provide any substantive backstop on execution quality – whether by price or any other factor – on any customer order.

However, SEC Rule 611, as currently integrated with other elements of Regulation NMS, helps fill this gaping void in best execution obligations. Specifically, Rule 611 provides – on an order-by-order basis – a backstop for execution pricing for investors.²¹

Essential Elements of the Duty of Best Execution

FINRA should modernize its best execution requirements to provide not just procedural protections, but implementable, measurable, and enforceable substantive protections for orders. This update is particularly important if the SEC repeals or materially revises Rule 611, which provides essentially the own substantive order-level protections to investors.

We recognize that some market intermediaries, particularly those that trade against investors, are pushing very hard to avoid substantive, order-by-order protections.²² We could not disagree more.

If a broker is to effectively work in the investors' best interest, then the broker should be required to:

²⁰ *In the Matter of Robinhood Financial, LLC*, SEC, Admin. Proc. No. 3-20171, at 2-3, Dec. 17, 2020, available at <https://www.sec.gov/files/litigation/admin/2020/33-10906.pdf>.

²¹ See Letter from Chris Nagy, HMA, to Vanessa Countryman, SEC, Aug. 17, 2026 available at <https://www.sec.gov/comments/S7-2026-20/s7202620-1005839-3202509.pdf>.

²² See, e.g., Letter from Adam Nunes, Hudson River Trading, to Vanessa Countryman, SEC, at 5, Aug. 17, 2026, available at <https://www.sec.gov/comments/S7-2026-20/s7202620-1006519-3203446.pdf> (asserting that "We believe that a policies, procedures, and disclosure-based best execution regime will best permit market participants to make reasonable routing decisions that are in the customers' best interest.").

1. Brokers Must Know the Market

Since long before FINRA existed, brokers have had the fiduciary obligation to help their customers trade securities. As a practical matter, it is substantively impossible for a broker to effectively fulfill its duty of best execution if the broker doesn't know the market in which it is being asked to engage by its customer.

At a bare minimum, to know the market, brokers need timely pricing information from all the relevant sources of liquidity. The SEC, FINRA, and the exchanges (through the CTA Plans) have created an elaborate patchwork of obligations for brokers and trading centers related to the collection, dissemination, and use of timely market data, including national securities exchanges' protected quotations.

That said, no rule – from either the SEC or FINRA – requires brokers to directly connect to any liquidity source, or route their customers' orders to any specific liquidity provider.

That said, FINRA has long maintained guidance that if a broker is already subscribing to proprietary data feeds “for its proprietary trading, [the broker] *would be expected* to also use these data feeds to determine the best market under prevailing market conditions when handling customer orders.”²³ Put another way, a broker needn't subscribe to particular data feeds, but it must not arbitrage data feeds for customer executions.

Nevertheless, several market participants have asserted that they feel effectively compelled by the combined operation of both SEC Rule 611 and Rule 5310 to directly connect and access exchanges providing protected quotations. Many brokers and data providers may also feel compelled for obvious business reasons to also have data and access to material sources of liquidity – not just those offering protected quotations.

As a result of these pressures, some brokers and data vendors connect to dozens of trading centers, even as others may not connect to a single exchange.²⁴ In fact, an SEC staff analysis reflected that less than two dozen brokers – out of more than one thousand brokers who submitted NMS stock orders – were connected to all exchanges.

²⁵

²³ FINRA, *Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets*, Reg. Notice 15-46, Nov. 20, 2015, available at <https://www.finra.org/rules-guidance/notices/15-46> (emphasis added).

²⁴ See, e.g., Cmte on Financial Services Majority Staff Report, *GAME STOPPED: How the Meme Stock Market Event Exposed Troubling Business Practices, Inadequate Risk Management, and the Need for Legislative and Regulatory Reform*, 117th Cong. (2022), available at https://democrats-financialservices.house.gov/uploadedfiles/6.22_hfsc_gs.report_hmsmeetbp.irm.nlrf.pdf (explaining that, during the January and February 2021 meme stock market events, Robinhood was not connected to any public stock exchange).

²⁵ Memorandum from the Staff of the Office of Analytics and Research, Division of Trading and Markets, SEC, *Trade-Through Roundtable Supporting Data*, Sept. 12, 2025, available at <https://www.sec.gov/files/trade-through-roundtable-supporting-data.pdf>.

Nevertheless, the repeal of Rule 611 may arguably provide brokers with even more comfort that they may exclude data and access from registered securities exchanges. In fact, several brokers and other commenters to the SEC's proposal to repeal Rule 611 have noted that, unless FINRA also changes its standards under Rule 5310, brokers may not disconnect from protected quotation venues – potentially diminishing the “savings” anticipated by the SEC in its release.

If a trading center offers consistently superior pricing, brokers should not be permitted to simply ignore those better prices for their customers.

2. Brokers Must Know Their Customers' Execution Desires on an Order-By-Order Basis, and Order Execution Costs Should be Presumed to Be Paramount

Acting in investors' best interests requires both knowing the customers generally, as well as knowing the customers' specific interests in the execution of each order. While Rule 5310 reflects some priority differences amongst investors and their interests, it does not establish a clear set of obligations related to those differences.

While Rule 5310, its guidance, and enforcement action language from FINRA acknowledges that many different factors can impact “best execution,” the reality is that not all factors are created equally. While Rule 5310 portends to codify a broker's fiduciary duty to her customers, it instead inappropriately deprioritizes investors' overriding interests – total order execution costs.

The factors correctly identified in Rule 5310 as relevant to best execution are only relevant because they impact one real-world question – how can an investor trade the full amount she wants to trade at the best prices available within the time the investor wants to trade.

Put simply, total order execution cost – within the investor's desired volume demands and time constraints – is always king. Nevertheless, Rule 5310 ignores the central importance of price, putting it inappropriately on the same tier as other execution factors. This laundry listing of seemingly equivalent factors renders examination and enforcement of best execution – as a substantive consideration – effectively impossible, or as one senior FINRA official once explained to HMA's members, “like nailing jello to a wall.” As a result, enforcement cases for violations of best execution have thus remained exclusively about firms having facially inadequate execution processes and procedures or not following them – rather than substantively, persistently providing their customers with poor execution quality.

At the other extreme, while SEC Rule 611 doesn't explicitly codify price as the only factor in best execution on an order-by-order basis, it acts as a guardrail for execution prices on an order-by-order basis. However, Rule 611 has long been imperfect, in part, because it doesn't reflect all-in total order execution costs.

FINRA should revise Rule 5310 to explicitly demand that brokers follow the execution directions of the investor on an order-by-order basis, and that, in the absence of explicit order-level direction from the customer, a brokers' best execution responsibility is to seek to minimize total order execution costs for the customer.

The other factors currently identified in Rule 5310 may remain relevant to that analysis, but they should not be permitted – absent direct, order-by-order direction to the contrary from an investor – overrule the presumption that the specific obligation to the customer is to minimize the customer's total order execution costs.

FINRA has historically understood the uniquely central importance of price to customers in evaluating best execution. For example, in Reg. Notice 21-23, FINRA acknowledged the importance of execution price as predominant over other factors, particularly for retail customers. Reg. Notice 21-23 explains that “[w]hile the SEC and FINRA have recognized that best execution is not concerned solely with price, price is undoubtedly a key concern for most retail customers.”²⁶

FINRA should codify that brokers must, on an order-by-order basis, “identify the best prices and obtain best execution for customer orders under prevailing market conditions.”²⁷

We expect that most retail investors or smaller institutional investors may never seek to override that presumption. For an investor trading 17, 100, or 1700 shares of stock through an online brokerage account, the vast majority of the time, they want the best price they can at that moment (or subject to the limits they set).

Investors have the ability to clearly communicate with their brokers about their clear intentions for execution. These instructions may be reflected in order types they submit, as well as different instructions. If retail brokers want to be able to override the presumption that their duty is to minimize the customers' total order execution costs, they should seek very specific clarifications on an order-by-order basis.

Today, institutional brokers for large institutional investors, who may handle held and not held orders, often obtain information from their customers so as to determine if factors *other than total order execution costs* (including the costs associated with implementation and potential price impacts) should be considered. These directions may be in the forms of directions provided through phone calls or electronic messages, or submissions of complex order types or direct entry of orders into broker-provided complex algorithmic strategies.

Accordingly, FINRA should require brokers to ascertain their customers' specific intentions related to the execution of their orders on an order-by-order basis, and in the absence of explicit order-level direction from the customer to the contrary, a brokers'

²⁶ Reg. Notice 21-23, at 2.

²⁷ See, Reg. Notice 21-23.

best execution responsibility is to seek to minimize total order execution costs for the customer.

3. Brokers Must Make Order-By-Order Decisions for the Best Interest of Investors

A broker's duty of best execution arises when the broker receives a specific order from a customer. It should go without saying that the broker's fiduciary duty with respect to that specific order should entail it exercising the necessary level of care with respect to that specific order. Put simply, the duty of best execution arises for a broker on an order-by-order basis, and it should be fulfilled on an order-by-order basis. A customer with a poor execution on her order gets little comfort from the general retort that most customers fare decently. An investor is entrusting her broker with her order, and the broker should fulfill her duty by exercising care and diligence with respect to that specific order.

This isn't hard. Brokers make their routing and execution decisions on an order-by-order basis. They should be required to do so for their customers. Trading decisions are made in nanosecond time increments, based on ever-changing market conditions. Obviously, market makers are executing or routing away retail channel orders that they have been entrusted based on real-time evolving market conditions.

Of course, if the customer communicates a large order to a broker, that parent-level order is what should give rise to the obligation, and it is at that level that best execution should be assessed.

Further, odd-lot orders have become a major component of the markets, and yet the existing best execution framework largely ignores them.

Brokers should generally be required to assess and access all better priced sources of liquidity, particularly including those stemming from odd lot quotations. A modernized best execution obligation cannot allow brokers to ignore superior odd-lot pricing simply because those quotes currently fall outside the traditional definition of the protected NBBO.

In 2015, FINRA explained the brokers should "consider what procedures they use or would use for executing the same or similar transactions for their own firm accounts, even if such procedures are not required to be the same."²⁸

Rule 5310 should be revised to explicitly demand that brokers' routing decisions be based on real-time market information, and with the express purpose of effectuating the best interests of their customers. As described above, we believe that this standard should be to minimize total order execution costs within the relevant time period, unless otherwise expressly indicated for that specific order by the customer.

²⁸ Reg. Notice 15-46.

The SIP-disseminated NBBO must remain the absolute, “worst case” or “backstop” standard for execution quality. However, a modernized best execution standard must go further. Brokers should be required to specifically identify on the trade confirmation whether a better price was known to the broker—whether displayed or not—at the time of execution.

In fact, as FINRA has already recognized, the prices reflected by the NBBO may still not be sufficient to achieve best execution. We agree that:

when a firm is routing order flow for automated execution, or internally executing such order flow on an automated basis, ... simply obtaining the best bid or best offer may not satisfy a firm’s best execution obligation, particularly with respect to small orders. In addition, FINRA cautioned that member firms would not satisfy their duty of best execution if they do not compare the execution quality they receive under their existing order routing and execution arrangements (including the internalization of order flow) to the quality of the executions they could obtain from competing markets.²⁹

Further, FINRA has explained that if a broker uses “filters on counterparties or filters on specific securities intended to limit accessing bids or offers in those securities, they may be used only for a legitimate purpose consistent with obtaining the most favorable executions for customers.”³⁰

These filters should be explicitly authorized in advance, and subject to significant protections, including (as FINRA has suggested before) that they are “reviewed on a periodic basis and adjusted as needed,” subjected to “policies and procedures ... that govern when and how to reasonably use filters without negatively impacting the quality of execution,” and periodically reevaluated.³¹

We are perplexed that, for large institutional orders, brokers have developed and operate complex algorithmic trading strategies that take into account a variety of factors as they may change in real time, and adjust trading center routing and other factors accordingly, yet, for retail orders, many brokers simply route to market makers or trading centers for which they may obtain the highest payments or minimize the brokers’ fees paid.

We are deeply concerned that brokers and trading centers may, in the absence of clear FINRA demands or Rule 611, prioritize their economic interests over their customers’ execution quality – while still claiming they are providing “best execution.”

This concern is crystallized by the facts from when: (1) the SEC first adopted Rule 611, and (2) the SEC recently changed what qualifies as a “protected quotation.” Both regulatory changes dramatically improved the execution prices provided to investors.

²⁹ Reg. Notice 21-23, at 4.

³⁰ Reg. Notice 15-46.

³¹ Reg. Notice 15-46.

Prior to the adoption of SEC Rule 611, trade throughs were common, and the additional execution costs from those trade throughs were very significant. The implementation of the rule led to far fewer trade throughs, and hundreds of millions of dollars in cost savings in the very first year.

Far more recently, the Commission changed its definition of a “round lot” to include 40 share increments of some securities. This expanded order protection to more quotations. As HMA told the SEC:

Investors started receiving better priced executions on trades at and above the newly protected quotation sizes, while those that remained below the protected quotation threshold continued to exhibit higher instances of trade-throughs. For stock trade sizes that remained below the new threshold, trade-through rates decreased over share sizes from 1 share to 40, while off-exchange trade-through rates were much higher than on-exchange trade through rates.

However, the Proposal looks at this data, and somehow reaches a wildly inconsistent, contradictory conclusion that since “trade-through rates of unprotected quotes fall as trade size increases, indicating that Rule 611 may not significantly affect the trade-through rates of round-lot orders.”³² This is not unlike looking at an intersection with four stop signs, observing that crashes are infrequent, and then using that as justification to remove all the stop signs.³³

As MIT Finance Professor and former SEC Director of the Division of Trading and Markets Haoxiang Zhu explained:

Equally striking, for stocks that switched to the 40-share round lot size, orders with 1 share and 5 shares still had a 24% and 10% probability of trading through the unprotected best quote ... In sum, the Commission’s own data analysis reveals insufficient market discipline: investors have not obtained the best prices in the absence of trade-through protection. The off-exchange evidence is particularly concerning, given that virtually all marketable retail orders are executed off-exchange.³⁴

Collectively, these experiences demonstrate a significant need for order-by-order substantive price guardrails to best execution. Put another way, when execution quality was simply dependent upon FINRA’s “best execution” rules, customers received much worse execution pricing than when the SEC’s order-by-order price protections applied.

³² Proposal, at 36689.

³³ Letter from Chris Nagy, HMA, to Vanessa Countryman, SEC, Aug. 17, 2026, available at <https://healthymarkets.org/wp-content/uploads/2026/08/HMA-File-No.-S7-2026-20.pdf>.

³⁴ Letter from Haoxiang Zhu, MIT, to Vanessa Countryman, SEC, July 12, 2026, available at <https://www.sec.gov/comments/S7-2026-20/s7202620-957479-2957766.pdf>.

FINRA must now fill this gap, irrespective of what the SEC independently chooses to do with respect to Rule 611.

FINRA should also finally reconcile its purported list of “factors” considered in best execution and routing practices with the factors actually used by brokers to make routing and execution decisions. As discussed above, price and speed of execution for the applicable order size are very common factors. But other factors also seem to play a significant role in routing decisions.

Most notably, many brokers route orders to venues so as to (within facially justifiable reason) maximize “inducements” to themselves or minimize their own costs. If an investor chooses to prioritize speed of execution over price for a particular order, then that should be documented and justified, and FINRA should be able to – pursuant to its examinations process – pull those orders and actually be able to compare the execution speed to obtainable speeds, as well as measure the costs of those decisions for each order.

While Reg. Notice 21-23 asserted that brokers “may not negotiate the terms of order routing arrangements for those customer orders in a manner that reduces the price improvement opportunities that otherwise would be available to those customer orders absent payment for order flow,” that appears to be widespread practice today.³⁵

But inducements aren’t the only unrecognized “factor” in brokers’ order routing decisions. Trading venue fee avoidance is another. For example, many retail brokers who do not accept payment for order flow may nevertheless route to the same market makers as those who do accept payments because doing so may allow those brokers to avoid (1) paying transaction fees, (2) building infrastructure and paying the costs to connect to exchanges and other venues, (3) building infrastructure and paying the costs to evaluate trading on an order-by-order basis for their customers. For example, simply batch routing to a wholesaler and not paying anything for the execution of a 100 share order is cheaper than paying 30 cents plus having to build and maintain complex systems, plus paying for data.

At the same time, many other market participants (including the market makers to whom these orders are often routed), are using artificial intelligence models to make trading and routing decisions across multiple venues in nanoseconds.

FINRA should codify that fee and cost avoidance by a broker is also an incentive that cannot be impermissibly considered. Further, FINRA should codify that a broker can fulfill its duty of best execution despite perhaps having no real-time information about the markets or even connectivity to exchanges or other market centers where better execution prices may be available, only if it has contractually negotiated with a third party to assume the best execution obligation for that specific order and it conducts its

³⁵ Reg. Notice 21-23.

own daily reviews of execution quality from such third parties to ensure that party is fulfilling its duties.

Put simply, FINRA should require order-by-order routing and execution decisions in the best interest of investors.

4. Brokers Must Explain Their Decisions To Customers

Investors care about their execution quality, but often lack the relevant data and resources to identify concerns or take action with respect to them. Revisions to SEC Rules 605 and 606 in recent years have very, very modestly improved investors' access to execution quality information, but they remain materially deficient, especially for all but the very largest institutional investors.

FINRA should update its rules to ensure that trade confirmations provided by brokers to their customers provide additional information necessary to inform those customers' understanding of their brokers' performance of their fiduciary obligations. At a minimum, if an order is a trade through, the broker should provide on that confirmation the amount of price disimprovement – or the cost of the lost execution. If firms can manage to identify “price improvement” for confirmations, they should be able to manage also showing “price disimprovement.”

For the last two decades, because of the Order Protection Rule, investors could generally assume that their execution prices factored into account the prices of all registered national securities exchanges' protected quotations. That may no longer be the case, if Rule 611 is repealed.

Accordingly, FINRA should require brokers to provide – on the trade confirmations to their customers – the top-of-book quotations on each trading center it considered pursuant to its obligation to “know the market” at the time of its receipt of the order. FINRA should mandate that the brokers include, at a minimum, data disseminated by the CTA Plan³⁶ and any proprietary data feeds accessed by the broker be provided pursuant to this information.

If the execution “traded through” a price available at an identified trading center, the broker should provide a short explanation of why – on the trade confirmation. For example, if the trade through was because the customer order was for 250 shares, and the referenced trading centers, in aggregate, only had 100 shares available at the better price, the confirmation should say so.

³⁶ We note that there are currently multiple CTA Plans, but they are (slowly) being consolidated into a unified plan. We anticipate FINRA reforms to be implemented after that unification occurs.

Put simply, a broker should – on the trade confirmation – identify whether a better price was known to the broker – whether displayed or not – at the time of execution for the amount of that execution.

Failure to adequately explain trade throughs or persistent trade throughs should trigger additional internal reviews by brokers, perhaps leading to changes to their policies, procedures, and practices. And failure to identify and address them is evidence of potential best execution violations.

5. Brokers Must Regularly and Rigorously Review Decisions and Outcomes on an Order-By-Order Basis

FINRA requires brokers to review their execution quality for their customers. And just as a broker's duty of best execution should entail making order-by-order routing and execution decisions, a review of performance should similarly be conducted on an order-by-order basis.

Over a decade ago, FINRA Reg. Notice 15-46 said that "FINRA explained that it had "found that some firms, in reviewing their business, have determined that it is necessary to conduct their reviews more frequently than quarterly, with most of those firms conducting monthly reviews."³⁷ Monthly analyses should be codified.

Also over a decade ago, FINRA explained that "order-by-order review of execution quality is increasingly possible for a range of orders in all equity securities and standardized options,"³⁸ but it has nevertheless continued to decline to require brokers to make or review routing decisions on an "order-by-order" basis.

Today, for large institutional customers, including HMA members, brokers typically engage in detailed reviews of their executions on an order-by-order basis. And this makes sense. When a single order is submitted to the broker, that order gives rise to the fiduciary duty of best execution, and a retrospective review of that execution is entirely appropriate.

Notably, these reviews are often supplemented by reviews from the institutional customers themselves. Many of the largest institutional investors have the resources, market power, and expertise to effectively command better pricing, and are more likely to receive materially better execution quality than those that don't have those advantages. These investors may be able to spend thousands of hours and millions of dollars on systems designed to detect and stop them from paying fractions of a penny more for a share when they trade. The economies of scale may make that a worthy endeavor.

³⁷ Reg. Notice 15-46.

³⁸ Reg. Notice 15-46.

Other investors, including many other “institutional customers” – with even billions of dollars worth of trading assets – will not. Bizarrely, for these millions of investors, FINRA permits brokers to essentially escape from undertaking substantively meaningful reviews of execution quality.

Unlike the ad hoc reviews brokers provide for institutional customers, which occur on an order-by-order basis, FINRA permits “Regular and Rigorous” best execution reviews that are often little more than aggregated batch processing of many customers’ orders that conclude “yes, our customers execution prices were generally good for each of these different slices of order types.”

But that’s not what should be required. This level of inadequate, summary analysis harkens back to an era of hand calculations and paper newspapers, not automated intelligence and widespread access to real-time analytical tools for large datasets.

A broker has a duty of best execution to every investor. And that duty arises with the submission of each order. And so, each order should be the beneficiary of that duty. A “regular and rigorous” review of all of a brokers’ other orders is meaningless to a customer with a poorly priced execution.

The fiduciary duty of best execution should explicitly require an order-by-order review of execution quality – not aggregations and averages. The data from Rule 605 is facially inadequate, in addition to being extremely untimely, given modern technology and decision-making.

We note that FINRA explained (again, over a decade ago) that “[a]ny orders a firm determines to execute by internalizing would be subject to an order-by-order analysis of execution quality.”³⁹ At a minimum, this analysis should be mandatory for any orders routed to any third party for execution pursuant to any financial arrangement with that third party (whether a wholesaler or exchange).

FINRA’s inconsistent standards for brokers’ reviews of execution quality based on order type, handling, and customers are inconsistent with the broader purpose of the fiduciary duty of best execution. All customers deserve order-by-order fiduciary protections.

6. Brokers Must Periodically Review and Adjust Routing Strategies and Trading Center Access

As mentioned above, brokers and market makers are making routing and execution decisions in real time, based on rapidly evolving market conditions. Increasingly, these decisions are using real-time market data feeds and artificial intelligence models.

Nevertheless, FINRA has inexplicably permitted brokers to selectively ignore changes to real-time conditions when choosing to route orders to particular trading centers, and instead rely on well after-the-fact reviews and considerations of alternative trading

³⁹ Reg. Notice 15-46.

centers. FINRA has even brought some enforcement actions against brokers for failing to consider and compare alternative trading centers.

These requirements are far, far below the standard policies, procedures, and practices of what a typical market maker or other trading firm is doing when trading on its own behalf.

FINRA should revise Rule 5310 to clearly mandate review and adjustments by brokers to their routing strategies and trading center access. Further, those reviews should be at least as frequently as the firm updates strategies and trading centers for trading on its own account, and not less frequently than monthly.

In 2015, FINRA declared that “a firm must determine whether any material differences in execution quality exist among the markets trading the security. If so, a firm should take these differences into account in its customer routing arrangements or justify why it is not modifying its routing arrangements.”⁴⁰

Reviews alone are insufficient. Actions may be required.

7. Brokers Must Annually Review and Update Their Policies, Procedures, and Practices Related to Best Execution

Rule 5310 doesn’t mandate that the broker review its best execution policies and procedures on any specific basis. It should.

We note that FINRA Rule 3130(c) generally requires brokers to review their policies and procedures for compliance and periodically update them. Further, we note that many brokers review their best execution policies, procedures, and practices on an annual basis.

Accordingly, FINRA should require brokers to review best execution policies, procedures, and practices on a not-less-than-annual basis, and those reviews should be documented for potential examination by FINRA and the SEC.

8. FINRA Must Not Permit Waivers or Disclaimers That Undermine Best Execution

A brokers’ duty of best execution is, at root, a fiduciary duty to its investor customers.

But that duty will mean nothing if FINRA permits brokers to essentially ignore the substantive duty, and replace it with waivers or disclosures to investors. In particular, if Rule 611 is repealed, we foresee many brokers providing worse total order execution costs, and then simply responding to investor complaints by saying, “we told you our relevant factors.” Given the consolidation of trading and other competitive pressures,

⁴⁰ Reg. Notice 15-46.

investors – whether retail or institutional – would likely have little or no substantive recourse.

Accordingly, FINRA should expressly prohibit brokers from seeking, obtaining, or relying on any customer waivers or disclosures as excusing the substantive requirements of the duty of best execution.

9. FINRA Must Modernize Its Examinations and Enforcement Tools To Identify And Deter Broker Deficiencies

FINRA needs clear, objective, substantive “best execution” standards. Aside from simply ensuring a “reasonable process,” it needs documentation for order-by-order execution quality analysis. Without that, there will be very little, if any, meaning to best execution.

FINRA should work with investors to ensure that brokers provide them with key data points that FINRA can test.

At a minimum, this should entail a listing of the best available prices in a security at the time of order receipt (with a robust NBBO), the execution price, and the list of factors in making the routing and execution decisions. Those should **all** be on the trade confirmations provided to investors.

Conclusion

For decades, FINRA’s very loose “procedures-based” best execution standard has been supplemented by the SEC’s substantive backstop on execution prices provided by Rule 611.

Even in the absence of the proposed repeal or modification of Rule 611, FINRA should modernize Rule 5310 to codify much of its guidance to ensure order-by-order procedural and substantive protections for investors.

Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact Tyler Gellasch at (202) 909-6138.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Gellasch', with a stylized, cursive script.

Tyler Gellasch
President and CEO

Cc: Hon. Paul Atkins, Chairman, Securities and Exchange Commission