



Letter from the Investment Company Institute

September 25, 2026

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1700 K Street, NW
Washington, DC 20006

Re: Regulatory Notice 26-15, Modernizing FINRA's Best Execution Guidance

Dear Ms. Mitchell:

The Investment Company Institute ("ICI")¹ appreciates the opportunity to respond to the Financial Industry Regulatory Authority's ("FINRA") request for comment on modernizing its best execution guidance under FINRA Rule 5310.² ICI members manage regulated funds and other pooled vehicles for millions of investors and rely on broker-dealers to execute fund orders in a manner that reflects fund objectives, order characteristics, market conditions, and shareholder interests. ICI members and their advisers also devote substantial attention to broker-dealer execution quality through trading oversight, broker review, and compliance controls. ICI appreciates FINRA's review of Rule 5310 and urges it to preserve a flexible, principles-based best execution framework and avoid rigid requirements that could impair institutional trading or increase costs for funds and their investors.

FINRA's review is particularly important in light of the Securities and Exchange Commission's (SEC or Commission) proposal to rescind Rule 611 of Regulation NMS, the trade-through rule for national market system securities.³ The proposal also would rescind Rule 610(e)'s locked and crossed markets provision, remove related defined terms from Rule 600, and make conforming changes to other provisions of Regulation NMS. Rule 611 has shaped the routing,

¹ The Investment Company Institute (ICI) is the leading voice of the asset management industry serving individual investors. ICI represents mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$47.6 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional \$11.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and separately managed accounts (SMAs) for individual investors. ICI associate members include service providers to funds, including financial communications firms, custodians and transfer agents, and CIT Trust companies. ICI has offices in Washington, DC, Brussels, and London.

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

³ See Securities Exchange Act Release No. 105655, File No. S7-2026-20, Regulation NMS: Rescission of Rule 611 and Related Amendments (proposed 2026).

connectivity, and order-handling systems used for institutional trading since Regulation NMS was adopted in 2005. In its review, FINRA should account for the practical effects of any SEC action and avoid guidance that creates confusion or undue burdens for broker-dealers executing fund orders.

FINRA also should avoid guidance that assumes a particular outcome in the Rule 611 rulemaking or prejudices how firms should weigh displayed price against liquidity, size, speed, market impact, and other execution factors. The SEC's proposing release frames the rescission as a possible shift away from mandatory intermarket price protection and toward competition, innovation, and market forces as drivers of equity market structure. FINRA should therefore coordinate and sequence any changes with related Commission initiatives involving order competition, tick sizes, access fees, market data, and order protection rules. Public comments on the SEC's proposal, which were due August 17, 2026, have highlighted important open questions for the Commission to consider before acting; FINRA should likewise consider how those unanswered questions may affect best execution obligations.

Against this backdrop, ICI offers the following observations.

FINRA Should Preserve a Principles-Based Approach Following Any Rescission of Rule 611

Rule 5310's principles-based framework is especially important for ICI members, whose trading often requires balancing price, size, timing, market impact, and information leakage across multiple funds or accounts. If Rule 611 is rescinded, FINRA should not recreate a trade-through rule through best execution guidance. Prescriptive requirements to access the best displayed quotation, connect to specified venues, or prioritize displayed price over other execution factors could constrain the broker-dealers on which ICI members rely and impair their ability to handle fund orders in ways that minimize market impact, preserve confidentiality, and improve overall outcomes for shareholders.

The SEC's proposal underscores that any rescission would remove the federal requirement that trading centers maintain policies and procedures reasonably designed to prevent trade-throughs of protected quotations. That change could give firms greater discretion in routing and execution decisions, but it also reinforces the need for FINRA to avoid substituting a prescriptive best execution standard for the Commission's proposed elimination of prescriptive intermarket price protection.

We note that the impact of rescinding Rule 611 may have unintended consequences on the displayed price and the national best bid and offer ("NBBO"), as we described in our comment letter to the SEC.⁴ Nonetheless, we believe that the NBBO could remain as reference points, but not the exclusive measures of execution quality for broker-dealers in the future. For example, a fund order's best result may turn on fill probability, available size, market impact, information leakage, latency, venue reliability, costs, the durability of displayed liquidity or other

⁴ ICI's comment letter is available at <https://www.ici.org/comment-letter/ici-comment-letter-on-the-secs-regulation-nms-rules-611-and-610e>.

relevant considerations. Venue-connectivity decisions also should be evaluated under the same flexible standard.

FINRA Should Preserve Flexibility for Execution of Institutional Orders

FINRA's guidance should recognize that execution of institutional orders may differ from retail order flow and should preserve the flexibility necessary to serve the interests of funds and other institutional customers. ICI members often submit orders through advisers or trading desks that manage transactions across multiple funds or accounts. Any guidance should not limit asset managers' ability to aggregate and manage discretionary orders in ways designed to achieve better average execution for investors.

For institutional orders, execution quality should be assessed at the parent-order level and in light of the customer's objectives, rather than by judging each child order in isolation. A child order may appear suboptimal relative to a contemporaneous quote, yet still support a better overall execution outcome by reducing market impact, limiting information leakage, or lowering opportunity cost.

This same flexibility is important when an institutional customer provides specific trading instructions. Customer instructions should receive substantial weight when they reflect an adviser's judgment about how best to trade for a fund. If an institutional customer selects a benchmark, algorithm, venue, trading window, or participation constraint, the broker-dealer ordinarily should be able to rely on that instruction if it processes the order competently and has no reason to believe the instruction is unlawful or clearly unreasonable. Broker-dealers remain responsible for competent execution within the scope of those instructions, including appropriate handling, controls, and review. Their obligations should complement, rather than displace, the adviser's duty to seek best execution for fund clients. When a broker-dealer exercises execution discretion, it should be able to demonstrate that venue-selection decisions are grounded in objective analysis and consistent with its best execution obligations.

FINRA Should Modernize Review Standards Without Mandating Retrospective Transaction-by-Transaction Analysis

FINRA should make clear that review obligations may be satisfied through risk-based, systems-level controls and testing, rather than manual or retrospective transaction-by-transaction review. ICI supports rigorous review of routing and execution quality, but FINRA should distinguish real-time order-handling controls from retrospective compliance testing. Well-governed smart-order routers, algorithms, and supervisory systems can process institutional orders efficiently and consistently, including without human review of each routing decision. FINRA should therefore permit technology-enabled review where a firm defines relevant execution factors, monitors performance, tests material changes, maintains exception reporting, and conducts periodic aggregate reviews calibrated to factors such as execution risk, order type, market conditions, and customer objectives.

FINRA also should avoid duplicative policies, procedures, or recordkeeping requirements unless it identifies a clear regulatory gap. If new obligations are necessary, FINRA should provide adequate implementation periods that account for the need to update routing logic,

supervisory systems, vendor arrangements, and institutional client workflows, and should coordinate timing with related Commission initiatives.

FINRA Should Address Extended-Hours Trading and Emerging Technologies Through Flexible Standards

FINRA's modernization effort also should account for evolving market structure and trading practices without converting best execution into a prescriptive framework, particularly where new trading sessions or technologies may affect fund trading, liquidity access, and investor outcomes. Firms should be able to evaluate liquidity, quote quality, execution risk, and customer objectives across trading sessions and technologies under a flexible reasonable-diligence standard.

Extended and overnight trading may involve lower liquidity, wider spreads, fragmented markets, greater volatility, diminished quote quality, reduced displayed depth, and less reliable reference prices. In these circumstances, reasonable diligence should account for heightened execution uncertainty and permit firms to consider whether trading outside regular hours may serve a fund's objectives or liquidity needs.

FINRA also should apply Rule 5310 in a technology-neutral manner. AI tools, distributed-ledger systems, and tokenized securities may affect how firms identify liquidity or execute transactions, but they should not alter the reasonable-diligence standard. Guidance should focus on outcomes and controls rather than prescribing particular technologies.

Conclusion

ICI supports FINRA's effort to modernize best execution guidance while retaining Rule 5310's principles-based framework. Revised guidance should enable broker-dealers to execute fund orders using the full range of relevant factors, including customer instructions, parent-order objectives, liquidity, size, timing, market impact, information leakage, venue reliability, costs, and overall execution quality. It should not recreate Rule 611, elevate displayed price above other factors, impose duplicative SEC/SRO obligations, or apply retail-oriented standards to institutional orders. FINRA should coordinate with the Commission and other regulators so any changes support funds' ability to seek best execution for shareholders.

ICI would welcome the opportunity to discuss these recommendations with FINRA.

Sincerely,

/s/ Timothy J. White, Jr.
Associate General Counsel
Investment Company Institute