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October 27, 2026

Via Electronic Mail

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

Re: Regulatory Notice 26-15 (July 25, 2026) — Request for Comment on Enhancing FINRA Rule 5310 (Best Execution)

Dear Ms. Mitchell:

Nasdaq, Inc. (“Nasdaq”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) request for comment on enhancing FINRA Rule 5310¹ (the “Best Execution Rule” or “Rule 5310”).²

The Securities and Exchange Commission (“SEC” or “Commission”) is considering whether to rescind Rule 611 of Regulation NMS, the Order Protection Rule (“OPR”).³ Since the Commission adopted Rule 611 two decades ago, the duty of best execution has become intertwined with it and various other facets of the current National Market System framework. Previously, the Commission observed that Rule 611 serves as a backstop to best execution, but in its proposal to rescind Rule 611, the SEC asserts that OPR is no longer needed for this purpose.⁴ If the SEC decides to rescind OPR, however, then FINRA Rule 5310 would become more important than ever as an investor protection mechanism.⁵ FINRA must ensure that broker-dealers are adequately guided and prepared to fulfill this important duty in a world without OPR and the price-centric path it provides to best execution compliance. FINRA’s Regulatory Notice 26-15 is therefore timely: FINRA best execution guidance is needed to bridge the gap that would be left by the demise of OPR. Such guidance should reimagine best

¹ See FINRA, Regulatory Notice 26-15, FINRA Requests Comment on Modernizing FINRA’s Best Execution Guidance (July 24, 2026), <https://www.finra.org/rules-guidance/notices/26-15> (the “Notice”).

² FINRA Rule 5310 (Best Execution and Interpositioning).

³ 17 C.F.R. § 242.611 (2025) (Order Protection Rule); *See also* Regulation NMS, Exchange Act Release No. 51808, 70 Fed. Reg. 37,496 (June 29, 2005) (the “Regulation NMS Adopting Release”).

⁴ *See* Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, Exchange Act Release No. 105655, 91 Fed. Reg. 36,656, 36,664 (proposed June 17, 2026) (the “611 Rescission Proposal”).

⁵ *See* Letter from Douro Labs LLC & Securitize Markets, LLC to Jennifer Piorko Mitchell, Office of the Corp. Sec’y, FINRA (Aug. 11, 2026), https://www.finra.org/sites/default/files/NoticeComment/Douro%20Labs%20-%20FINRA%205310%20Letter%20%28Notice%2026-15%29_0.pdf, at 1 n.1, 6–7, 8–9 n.16, 10–11 (“Douro/Securitize Letter”); Letter from James J. Angel, Assoc. Professor, Georgetown Univ., to FINRA (Sept. 1, 2026), <https://www.finra.org/sites/default/files/NoticeComment/Comments%20by%20Professor%20James%20J%20Angel%20PhD%20CFP%20CFA%20on%20Modernizing%20FINRA%20Best%20Execution%20Guidance%20Reg%20Notice%2026-15.pdf>, at 2, 6–9 (“Angel Letter”).

execution beyond the “best bid and offer.” It can also preserve the flexibility needed to innovate while providing guideposts that can keep the duty robust and enforceable.

As a steward of the U.S. capital markets, Nasdaq has a strong institutional interest in investor protection, which is the foundation of the trust and confidence on which well-functioning markets depend. Nasdaq operates national securities exchanges, listing markets, market data facilities, and technology infrastructure that serve investors, issuers, and market participants. Nasdaq has previously engaged with the Commission on these issues, including in connection with proposed Regulation Best Execution.⁶

Nasdaq’s exchanges are not FINRA members and are not subject to Rule 5310. Nasdaq has reviewed the comment file, including submissions from market participants, investor advocates, and academics, and offers these proposals as a framework to be weighed alongside members’ operational experience. They are a contribution to, not a substitute for, member-specific implementation perspectives.

Rule 5310’s principles-based approach to best execution has accommodated substantial evolution in market structure.⁷ Other commenters support retaining that approach, noting that it has been copied by other jurisdictions and remains adaptable.⁸ Nasdaq similarly recommends retaining the rule text largely as it stands while substantially updating the interpretive guidance last comprehensively addressed in Regulatory Notice 15-46 and reinforced in Regulatory Notice 21-23.⁹

Specifically, Nasdaq recommends that FINRA establish, through guidance, a common framework addressing the following: (i) when and how to address the customers’ own stated execution priorities; (ii) the presumptive priority for best execution in absence of customer preferences (iii) benchmarks for best execution; and (iv) obligations for member reviews of reviews of execution quality. Such a framework should not prescribe a single approach or otherwise constrain execution innovation. Its purpose is to give members a shared and predictable baseline, and to give FINRA a consistent standard against which to examine member conduct.

I. Investor Priorities Framework

Nasdaq recommends that the updated guidance be organized around customer-driven best execution. Different customers legitimately value different attributes of an execution. Customers should be permitted to set individualized priorities, which may include price, speed, certainty of fill, size, protection against information leakage, total transaction cost, venue selection, anonymity, and, as markets evolve, on-chain settlement.

Under this framework, brokers would: (i) disclose their best execution approaches and solicit customer feedback; (ii) be duty-bound to execute in accordance with any priorities the customer has identified in lieu of the broker’s default practice; (iii) disclose material conflicts of interest bearing on how brokers will pursue best execution; (iv) advise customers when, in the broker’s professional judgment, customers’ stated execution

⁶ See Regulation Best Execution, Exchange Act Release No. 96496, 88 Fed. Reg. 5440 (proposed Jan. 27, 2023) (the “Reg Best Ex Proposal”).

⁷ See *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 270 (3d Cir. 1998) (en banc).

⁸ See Letter from Douro Labs LLC & Securitize Markets, LLC to Jennifer Piorko Mitchell, Office of the Corp. Sec’y, FINRA (Aug. 11, 2026), https://www.finra.org/sites/default/files/NoticeComment/Douro%20Labs%20-%20FINRA%205310%20Letter%20%28Notice%2026-15%29_0.pdf, at 1 n.1, 6–7, 8–9 n.16, 10–11 (“Douro/Securitize Letter”); Letter from James J. Angel, Assoc. Professor, Georgetown Univ., to FINRA (Sept. 1, 2026), <https://www.finra.org/sites/default/files/NoticeComment/Comments%20by%20Professor%20James%20J%20Angel%20PhD%20CFP%20CFA%20on%20Modernizing%20FINRA%20Best%20Execution%20Guidance%20Reg%20Notice%2026-15.pdf>, at 2, 6–9 (“Angel Letter”).

⁹ See FINRA, Regulatory Notice 15-46, Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets (Nov. 2015) (“Notice 15-46”).

priorities are misguided, contrary to their interests, or unattainable; and (v) continue to exercise reasonable diligence within the chosen priority space. Customer priorities would thus define the objective of the execution.

II. Default Price Presumption

Where a customer does not express priorities, or expressly defers to the broker's judgment, price should be presumptively predominant. This presumption reflects the factor most investors value most and is consistent with the Commission's historical emphasis on price in Regulation NMS. The presumption should be rebuttable, but only on the basis of an articulable, customer-serving rationale documented in advance—for example, in written order-handling policies—rather than reconstructed after the fact.

Critically, firm interests cannot alone justify inferior pricing. Rebate maximization, payment for order flow, and preference for affiliated venues are not customer-serving rationales and should not, standing alone, rebut the price presumption. A recent SEC finding that a broker accepted less customer price improvement in exchange for higher payment for order flow illustrates the risk.¹⁰ This limitation is essential to ensuring that flexibility from any OPR rescission accrues to investors rather than intermediaries.

III. Venue Standards and Benchmarks

Nasdaq recommends that guidance require affirmative, documented, and transparent venue-selection judgments. Relevant considerations should include available liquidity, historical execution quality, explicit and implicit costs, venue reliability, latency, order types, affiliation conflicts, and net cost. Brokers passing through access fees should route on net cost, without allowing fee or rebate economics to override execution quality.¹¹ Venue selection should reflect a reasoned assessment of these and other relevant factors rather than inertia or economic incentives.

The national best bid and offer ("NBBO") should remain the primary benchmark for NMS stocks during regular trading hours. One commenter argues that the round-lot NBBO can miss meaningful odd-lot liquidity and proposes a size-specific Effective Best Bid or Offer based on displayed lit liquidity, including odd lots. Nasdaq agrees that odd-lot liquidity inside the NBBO matters in many situations and that guidance should permit documented size-adjusted supplemental measures, but the NBBO should remain presumptively preeminent because it is uniformly available from the SIPs. For on-chain markets, qualifying independent reference-price services meeting reliability, transparency, independence, and auditability criteria may be appropriate,¹² but only as a limited exception. Where the NBBO is unavailable or unreliable, members should use documented alternative benchmarks, including for example TWAP, VWAP, midpoint prices, qualifying independent reference-price services, and session-specific trade prices.

IV. Review Obligations, Conflicts, and Order Types

Rule 5310.09 requires members that do not conduct order-by-order review to conduct a regular and rigorous review of execution quality.¹³ Nasdaq recommends calibrating review obligations to conflicts:

¹⁰ See Letter from David Lauer, Co-Founder, We The Investors, to Jennifer Piorko Mitchell, Office of the Corp. Sec'y, FINRA (Sept. 15, 2026), <https://www.finra.org/sites/default/files/NoticeComment/WTI-FINRA-26-15-Comment-Letter.pdf>, at 2–4, 9–10 ("WTI Letter"); Letter from Jason Weisz, Founder, The PipeX, to Jennifer Piorko Mitchell, Office of the Corp. Sec'y, FINRA (Sept. 18, 2026), https://www.finra.org/sites/default/files/NoticeComment/The%20PipeX_Jason%20Weisz_26-15_9.18.2026.pdf, at 5–6 ("PipeX Letter").

¹¹ See FINRA, Regulatory Notice 21-23, FINRA Reminds Member Firms of Requirements Concerning Best Execution and Payment for Order Flow (June 23, 2021); Douro/Securitize Letter, *supra* note 8, at 6–7, 8–9 n.16, 10–11; Angel Letter, *supra* note 8, at 6–9.

¹² See FINRA, Regulatory Notice 21-23, FINRA Reminds Member Firms of Requirements Concerning Best Execution and Payment for Order Flow (June 23, 2021); Douro/Securitize Letter, *supra* note 8, at 6–7, 8–9 n.16, 10–11; Angel Letter, *supra* note 8, at 6–9.

¹³ Rule 5310.09 (Regular and Rigorous Review of Execution Quality).

internalized and affiliated-venue flow should receive order-by-order review, including through automated exception monitoring, while unaffiliated routing should receive documented periodic review at least quarterly.

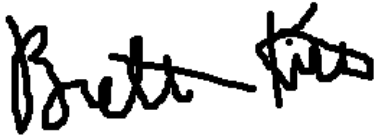
Nasdaq further recommends a safe harbor where execution logic: (i) reflects customer priorities; (ii) is subject to appropriate governance and periodic testing; and (iii) does not permit fee or rebate economics to override execution quality. Such a safe harbor would reward sound design and governance while preserving room for innovation. FINRA would review the execution logic periodically to ensure that it is both appropriate and implemented.

V. Best Execution Enforcement

Finally, Nasdaq urges FINRA to do more to scrutinize best execution, regardless of how it is formulated. We note that on the Nasdaq Stock Market, midpoint liquidity is available for Nasdaq 100 stocks roughly a third of the time each trading day— offering substantial price improvement relative to the NBBO. The presence of such midpoint liquidity demonstrates that even under the existing market structure, brokers often miss opportunities to offer their customers the best available executions. FINRA, in turn, should be doing more to ensure that brokers do so.

Nasdaq thanks FINRA for its consideration of these comments and for its leadership on this important initiative. We would welcome the opportunity to discuss these recommendations with FINRA staff at its convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett Kitt", with a stylized flourish at the end.

Brett Kitt
Nasdaq, Inc.