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Via Email

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

Re: Comment on FINRA Regulatory Notice 26-15

Dear Ms. Mitchell:

Options Xchange Group Inc. ("OX Group") respectfully submits this comment letter in response to FINRA's Regulatory Notice 26-15, requesting comment on modernizing FINRA's Best Execution Guidance ("Regulatory Notice 26-15"). Specifically, OX Group welcomes the opportunity to provide its input in response to questions identified in Item 8 of Regulatory Notice 26-15, relating to the application of best-execution obligations under FINRA Rule 5310 ("Rule 5310") to listed options.

In brief, OX Group urges FINRA to issue guidance tailored to the distinctive structure of the U.S. listed options market, and to confirm that a member's decision about where to send a customer's order is governed by Rule 5310 and reviewed by FINRA, not by any competing exchanges that stand to gain from the answer.

Background

On August 4, 2026, OX Group announced its plans to establish and operate a U.S. listed options exchange business, which will be powered by a new technology platform engineered from the ground up to meet the needs of modern options trading. OX Group looks forward to working with the Securities and Exchange Commission ("SEC") on the required regulatory filings to launch its exchange business.

Although not yet operational, OX Group fully appreciates the important role that U.S. registered exchanges play in the regulation of our markets. One of OX Group's core principles is rational regulation with rules that members can understand and plan for, and guidance furnished at the outset, rather than enforcement used after the fact to set policy.

OX Group expects that its members will be members not only of other U.S. listed options exchanges, but also of FINRA. To that end, OX Group believes that it is important to appropriately calibrate the roles of FINRA and the U.S. options exchanges so as to (i) ensure that the broker-dealer community is not subject to a patchwork of overlapping and potentially inconsistent regulatory requirements, and (ii) eliminate any perception that

exchange groups are using their regulatory arms in an anticompetitive manner. OX Group offers these comments as a prospective exchange operator that would itself be constrained by the position it advocates.

Best Execution and Listed Options

I. Rule 5310 Should Be the Only Self-Regulatory Organization Standard Governing Best Execution in Listed Options

Rule 5310 applies to listed options,¹ and OX Group believes it should be the only self-regulatory organization rule governing best execution. Because all broker-dealers with public customers must be FINRA members, all are subject to Rule 5310 regardless of their exchange memberships. Rule 5310 is therefore the one best-execution standard that reaches every broker handling a customer's options order on identical terms.

Rule 5310 is, at its core, a customer-order handling rule: it requires a member to use reasonable diligence to ascertain the best market for the subject security and to trade there so that the resulting price to the customer is as favorable as possible under prevailing market conditions. The obligation runs from the member to its customer, and is an outgrowth of the common law duties of agency and loyalty.² That framing identifies the only party with a cognizable interest in the outcome: the customer. An exchange is not the customer. Instead, it is a venue competing for the order.

The reason why exchanges should not be responsible for monitoring a member's compliance with best execution is simple: no exchange group should be in a position to dictate whether, or how, its members route orders to a competitor exchange. There are currently nineteen U.S. listed options exchanges, with over 90% of options trading market share concentrated in just four exchange family groups. Every U.S. options exchange today is operated by a for-profit enterprise that competes vigorously for order flow. When an exchange asks whether a member was correct to send some part of a customer's order elsewhere, it poses a question to which it is not indifferent. Exchange groups benefit commercially if the order flow is directed to their own markets.

The more serious consequence, however, is not bias in any individual case but the incentive the arrangement creates for members. A member that receives an inquiry from one exchange group asking it to justify why it sent part of a customer's order to a competitor exchange has every reason to wonder whether the inquiry is regulation or competition, even if it is a well-founded inquiry. A member exposed to such inquiries from several exchanges at once acquires an incentive to resolve close routing questions in

¹ See, e.g., FINRA Regulatory Notice 15-46, Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets (November 2015).

² As the SEC has noted, a "broker's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated implicitly, through judicial and Commission decisions." Securities Exchange Act Release No. 105655 (Jun 11, 2026), 91 FR 36656, 36661 n.73 (June 17, 2026).

favor of the exchanges most likely to ask. That incentive is precisely backwards: the exchanges' regulatory leverage instead of the customer's interest becomes the organizing principle of order routing.

FINRA has no comparable conflict. It operates no listed options market, competes for no order flow, and has no commercial interest in where an order is sent. Its membership includes every broker-dealer that handles public-customer options orders, and it has decades of interpretive and examination experience under Rule 5310 and the infrastructure to apply that rule consistently across all venues rather than one venue at a time.

If an exchange has a best-execution rule, as some have recently added,³ such rule should not only be identical to Rule 5310, but also, such exchange should enter into a plan under Rule 17d-2 under the Securities Exchange Act of 1934 (the "Act") to allocate regulatory responsibility of such rule to FINRA. The requirement for any such rules to be identical in text to Rule 5310 would ensure that a broker-dealer that is a member of both FINRA and one or more exchanges would be subject to a single substantive standard rather than to several that may differ at the margins. Moreover, allocating regulatory responsibility to FINRA under a Rule 17d-2 plan would eliminate not only the possibility of duplicative regulation, but also the conflict that arises when a venue competing for order flow is asked to evaluate a member's decision to send that flow elsewhere.

II. "Unbundling" Rules Should Not Be Converted Into Cross-Market Best-Execution Rules

OX Group's concern is not hypothetical. A parallel line of exchange rulemaking, the options exchanges' "unbundling" prohibitions, is being read in a manner that would accomplish indirectly what an exchange-administered best execution rule would accomplish directly.

Unbundling prohibitions have existed at the options exchanges, in various forms and of varying scope, for some years.⁴ What they have had in common is their orientation: they address what a member does with an order that the member has already decided to send to a particular exchange. None of the exchange filings discussed that their respective rules were intended to address how a parent order may be routed across multiple exchanges. For example, in 2010, one of the filings adopting an unbundling rule stated concerns relating to inflated commissions and fees, distorted trade data, circumvention of

³ See, e.g., Securities Exchange Act Release Nos. 105627 (June 9, 2026), 91 FR 35732 (June 12, 2026) (SR-NYSEArca-2026-59) (Notice of Filing) and 105626 (June 9, 2026), 91 FR 35712 (June 12, 2026) (SR-NYSEAmex-2026-47) (Notice of Filing).

⁴ See, e.g., Securities Exchange Act Release No. 52872 (December 1, 2005), 70 FR 73043 (December 8, 2005) (SR-CBOE-2005-92) (proposing CBOE Rule 4.23, addressing division of an order "for the primary purpose of maximizing rebates of fees") ("2005 Cboe Filing"); Securities Exchange Act Release No. 62667 (August 9, 2010), 75 FR 50013 (August 16, 2010) (SR-NYSEAmex-2010-77) (adopting NYSE Amex Rule 995NY(d)) (the "2010 NYSE Amex Filing").

maximum order size rules, and manipulation of that exchange's own trade allocation methodology.⁵ Each of those examples presuppose that the decision to route to that exchange has already been made.

OX Group has no objection to an unbundling rule applied in that manner. An exchange has a legitimate interest in preventing a member from slicing an order it has chosen to send to that exchange into pieces sized to capture an enhanced allocation entitlement, to manufacture a guaranteed auction participation, or to evade order size limits. That is the policing of conduct on the exchange's own market by the exchange whose market it is.

What OX Group cannot support is the extension of an exchange's unbundling rule to the antecedent question of venue selection. Certain options exchange groups have recently taken the position that where any portion of a parent order is routed to one of their exchanges, the resulting execution supplies a jurisdictional hook over the handling of the entire parent order, including the portions routed to competing exchanges. Those exchanges claim authority to examine whether the member divided the order across multiple venues for a purpose "other than seeking the best execution of the entire order."⁶ Three features of that position trouble OX Group.

First, it converts an intra-market conduct rule into a cross-market best-execution rule. The operative standard, splitting "for any purpose other than seeking the best execution of the entire order," was language that provided an opportunity for a member to justify intra-market unbundling. But based on recent guidance, this exception has been converted to a market-wide best-execution standard and compliance with it cannot be assessed without evaluating the member's routing decisions across every venue to which the order either was sent or not sent. That is a Rule 5310 analysis, but it is now conducted by a competitor of the venues that received the remaining contracts of the parent order. A member's order handling would thus be subject to both FINRA and exchange review, with potentially different outcomes of whether the order handling would be considered violative of one or more rules.

Second, this jurisdictional theory has no natural limit. Each exchange group could claim review authority over a member's entire order-handling process by virtue of receiving any part of a parent order. Because a member of multiple exchanges will, in the ordinary course, send some flow to each of them, every exchange would acquire a claim to review that member's decisions to send flow to competitor exchanges. A routing decision by a member could then be reviewed by several interested exchanges, under standards that may not be identical and would almost certainly not be identically applied.

Third, and most seriously, the position is susceptible to anticompetitive use, and its burden falls most heavily on new entrants. An incumbent exchange group holding both this jurisdictional theory and the "any purpose other than best execution" standard

⁵ See 2010 NYSE Amex Filing, 75 FR at 50013-14.

⁶ See, e.g., "Order Splitting, Order Shredding, or Order Unbundling," NYSE American Options and NYSE Arca Options Regulatory Memo RM-25-07 (August 29, 2025).

possesses a mechanism by which a member's decision to route away from it can be characterized as a rule violation. A member exposed to that risk would rationally reduce the number of venues across which it divides orders and would favor the venues whose regulatory departments it has reason not to provoke. Neither lever is available to a new exchange, which by definition has no established order flow. A rule that raises the cost of trying a new venue is a barrier to entry whatever its label, and Section 6(b)(8) of the Act forbids exchange rules that impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁷

OX Group advances this position notwithstanding that it will itself, subject to regulatory approval, be an exchange operator and would, in time, be among the potential beneficiaries of such a rule. OX Group does not want it. A market structure in which venues compete by building better markets is preferable to one in which they compete by regulating where its members may send order flow.

Dividing an options order across venues is, moreover, frequently what best execution requires. Liquidity in any given option series is distributed across multiple exchanges, and an order larger than the size displayed at the best price on any one of them cannot be filled at the best available prices without being divided among several. That is the ordinary case rather than the exception, and it would remain so under any set of order protection requirements, including none at all. A rule that treats division across venues as presumptively suspect therefore places the member in the untenable position of having to justify, to one exchange, conduct that its duty to the customer compelled.

The remedy is straightforward. Unbundling rules should be confined, by their terms, to conduct within the adopting exchange's own market: the division of an order that a member has directed to that exchange, where the division is designed to obtain an allocation, auction, or order-size advantage there. The antecedent question, how a member divides a customer's order among competing venues in the first instance, should be evaluated solely under Rule 5310, by FINRA.

III. The Equity Market's Experience With "Trade Shredding" Does Not Support the Options Unbundling Rules

The options unbundling rules are frequently described, in exchange filings and guidance, as addressing "trade shredding," with the equity market's anti-trade-shredding rules of 2006 invoked as their antecedent.⁸ The analogy does not hold, and FINRA, whose own rule is the one being invoked, is best positioned to clarify the distinction.

⁷ 15 U.S.C. 78f(b)(8).

⁸ See, e.g., Securities Exchange Act Release No. 104423 (December 17, 2025) (SR-NASDAQ-2025-103) ("Unbundling,' also known as 'trade shredding,' is the practice of breaking up an order into multiple smaller orders ..."). NYSE Arca, Inc. ("NYSE Arca") Rule 11.2(g) traces its origins to equities trade shredding, and expressly limits that rule to its ETP Holders. NYSE Arca has since claimed that its Rule 11.2(g) applies to options trading, but the history of that rule, which was initially only on the

Equity trade shredding based on market data revenue opportunities was a specific arbitrage with a specific payer. The market data plans then in effect allocated revenue among participants principally by counting trades, “no matter how small the size,”⁹ and several self-regulatory organizations rebated that revenue to the members who reported trades to them,¹⁰ so that a member could increase its own revenue allocation, for example, by reporting a customer order of 100 shares as ten prints of 10 shares rather than one print of 100 shares.¹¹ The rule FINRA adopted is drawn precisely to that mechanism: FINRA Rule 5290 (and its predecessor) prohibits splitting an order or an execution “for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person.”¹² The rule is keyed to the member’s own pecuniary gain.

In listed options, that market data revenue predicate does not exist.¹³ OPRA’s net revenues are allocated among the participant exchanges and OX Group is not aware of any U.S. options exchange that shares OPRA market data revenue with its members. A broker that divides a customer’s options order across venues therefore receives nothing additional for having done so in the same way that “trade shredding” behavior previously did in the cash-equities market. Notwithstanding the unique cash-equities market history of trade shredding relating to market data revenue sharing, the vocabulary of trade shredding has been carried across to the options markets.

OX Group requests that FINRA make clear that FINRA Rule 5290 addresses order splitting undertaken for the member’s own monetary gain, that it is not a best-execution rule, and

NYSE Arca Equities, Inc. rulebook, and the plain text of that rule, belies that claim. See Exchange Act Release No. 80929 (June 14, 2017), 82 FR 28157 (June 20, 2017) (SR-NYSEArca-2017-40) (Notice).

⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37503 (June 29, 2005) (“Regulation NMS Adopting Release”) (“The current Plan formulas are seriously flawed by an excessive focus on the number of trades, no matter how small the size, reported by an SRO. They thereby create an incentive for distortive behavior, such as wash sales and trade shredding ...”).

¹⁰ See, e.g., Securities Exchange Act Release No. 45444 (February 14, 2002) (SR-NASD-2002-17) (expanding NASD’s program for sharing market data revenue with members, under which eligible revenue was credited to members based in part on each member’s percentage of total trade reports); Securities Exchange Act Release No. 48914 (December 12, 2003), 68 FR 70550 (December 18, 2003) (SR-BSE-2003-22) (establishing a general revenue sharing program for member firms that included market data revenue).

¹¹ NASD Notice to Members 06-19 (April 2006) (“SEC Approves New Rule 3380, Order Entry and Execution Practices”); see also Securities Exchange Act Release No. 53441 (March 8, 2006) (SR-CHX-2006-03) (observing that “firms might engage in this practice to maximize the market data rebates available to them from self-regulatory organizations”).

¹² FINRA Rule 5290 (Order Entry and Execution Practices).

¹³ See 2005 Cboe Filing, 70 FR at 73044 (“For options trading, CBOE’s members do not have any incentive to engage in this practice because CBOE does not share its market data revenue with its members.”).

that it should not be invoked to support exchange rules that evaluate members' cross-market routing decisions.¹⁴

IV. Further Best Execution Guidance Specific to Listed Options Would Be Useful

Circling back to FINRA's first question under Item 8, whether further best-execution guidance specific to listed options would be useful, OX Group's answer is an unequivocal yes. The listed-options market differs from cash equities in ways that make generalized, equities-derived guidance an imperfect fit.

Every transaction in a listed option must be effected on an exchange. There is no off-exchange venue for options analogous to the cash-equities trade reporting facility. A single underlying may be the subject of thousands of option series, each with its own strike, expiration, and liquidity profile, and quotations are supplied predominantly by registered market makers. Orders are frequently multi-leg or tied to a position in the underlying, and displayed size in any single series is often small relative to institutional order size.

The consequence is that in listed options, the questions Rule 5310 asks, which market, at what price, with what likelihood, and speed of execution, are answered almost entirely by reference to competing exchanges. That makes it especially important that the governing standard be a single, neutral one, and especially problematic for any one exchange group to serve as the arbiter of whether a member answered correctly, for the reasons described above.

OX Group expects that other commenters will provide feedback regarding listed options and Rule 5310 in response to Regulatory Notice 26-15. But similar to the SEC's decision to focus first on cash equities in connection with its proposal to rescind Rule 611 under Regulation NMS and address listed options separately, OX Group recommends that FINRA likewise engage in a stand-alone effort to finalize best-execution guidance for listed options. OX Group would welcome the opportunity to work with FINRA and other interested parties to identify and craft transparent best-execution guidance tailored for the listed options markets.

Conclusion

OX Group appreciates the opportunity to comment on Regulatory Notice 26-15 and commends FINRA for undertaking this review. OX Group recommends that best execution in listed options continue to be governed by FINRA under Rule 5310, both directly and via a Rule 17d-2 allocation plan on behalf of exchanges with a best-execution rule. For the reasons discussed above, the assessment of where a member chooses to send its

¹⁴ OX Group appreciates that there could be potential for Rule 5290 to come into play in the options space if a broker were to receive financial incentives for splitting an order that would inure solely to the broker-dealer, and such financial gain were not passed to the customer. But that is a FINRA Rule 5290 analysis, and not a best-execution analysis under Rule 5310.

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customers' orders should remain with the self-regulatory organization that has no stake in the answer.

OX Group further recommends that FINRA provide guidance under Rule 5310 that addresses the distinctive features of the listed options market. OX Group welcomes the opportunity to work with FINRA and other interested market participants to identify the scope of any such guidance so that broker-dealers can operate with clarity regarding their order-routing decisions in listed options.

Respectfully submitted,



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cc: Jamie Selway, Director, Division of Trading and Markets, SEC
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