

From: [Robert Rutkowski](#)
To: [Comments, Public](#)
Subject: Late Comment — Regulatory Notice 26-15 — Modernizing FINRA's Best Execution Guidance
Date: Monday, September 28, 2026 2:44:16 PM

WARNING: External Sender! Exercise caution with links, attachments and requests for login information.

September 28, 2026

Submitted electronically via email to: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority (FINRA)
1735 K Street, NW
Washington, DC 20006-1506

RE: Late Comment — Regulatory Notice 26-15 — Modernizing FINRA's Best Execution Guidance

Dear Ms. Mitchell:

I am submitting this comment in response to FINRA's Regulatory Notice 26-15, published July 24, 2026, which solicited public input on modernizing best execution guidance under Rule 5310. I recognize that the comment period closed on September 25, 2026; nevertheless, I respectfully request that this submission be accepted for the record given the critical importance of these protections for retail investors.

My comments draw heavily on analysis from Better Markets and related investor advocacy research regarding deficiencies in current best execution frameworks. I urge FINRA to strengthen Rule 5310 guidance in five key areas:

1. MANDATE ORDER-BY-ORDER BEST EXECUTION ANALYSIS

Current Rule 5310 permits firms to satisfy their best execution duty through periodic aggregate assessments conducted quarterly. As Better Markets emphasized in their SEC comment filings, this standard mirrors how the SEC described minimum broker obligations in 1979—forty-five years ago. Periodic reviews cannot identify individual execution failures or hold firms accountable when specific orders are routed to inferior markets in exchange for payments for order flow.

An order-by-order best execution requirement would better ensure brokers actively seek optimal prices for each customer transaction. This approach aligns best execution obligations with modern market complexity and investor expectations that their trades execute at the most favorable available prices.

2. ADDRESS PAYMENT FOR ORDER FLOW (PFOF) STRUCTURAL CONFLICTS

PFOF arrangements create inherent conflicts between broker profitability and customer best execution obligations. Academic and regulatory research demonstrates that PFOF venues consistently produce worse execution prices for retail clients. Multiple jurisdictions—including the United Kingdom, Canada, and the Netherlands—have prohibited PFOF precisely because it "inappropriately incentivizes investment firms to select the party offering the highest payment, rather than the party offering the best possible outcome for clients" (ESMA, 2022).

FINRA's modernized guidance should require:

- Enhanced disclosure of net payments received from market makers, broken down by order type and executable on a customer-by-customer basis
- Mandatory routing comparison demonstrating that PFOF arrangements do not compromise execution quality versus competing markets
- Supervisory procedures specifically addressing how firms manage PFOF-related conflicts in real-time order routing decisions

Without addressing these conflicts directly, enhanced best execution guidance will remain theoretical rather than practical.

3. REQUIRE RIGOROUS REVIEWS ON A TYPE-OF-ORDER BASIS

As FINRA's own 2021 and 2024 examination reports documented, common compliance failures include:

- Failure to compare execution quality against competing markets
- Inadequate review of certain order types (market orders, marketable limit orders, non-marketable limit orders)
- Routing logic disconnected from execution quality metrics

Modernized guidance must mandate security-by-security, type-of-order analysis with specific performance benchmarks. Firms should be required to modify routing arrangements when material execution quality differences are identified—and provide documented justification when they choose not to.

4. CLARIFY BEST EXECUTION OBLIGATIONS DURING EXTENDED HOURS TRADING

Extended hours trading continues expanding for retail investors, yet execution quality protections during pre-market and after-hours sessions remain unclear. Given that liquidity is reduced and volatility typically elevated outside standard trading hours, best execution obligations become even more critical—not less. FINRA should explicitly affirm that Rule 5310 applies equally regardless of when orders are received or executed.

5. ANTICIPATE MARKET STRUCTURE CHANGES AND TECHNOLOGICAL EVOLUTION

The SEC has proposed rescinding Reg NMS Rule 611 (the trade-through prohibition) and Rule 610(e) (restrictions on locked and crossed quotations). If adopted, these changes could significantly alter competitive dynamics across execution venues. FINRA's modernized best execution guidance should proactively

fill any regulatory gaps that might emerge.

Additionally, emerging technologies—including AI-driven order routing algorithms and tokenization platforms—require specific guidance on how best execution obligations apply to novel execution venues and automated decision-making systems. Firms deploying such technologies should demonstrate how their systems satisfy the reasonable diligence standard under Rule 5310.

CONCLUSION

There should be nothing controversial about asserting that brokers must attempt to ensure investors receive the best prices available for their securities trades. Such a duty is fundamental to a broker's role in the securities markets. After fifty years, FINRA has an opportunity to modernize Rule 5310 guidance to reflect market evolution, close regulatory gaps, and strengthen investor protections.

I request that FINRA consider these recommendations substantively and provide detailed responses to the questions raised in Notice 26-15 that advance retail investor protection rather than merely preserving the status quo. The credibility of best execution as an investor protection principle depends on meaningful implementation—not aspirational guidance that allows decades-old practices to continue unchecked.

Thank you for your consideration.

Respectfully,
Robert E. Rutkowski

[REDACTED]