

September 25, 2026

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

Re: Request for Comment on Modernizing FINRA's Best Execution Guidance

Dear Ms. Mitchell:

Simplex Trading, LLC ("Simplex" or "the Firm") appreciates the opportunity to submit these comments regarding FINRA's best execution guidance under Rule 5310 and applauds FINRA for modernizing its guidance to reflect the realities of today's marketplace. Simplex, a leading proprietary options market-making firm, is particularly interested in ensuring that any new FINRA guidance protects options investors by allowing robust competition for order flow and eliminating barriers to competition that can arise from certain order routing practices that pervade the existing market.

Background

In Simplex's view, FINRA's guidance is badly needed to address order routing and execution practices that currently pervade the listed options markets. To understand why, it is helpful to first understand the evolution of the listed options market structure.

The retail order flow that is central to the concerns of best execution is a significant part of the options market. That order flow, which originates from non-professional investors who enter options orders through retail brokers, is almost never executed in the market by the broker that has a direct relationship with the retail investor. Instead, retail brokers sell the rights to direct retail order flow to the market for execution to "wholesale" or "routing" brokers, a transaction commonly known as payment for order flow ("PFOF"). It is economically rational for routing brokers to pay for the right to direct retail order flow to the market because routing strategies can increase the likelihood that retail orders are filled by particular market-making firms. This is valuable to market makers because, as the Securities and Exchange Commission ("SEC") has recognized, "[r]etail customer options orders are considered the most profitable because these orders are often 'uninformed,' and specialists and market makers can profit from the spread or gain valuable market trend information from aggregate customer options order flow."¹ PFOF thus impacts the handling of a significant component of the options market.

¹ Sec. and Exch. Comm'n, Special Study: Payment for Order Flow and Internalization in the Options Markets (2000).

Because routing brokers control how retail order flow reaches the options market, these brokers have over time developed affiliate relationships with market makers that generate revenue by trading against (or “internalizing”) retail order flow. The exact legal structure these relationships take can vary by firm, as some routing brokers are part of the same corporate family as a market-making firm while others have contractual relationships, but the essential similarity between these relationships is that routing brokers increase the likelihood that their affiliated market maker will internalize retail order flow, generating the revenue that finances the PFOF paid to retail brokers.

Today, the options market is dominated by a small number of routing brokers and affiliated market-making firms that internalize retail options order flow. These affiliated market-making firms use diverse methods including, among other things, unbundling parent orders and routing the resulting child orders to multiple exchanges for the purpose of increasing internalization. Routing brokers may also direct retail orders to exchanges where their affiliated market maker may receive a guaranteed allotment under exchanges’ designated market maker (“DMM”) or similar programs. These practices allow market makers to internalize retail orders at the prevailing national best bid or offer (“NBBO”), even if other market participants may have been willing to provide price improvement to a given order. The current market structure is based on PFOF and internalization and thus incentivizes the affiliated market-making firms to compete for order flow from retail brokerage firms by trading off price improvement to customers against their own profits.

This market structure has thrived because FINRA and the exchanges have not provided meaningful guidance regarding the practice of information sharing between market makers and their affiliated routing brokers. Systematic internalization is only possible because the decisions of routing brokers can be informed by information from affiliated market makers, including where their affiliated market makers are resting quotes in the market. FINRA and the exchanges have not prohibited the widespread and longstanding use of such information in routing decisions and have not specified what types of information market makers may or may not share with their affiliates.

This regulatory void has led market participants to understand that market makers are free to share information with their affiliated routing broker. As a result, market makers have adopted a variety of practices, which appear to include the sharing of information such as theoretical pricing and risk modeling (in addition to the location and queue priority of their resting quotes and orders) with their affiliated routing brokers, all in service of internalizing retail order flow. Because this permitted information sharing allows routing brokers to direct orders to the market with a high degree of certainty that their affiliated market maker will internalize them, other market makers have limited ability to compete for those orders. Thus, the flow of information from market makers to routing brokers, combined with the ability to internalize at the NBBO through practices such as unbundling and DMM allocations, has reduced market makers’ incentives to display their most competitive quotes.

The exchanges’ economic incentives to attract order flow have exacerbated this dynamic. Each exchange controls the allocation of its DMM assignments, and the processes through which those allocations occur have historically been opaque to the public and insulated from meaningful competitive pressure. Although some exchanges have taken steps to enhance the competitiveness of these allocations, many valuable DMM assignments are still distributed through legacy practices. The academic literature has revealed the predictable result: the exchanges have

increasingly concentrated DMM assignments in a small number of very large incumbent firms.² Similarly, exchanges are able to adopt rules permitting routing brokers to route customer orders to preferred market makers that are entitled to participate in the execution of those orders even if they are not first in the queue at the prevailing NBBO. Because routing brokers control the distribution of retail order flow across exchanges, exchanges are incentivized to adopt rules that reward the brokers that route orders to them by allowing their affiliates to internalize retail orders even if they do not have queue priority. The exchanges' economic incentives to attract order flow have created an almost insurmountable barrier to entry that insulates the market share of a small number of dominant incumbents from competitive pressure.³

Critically, this outcome does not require any agreement or coordinated intent among separate, competing market participants. The market for retail options order flow is dominated by a small number of routing brokers whose affiliated market makers hold a concentrated share of DMM assignments, and that order flow is internalized through mechanisms that are already widely believed to be permitted, including intentionally routing to take advantage of DMM allocations, preferenced order allocations, affiliated market maker queue priority, and small order entitlement rules. Other market participants who would otherwise provide price improvement to these orders never have a meaningful opportunity to do so, which reinforces the barrier to entry that insulates incumbent market makers' share of order flow from competitive pressure.

Considering these dynamics, it is little wonder that the SEC recently found that the number of market makers deriving revenue from options market making has substantially decreased, while at the same time effective spreads for most equity options have increased. For example, between 2012 and 2025, the number of broker-dealers reporting revenue from options market making shrank by roughly fifty percent, from 98 to 51.⁴ Over the same period, effective spreads in equity options for all but the 10 most liquid underliers increased by anywhere from 0.4% to 1.5%.⁵ The most obvious explanation for this confluence of events—increasingly dominant market share by a small handful of incumbents with built-in internalization advantages facilitated by the exchanges, and, at the same time, increasing effective spreads—is that the form of competition embraced by the current market structure reduces the incentives for market participants to meaningfully compete on price by tightening quoted spreads. The time is thus ripe for FINRA to take action to restore meaningful on-exchange competition to the listed options markets.

² Thomas Ernst, Chester Spatt, *Payment for Order Flow and Option Internalization*, The Review of Financial Studies (2026) (finding that “[t]he four largest PFOF-paying wholesalers . . . are also the four largest holders of DMM seats, collectively holding 83% of the DMM assignments,” while “[t]he top two firms alone . . . hold 59% of DMM seats”). These numbers have become even more skewed since the article, as one of the four largest PFOF-paying wholesalers subsequently acquired the DMM assignments of another. See, e.g., Cboe, [*Citadel Securities LLC Appointed DPM in Classes to Which Morgan Stanley and Co. LLC Was Previously Appointed DPM*](#).

³ See, e.g., Ernst and Spatt at 5 (finding that two incumbents “which buy over 70% of retail option order flow also control 60% of DMM positions,” and “[a]ny entrant into retail option market making will have far less access to the DMM internalization privilege, if any, compared to the current top two retail option market makers, imposing a barrier to competition”).

⁴ [*Roundtable on Options Market Structure Supporting Data*](#) at 9.

⁵ *Id.* at 14.

IX. Listed Options

8.a. Do commenters believe that further best execution guidance specific to listed options would be useful? If yes, what specific scenarios do firms believe exist with respect to order handling, routing and execution in the listed options market that the guidance should address (e.g., unbundling)?

FINRA should change the current market structure by updating its best execution guidance to help enhance competition in the options marketplace. Going forward, FINRA should presume that order routing practices motivated in whole or in part by a desire to internalize order flow violate a routing broker's duty of best execution. Although there may be certain circumstances in which internalization is presumptively consistent with best execution (including when done via price improvement auctions), FINRA should adopt a presumption of a best execution violation that applies to all other circumstances in which a routing broker is influenced by a desire to internalize order flow, including unbundling and routing to exchanges where the routing broker's affiliate receives preferential execution allocations, whether through DMM appointments or otherwise. The Firm offers more specific comments regarding several practices below.

Unbundling

FINRA should update its best execution guidance to provide that unbundling orders for the purpose of increasing internalization (rather than delivering price improvement) is presumptively a violation of the duty of best execution. As the Firm is using the term, unbundling refers to the practice of a routing broker dividing a parent order into multiple smaller orders which it then routes to multiple exchanges at the NBBO. Routing brokers can be incentivized to engage in this behavior because their affiliated market-making firms can internalize these orders through DMM allocations, preferenced order allocations, or simply by routing to the exchange where they know their affiliated market maker has a resting quote first in queue at the top of the order book. However, the practice does not deliver any benefit to the retail investor whose order is unbundled, who does not receive any opportunity for price improvement. Simplex believes that the practice of unbundling the orders of retail investors for the benefit of affiliated market makers reduces opportunities for price improvement for those orders.

FINRA should also update its guidance regarding how best execution should be evaluated for internalized orders. Currently, best execution is evaluated in the aggregate, based on the total benefit brokers provide to customers for categories of executions. That standard should change. FINRA should state that, going forward, a firm may not justify unbundling—or other routing strategies that maximize internalization at the expense of price improvement—on the ground that the revenue those strategies generate could be redeployed as price improvement on other trades. The anticompetitive risk of unbundling in the options market is directly analogous to the anticompetitive risk associated with a dealer in the equities market internalizing orders off exchange from its own inventory. In both cases, the market maker's opportunity for internalization is effectively insulated from competitive forces, and the retail investor is denied any opportunity for price improvement. As a result, FINRA should require options market makers that engage in

unbundling to demonstrate that they have complied with their duty of best execution for each unbundled order, just as it has previously done in the case of off-exchange equity internalization.⁶

8.d. As the SEC noted in its proposal to rescind Rule 611 and the locked and crossed provisions of Rule 610(e), which are only applicable to NMS stocks, listed options have their own rules prohibiting trade-throughs and locked and crossed markets, as set forth in the Options Order Protection and Locked/Crossed Market Plan. If these requirements for listed options were to be modified or eliminated, do commenters believe additional or modified best execution guidance for listed options would be required?

Trade-Throughs in the Simple Options Market

FINRA should publish new guidance establishing that it is a presumptive violation of a routing broker's duty of best execution to obtain a fill of a customer order at a price that is inferior to the prevailing NBBO based on the information the routing broker possessed at the time it received the order (assuming there was sufficient size at the prevailing NBBO to fill the customer order at the time it was received).

In general, Simplex believes that filling a customer order at a price worse than that which was available at the time the routing broker received the customer order presumptively demonstrates unnecessarily inefficient order routing behavior. Routing brokers generally should be able to guarantee their customers no worse than the liquidity available at the prevailing NBBO at the time they received the order. To the extent that a routing broker does not meet that standard, it should be prepared to demonstrate a legitimate pro-competitive reason for that result. FINRA should clarify that a desire to internalize an order is not a legitimate pro-competitive reason to fill a customer order at a price inferior to the NBBO at the time the order reached the routing broker.

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Simplex appreciates the opportunity to comment on Regulatory Notice 26-15 and applauds FINRA for updating its best execution guidance to ensure a competitive options marketplace.

Sincerely,

/s/ Dennis Kerlin

Simplex Trading, LLC

⁶ See FINRA Regulatory Notice 21-23 ("As discussed more fully in *Regulatory Notice 15-46*, order-by-order review of execution quality is increasingly possible for a range of orders in equity securities and standardized options, and it is required for any orders that a member firm determines to execute internally.").