

September 18, 2026

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

Re: Regulatory Notice 26-15 — Best Execution (Rule 5310)

Dear Ms. Mitchell:

I write in response to Regulatory Notice 26-15. I am the founder of The PipeX (www.thepipex.com), which is developing trading infrastructure for follow-on offerings and resales of restricted and control securities. I hold issued United States and Canadian patents in this field and intend to operate in it. I state that interest at the outset so that FINRA can weigh this letter accordingly. I have commented previously on related questions, including a January 8, 2020 letter to the Securities and Exchange Commission on File No. S7-08-19 and a March 18, 2021 letter to Senator Patrick Toomey of the Senate Committee on Banking, Housing, and Urban Affairs.

The Notice requests comment on “all aspects of the rule and related guidance” and welcomes comment “more broadly on any topics related to best execution that members believe may require modernization or clarification.” It also observes that best execution obligations apply “broadly to transactions in any security” and invites comment on guidance for “any other specific types of securities.” This letter responds to those invitations. It concerns a category of member activity on which Rule 5310 and its guidance are silent, and which a modernization of the rule should address: private placements of securities by public companies, negotiated against a public market, effected through a member acting as placement agent. Where a point responds to a numbered question in the Notice, I identify it.

1. The transaction

In a PIPE or comparable private placement, a company whose stock is publicly quoted sells newly issued securities to selected investors in an exempt transaction. The member engaged as placement agent identifies the investors, negotiates the terms, and closes.

The terms vary widely. Common stock may be sold at a discount to a public reference, at the market, or occasionally at a premium. A substantial share of the volume is not common stock at all: convertible notes and preferred with fixed or variable conversion prices, reset provisions and floors; equity lines and standby purchase facilities drawn down over time; and structures carrying warrant coverage, registration rights, anti-dilution protection or participation rights.

What these structures share is that the economics are established by bilateral negotiation between the agent and a small number of investors the agent has selected, and that the public quotation constrains them only loosely. A headline price at or near the market tells an observer very little when the warrant coverage, the conversion mechanics or the reset supplies the actual concession. No process tests any of it.

Question 1(g) asks whether FINRA should clarify the “prevailing market conditions” that affect execution, including “reference price reliability.” That concept is central here. The reference price for a placement is typically a recent closing or volume-weighted price in a security that may trade thinly, and the terms are then set by adjustments to that reference that no market tests. Supplementary Material .06 already recognizes that some securities have limited quotations or pricing information, and Question 1(d)(iii) acknowledges that members transact in OTC equity securities without a consolidated quote. A placement priced off such a reference inherits that uncertainty and adds a negotiated concession on top of it.

The absence of such a process is not confined to public companies. But the presence of a public quotation that constrains the terms only loosely makes the condition particularly anomalous here, and I confine my comment accordingly.

2. No FINRA rule tests the price

Rule 5310(a)(1) applies “[i]n any transaction for or with a customer,” and the Notice states that the rule “thus applies to transactions with all customers.” An issuer that engages a member as placement agent is plausibly that member’s customer under Rule 0160(b)(4), and a placement is plausibly a transaction for that customer. Read alone, the scope language is broad enough to reach these transactions.

The operative obligation, however, is to “ascertain the best market for the subject security and buy or sell in such market.” That mechanism presupposes a secondary market in which an order can be routed and alternative venues compared. A private placement is a primary issuance: no order is routed, no alternative venue exists to be ascertained, and the security is created at the negotiated price rather than executed against displayed interest. I therefore do not read Rule 5310, as now written, to impose any operative obligation on a placement agent with respect to price, and I am not aware that FINRA has taken the position that it does. The question is open, not settled.

Nor does anything else reach the price. Rules 5122 and 5123 require notice filings of offering documents; they do not address terms. Rule 2111 and Regulation Best Interest govern recommendations to investors; they speak to whether the investor should buy, not to whether the issuer sold well. Rule 2010 is available in an egregious case but supplies no standard.

The result is that the single most consequential term in a recurring class of transactions in publicly traded securities is governed by no articulated standard at all.

3. The member is frequently on both sides

A placement agent is typically engaged and compensated by the issuer. The issuer's interest is the least dilutive terms obtainable.

The same agent, however, generally sources the investor side from a recurring group of funds with which it maintains an ongoing relationship and from which it expects future participation. Those investors' interest is the opposite. The agent's compensation, a percentage of gross proceeds, is largely insensitive to the terms and therefore aligns weakly with the issuer.

This is not an allegation of misconduct. It is a description of the ordinary structure of the transaction, and it is well understood by participants. The point is that the conflict is managed entirely by disclosure and reputation, with no reviewable record of what alternative terms were available.

That absence is the operative problem. Because the placement is offered only to the investors the agent approaches, there is no record of interest that was never solicited. If capital was available on materially better terms — a tighter discount, less warrant coverage, no reset — nothing in the file would show it. Neither the issuer, nor its board, nor an examiner could establish otherwise.

Question 1(j) asks what data FINRA should consider in overseeing best execution compliance. For placements, the answer under current practice is that there is none to consider. The data that matters — which investors were approached, what each indicated, and on what terms — is not required to be created, and generally is not.

4. A related condition drives discounts wider

Discounts in these transactions are also a function of exit risk. Following FINRA Notice 09-05 and the response of clearing firms to it, members substantially withdrew from accepting restricted certificates. An investor who cannot model a resale discounts the entry to compensate. The pricing problem described above and the resale problem I raised in 2020 and 2021 are connected: illiquidity downstream is paid for by the issuer's existing shareholders upstream, in the form of a wider discount.

5. Recommendation

I urge FINRA, in modernizing Rule 5310, to state whether any execution-quality obligation attaches to a member acting as placement agent in a private placement of securities that have a public market, and if so, what it requires.

I recognize that extending best execution doctrine to primary issuance would be a significant step and that the rule was not written for it. FINRA may reasonably conclude it does not belong there. But the question should be answered rather than left in its present condition, where the rule is silent, members vary widely in practice, and issuers have no basis on which to evaluate the service they received.

If FINRA does address it, I would suggest the standard be evidentiary rather than substantive — directed at what the member must be able to show, not at the pricing parameters of the transaction. The Notice itself, at Question 1(i), contemplates treating “executions pursuant to documented regular and rigorous methodologies” as meeting a firm's obligations. The same principle fits here. A member that documents having exposed the placement to a meaningful population of potential investors, through a registered alternative trading system or other electronic venue capable of recording expressions of interest, would have a record against which the resulting terms can be evaluated. A member that approached four familiar funds by telephone would not. Neither outcome would be prohibited; only

one would be reviewable.

Pricing tests for placements in public securities already exist. Canada's principal exchanges limit the discount at which listed issuers may price private placements, and Nasdaq Rule 5635(d) requires shareholder approval for large issuances below a defined minimum price. Issuers quoted over the counter face no comparable test.

I recognize the obvious objection. Question 3(d) identifies information leakage as a legitimate customer consideration, and placements are conducted confidentially for exactly that reason: premature knowledge of a pending issuance invites short selling ahead of pricing. An evidentiary standard does not require public exposure. Exposure can run to participants brought over the wall under confidentiality agreements, on a venue that logs who was shown the terms and what each indicated. The confidentiality of the process is unchanged; what changes is that a record of it exists.

Nor would this be foreign to the Notice's own framework. Question 4(f) asks how request-for-quote platforms should be treated for best execution purposes; an RFQ platform is, in substance, a venue that records solicited interest. Question 4(e) acknowledges that price-oriented standards strain when applied to pre-negotiated block trades. A private placement is among the most negotiated transactions a member handles, and the guidance FINRA develops in answering those questions may extend to it with little modification.

Nor would electronic intermediation in exempt offerings be a novel imposition. The Commission has already required that offerings under Regulation Crowdfunding be conducted exclusively through a single registered intermediary's electronic platform. Whatever the original rationale, that requirement demonstrates the approach is administrable and has operated for a decade without proving unduly burdensome.

Separately, I have previously proposed that Form D be filed in advance of an offering rather than after the first sale, so that a pending placement in a public security becomes known to all market participants rather than only to those approached. That recommendation is directed to the Commission, not to FINRA, and I note it only so the record is complete. Nothing in this letter depends on it.

6. Conclusion

Private placements by public companies occupy an unusual position: exempt transactions in securities with a public market, priced off that market, intermediated by members, and touched by no rule that examines the price. Whatever FINRA concludes about the reach of Rule 5310, the modernization of the rule is the appropriate occasion to say so plainly.

I would add one observation about direction. If the Commission's pending registered offering proposal is adopted, some financing that now takes the form of a private placement will move to registered offerings. For smaller issuers, however, a registered offering is commonly paired with a concurrent private placement of warrants, and it is often the warrant coverage, negotiated privately, that supplies the concession. Registering the shares does not bring the warrants under any pricing standard. The gap this letter describes would therefore not close as registered access expands. It would move into the warrant, and the issuers most exposed to it would be those the proposal leaves behind.

I appreciate the opportunity to comment and am available to discuss.

Respectfully submitted,

Jason Weisz

Founder

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