

Dear Ms. Asquith:

Scottrade, Inc. appreciates the opportunity to comment on proposed Rule 5310 dealing with members' best execution obligations. Scottrade has the following comments about the Rule in its current form. Specifically:

- Paragraph .08(b) of the accompanying Interpretive Material contains a list of factors that a member should consider when reviewing and comparing execution quality. We offer the following comments about this section:
 - o We believe that the traditional non-price factor of "efficiency of execution" has been excluded in FINRA's attempt to codify existing interpretations. The guidance about regular and rigorous review in NASD Notice-to-Members 01-22 specifically quoted a paragraph from the SEC's order handling rules release. One of sentences in that release said that "[t]he traditional non-price factors affecting the cost or efficiency of executions should also continue to be considered". Scottrade believes that this is an important component of regular and rigorous review. As a practical matter, efficiency of execution takes into account many sub-factors of an operational nature, including reliability of systems and service, stability of order routing destinations' platforms, capacity and scalability, load balancing for risk management, speed of recovery from an outage, performance and communication during outages, quality of connectivity, promptness in dealing with exceptions, quality of reconciliation and P&S services, support and back-up services, and history of unscheduled outages. Non-price factors are a traditional component of a regular and rigorous review. A codification of the factors that go into a regular and rigorous review would be inaccurate without including "efficiency of execution" and its sub-factors. Scottrade suggests that factor (6) be modified to read, "effects on costs or efficiency of execution."
 - o Factors dealing with speed, size of order and transaction cost are currently modified by the qualifier "materially." The factor as described in NTM 01-22 says, "[o]ther material differences in execution quality such as the speed of execution, size of execution, and transaction cost[.]" The proposed rule eliminates this materiality standard without explanation. We believe that this standard should be retained. If FINRA is trying to alter the substance of an existing interpretation, it should at a minimum describe its rationale in making such a change.
- Paragraph .01 of the accompanying Interpretive Material states that "a member must make every effort to execute a customer market order that it receives promptly and fully". We agree that members have an obligation to execute orders promptly and fully. However, we believe that the time at which a firm "accepts" a market order should start the clock for the purposes of fulfillment and measurement of best execution obligations, particularly in the online brokerage sector. Online brokers (and non-online brokers) usually have a series of controls

that are engaged upon receipt of an order to comply with regulations and mitigate firm risks. These include tests to ensure that locate requirements are met, ensure that funds are available for payment, ensure that the order is valid or not a duplicate order, tests to verify large orders, etc. We believe that the Material could be clarified by either defining “receives” as the time at which an order is accepted by the member, acknowledging that the term “receipt” takes such considerations into account, or by changing the Rule’s language to state that market order handling responsibilities begin once an order is accepted by the member.

- We have some concerns about the practical application and enforcement of Proposed Rule 5310(f)(1)(D). The Proposed Rule requires members to obtain consent of customers regarding the member’s policies and procedures regarding handling of orders for non-US traded securities. We believe that it would be more appropriate for the Rule to require members to *disclose* such practices to its customers at the time of account opening and on an annual basis, as opposed to requiring *consent*. Our concern is twofold. First, a uniform practice of disclosing order routing and handling practices already exists. Rules 606 and 607 require ongoing disclosure of order routing practices. We believe that a similar standard could exist with regard to the routing and handling of orders for non-US traded securities that would allow members to describe its practices in full in one medium, which would provide full disclosure to the public regarding order routing practices and be less burdensome to members. Secondly, while Endnote 4 of Notice to Members 08-80 further elaborates that “a firm could receive its customers’ consent in any reasonable manner, including negative written consent”, we are concerned that the reasonableness standard could be interpreted and applied differently by different examining authorities in different contexts.

Scottrade appreciates FINRA taking its views into consideration when drafting the final version of the Rule, and would welcome the opportunity for further discussion or clarification.

Sincerely,

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