September 25, 2026

Via Electronic Submission

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1700 K Street, NW
Washington, D.C. 20006

Re: Regulatory Notice 26-15: Modernizing FINRA's Best Execution Guidance

Dear Ms. Mitchell:

MFA[1] appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("**FINRA**") Regulatory Notice 26-15 requesting comment on modernizing FINRA's guidance concerning the duty of best execution under FINRA Rule 5310 ("**Notice**").[2]

The Notice arrives amid significant uncertainty regarding the future structure of the U.S. equity markets. The Securities and Exchange Commission ("**SEC**") has proposed to rescind Rules 611 and 610(e) of Regulation NMS, provisions that have shaped routing practices, venue-connectivity decisions, and the role of the national best bid and offer ("**NBBO**") for nearly two decades.[3] MFA has urged the SEC not to proceed without further analysis of the implications for market quality and the broader regulatory framework.[4]

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1 Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 FINRA Regulatory Notice 26-15, Best Execution: FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance (July 24, 2026), available at: https://www.finra.org/sites/default/files/2026-07/Regulatory-Notice-26-15.pdf.

3 Proposed Rule, The Trade-Through Rule and Locked and Crossed Markets Provision of Regulation NMS, Rel. No. 34-105655 (June 11, 2026), 91 Fed. Reg. 36656 (June 17, 2026), available at: https://www.govinfo.gov/content/pkg/FR-2026-06-17/pdf/2026-12163.pdf.

4 *See* Letter from Jennifer W. Han, Chief Legal Officer & Head of Global Regulatory Affairs, MFA, to Ms. Vanessa Countryman, Secretary, SEC (Aug. 17, 2026), available at:

Because the contours of the future market structure remain uncertain, it is difficult to determine what revisions to FINRA's best-execution guidance ultimately may be necessary or appropriate. Some of the recommendations in this letter therefore necessarily depend on whether Rule 611 remains in place. FINRA is asking commenters to assess potential changes to best-execution guidance without knowing the market structure in which that guidance ultimately may operate.

Against that uncertain backdrop, MFA supports FINRA's preliminary view that Rule 5310's principles-based framework remains appropriately calibrated. Its reasonable-diligence standard permits firms to consider the facts and circumstances of each order, which is particularly important for institutional orders, where price may need to be evaluated together with liquidity, market impact, information leakage, execution certainty, speed, and transaction costs.

I. EXECUTIVE SUMMARY

In light of the uncertainty regarding whether and how the SEC will alter equity market structure, MFA respectfully recommends that FINRA:

- Maintain Rule 5310's principles-based, facts-and-circumstances framework and avoid prescriptive routing, connectivity, or price-improvement mandates.
- Confirm that a firm may consider the total execution outcome, including liquidity, market impact, information leakage, execution certainty, speed, and transaction costs, rather than price alone.
- If Rule 611 is rescinded, clarify that firms may make and periodically review reasonable venue-connectivity decisions based on relevant factors, including quotation accessibility, execution quality, liquidity, operational considerations, costs, and customer objectives
- Recognize the NBBO as an important, but not dispositive, benchmark where a quotation is not practically accessible or another benchmark is appropriate to the order and customer objective.

II. DISCUSSION

A. FINRA Should Preserve a Principles-Based Best-Execution Standard.

FINRA should retain Rule 5310's reasonable-diligence standard and modernize its guidance through non-exclusive factors and examples rather than categorical requirements.[5] As MFA observed in commenting on the SEC's proposed Regulation Best Execution, an additional or overly prescriptive standard risks creating uncertainty, operational burdens, and potentially conflicting obligations. FINRA's existing rule already

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https://www.mfaalts.org/wp-content/uploads/2026/09/MFA-Comment-Letter-on-Rule-611-Proposal-As-submitted-8.17.26.pdf.

[5] *See id.; see also* Letter from Jennifer W. Han, Chief Legal Officer & Head of Global Regulatory Affairs, MFA, to Ms. Vanessa Countryman, Secretary, SEC (Mar. 30, 2023), available at: MFA-SEC-Market-Structure-Comment-Letter-As-submitted-3.30.23.pdf.

identifies relevant factors beyond price, including market character, transaction size and type, the number of markets checked, quotation accessibility, and customer order terms. The Notice likewise identifies execution-quality considerations including price improvement, fill likelihood, speed, size, transaction costs, and customer needs and expectations.

FINRA should build on that framework. Best execution does not necessarily mean execution at the best displayed price viewed in isolation. For a large institutional order, accessing a displayed quotation may reveal trading interest, increase market impact, or reduce the likelihood of completing the overall parent order. In other circumstances, speed or certainty may be more important than marginal price improvement. Updated guidance should expressly recognize that firms may weigh these considerations in good faith based on the order and prevailing market conditions.

FINRA also should avoid treating any technology, routing methodology, or venue type as presumptively compliant or noncompliant. The adequacy of a firm's process should depend on its design, inputs, governance, and outcomes, with relevant differences among liquidity sources evaluated under the same flexible standard.

B. Post-Rule 611 Guidance Should Clarify How Best Execution Applies to Venue Connectivity Decisions

If Rule 611 is rescinded, FINRA should clarify how quotation accessibility and venue-connectivity decisions will be evaluated for best-execution purposes. FINRA should provide guidance that recognizes the role of connectivity, quotation accessibility, execution quality, costs, operational considerations, and customer objectives in assessing whether a firm's practices are reasonably designed to achieve favorable customer outcomes.

Guidance should confirm that firms may make and periodically review venue-connectivity decisions using relevant factors such as displayed and executable liquidity, fill rates, quotation accessibility and reliability, latency, order types, access fees and rebates, operational resilience, and the needs of the firm's customers. Conversely, firms should ensure that connectivity and routing decisions are designed to promote favorable customer outcomes and are not driven by the firm's own commercial interests.

These principles also should apply to affiliated venues, subject to appropriate identification and management of conflicts of interest. FINRA should require firms to identify and manage conflicts, compare execution quality against reasonably available alternatives, and ensure that affiliation does not override customer interests. It should not, however, impose a separate routing hierarchy that focuses on venue affiliation rather than execution outcomes.

The NBBO should remain an important benchmark if Rule 611 is rescinded, but it should not be dispositive where a quotation is stale, delayed, unavailable in sufficient size, or not practically accessible. FINRA also should permit firms to use an alternative benchmark appropriate to the order and customer objective, provided the firm documents why the benchmark is appropriate.

C. Guidance Should Better Reflect Institutional Order Handling.

Whether or not Rule 611 is rescinded, any guidance FINRA issues should recognize the differences between retail and institutional orders. Institutional customers frequently submit larger or more complex orders, use algorithmic strategies, negotiate blocks, and provide instructions concerning timing, price, venue, liquidity source, or confidentiality. These customers may prioritize limiting information leakage and market impact, completing a parent order, or achieving a benchmark over obtaining the best displayed price for each child order.

FINRA therefore should clarify that execution quality for an institutional parent order may be evaluated across the order as a whole and over the period in which the order is worked, rather than by evaluating each child execution in isolation. Relevant factors should include the customer's instructions and expectations, order size, urgency, participation rate, market impact, information leakage, fill probability, opportunity cost, and performance against an appropriate benchmark. A child-order execution that does not obtain the best displayed price at a particular instant should not, standing alone, establish a best-execution deficiency where the firm's handling of the parent order was reasonably designed to achieve the customer's objectives.

FINRA also should preserve the distinction between held and not-held orders. Where a customer grants time and price discretion or directs an order to a particular venue, counterparty, RFQ platform, or single-dealer platform, the firm's obligations should be evaluated in light of the customer's instructions and Supplementary Material .08.

D. FINRA Should Modernize Review Standards Without Mandating a Single Methodology.

FINRA's regular-and-rigorous review framework should continue to permit firms to tailor their reviews to their business, customer base, products, and order types. Updated guidance may usefully identify data that firms should consider when reasonably available, but it should not require all firms to collect every data element or use a uniform methodology. Institutional execution quality often cannot be captured through retail-oriented metrics alone, particularly where orders are large, worked over time, or customized.

FINRA should reconsider categorical order-by-order review requirements for internalized orders and clarify when larger orders may appropriately be evaluated through automated or aggregate review methodologies. Automated routing and execution systems can assess prices, liquidity, costs, fill probability, and other factors continuously. A well-designed automated process, combined with periodic aggregate testing and conflict controls, may provide more consistent oversight than a manual review. Guidance should permit firms to demonstrate compliance through documented, risk-based methodologies and outcome testing.

III. CONCLUSION

MFA supports FINRA's effort to modernize its best-execution guidance while retaining Rule 5310's principles-based framework. Any updated guidance should preserve flexibility and appropriately account for institutional orders. If the SEC rescinds Rule 611, the SEC and FINRA should provide a clear, coordinated framework that preserves a principles-based best-execution standard and permits reasonable venue-connectivity decisions based on customer outcomes and the facts and circumstances of the order.

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MFA appreciates the opportunity to comment on the Notice and would be pleased to discuss these comments with FINRA staff. Please do not hesitate to contact Matthew Daigler (mdaigler@mfaalts.org) or the undersigned (jhan@mfaalts.org) with any questions regarding this letter.

Sincerely,

/s/ Jennifer W. Han

Jennifer W. Han
Chief Legal Officer & Head of Global Regulatory Affairs
MFA

cc: The Hon. Paul S. Atkins, Chairman, SEC
The Hon. Hester M. Peirce, Commissioner, SEC
The Hon. Mark T. Uyeda, Commissioner, SEC
Jamie Selway, Director, Division of Trading and Markets, SEC