September 25, 2026

Via Electronic Submission

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

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

Dear Ms. Mitchell:

The American Securities Association (ASA)[1] appreciates the opportunity to comment on Regulatory Notice 26-15, FINRA's request for comment on modernizing its best execution guidance under Rule 5310 (Notice).

I. Overview.

ASA submitted a comment letter to the Securities and Exchange Commission on August 17, 2026, addressing the Commission's proposal to rescind Rule 611 and Rule 610(e) of Regulation NMS[2] (611 Rescission Proposal). This letter responds to the Notice and should be read together with that submission, because the positions ASA takes here were also directly raised with the Commission.

FINRA occupies a unique and consequential position in this rulemaking cycle. The Commission has proposed to remove the trade-through rule that has functioned as the operational backstop beneath FINRA's own best execution standard under Rule 5310 for over two decades. Whatever the Commission decides on Rule 611, member firms will look to FINRA for the day-to-day guidance that determines how they route orders, document compliance, and defend their conduct in examinations and arbitration. FINRA's Notice acknowledges this dynamic directly.[3]

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[1]ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

[2]Letter from Christopher A. Iacovella, President & CEO, American Securities Association, to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission (Aug. 17, 2026) (commenting on Release No. 34-105655; File No. S7-2026-20; RIN 3235-AN50).

[3] FINRA Regulatory Notice 26-15, "FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance" (July 24, 2026), Section C ("Rule 611 and its Relationship to Rule 5310"). "firms have adapted their order handling and routing processes

If FINRA does not finalize its guidance on the same implementation timeline as the Commission, then member firms will be left to operate on their own. That would be a significant inconvenience as firms would be forced to construct ad hoc compliance frameworks and be exposed to inconsistent treatment by examination staff and arbitration panels until FINRA acts.

ASA urges FINRA to treat its rulemaking with urgency and to coordinate the effective date of any amended guidance with the Commission's timeline for finalizing the 611 Rescission Proposal.

This letter addresses four sets of questions raised in the Notice: (1) whether the NBBO should remain an explicit benchmark for best execution (Question D.1.4); (2) whether FINRA should adopt one or more Rule 5310 safe harbors (Question D.1.9); (3) how access fees should factor into best execution obligations in light of the Commission's parallel review of Rule 610(c) (Section 2, Questions 1–4); and (4) how best execution guidance should differ for institutional order flow (Section 4, Questions 1–3).

II. <u>The NBBO Must Remain an Explicit Benchmark in FINRA Guidance (Question D.1.4)</u>.

The Notice correctly observes that, even if Rule 611 is rescinded, the Securities Information Processors (SIP) would continue to publish the NBBO. That is the right starting point, but it is not sufficient on its own. Any FINRA action must commit to treating the SIP NBBO calculation as a benchmark for best execution purposes going forward.

Director Jamie Selway, in his own remarks on the Commission's parallel rulemaking, described the NBBO as essential to promoting fair, efficient, and liquid markets. He stated that decades of Commission oversight of consolidated market data have centered on ensuring that the NBBO remains "ground zero for price discovery and a consistent baseline for best execution."[4]

While the NBBO doesn't need to be legally "protected" under Rule 611 to serve as a reference for best execution, order protection contributes to the reliability of the NBBO today. FINRA should work with the Commission to ensure that the NBBO continues to function as a reliable, shared, and objective reference point for best execution.

Rescinding Rule 611 could also affect the reliability of the NBBO itself, not merely its legal status. Under Rule 600(b)(6) of Regulation NMS, only quotations that meet the definition of an "automated quotation," meaning quotations that a trading center is capable of immediately and automatically executing, canceling, and updating, are eligible to be included among protected

around Rule 611 for twenty years, and firms may currently be required to connect and route to venues that display protected quotes for compliance purposes, independent of any judgment about those venues' actual execution quality.

[4] Jamie Selway, Director, SEC Division of Trading and Markets, Remarks at the Roundtable on Rule 611 of Regulation NMS (Dec. 16, 2025) ("A robust, transparent, reliable NBBO is essential in promoting fair, efficient, and liquid markets... the NBBO remains ground zero for price discovery and a consistent baseline for best execution.").

quotations today.[5] If that accessibility and reliability standard no longer has any operative role once Rule 611 is rescinded, the NBBO could come to reflect quotations that are neither accessible nor reliable. This would make it substantially harder for both member firms and FINRA examination staff to evaluate best execution against that benchmark. If the Commission proceeds with rescinding all or part of Rule 611, FINRA's guidance should address how firms are expected to evaluate best execution if the NBBO includes quotations that do not meet current accessibility and reliability standards.

ASA recommends that FINRA's guidance state affirmatively that the consolidated NBBO remains the primary benchmark for retail-sized orders, while recognizing, as addressed further in Section V below, that institutional and algorithmic orders may appropriately be measured against alternative benchmarks such as VWAP or arrival price. Those two goals do not conflict. A durable NBBO benchmark for standard orders and a broader set of benchmarks for institutional orders can and should coexist in the same guidance framework. We do not view them as competing options.

III. FINRA Should Adopt One or More Rule 5310 Safe Harbors (Question D.1.9).

The Notice raises the possibility of a Rule 5310 safe harbor and specifically asks what circumstances such a safe harbor should address, citing as examples a directed order to a specified venue, execution pursuant to a documented regular and rigorous methodology, and large order execution against a specified benchmark. ASA agrees that a safe harbor is necessary. Below is a fully worked-out version of the framework FINRA has already sketched.

ASA recommends the presumption attach where a member firm demonstrates any of the following:

1. **Execution at the customer's express direction.** An unsolicited, documented customer instruction as to venue, price, or manner of execution should presumptively satisfy best execution as to the instructed element of the order.
2. **Execution at or better than a published consolidated reference price.** The Commission should require that a consolidated best bid and offer continue to be calculated and disseminated through existing SIP infrastructure for benchmarking purposes, even though no longer "protected."
3. **Execution under a documented, regularly and rigorously reviewed routing methodology**. This would codify existing FINRA "regular and rigorous review" guidance into an affirmative safe harbor.
4. **Venue selection supported by documented execution-quality data,** of the type already required under Rule 605 and disclosed under Rule 606.

[5] The SEC's own proposing release confirms this: the rescission "would also make conforming changes to other provisions of Regulation NMS and other SEC rules, including deleting certain terms defined in Rule 600 of Regulation NMS."

5. **Execution during quote unavailability or system outage conditions,** using whatever published prices were reasonably obtainable at the time.
6. **Institutional-size or algorithmic orders measured against an appropriate execution benchmark** (e.g., VWAP or arrival price) rather than a single point-in-time quote.
7. **A liquidity-sourcing standard for illiquid or thinly-quoted securities,** where reasonableness turns on the effort to source liquidity and the fairness of the resulting price relative to comparable recent trading, since a single NBBO snapshot was never a meaningful benchmark for these names.

ASA urges FINRA to adopt this framework as amendments to Rule 5310 or its Supplementary Material in *rule text*. These changes must legally bind members, examination staff, and arbitration panels.

ASA raised the same point in its letter to the Commission: we asked the Commission to direct FINRA to adopt corresponding rule text amendments, so the safe harbor is enforceable at both the federal and SRO level. FINRA's own rulemaking here is the mechanism by which that request gets fulfilled, independent of whatever the Commission ultimately does with Rule 611.

IV. Access Fees Must Be Addressed in Any Updated Best Execution Guidance (Section 2, Questions 1–4).

The Notice asks whether FINRA should supplement its guidance to address the interplay between venue access fees and best execution. Specifically, it asks whether the analysis should turn on the displayed price or the net cost of execution to the customer. ASA's answer is unambiguous: net cost of execution.

A member firm that routes to a superior displayed price on a materially higher-fee venue, without accounting for that fee in its execution-quality analysis, has not actually obtained the best outcome available to the customer. FINRA's guidance should state that explicitly.

This question cannot be answered in isolation from the Commission's parallel work on Rule 610(c). Chairman Atkins has already directed SEC staff to prioritize a review of the access fee caps under Rule 610(c) and Rule 612 by the end of this year, in light of the proposed rescission of Rule 611[6]. ASA made the same point directly to the Commission: the access fee cap under Rule 610 exists only because Rule 611 exists, and rescinding Rule 611 without also revisiting that cap would leave the maker-taker distortions the cap currently sustains completely untouched while removing the trade-through obligation that justified the cap in the first place.

[6]Chairman Paul S. Atkins, Statement Regarding Minimum Pricing Increments and Access Fee Caps (June 11, 2026) ("In light of the Commission's proposed rescission of Rule 611 of Regulation NMS, the exemptive relief issued today, and the pending application by MEMX LLC for exemptive relief and comments received thereon, I have directed the staff to prioritize a review of Rules 610(c) and 612 of Regulation NMS by the end of the year, including whether potential changes to the access fee caps and minimum pricing increments may be appropriate."), quoted in FINRA Regulatory Notice 26-15, n.33.

The underlying economics support treating this as urgent rather than a lower priority. One industry analysis of the Commission's 2024 amendments observed that regulators generally should not be in the business of setting prices, yet the Commission has been required to set the maximum access fee specifically because of the Order Protection Rule.[7] The Commission's own 2024 rule reducing access fee caps was motivated by a need to address distortions associated with access fees and rebates under the existing caps.[8]

Academic researchers have separately argued the Commission should prohibit both inverted and maker-taker pricing models because they create front-running, conflict-of-interest, and transparency problems.[9] Empirical work has also found that limit orders posted on maker-taker exchanges paying rebates produce measurably worse execution outcomes than comparable orders on fee structures without rebates.[10] The SEC's own 2015 staff analysis found that exchange fees appeared to be a significant factor driving where non-marketable orders were routed.[11] This is exactly the conflict FINRA's has long been concerned about.[12]

ASA also urged the Commission to pair any rescission of Rule 611 with a reduction in minimum tick sizes for tick-constrained securities. One analysis concluded that decreasing the minimum tick increment would lower overall trading costs for tick-constrained securities by allowing investors to capture more of the resulting narrower spread.[13] While tick size is primarily an SEC rulemaking matter rather than a FINRA guidance matter, ASA raises it here because any FINRA guidance addressing net cost of execution should be drafted with the expectation that both access fees and tick sizes may change during the same period, and should not need immediate re-revision if the Commission acts on both.

V. **Institutional Best Execution Requires Its Own Framework (Section 4, Questions 1–3).**

[7]See, e.g., BestEx Research Group, LLC, "Regulation NMS Amendments: Summary & Impact" (Sept. 19, 2024) (observing that while regulators generally should not be in the business of setting prices, the Commission has been required to set the maximum access fee under Rule 610 because of the Order Protection Rule).
[8]SEC Press Release 2024-137, "SEC Adopts Rules to Amend Minimum Pricing Increments and Access Fee Caps and to Enhance the Transparency of Better Priced Orders" (Sept. 18, 2024); Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Release No. 34-101070 (Sept. 18, 2024).
[9]See James J. Angel, Lawrence E. Harris & Chester S. Spatt, "Equity Trading in the 21st Century: An Update," 1 Q.J. Fin. 1 (2015) (arguing the Commission should prohibit both inverted and maker-taker pricing models on the ground that they create front-running, conflict-of-interest, and transparency problems).
[10]Acadian Asset Management, "Conflicts of Interest in U.S. Equity Order Routing: Hidden Costs to Asset Owners" (July 10, 2024) (finding that limit orders posted on maker-taker exchanges paying rebates produced measurably worse markouts than comparable orders on inverted or fee-fee venues, by as much as $0.0040 to $0.0050 per share).
[11]SEC Equity Market Structure Advisory Committee, "Maker-Taker Fees on Equities Exchanges" (Oct. 2015) (SEC staff memorandum) (summarizing a study finding that, for several firms reviewed, exchange fees appeared to be a significant determinant of where non-marketable orders were routed).
[12] *Regulatory Notice 15-46* (Nov. 20, 2015); *see also Regulatory Notice 21-23* (June 23, 2021) "FINRA has stated that "a firm's routing decisions should not be unduly influenced by a particular venue's fee or rebate structure"
[13]NYSE, "The Impact of Tick Constrained Securities on the U.S. Equity Market" (analysis finding that decreasing the minimum tick increment should lower overall trading costs for tick-constrained securities by allowing investors to capture more of the resulting narrower spread).

The Notice asks what execution-quality factors institutional customers value differently from retail customers, and whether Supplementary Material .09(b) needs updating to reflect that difference. ASA's answer is that the difference is significant enough to warrant explicit treatment, not an implicit assumption that the existing factors apply equally across order types.

For a retail-sized order, capturing the best displayed price is a reasonable proxy for best execution, because the order is unlikely to move the market and the customer's primary interest is immediacy and price.

For an institutional manager working a large order over time, best execution instead depends on sourcing liquidity, minimizing market impact, and managing information leakage across a series of child orders, considerations that have little to do with whether any single fill matched the NBBO at a given instant.[14]

Market participants have made the same point directly to the Commission, arguing that institutional order flow is best measured against benchmarks like VWAP or arrival price rather than a single point-in-time comparison to the NBBO.[15] Many market participants believe that enumerated factors, while appropriate for retail orders, are not uniformly appropriate for assessing the execution quality of larger institutional orders handled via algorithm. [16]

ASA recommends FINRA amend Supplementary Material .09(b) to state explicitly that, for institutional-size and algorithmic orders, appropriate execution-quality factors include (1) performance against a specified benchmark (e.g., VWAP or arrival price), (2) whether the firm's order handling, routing, and execution methodology was reasonably designed to mitigate unnecessary information leakage, and (3) whether the chosen execution strategy was reasonably designed to achieve the customer's objective and benchmark, in addition to, not as a replacement for, the existing factors applicable to retail-sized orders.

ASA frames institutional-size and algorithmic orders this way because an undefined "information leakage" or "fairness relative to comparable trading activity" standard would be difficult for a firm to evidence on an order-by-order basis. However, a standard tied to the reasonableness of the firm's process, which is supported by documented information barriers

[14]The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, Release No. 34-105655, File No. S7-2026-20, 91 Fed. Reg. 36656, 36667 (June 17, 2026) (recognizing that dispersion of displayed liquidity across exchanges makes institutional trading intentions easier to detect, increasing slippage and harming execution quality of the parent order, and that rescission would give institutional investors greater flexibility to route child orders in ways that reduce information leakage).
[15]Roundtable on Trade-Through Prohibitions, Tr. (Sept. 18, 2025) (remarks of Mehmet Kinak, Global Head of Equity Trading, T. Rowe Price).
[16]Letter from Bernard V. Canepa, Managing Director and Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (June 11, 2025), Attachment at 5, quoted in FINRA Regulatory Notice 26-15, n.36 ("Amend Supplementary Material (SM) .09, which lists certain factors that should be considered when performing a regular and rigorous review of execution quality. While these factors may be appropriate for assessing smaller retail orders, each factor is not necessarily appropriate or effective in assessing the execution quality of larger institutional orders, in particular those handled via an algorithm.").

between sales traders and market makers and anonymized order-handling protocols, gives both firms and examination staff something concrete to assess.

VI. Venue Connection Standards and Locked/Crossed Market Coordination (Questions 1.a and 12).

The Notice asks what standards or factors member firms may apply, or should be required to apply, when making venue connection decisions in the absence of the trade-through rule. ASA recommends that FINRA's guidance identify specific factors (a venue's liquidity contribution, its access fees, connectivity and data costs, and the order types it offers) as relevant to a firm's determination that it need not connect to a particular market consistent with its best execution obligations.

Absent that clarification, firms are left to guess whether disconnecting from a low-value venue is a permitted cost saving or an unexamined best execution risk. This will cause different firms to reach different conclusions on functionally identical facts.

Consistent with this framework, ASA recommends that FINRA make clear that, while a firm cannot disclose away its best execution obligation[17], a firm should retain the flexibility to disclose its venue connectivity and order routing decisions to customers. For example, a firm should be able to disclose that it has disconnected from, or declined to connect to, venues with low trading volumes, inverted fee structures, or prohibitively high access fees, without that disclosure being treated as inconsistent with its best execution obligations.

The Notice separately asks what scenarios may present challenges to a firm's best execution obligations if SROs rescind their own locked and crossed rules. While ASA agrees this is a fair question for FINRA to take up, we think it presupposes an answer to a more basic question that only the Commission can resolve: whether any mechanism for reconciling locked or crossed quotations will continue to exist at the exchange and SIP level once Rule 610(e) no longer requires one.

ASA has asked the Commission to address that threshold question directly in its rescission of Rule 610(e). FINRA's guidance on how member firms should handle order execution in locked or crossed conditions will necessarily depend on how the Commission answers it. This reinforces ASA's broader point in this letter: FINRA's guidance and the Commission's rulemaking need to be coordinated on the same timeline, not developed independently and reconciled after the fact.

VII. Conclusion.

ASA's support for FINRA's review of its best execution guidance rests on FINRA resolving the same three issues we raised with the Commission. First, FINRA should state affirmatively that

[17] *Regulatory Notice 21-12* (March 18, 2021). "disclosures do not excuse order handling procedures that are unfair or otherwise inconsistent with a member firm's best execution obligations"

the consolidated NBBO remains a benchmark for best execution purposes, independent of whether it remains "protected" under Rule 611. Second, FINRA should adopt the safe harbor framework described in Section III in rule text, amendments to Rule 5310 or its Supplementary Material, not as interpretive guidance. Third, FINRA should address access fees and institutional order execution explicitly in any updated guidance, rather than leaving member firms to apply the existing principles-based standard to circumstances it was not written to anticipate.

Underlying these recommendations is the same timing concern we raised at the outset of this letter and ASA urges FINRA to finalize its updated guidance on the same schedule as the Commission's action on Rule 611.

We appreciate the opportunity to comment and would welcome the opportunity to discuss these recommendations further with FINRA staff.

Respectfully submitted,

Christopher A. Iacovella

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