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September 25, 2026

By Electronic Submission

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

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

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on FINRA Regulatory Notice 26-15, in which FINRA requests comment on modernizing its best execution guidance under FINRA Rule 5310.[2]

## I. Introduction

FINRA Rule 5310 and its predecessors have applied to FINRA members since 1968, and the duty of best execution long predates Regulation NMS. For the past twenty years, however, Rule 611 of Regulation NMS has fortified the application of that duty by supplying a price-based backstop for NMS stocks. Because trading centers could not trade through a protected quotation, and because Rule 610 of Regulation NMS obliged venues to make those quotations accessible, the market a member could actually reach and the market reflected in the national best bid and offer ("NBBO") were largely congruent. Rescission of Rule 611 would end that congruence.[3] Best execution would then become the guiding principle on order handling, routing, and execution in NMS stocks, and FINRA Rule 5310 would be applied to displayed exchange quotations without a trade-through backstop for the first time since 2005, in a national market system with materially more venues (which may continue to increase particularly as tokenized venues emerge in light of the Commission's Innovation Exemption and further regulatory developments in the digital assets space),[4] materially more displayed quotations, and materially greater speed.[5]

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] FINRA, Regulatory Notice 26-15, Best Execution: FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance (July 24, 2026) (the "Notice").

[3] Exchange Act Release No. 105655 (June 11, 2026), 91 FR 36656 (June 17, 2026) (the "Rule 611 Proposal").

[4] Exchange Act Release No. 106402 (Sept. 17, 2026), 91 FR 60168 (File No. 4-927) (the "Innovation Exemption").

[5] *See* Letter from SIFMA and SIFMA AMG to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, Re: The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS; Release No. 34-105655; File No. S7-2026-20 (Aug. 17, 2026) (the "SIFMA Rule 611 Letter").

A critical practical consequence of the repeal of Rules 611 and 610(e), therefore, is that the content of FINRA's best execution guidance will largely determine whether the Commission's proposal achieves many of its stated objectives of reducing cost, complexity, and exchange fragmentation. If FINRA and the Commission administer best execution as though every displayed exchange quotation remains de facto protected, members will be forced to retain the same connectivity, routing, testing, post-trade reviews, and exception-review burdens they bear today, and the freedom to disconnect that the Rule 611 Proposal contemplates will exist only on paper. Equally important, FINRA's guidance should not frustrate the Commission's objectives by preserving a supervisory presumption that a member must necessarily access the best displayed quotation in every circumstance. The rescission of Rule 611 should not result in best execution becoming a substitute for order protection. Accordingly, members need affirmative guidance confirming that an execution that does not access a better-priced displayed quotation is not, by itself, necessarily inconsistent with FINRA Rule 5310.

Members' concern with the clarity and scope of FINRA's guidance is heightened by the way in which best execution has been administered to date. Members' experiences are that the operative standard by which FINRA Rule 5310 is applied is frequently developed in examinations and enforcement inquiries rather than in published guidance, and that expectations for firms' compliance vary among examiners and over time. SIFMA believes greater clarity regarding FINRA's expectations and more consistent enforcement of such expectations is necessary so that members may better design and document reasonable processes against a knowable and uniform standard.

Several key points guide SIFMA's comments as set forth herein:

(1) Scope – SIFMA has concentrated its comments most heavily on Section D.1 of the Notice and on the questions most directly affected by potential rescission of Rules 611 and 610(e). FINRA has asked a much broader set of questions. SIFMA has prioritized the areas in which guidance is needed most urgently and on the shortest timeline, and encourages FINRA to establish a further process for engaging on the balance of its request for comments (*e.g.*, with respect to artificial intelligence).

(2) Silence is not agreement – Given the breadth of the Notice, SIFMA has not responded to every question posed in Section D. The fact that SIFMA has not addressed a particular question, or a particular aspect of any question, should not be understood to mean that SIFMA or its members lack views on the subject, that they agree with any position FINRA may be considering, or that they agree with positions advanced by other commenters. SIFMA respectfully requests that FINRA not treat the absence of comment on any question as consent to any particular outcome, and SIFMA reserves the ability to comment further as FINRA's thinking develops.

(3) SIFMA's views depend in part on the Commission's action – Several positions in this letter—including on access fees and transaction costs, on the composition and utility of the NBBO, and on what it means for a quotation to be accessible—depend on how the Commission ultimately resolves Rules 611, 610(e), and 610(c). Members' views may differ materially depending on whether the Commission retains, curtails, or rescinds Rule 611, and on whether access fee caps are retained, raised, or eliminated. Accordingly, while we greatly appreciate the opportunity to respond to the Notice at this time, SIFMA respectfully requests that FINRA publish any anticipated guidance for further public comment once the Commission's framework is known, so that

members may evaluate that guidance against the market structure that will actually exist and FINRA has the benefit of comment informed by the Commission's final action.[6]

(4) Coordination and timing – SIFMA urges FINRA to publish its guidance in coordination with the Commission (and with further opportunity for member input, per the notes immediately above) before rescission of Rules 611 and 610(e) becomes effective (if the Rule 611 Proposal is adopted). Members will need sufficient lead time to evaluate the framework and adjust disclosures, routing logic, monitoring, and review processes as necessary. Guidance arriving at or after effectiveness would require members to make consequential best execution framework decisions without knowing how they will be judged.

## II. Executive Summary

SIFMA respectfully recommends the following:

- *A principles-based standard should be retained* – It is critical that broker-dealers and regulators share a mutual understanding of the duty of best execution. SIFMA supports a continued principles-based best execution standard under FINRA Rule 5310, particularly as we approach the new market structure in a post-Rule 611/610(e) world.
- *The best execution framework members apply to unprotected venues today should apply to exchanges* – Members already maintain best execution frameworks for evaluating venues whose quotations are not protected under Rule 611, and FINRA should confirm that members may apply those existing frameworks—in particular, the framework a member uses to decide whether to connect to, or disconnect from, a venue—to national securities exchanges following rescission. A member may reasonably decline to connect to, or disconnect from, any venue, including an exchange, for legitimate reasons, and that decision should not be presumptively inconsistent with best execution.
- *All-in costs* – Price should not be treated as the sole determining factor in venue selection or execution choice. FINRA should confirm that access fees, rebates, connectivity, market data, port, colocation, membership, regulatory, development, and technology costs are appropriate considerations when considering connecting to or disconnecting from a venue, or accessing a particular venue or quotation, whether or not those costs are directly passed on to customers.
- *Role of the NBBO* – The NBBO will remain an important benchmark and a uniform, market-wide NBBO remains necessary for comparability under Rules 605 and 606 of Regulation NMS. The quality of the NBBO becomes more important if Rules 611 and 610(e) are repealed, and FINRA and the Commission should coordinate on standards for what quotations are included in it—for example, SIFMA has recommended a minimum volume threshold and an immediately accessible quote requirement for that purpose. The NBBO is, however, a reference point from which

[6] SIFMA notes that material changes to the interpretation of FINRA Rule 5310 may require a proposed rule change to be filed with the Commission. Section 19(b)(1) of the Exchange Act requires a self-regulatory organization to file as a proposed rule change any "stated policy, practice, or interpretation" that the Commission deems to be a rule, and Exchange Act Rule 19b-4 excepts only a stated policy, practice, or interpretation that is "reasonably and fairly implied by an existing rule" or that concerns solely the self-regulatory organization's administration. *See* 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4(c). Accordingly, to the extent contemplated guidance would change the meaning, administration, or enforcement of FINRA Rule 5310 in a manner not reasonably and fairly implied by the existing rule, a proposed rule change—and the attendant notice-and-comment process—would be required.

execution quality may be measured, not the standard by which best execution should always be judged. Price improvement and disimprovement against the NBBO are relevant statistics, not conclusions, and members should retain flexibility to use reasonable, consistently applied alternative benchmarks in addition to the NBBO.

- *Executions away from the best displayed price* – Such executions may become more common in a market without Rule 611. FINRA should confirm that an execution occurring away from the best displayed price does not, standing alone, establish a violation of a member's best execution obligations. FINRA should confirm that a member demonstrates compliance where it can show, for any given order, that it had a reasonable basis for its handling of that order, and that a member's customer order executions are assessed against the member's documented and disclosed venue-selection framework and its regular and rigorous review of such venues. FINRA should also confirm how members may evaluate and demonstrate best execution for orders executed away from the best displayed price, including how the accessibility of displayed quotations, transaction costs, order size, likelihood of execution, and customer needs and expectations should be weighed. That a better price was displayed does not establish that it was obtainable, and members should be able to demonstrate, on a probabilistic basis using venue execution quality statistics, that a given routing decision was reasonable.
- *Customer disclosure* – Disclosure of order handling practices should be recognized as an enhancement to a member's best execution framework and as a means of establishing the scope of a firm's best execution standard. A member should be able to disclose the venues, categories of venue, and types of quotations it will and will not access, and be evaluated within the scope of those disclosures with respect to best execution. SIFMA is not asking FINRA to prescribe the form, content, or timing of any such disclosure, and a member that does not provide such disclosures should remain able to demonstrate compliance by other means.
- *Review standards* – FINRA's guidance on order-by-order reviews, particularly as applicable to internalized orders, could benefit from additional clarifying guidance. FINRA should confirm that an order-by-order analysis is a prospective determination made when an order is handled rather than a retrospective review of individual execution prints, and that members should retain flexibility to reasonably carry out order-by-order reviews in these circumstances.
- *Retail and institutional orders* – Members face differing expectations from retail customers and institutional clients, as well as with respect to the execution of a parent order and a child slice of that order. FINRA should acknowledge these distinctions expressly, and should give real weight to customer needs and expectations for institutional flow.
- *Safe harbors and oversight* – SIFMA supports retaining the existing safe harbors and developing additional ones. Exchange best execution rules adopted in 2026 should not recreate order protection enforced on a venue-by-venue basis and FINRA's framework should not be superseded by, or conflict with, rules adopted by other self-regulatory organizations.
- *Emerging technologies* – A member that does not offer tokenized trading should be able to disclose this and remain outside that market, and guidance should not effectively require connection to tokenized venues, particularly given product differences across tokenized and core equities. Products that are not fully fungible with core NMS stocks should not be included in the NBBO, and members should not be required to connect or route to the venues on which they trade.

FINRA's existing statement that its rules apply to generative artificial intelligence as they apply to any other technology is sufficient at this time.

## III. Best Execution Following Rescission of Rules 611 and 610(e) (Notice Section D.1)

### A. Connecting to, Declining to Connect to, and Disconnecting from Venues

*Leveraging the existing non-protected venue best execution framework for connectivity* – Members already maintain best execution frameworks for evaluating whether to connect to, and how to route among, the many venues whose quotations are not protected today, including alternative trading systems, single-dealer platforms, and other off-exchange venues. In a market without Rule 611, exchanges would be, for connectivity purposes, essentially the same as non-exchange trading venues, with both environments offering a mix of dark and lit liquidity. Perhaps the most useful single confirmation FINRA could provide is that members may extend that framework for making connectivity determinations to national securities exchanges, evaluating each venue on its own attributes rather than on how it is registered. FINRA Rule 5310 and Supplementary Material .09 already supply part of what is needed, including that reasonable diligence factors include the character of the market and the accessibility of the quotation, and the execution quality considerations include transaction costs and customer needs and expectations. Existing guidance also treats connectivity as variable, requiring periodic assessment of whether to establish or terminate connectivity to a trading center and, in the fixed income context, disclaiming any obligation to access every available platform.[7]

What existing guidance does not address are some of the venue attributes that FINRA identifies in the Notice as potentially relevant, such as volume and liquidity thresholds, access fees and rebates, connectivity and data costs, order types, and latencies or speed bumps. SIFMA asks FINRA to confirm that members may consider each, that the list is illustrative and neither mandatory nor exhaustive, and that these considerations apply to exchanges on the same terms as to other venues.

*Additional venue considerations* – FINRA should also confirm that members may consider, among other factors: (i) colocation costs; (ii) development and integration costs; (iii) membership, application, and other regulatory costs; (iv) surveillance costs; (v) venue reliability; (vi) fill and hit rates; (vii) quote stability; (viii) information leakage; (ix) statistical analysis of execution quality; (x) speed bumps and other quotation-accessibility constraints; (xi) operational resiliency and outage history; (xii) limitations of liability under venue rules; (xiii) price discovery; (xiv) offered functionality (*e.g.*, order types, tokenized clearing) and segmentation; (xv) operational risk in routing and venue selection; and (xvi) other factors a member reasonably determines to be relevant.

Importantly, FINRA should make clear that these and any other factors it identifies are factors a member *may* consider, rather than a mandatory or exhaustive checklist, and that members retain flexibility to determine which factors are relevant and how to weight them, subject to written documentation supporting the overall reasonableness of their decisions. Members should not have to document the specific weight assigned to each factor in every decision. Members' examination experiences with the seven considerations in Supplementary Material .09(b) have been that a list intended as illustrative can often be applied as a mandatory scorecard, with a perceived weakness on a single element treated as a deficiency without regard to the overall outcome.

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[7] FINRA, Regulatory Notice 15-46, Best Execution: Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets (Nov. 20, 2015) ("Notice 15-46").

*Documentation of venue connectivity decisions* – Members should be able to rely on internal documentation of their framework for deciding which venues to connect to, decline to connect to, or disconnect from, including the factors considered. Members should not be required to evaluate and document a connectivity decision with respect to every available venue or, at a minimum, should be able to exclude certain categories of venues (*e.g.*, tokenized venues and venues with materially high latencies or access fees). In addition, a venue's publication of a quotation feed should not, standing alone, obligate a member to consider or connect to that venue. Similarly, consuming a venue's market data (whether directly or via consolidated market data feeds) should not be treated in and of itself as a commitment to route to it. SIFMA recognizes that connectivity determinations are not static and members must revisit those decisions periodically. With respect to new venues, a member's initial determination to connect or not should only need to be reasonable and thereafter subject to the regular and rigorous review standard as a venue may gain traction or its characteristics may change.

*Role of Rule 605 reports* – Periodic review of publicly available execution quality statistics should be a reasonable means of satisfying a member's governance obligation for evaluating significant venues to which it does not connect. Rule 605 reports are one such source, but not the only one—data published or provided by the venue and direct engagement with the venue may also be reasonable. A member should not be required to establish connectivity, or route customer orders for testing purposes, to a venue in order to substantiate a decision not to connect to it. A member should also not be required to maintain connectivity to a venue solely because that venue is the best market in a single security or a handful of securities.

*Reasonableness standard* – SIFMA is not seeking a blanket license to ignore better prices. Members that act reasonably, document the reasons for and data supporting their routing and internalization decisions, and act consistently with their policies and customer disclosures should generally be viewed as having satisfied the duty of best execution where they are achieving best execution in the aggregate. Relatedly, FINRA should expressly acknowledge that technical documentation gaps should not lead to enforcement action unless they are material and have been demonstrated to have affected execution quality, particularly where objective outcomes are consistently strong.

### B. The NBBO, Accessibility, and Benchmarks

*Significance of the NBBO* – The NBBO will remain an important benchmark for a member's best execution analysis, including for measuring price improvement and evaluating internalized orders. It supplies a standardized and objective metric, supports consistency in execution quality measurement across venues and firms, and underpins Rule 605 reporting. SIFMA supported the continued use of a uniform, market-wide NBBO for these purposes in the SIFMA Rule 611 Letter and continues to do so.

Precisely because the NBBO will remain central, its composition matters more after rescission of Rule 611 than before. SIFMA has asked the Commission to establish a minimum volume threshold and a clear and uniform immediate-accessibility standard for inclusion in the NBBO, and to allocate quote-based SIP revenue only to quotations satisfying those standards. With the Commission's Innovation Exemption now in place, SIFMA also urges that products that are not fully fungible with core NMS stocks not be included in the NBBO.[8] SIFMA encourages FINRA to coordinate with the Commission on standards addressing, at a minimum, quotation accessibility, lot size, certain intentional access delays, and whether quotations resulting from exchange order flow segmentation that may arise in the coming years should be included in the NBBO.

At the same time, executing at the NBBO is not necessarily the same as satisfying the duty of best execution, as FINRA and the Commission have long recognized. FINRA Rule 5310 was not written for a market with substantial hidden liquidity at and inside the NBBO, and FINRA has never articulated the benchmark against which the search for that liquidity is measured. The relevant benchmark should be what a member reasonably can deliver within the scope of its available arrangements, not the best possible execution that could theoretically have been obtained anywhere in the market.

*Acknowledging competitive market dynamics* – It is critical that regulators understand and acknowledge that a displayed quotation is a moment-in-time advertisement of price and size that may not be available when an order arrives, because others are also competing for that quotation. That a better price was displayed does not establish that it was obtainable, and pursuing it carries opportunity cost. Accordingly, members should be able to demonstrate, on a probabilistic basis using venue execution quality statistics, that a routing decision was reasonable even where a particular order did not capture (or attempt to capture) a particular displayed price.

*Quotation accessibility* – As noted above, SIFMA has recommended standards designed to maintain a healthy NBBO. If those recommendations are not adopted, rescission of the definitions of "automated quotation" and "automated trading center" would leave no uniform standard for when a displayed quotation is immediately accessible.[9] To the extent FINRA addresses accessibility, it should permit members to consider observable factors including comparative response time, fill and hit rates, slow quote updating, and non-standard means of access.

*Discordance between a member's accessible market and the NBBO* – Members' effective view of the accessible market will differ from the consolidated NBBO once members may disconnect from exchanges. FINRA should acknowledge that divergence between a member's accessible market and the SIP NBBO is not, standing alone, inconsistent with best execution. Where a member has reasonably declined to connect to a venue and that venue displays the national best bid or offer, the member's execution elsewhere should be evaluated against its documented best execution framework and disclosures, not treated as a presumptive deficiency because a better price appeared on the tape. Even within the scope of a member's disclosed, accessible venues, a member should not be viewed as necessarily having an obligation to access a particular quotation within it, provided it can otherwise demonstrate best execution for that order.

*Displayed vs. non-displayed liquidity* – Finally, FINRA should not treat displayed liquidity as presumptively superior to non-displayed liquidity, or treat venues offering one, the other, or both as presumptively better or worse markets. Non-displayed liquidity cannot be observed in advance, and

[8] *See* SIFMA Rule 611 Letter, *supra* note 5, at 10–12 (recommending a minimum volume threshold for inclusion in the NBBO, a clear and uniform immediate-accessibility standard, and allocation of quote-based SIP revenue only to quotations satisfying those standards).

[9] *See* Commission Interpretation Regarding Automated Quotations Under Regulation NMS, Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016) (interpreting "automated quotation" to permit intentional access delays only where they are de minimis).

seeking it requires a probabilistic judgment that may introduce delay, information leakage, or the risk of missing an execution against displayed liquidity. Non-displayed venues also frequently deliver price and size improvement, and we expect some non-displayed venues also will offer to match displayed quotes on other venues. Each should be evaluated on its attributes and on how those attributes bear on what the member is trying to achieve for the customer. This approach to evaluating venues would not be novel as members already handle orders in markets with no consolidated cross-market quotation, including OTC equity securities and NMS stocks traded overnight, using reasonable alternative reference points and disclosing the characteristics of the session.

*Price improvement* – Price improvement should not be singled out as a standalone, determinative criterion for assessing compliance with FINRA Rule 5310. Treating it that way would risk recreating order protection dynamics through the best execution rule.

*Benchmarks* – Members should retain flexibility to use reasonable, consistently applied alternative benchmarks in addition to the NBBO where appropriate, and to consider costs or accessibility limits associated with a particular quotation appearing in the NBBO. Alternative benchmarks would supplement rather than replace the NBBO.

### C. Executions Away from the Best Displayed Price

Executions at prices inferior to a better displayed quotation for a given security could become more common in a market without Rule 611, particularly if SIFMA's recommendations on the composition of the NBBO are not adopted and the range of quotations contributing to the NBBO expands (*e.g.*, from tokenized venues). This is a direct consequence of rescission and members' venue connectivity decisions rather than evidence of degraded order handling. SIFMA asks FINRA to confirm the following propositions:

- a member may make reasonable determinations not to connect to particular venues, consistent with its best execution obligations, notwithstanding that there may be instances where such venues display a better price;
- failing to access a better-priced quote at an execution venue that a broker-dealer has determined, after a regular and rigorous review of potential venues, that it does not connect to should not be presumed to be inconsistent with the broker-dealer's best execution obligations, and such executions should be assessed against the member's reasonably designed and documented venue-selection framework;[10]
- a member that fails to access the best displayed price while acting pursuant to a reasonably designed and statistically supported process for obtaining better-priced, non-displayed liquidity has not necessarily acted inconsistently with its best execution obligations; and
- a member can demonstrate compliance by showing that, for any given order and regardless of whether it is connected to the venue displaying a better price, it had a reasonable basis for its handling of that order consistent with its best execution obligations, its documented and disclosed venue-selection framework, and its regular and rigorous review.

[10] When evaluating an execution venue, a firm should be permitted to consider, among other factors, the cost and difficulty of accessing liquidity on that venue, how frequently the venue has the best publicly displayed liquidity, and whether and how often the venue may have non-displayed liquidity priced better than the NBBO.

SIFMA feels strongly that, particularly in a market without Rule 611, there should not be a presumption that a member failed to comply with its best execution obligations where an execution occurs away from a better displayed price.

It follows that FINRA's exception reports and report cards built around the trade-through convention—including the Outside-the-Inside Report Card and the Trade Through Report Card—should be retired or fundamentally redesigned. A report card premised on the proposition that such an execution is presumptively problematic would reintroduce order protection through surveillance. To the extent that FINRA does require firms to defend every trade that occurs at a price away from the best displayed quotation, Rule 611 will be perpetuated through best execution enforcement, directly contrary to the Commission's proposed rescission.

Separately, SIFMA asks FINRA to confirm that routing an order to a venue that guarantees execution at or better than the NBBO is a relevant and favorable consideration in evaluating that member's routing decision for purposes of best execution.

D. The Role of Customer Disclosure

For twenty years, Rule 611 and the Rule 610(c) access fee cap have limited the degree to which venues differentiate themselves in order types, fees, and market data. If venues differentiate more following rescission of these rules, members will make more granular venue decisions across a wider and less stable universe of venues, and will need to understand in advance what FINRA expects of them from a best execution perspective.

As we move to a post-Rule 611 world with a potentially greater variety of venues and attendant venue selection determinations, customer disclosure should be recognized as an available enhancement to the best execution analysis and as a means of establishing the scope of a member's best execution obligation. That approach is consistent with the common law agency principles from which the duty derives. Specifically, disclosure and informed consent are generally how an agent's scope of service is defined and how conflicts within that scope are addressed. To be clear, SIFMA is not suggesting that a member may disclose its way out of the duty of best execution. Rather, disclosure would help define the scope of the arrangement within which the duty operates and is designed to inform customer expectations and broker selection decisions.

For example, if a member discloses that it will route to, for example, 10 out of 20 trading venues, it should remain obligated to obtain the best result reasonably available among those 10, measured under the member's best execution analysis, and not by reference to every displayed (or undisplayed) quotation that may be available on each of the 20 venues. Two distinct determinations are involved here. The first is the member's selection of the universe of venues to which it will connect pursuant to a regular and rigorous review or reasonable determination of venues. A member may reasonably conclude that the cost of connecting to the other 10 venues is too high or that, although a venue to which it does not connect may occasionally display a better price, that does not occur frequently enough to justify the ongoing costs of connecting and routing to it. The second is how the member routes a particular order among the 10 venues it has selected. There too, the best result reasonably available is not always the best displayed price among those venues. A member may reasonably conclude that a marginally worse price for materially greater size is the better outcome for a particular customer, or that seeking non-displayed liquidity is preferable to taking a displayed quotation. Critically, a member should not be required to justify on an order-by-order basis why it did not reach the other 10 venues to which it did not connect even where a potentially better price may have been available.

Within the disclosed scope of accessible venues for a given member, reasonable diligence and regular and rigorous review would continue to apply in full. A member's review should evaluate how it used its selected venues and whether it routed appropriately among those venues. A member's order handling disclosures would not be a substitute for that regular and rigorous analysis and would not excuse order handling that is unfair, inconsistent with the member's own disclosures, or otherwise inconsistent with FINRA Rule 5310.

Firms that elect to disclose their venue selections should be permitted to do so in flexible form and granularity. What is appropriate will vary with the customer and the relationship—the form and level of detail useful to a retail customer will likely differ from what an institutional client expects. A member should be able to describe the principles and considerations that govern its order handling and venue selection rather than publish venue lists or routing logic. Many members already maintain disclosures that generally serve this function and which could be further enhanced. Disclosure should be made directly to customers, including on a reasonable-request basis and, in an intermediated relationship, to the firm sending order flow.

However, FINRA should not create a new centralized public disclosure regime, nor should firms be required to provide such disclosure if they can otherwise demonstrate compliance with best execution. SIFMA does not believe FINRA should prescribe the form, content, or timing of any such disclosure. Nor should any such disclosure be expected to take the form of a continuously updated public posting. Rather, disclosure should be understood to be one means by which a member might help establish and manage a customer's needs and expectations under Supplementary Material .09(b) to FINRA Rule 5310.

SIFMA believes that a member's disclosures should inform what its customers can reasonably expect, and customers and introducing brokers can make informed choices with respect to how their orders will be handled by electing to use a different broker if they do not like a member's best execution disclosures.[11] Amended Rule 605 and Rules 606(a)(1) and 606(b)(3) were designed to give order senders related order handling and execution information, and members should be able to rely on that framework together with enhanced order handling disclosures specific to best execution as part of the overall service offering presented to customers.

## E. Affiliated Venues, Locked Markets, Safe Harbors, and Oversight

*Affiliated venues and internalization* – Affiliated venues and internalization should be viewed through the same lens as any other venue. Members should be prepared to demonstrate that the affiliated venue or internalizing desk was the best market for the order within the scope of the member's available arrangements, including by evaluating client benefits such as speed, cost, price and size improvement, customer support and error handling, or a lower incidence of price disimprovement. Where an affiliated or internalization arrangement has been fully and fairly disclosed, it should not create an adverse inference or alter the applicable standard.

*Locked and crossed markets* – If self-regulatory organizations rescind their locked and crossed rules, including FINRA Rule 6240, FINRA should confirm that posting a non-marketable limit order

[11] *See* Rule 5310(a)(1)(A)–(E); Supplementary Material .09(b) to Rule 5310; Notice 15-46, *supra* note 7.

rather than accessing a locked market may be reasonable where done under documented procedures addressing cost, speed and likelihood of execution, and customer needs and expectations.[12] As stated in the SIFMA Rule 611 Letter, SIFMA expects locked and crossed markets to be more frequent and persistent in a post-Rule 611/610(e) world than the Commission anticipates, which emphasizes the need for FINRA guidance. SIFMA also encourages FINRA and the Commission to address how execution quality should be evaluated for Rule 605 purposes where there is no spread against which to measure.[13]

*Safe harbors* – SIFMA supports retaining the existing safe harbors, including for directed orders under Supplementary Material .08 to FINRA Rule 5310 and for circumstances in which a member acts as counterparty rather than handling an order, such as a single-dealer platform responding to an immediate-or-cancel order under Supplementary Material .04 to FINRA Rule 5310.

*Oversight* – FINRA should adopt a non-prescriptive oversight standard that affords deference to members that have documented reasonable processes, established reasonable methods for measuring execution quality, and followed those processes. FINRA should also avoid anchoring oversight to a single data type or metric. Guidance that focuses on one type of data tends in practice to be applied as though other reasonable types are disallowed.

*Exchange best execution rules* – A number of national securities exchanges adopted or expanded member best execution rules in 2026.[14] Those rules are duplicative of and potentially in conflict with FINRA Rule 5310, and an exchange examining a member's executions away from its own market has an evident conflict between its commercial objectives and its regulatory function. FINRA's framework should not be superseded by, or operate in conflict with, rules adopted by exchanges. SIFMA encourages FINRA to work with the Commission and the exchanges to harmonize those rules, to allocate regulatory responsibility for best execution oversight to FINRA under Exchange Act Rule 17d-2, and to recognize that exchange rules or interpretations impeding intermarket competition are a legitimate factor for members to weigh in venue decisions. In SIFMA members' view, the better course would be for those exchanges to withdraw their best execution rules and for best execution oversight to remain with FINRA.

## IV. Access Fees and Transaction Costs (Notice Section D.2)

*Transaction costs* – While SIFMA believes that a variety of different costs are appropriate for consideration (as discussed above), SIFMA does not believe it would be appropriate to require firms to evaluate all-in cost calculations or a single cost-adjusted execution quality metric. Costs vary by member and by order, and it would be exceedingly difficult to capture market data, port, colocation, connectivity, membership, development, or operational costs all within a single metric. With that said, firms still need the ability to evaluate cost, opportunity cost, and the bundle of services a member

[12] *See* FINRA Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks); Rule 611 Proposal, *supra* note 3, at 36673 & n.207.

[13] *See* SIFMA Rule 611 Letter, supra note 5, at 18–20 (explaining why existing data does not predict the frequency or persistence of locked and crossed markets following rescission, and why access fees and rebates may prevent locks from unwinding through arbitrage).

[14] *See*, *e.g.*, Exchange Act Release No. 104543 (Jan. 5, 2026), 91 FR 731 (Jan. 8, 2026) (SR-NYSE-2025-50) (adopting NYSE Rule 5310 (Best Execution)); *see also* Exchange Act Release Nos. 105626–105629 (June 9, 2026), 91 FR 35712, 35715, 35732, 35758 (June 12, 2026) (adopting substantially identical best execution rules for NYSE American, NYSE Texas, NYSE Arca, and NYSE National).

provides and have these weighed together, with disclosure of the trade-offs, leaving the customer to decide what it values.

In addition, SIFMA believes that FINRA should clarify that fees and costs are proper execution quality factors irrespective of the member's customer billing model—for example, whether the member passes costs through, absorbs them, or reflects them in commissions or other service economics. Ultimately these costs are borne by customers (even if not billed directly to them) and are relevant to the member's venue selection and best execution analysis. More generally, execution quality should be evaluated in light of the economics of the platform and routing model being assessed, including where payment for order flow is present, rather than by reference to any single cost metric in isolation.

*Access fees* – FINRA's existing guidance developed against a 30 mil access fee cap, at which fee differentials rarely drive routing decisions.[15] That premise may not hold as the market structure evolves. NYSE has proposed a cap set at half the minimum pricing increment, or 50 mils at a penny tick,[16] Cboe has urged eliminating the caps entirely,[17] and the Commission has directed its staff to review Rules 610(c) and 612 by the end of the year.[18] For purposes of this letter, SIFMA assumes members may face materially higher or uncapped access fees. If caps rise materially or are removed, cost becomes a first-order routing input, and guidance that treats cost as a minor consideration—or that treats a decision influenced by cost as presumptively suspect—will not work.

A member should be able to disclose that it will not route to venues whose access fees exceed a stated threshold, and be evaluated accordingly. SIFMA recognizes this is a departure from how FINRA has traditionally approached cost. However, it follows from a change in what constrains venue fees, which under the Rule 611 Proposal shifts from the access fee cap to what members may be willing to pay.

*Following client instructions* – Finally, FINRA should confirm that members may treat a client election to obtain rebates rather than pay removal fees, or to prefer lower-cost venues, as a directed order under Supplementary Material .08 to FINRA Rule 5310, irrespective of whether the direction comes from an introducing broker or the underlying customer. For example, if a customer expresses a preference to avoid venues with high take fees but does not necessarily direct an order to a particular venue, SIFMA believes that this should essentially be treated as a directed order for best execution purposes. Where the instruction comes from an introducing broker rather than the underlying customer, the receiving member satisfies its obligations by adhering to that instruction. SIFMA

[15] *See* Notice 15-46, *supra* note 7 (stating that firms "should not allow access fees charged by particular venues to inappropriately affect their routing decisions"); *see also* FINRA, Regulatory Notice 21-23, Best Execution and Payment for Order Flow (June 23, 2021) ("Notice 21-23").

[16] Letter from Jaime Klima, General Counsel, NYSE Group, Inc., to Vanessa Countryman, Secretary, Commission, Re: File No. S7-2026-20: Proposed Rule Regarding the Trade-Through Rule and the Locked and Crossed Markets Provisions of Regulation NMS (Aug. 17, 2026).

[17] Letter from Patrick Sexton, EVP, General Counsel and Corporate Secretary, Cboe Global Markets, Inc., to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, Re: The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS; Release No. 34-105655; File No. S7-2026-20, at 3 - 5 (Aug. 17, 2026).

[18] *See* Chairman Paul S. Atkins, Statement Regarding Minimum Pricing Increments and Access Fee Caps (June 11, 2026) (directing the staff to prioritize a review of Rules 610(c) and 612 of Regulation NMS by the end of the year).

acknowledges that whether the introducing broker has satisfied its own obligations in giving the instruction is a separate question.

## V. Best Execution Review Standards (Notice Section D.3)

FINRA's guidance on what is required in an order-by-order review and a regular and rigorous review would benefit from additional clarity, and FINRA has not fully articulated its expectations for demonstrating compliance with the order-by-order review requirement. For example:

- FINRA has framed regular and rigorous review as available to a member that routes order flow out, while a member that internalizes any part of its flow is subject to an order-by-order analysis.[19] Members would benefit from clarity as to what that standard requires and against what it is measured. For example, if a firm internalizes an order and provides it price improvement above the NBBO, it is unclear what metric such order should be measured against. When a member internalizes an order, it is in substance routing that order to itself as a venue, and a member that demonstrates its internalized executions are as good as or better than those reasonably available elsewhere has addressed any perceived conflict.
- An order-by-order analysis is properly understood as a prospective determination of the best market for an order at the time the order is handled, and not as a retrospective review of each execution print. Members' examination experiences have nonetheless included inquiries that appear to assume a retrospective, order-by-order reconstruction of individual executions. Retrospectively reviewing the execution print for each individual order is not achievable at scale for members handling large volumes of orders, and members do not understand FINRA to require it, and confirmation of that understanding would be helpful. Therefore, SIFMA respectfully requests that FINRA clarify its expectations with respect to order-by-order review, beginning with confirmation that the analysis is prospective rather than retrospective.
- Members that employ technology with embedded order routing logic that performs an individualized, real-time evaluation of each order against available market centers may utilize such logic as part of their compliance with best execution. FINRA should confirm that such logic, where reasonably designed (taking into account the FINRA best execution factors), tested, implemented, documented, and periodically reviewed, constitutes an order-by-order review under FINRA Rule 5310. Because the regular and rigorous review was intended as an alternative method of compliance for order flow not subject to an order-by-order determination, FINRA should not expect members to conduct a regular and rigorous review on top of a compliant order-by-order review. Confirming this distinction would give members greater certainty while preserving FINRA's ability to assess whether an order routing technology and its embedded logic are reasonably designed, appropriately tested, and operating as intended.

Members should retain flexibility to deviate from standard policies where market conditions or order-specific factors warrant. A member should not be strictly held to its written standards, which in many cases go above and beyond minimum best execution requirements, as though they applied without exception in every circumstance. In addition, members anticipate that certain order handling,

[19] *See* Supplementary Material .09 to Rule 5310. *See also* Notice 15-46, *supra* note 7; Notice 21-23, *supra* note 15 (stating that any orders a firm determines to execute internally on a proprietary basis out of the firm's inventory would be subject to an order-by-order analysis of execution quality).

routing, and execution policies will change following rescission of Rules 611 and 610(e), with the scope of those changes depending on FINRA's guidance and on how the Commission resolves Rules 611, 610(e), and 610(c)—a further reason to publish guidance well in advance of effectiveness of any final Commission rulemaking.

As to the execution quality considerations in Supplementary Material .09(b) to FINRA Rule 5310, it would be useful for FINRA to acknowledge expressly that information leakage concerns and urgency to execute fall within "customer needs and expectations" and that members may give greater weight to that factor where the facts and circumstances warrant.[20] More fundamentally, price improvement and disimprovement are statistical measures against a benchmark. Such measures are most probative where the result available for a particular order could not reasonably have been determined in advance. Order size, speed preferences, cost, and likelihood of execution may be weighed in combination, and whether best execution was achieved should remain a facts and circumstances analysis.

## VI. Institutional Orders (Notice Section D.4)

Customer needs and expectations are already included in the reasonable diligence and execution quality factors, and FINRA should give those considerations real weight for institutional clients in its guidance and examinations, expressly accounting for information leakage, market impact, execution strategy, and client instructions.

Guidance should not treat institutional orders as a single category. A large parent order given to a member differs from a child slice generated by the client's own algorithm, which may be the size of a retail order but carries different expectations. Any guidance with respect to executing institutional orders should provide flexibility to evaluate the performance of a client's overall order against the client's objectives rather than measuring individual slices against a fixed list of prescriptive factors. Applying a rigid standard at the child order level may detract from the customer experience and from the shared goal of quality executions in the aggregate. Where a member creates child orders to work a parent order it has received, the duty of best execution runs to that parent order. The child orders are created by the member on behalf of the client and executed for the benefit of the parent, and a member's obligation runs to the order it receives.

Guidance should permit members to use statistical analyses and market impact models to construct flexible execution plans for large parent orders, and to permit child orders to seek liquidity away from the NBBO where the member is minimizing overall market impact on the parent order. It should also permit members to price negotiated blocks at a mark-up or mark-down relative to spot, stop, prior reference, or market benchmark prices, reflecting the risk transfer rather than the prevailing market. A customer's preference for immediacy in executing a block should support the reasonableness of executing at a price inferior to a better-priced quotation that is small relative to the block.

FINRA must give appropriate weight to client instructions and client expectations within the existing best execution framework. Where an institutional client instructs a member as to how its orders are to be handled generally—including instructions favoring particular venues, cost outcomes,

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[20] SIFMA previously asked FINRA to amend Supplementary Material .09 on this basis. *See* 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) (responding to FINRA Regulatory Notice 25-04).

or execution strategies—the member satisfies its obligations by adhering to those instructions. This should be understood as encompassing a customer's needs and expectations under Supplementary Material .09(b) to FINRA Rule 5310. In many cases, this circumstance is akin to receiving directed order guidance from the client, notwithstanding that the client may not be directing every order to each venue.

## VII. Introducing and Receiving Firm Obligations (Notice Section D.5)

SIFMA believes that the same standard should apply to every firm in the routing chain, and FINRA need not adopt different standards depending on a member's role. The application of that standard must, however, reflect the function each member actually performs. Reliance under Supplementary Material .09(c) to FINRA Rule 5310 should be sufficient where a member routes to a firm that has agreed to handle the flow as agent and provides that firm with discretion over order handling. A sending firm that relies on a receiving firm's regular and rigorous review remains responsible for selecting and overseeing that firm, including by periodically reviewing the methodology, statistical results, and rationale of the review. The receiving firm remains responsible for the routing and execution decisions entrusted to it. Supplementary Material .09(c) to FINRA Rule 5310 should not be read to require a member to reconstruct or override reasonable decisions retained by another member and outside its control, which would produce duplicative and potentially conflicting reviews.

SIFMA believes that it would be helpful for FINRA to expressly acknowledge that an introducing firm's benchmark is what its available routing/executing brokers can deliver, not what the market as a whole displays, and it should not have to add executing brokers, at significant expense, to reach a venue offering only marginal opportunities for better executions, provided it has acted reasonably in its initial determination of routing/executing brokers. This fact is likely to become even more consequential after the rescission of Rules 611 and 610(e) because many introducing firms rely on one or two executing brokers and those brokers may themselves reasonably decline to connect to a given venue.

Differences in execution quality across routing/executing brokers are ordinarily evidence of competition, not of a best execution failure. Introducing firms deliver different mixes of order flow and routing/executing firms may provide different levels of price improvement across segments because of differences in order characteristics, customer composition, scale, risk capacity, liquidity access, fee tiers, service requirements, and operational efficiency. The standard is whether each sending firm receives execution quality at least as good as is reasonably available for the orders it sends—evaluated holistically across price improvement and disimprovement, fill rates, speed, size, certainty of execution, and transaction costs—not whether every sending firm received the same price. SIFMA believes that FINRA should expressly acknowledge this and should not require a receiving firm to replicate the results of, or reroute orders to, a competing executing broker.

SIFMA also asks FINRA to confirm that the directed order guidance in Supplementary Material .08 to FINRA Rule 5310 applies to an instruction from the member's own broker-dealer client in an intermediated routing chain, and is not limited to an instruction originating with the underlying customer of another broker-dealer. For example, where Broker A uses Broker B to access an exchange by sending directed orders, Broker B should satisfy its obligations by routing those orders promptly and in accordance with Broker A's instructions, irrespective of who selected the destination as between Broker A or Broker A's customer. Relatedly, Broker A's instruction to apply a particular routing strategy (*e.g.*, to access only low-cost venues, without specifying the exact venue) should also qualify as a directed order under Supplementary Material .08 to FINRA Rule 5310.

With respect to payment for order flow, members would benefit from a fuller written articulation of how FINRA evaluates order flow payment arrangements. Where an arrangement has been fully and fairly disclosed, its existence should not, standing alone, create a presumption of a violation or alter the applicable execution quality standard. The relevant inquiry should be whether the arrangement materially affected the member's routing judgment, evaluation of market quality, or execution outcomes. Finally, SIFMA does not believe additional guidance is needed with respect to the interpositioning provisions of FINRA Rule 5310.

## VIII. Extended Trading Hours (Notice Section D.6)

The principles applicable during regular trading hours apply equally to extended and overnight trading and the existing disclosure regime is adequate.[21] Differences in the extended hours market—principally lower liquidity, wider spreads, a lack of firm quotes, higher volatility, and fewer participating venues—are characteristics of the market to be considered within the existing framework rather than gaps in the rule. The relevant distinction is between the regular trading session and sessions outside regular hours, rather than between overnight trading and other extended sessions. If Rules 611 and 610(e) are rescinded, the analytical framework should be the same across all sessions, with differences in liquidity and volatility accounted for as market characteristics; session-specific guidance would be more likely warranted if Rule 611 is retained.

SIFMA does offer two observations. First, where the SIPs are not operating—for example, between 8:00 and 9:00 p.m. ET—the absence of an NBBO is likewise a characteristic of the market to be disclosed and managed rather than a gap in the rule, and members should be able to use reasonable alternative reference points and would benefit from confirmation of how execution quality is to be reported for those sessions. Second, the point made above about venue disconnection is more acute overnight—where an exchange operates an overnight session and a member has reasonably declined to connect, the member should not be presumed to have failed to achieve best execution because that exchange's quotation appeared on the consolidated tape. The all-in cost considerations described in Section IV are also more acute overnight, where fee structures are less established. Participation in the overnight session, like participation in the pre- and post-market sessions, is optional and not a regulatory obligation, and a member should not be second-guessed because a venue it has declined to use performs well in one session but not another.

Rather than additional prescriptive guidance now, SIFMA asks that FINRA observe how the overnight market develops. Overnight trading remains at an early stage, and material volume growth is not expected in the initial phase of exchange overnight sessions, as discussed at the Commission's recent roundtable. FINRA should continue to reassess whether additional guidance is warranted as volumes and participation grow, while remaining flexible to adjust its expectations as the market evolves.

[21] *See* FINRA Rule 2265 (Extended Hours Trading Risk Disclosure); Supplementary Material .06 to Rule 5310; FINRA Rule 3110.

## IX. Held and Not Held Orders (Notice Section D.7)

SIFMA believes that it would be helpful if FINRA acknowledged that members necessarily exercise some degree of discretion in how orders are executed whether an order is marked held or not held. For example, a member may direct a held order to a given venue in its discretion. Moreover, customer expectations or grants of discretionary authority do not map cleanly onto each category of held or not held. In particular, not all retail orders are appropriately treated as held.

The held and not held categories are not drawn by FINRA Rule 5310 itself, not opposite ends of a single spectrum, and of limited utility in evaluating order handling. The more useful inquiry is what the customer needs and expects for the order in question. SIFMA suggests two responses. First, "fully and promptly" should be interpreted in light of the characteristics of the order and market conditions at the time rather than as an absolute. Second, FINRA should consider marking criteria beyond the held/not-held distinction, together with guidance regarding members' handling obligations that may not fit neatly into the held/not-held distinction.

FINRA should also acknowledge that members have reasonable discretion where they act in certain, narrow circumstances, such as to address account intrusion or fraud or to modify or delay an order because of the potential for error or unintended market impact, including by evaluating an order before rejecting or releasing it. Members should not be exposed to a market access or timeliness inquiry for pausing an order they had a reasonable basis to question.

## X. Listed Options (Notice Section D.8)

The market structure for listed options differs materially from that for equities—for example, listed options can be executed only on national securities exchanges, the market is quote-driven rather than order-driven, introducing firms typically route retail flow to consolidators, executions may occur through auction mechanisms, and there is no Rule 605 analogue. The Rule 611 Proposal does not extend to the options markets and SIFMA has not supported extending it to them.[22]

Given the immediacy of the changes proposed for the equity markets, SIFMA has focused its comments there, and notes that the Commission's roundtable on the options markets generally found the quote-driven options market structure to be working well for investors. SIFMA does not, by focusing its comments elsewhere, suggest that FINRA's current options guidance is free of ambiguity or that no options-specific guidance is warranted. However, as a general matter, SIFMA believes that FINRA and the industry's efforts are best focused on addressing the more immediate concerns of a post-Rule 611 world as well as the anticipated emergence of tokenized venues rather than addressing options market guidance at this time. SIFMA notes that changes to FINRA's equities guidance may have unintended consequences for the options markets, asks FINRA to consider those effects, and reserves the ability to comment further.

## XI. Emerging Technologies (Notice Section D.9)

*Tokenized securities* – SIFMA agrees that the same principles-based approach to best execution should apply to customer directed orders in tokenized securities as apply to customer orders in securities traded through traditional market infrastructure and that tokenization should not, by itself,

[22] *See* Rule 611 Proposal, supra note 3, at 36661 n.72; SIFMA Rule 611 Letter, supra note 5, at 3 n.8 ("SIFMA does not support extending the Rule 611 Proposal's approach to the options markets, including the trade-through prohibition in the Options Order Protection and Locked/Crossed Market Plan, given differences between equities and options markets.").

alter the applicable standard. However, firms should not be forced to assess tokenized stock prices by default and not assessing tokenized stock prices should not be a violation of best execution obligations. SIFMA also encourages FINRA to coordinate with the Commission to ensure that market participants that elect to participate in tokenized trading environments are not free from best execution responsibilities. Differences in technology or market structure should not create opportunities for regulatory arbitrage.

In addition, SIFMA believes that FINRA should provide guidance specifying that a member that does not offer tokenized trading should be able to disclose this and remain outside that market, and members, including members that elect to participate on a limited or experimental basis, should not have to evaluate and document every tokenized or emerging venue type in order to justify not participating in it.

One of many key issues for broker-dealers and investors alike is the question of whether a tokenized version of an NMS stock is fungible with the corresponding core NMS stock, given differences in clearance and settlement rails, transfer agents and transferability, the trading venues themselves and the lack of interoperability or movement across different venues, regulatory regimes, the significant technology build needed to facilitate tokenized NMS stocks, and other factors. Further, the ability of issuers to object to having their stock tokenized under the Commission's Innovation Exemption differs from core equities. The degree of friction may also vary depending on how the tokenized version of an NMS stock is legally wrapped and on the type of emerging venue on which it trades. Taken together, these factors make tokenized products parallel to, rather than fully interchangeable with, core NMS stocks. Accordingly, a better-priced quotation in a tokenized security referencing an NMS stock is not necessarily a better price for the core NMS stock, and it would not be appropriate to expect a member to override a customer's decision to purchase the core NMS stock to obtain a nominally better price in a different product. These questions should be resolved before quotations in tokenized securities are treated as relevant to best execution or included in the NBBO.[23]

In the hypothetical event where a tokenized venue displays a better nominal price for a token that represents a fungible security, the all-in costs of accessing that price will differ: gas fees, wallet and custody requirements and costs, interoperability costs, technology and compliance/control builds to access the venue, settlement frictions, and differing operating hours, among others, may render that price economically inaccessible. A visible but practically inaccessible quotation should not, standing alone, create a routing obligation under a member's best execution obligations. That is particularly so for prices displayed by automated market makers, which are estimates rather than firm, immediately accessible quotations, and the price received on confirmation will frequently differ from the displayed estimate creating significant slippage.

Maximum extractable value ("MEV") activity presents another major area of concern regarding best execution and trades in tokenized NMS stocks. Distributed ledger trading platforms generally permit pending transactions in a not-yet-confirmed block to be reordered in a manner that maximizes returns to validators and to participants willing to pay for priority—a mechanism that is not permissible in the traditional equities markets—and the resulting MEV activity produces slippage that a member can neither control nor predict at the time of routing. Members should be permitted to consider product- and venue-specific risks that do not arise for traditional venues, including

[23] In the SIFMA Rule 611 Letter, SIFMA argued that, to be included in the NBBO, a quotation should satisfy a minimum volume threshold and be immediately accessible. Fungibility should be an additional criterion.

counterparty risk, potential anti-money laundering and sanctions risk, cybersecurity, reputational risk (including the heightened potential for fraudulent activity on unregistered venues), the identity and role of node operators, and the potential for MEV and front-running activity.

Members should also be permitted to consider the absence of recourse when something goes wrong on these venues: there may be no market maker, exchange, or broker-dealer positioned to make a customer whole, and members should not be held accountable for that structural gap. Under the Commission's Innovation Exemption, tokenized securities venues ("TSVs") are not subject to many of the core obligations traditionally expected of registered broker-dealers and exchanges, including customer complaint and dispute resolution processes, protection of PII and participant confidential information, and system integrity, capacity, resiliency, and availability. Since these protections are voluntary and may not exist at TSVs, such venues should not be considered part of the registered community for purposes of best execution obligations.

Broker-dealers are subject to FINRA oversight and the duty of best execution, while other participants transacting on the same tokenized venues may not be. The Commission's Innovation Exemption sharpens that asymmetry (and the corresponding regulatory arbitrage): participants operating under the Commission's Innovation Exemption may transact alongside broker-dealers on the same venues without the corresponding obligations, examination exposure, and cost base. Guidance should not create an asymmetry that disadvantages regulated intermediaries. SIFMA recognizes that this concern may be one that the Commission must address, and SIFMA encourages FINRA to work with the Commission to do so.

SIFMA accepts that a member must maintain some level of technology and market access in the traditional markets and does not suggest that cost alone excuses a member from evaluating a venue. SIFMA believes members would benefit from guidance recognizing that judgments about which technology costs are warranted—like long-standing judgments about market data feeds, colocation, and exchange memberships—are a legitimate exercise of business discretion and that a reasonable, documented decision not to build to support a particular venue or product is not a best execution deficiency. Similar questions arise for other new products that require a new clearing relationship for transactions. Nor should a member be required to transact with an automated market maker or on a distributed ledger platform where it or its customers do not wish to do so.

*Artificial intelligence* – FINRA has already stated that its rules apply to members' use of generative artificial intelligence as they apply to any other technology and SIFMA believes that principle is sufficient at this time.[24] As noted, SIFMA's current focus is on the proposed changes to Regulation NMS and SIFMA welcomes future opportunities to engage with FINRA on artificial intelligence and best execution.

## XII. Conclusion

SIFMA appreciates FINRA's decision to review its best execution guidance now and its recognition that the principles-based standard in FINRA Rule 5310 remains sound. SIFMA's recommendations are directed at one objective: that members and FINRA share an understanding, before rescission of Rules 611 and 610(e) becomes effective if the Rule 611 Proposal is adopted, of how the duty of best execution operates where no quotation is protected.

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[24] *See* FINRA, Regulatory Notice 24-09, Artificial Intelligence and Large Language Models (June 27, 2024).

SIFMA looks forward to continuing to work with FINRA and its staff on these issues, including the questions raised in the Notice that this letter does not address. Please feel free to contact us or our counsel, Charlie Sommers (csommers@sidley.com), Hardy Callcott (hcallcott@sidley.com), and Michael Ogershok (mogershok@sidley.com) of Sidley Austin LLP.

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