

September 25, 2026

- via https://datacollection.fnrw.finra.org/?notice_ref=383836

Ms. Jennifer Piorko Mitchell,

Office of the Corporate Secretary - Financial Industry Regulatory Authority (FINRA)

1700 K Street, NW, Washington, DC 20006

Re: Modernizing FINRA's Best Execution Guidance (Regulatory Notice 26-15)¹

Dear Ms. Mitchell,

On behalf of Data Boiler Technologies, I am pleased to provide FINRA with our comments on modernizing Best Execution (BestEx) Guidance. Data Boiler is a Pioneer in FinTech with patented inventions in signal processing, trade analytics, machine learning, time-lock cryptography, etc. We frequently comment on regulatory policy both domestically and abroad with over 13 years in business.

We strongly encourage FINRA to review our 33-page comment letter submitted on August 17 to the US Securities and Exchange Commission (SEC) on the Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation National Market System (Reg. NMS),² which is directly relevant and should be read in conjunction with our response here.

Please see the BOX below for an **Executive Summary** of our comments:

THE FAULTED FOUNDATION OF FINRA NOTICE 26-15

FINRA's Regulatory Notice 26-15 represents a fundamental administrative and microstructural misstep that attempts to erect an expansive, centralized command-and-control auditing regime over an unfinalized federal legal vacuum. By conditioning its sweeping BestEx overhauls on the passive assumption that the SEC will completely rescind Rule 611 and dismantle locked and crossed prohibitions under Rule 610(e), a.k.a. Order Protection Rules (OPR), **FINRA is prematurely prejudging open SEC rulemaking under File No. S7-2026-20**. This regulatory overreach seeks to force broker-dealers to absorb the costs, documentation burdens, and liability of a self-inflicted structural collapse.

A fundamental limitation for policymakers pursuing evidence-based regulations is that *every quantitative model faces a harsh trade-off between tractability and reality; liquidity is a moving target that no static framework can capture*. If the foundational anchors of Reg. NMS are dismantled, the **NBBO** will be legally stripped of its enforcement teeth, degrading the public consolidated tape into a series of unlinked, disconnected trading "*echo chambers*" streaming conflicting, uncoordinated prices. In this fragmented landscape, the public tape functions solely as **one of the sources of access, not a universal anchoring reference price to depend on for compliance**. Attempting to pass prescriptive, check-the-box routing standards, transaction-level mandates, or artificial safe harbors is a mathematical and statistical impossibility.

Any attempt by FINRA to dictate how independent firms handle price improvement, verify connectivity, or navigate internalization mechanics will fundamentally morph a self-regulatory organization into a central-planning command economy, like a Communist system, which destroys free-market pricing mechanics. *This heavy-handed intervention directly contradicts the SEC's stated principle under the current administration to encourage competing market forces to maintain the orderly function of the market and minimize regulatory intervention*. **FINRA cannot legally or logically restrict members' engagement in activities that are explicitly or implicitly permissible under the SEC's policy choices.**

- **The Invalidation of Safe Harbors and the "Europeanization" of US Markets:** Proposing compliance-driven safe harbors under FINRA Rule 5310 is a futile exercise. Once the OPR pillar collapses, the definition of a single "*best market*" ceases to exist. The market will shift toward a fractured, Europeanized framework reminiscent of Europe's

¹ <https://www.finra.org/rules-guidance/notices/26-15>

² https://www.databoiler.com/index.htm_files/DataBoiler%20SEC%20OPR%2020260817.pdf

deeply flawed MiFID II calibration regime, where rigid mathematical models misfired, perversely driving institutional volume away from transparent lit exchanges and into dark, unregulated pockets.

- **The Illegality of Transaction-by-Transaction Auditing Mandates:** FINRA lacks statutory authority to mandate the order-by-order best execution review standard. Attempting to enforce a microscopic, transaction-level checking process directly contradicts established federal regulatory precedent. In 79 FR 5592 (Footnote 711) regarding the Dodd-Frank Volcker Rule, the joint regulatory agencies—including the SEC, CFTC, Federal Reserve, OCC, and FDIC—unequivocally rejected a “*transaction-by-transaction*” approach as “*unduly burdensome*,” “*impractical*,” and “*inconsistent*”. Fabricating an order-by-order standard against unlinked books creates an impossible compliance nightmare plagued by sub-millisecond sequence drift and artificial audit anomalies within the opaqued Consolidated Audit Trail (CAT).
- **The Cross-Asset Asymmetry and Derivative Blind Spots:** The SEC and FINRA are operating in complete denial by trying to treat the equity and options markets as isolated, separate ecosystems. Options market makers do not quote derivatives in a vacuum; they survive by instantly delta-hedging their structural inventory risk using underlying NMS stocks. Completely unlinking equity protections while keeping the Options Order Protection NMS Plan active creates an uncompensated market asymmetry. To manage risk, **firms rely heavily on CFTC-regulated futures, exotic derivative products, and complex cross-border sweeps executed through foreign affiliated entities – such as short-selling 23-hour E-Mini futures on CME Globex – all of which operate outside the statutory scope of the SEC and FINRA.** Any attempt to pass rigid, equity-only routing standards ignores these vital global hedging loops and forces severe synthetic quote widening, perversely inflating transaction costs for investors.
- **The Reality of Algorithmic Warfare and Private Internalization:** Real-world market participants are not passive bystanders; they are actively counting their own securities inventory and margin constraints, as well as those of their opponents. Forcing firms to disclose or standardize their “*secret sauce*” – such as automated Smart Order Routers, signal detection tools, and real-time obfuscation techniques used to play active defense or offense against toxic liquidity – is an invasive overreach. In an unprotected market, forcing uniform compliance parameters eliminates the “**Variety**” factor among the 4Vs of Big Data, creating synchronized algorithmic echo chambers that escalate the probability of flash crashes and systemic default cascades.
- **Boilerplate Retail Waivers versus Tactical Discretion:** FINRA possesses the clear statutory authority to prohibit blanket, pre-emptive “*not held*” disclaimers embedded in new retail account documentation. These boilerplate waivers act as a predatory legal shield, allowing firms to systematically stall retail orders to pocket wider spreads or facilitate internal matching while claiming “*discretionary immunity*”. However, this contractual boundary is separate from the live algorithmic battleground. FINRA must stay out of micro-regulating real-time tactical order handling, signaling flags, and mid-flight re-categorizations (“*held*” to “*not held*” downstream), because the SEC provides absolutely no framework to judge underlying intent by realized economic outcomes – such as net-effective price improvement – rather than by mechanical routing semantics.
- **Technology-Specific Guidance Traps for AI and Tokenization:** Market participants utilize a wide variety of diverse, highly customized systems, including AI, to evaluate execution quality when the SIP is offline or non-existent. Standard tools like TCA and SOR are not the holy grail. Real-world market participants are actively counting the securities inventory and margin constraints of themselves and their opponents. Policy makers must recognize this microstructural reality rather than prescribing certain trade practices, technologies, or demanding additional data reporting requirements. Any added burden heightens the cost to transact in the US, eroding the competitiveness of US markets while completely failing to improve the trust factor if the market is left without OPR. FINRA should refrain from providing any BestEx guidance specific to the use of AI or tokenized securities. Before Congress and the

Commissions sort through these jurisdictional entanglements, FINRA can only observe policy directions – not develop independent rules.

Because an unprotected, crossed market tape strips broker-dealers of an objective baseline, FINRA must reject this arbitrary guidance expansion. **FINRA’s objective enforcement boundaries would be narrowed to merely verifying the mechanical accuracy of public disclosures under SEC Rule 605 and Rule 606.**

If the regulators’ true objective is to deemphasize speed as a factor for trading success, the correct mechanism is mandating the use of **time-lock encryption to make market data available securely in synchronized time across all venues**. If the goal is to eliminate data-fee waste and protect the public tape from rent-seeking behaviors, the Commission must implement a **Venue Trading Volume Threshold for Protected Quotes alternative** (e.g., a rolling 1% ADV benchmark). This surgical model strips protection from illiquid platforms while anchoring a hyper-liquid, protected core tape that market makers can safely hedge against.

Additionally, instead of implementing complex compliance requirements that benefit **ONLY the lawyers and big consulting firms** while exacerbating the gap between the “*Haves*” and “*Have-Nots*,” the Commission should adopt a **Copyright Licensing Mechanism**. By treating market data rebate incentives as standardized copyright royalties – drawing direct policy lessons from the music industry’s 4-part test objective rate-setting models – the clearinghouse can parse encrypted metadata tags to generate a robust cash cushion to absorb defaults, enhance capital velocity, and permanently lower the transaction cost barrier in the US.

FINRA can, and should, warn and remind the Commission of how the SEC’s attempt to completely rescind OPR is fundamentally faulted, but cannot legally or logically demand that broker-dealers expend private capital to absorb and correct the fallout of that structural policy misstep.

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One needs to look no further than the European equity markets to see the consequences of rescinding the SEC Rule 611 and Rule 610(e) – a.k.a. Order Protection Rules (OPR). Rescinding OPR will *widen public spreads and degrade the refresh rate and integrity* (abolishment of the legal mandate) *of the* National Best Bid Offer (NBBO), in turn, *harming retail price discovery*. The resulting effect is like Europe – consolidated tape data will not be mandatory for BestEx assessment.³ In turn, investment firms may decide to choose an endogenous selection to trade on certain exchanges, or with dealers and then review the performance every 6 months. This reduces incentives for broker-dealers wanting to up their game in execution performance.⁴ It sparks a “*Gresham’s Law of Microstructure*” and fuels a race to the bottom.

Rescinding OPR would **NEVER simplify the US equity market structure** but *trigger further market fragmentation*. It will cause institutional volume to abandon public continuous trading hours, migrating into private, unlinked single dealer “*echo chambers*” to avoid adverse selection. This shift will *hollow out* the public Central Limit Order Book (CLOB), expand the *Equity Risk Premium* for *corporate issuers*, and introduce severe *tracking errors of Exchange Traded Products*. While periodic auctions at lit exchanges and Alternative Trading Systems (ATSS) will increase, completely rescinding OPR strips away the synchronization between the CLOB and auctions, paving the way for cheap, highly profitable, and uninhibited *cross-mechanism arbitrage*.⁵ Also, executing continuous global sessions without intermarket boundaries would result in *erratic, high volatile public books* that *thin out unevenly during stress*. This creates a high risk of *micro-flash crashes* on isolated secondary venues while the primary exchange trades normally, heightening overarching systemic liquidity risk.

The EU’s calibration regime suffered from a major flaw: its mathematical model for classifying “*liquid*” instruments was frequently mis-calibrated, perversely driving order flow away from transparent exchanges and into dark, unregulated pockets.⁶ A fundamental **limitation** for policymakers pursuing evidence-based regulations⁷ is that every quantitative model faces a harsh trade-off between tractability and reality.⁸ In practice, **liquidity is a moving target** that NO static framework can accurately capture. The US avoids these rigid liquidity calibrations, which force European institutional orders onto public lit venues unless they clear a “*Large in Scale*” threshold. Instead, the US framework preserves block execution quality by letting the market organically route size via limit orders, Intermarket Sweep Orders (ISOs), and dark pools. This flexible architecture prevents the severe information leakage that plagues European institutional execution.

The structural integrity of **FINRA’s** oversight depends entirely on the empirical boundaries established by the **Commission**. Because the SEC’s record under **File No. S7-2026-20** is explicitly silent on the microstructural linkages between equity execution and option market-making, as well as CFTC-regulated derivative markets, **FINRA possesses no objective administrative footing to construct compliance standards for these cross-asset behaviors**. Self-regulatory authority is NOT a mandate to fill regulatory vacuums left by agency omissions. Attempting to discipline or audit a broker-dealer’s

³ <https://www.globaltrading.net/consolidated-tape-data-wont-be-mandatory-for-best-execution-quality-assessment/>

⁴ <https://www.databoiler.com/index.htm/files/DataBoiler%20Europe%202024.pdf> ; One logical reason for such European phenomenon will happen in the US is that, firms under invest in technologies and lack resources or are understaffed. Second, a lack of trustworthy NBBO or deferred SIP performance improvements causes the end-clients not to be aware of receiving inferior price. Third, elite firms rely on strong presence throughout the nation and stickiness relationship with clients rather than execution performance to do business. Fourth, firms are afraid that the geographic dispersion and aggregation distance would cause their NBBO refresh rate to be “*stale*” anyway, that we disagree – [time lock encryption](#) can make market data available securely in synchronized time to address *initial bias*. Market Data Infrastructure Rules (MDIR) §242.603(b) “*requires SRO to provide ... to all Competing Consolidators and Self-Aggregators in the same manner and using the same methods ... as such SRO makes available any information to any other person.*”

⁵ <https://blogs.cfainstitute.org/marketintegrity/2014/11/10/are-frequent-batch-auctions-a-solution-to-hft-latency-arbitrage/>

⁶ <https://blogs.cfainstitute.org/marketintegrity/2018/07/13/mifid-ii-and-systematic-internalisers-if-only-someone-knew-this-would-happen/>

⁷ <https://regulatorystudies.columbian.gwu.edu/proposed-framework-evidence-based-regulation>

⁸ <https://www.amazon.com/Complexity-Financial-Markets-Psychological-Agent-Based/dp/3319032739>

execution pathways across equity-to-option hedges without a formalized, Commission-level economic baseline is an arbitrary use of SRO power that violates basic principles of administrative law.

Consequently, in a fragmented market environment stripped of the OPR, **FINRA's legitimate oversight role must narrow strictly to verify explicit disclosure parameters.** The regulator *CANNOT legally orchestrate optimal routing paths or penalize firms for handling cross-market latency* when the Reg. NMS concept of a single, protected national price will be dismantled by the SEC or is degraded by the SROs.⁹ Enforcement metrics must then be confined to verifying the accuracy of disclosures under SEC Rule 605 and Rule 606.¹⁰ Any attempt to enforce an elastic, subjective “*duty*” beyond these strict transparency standards is in effect forcing firms to defend their routing logic against unlinked, uncoordinated market venues penalizes the industry for structural defects caused directly by the Commission's deregulation.

Without a uniform price backstop, requiring broker-dealers to constantly document multi-asset execution pathways is an attempt to enforce order in a system designed for fragmentation. If the SEC refuses to evaluate how options hedging and interconnected markets – including CFTC-regulated futures (especially in Overnight trading)¹¹ – are impacted by an unprotected equity tape, FINRA can, and should, warn and remind the Commission of how the SEC's attempt to completely rescind the OPR is fundamentally faulted. However, FINRA cannot legally or logically demand that broker-dealers expend capital to absorb and correct the fallout of that structural policy misstep. The proposed guidance expansion in **Regulatory Notice 26-15** must be halted until a coherent, cross-asset cross-markets economic analysis is formally introduced into the Federal record.

Shifting the **burden of proof** to broker-dealers under **FINRA Rule 5310** is **unjust**. It costs legal fees, time and efforts whenever a broker-dealer needs to conduct a statistical defense against BestEx liability rather than having OPR as a backstop. Firms are forced into a bureaucratic compliance exercise to justify routing designs through rigid, expensive “*Material Markets*” documentation – e.g., which exchange feeds and Single Dealer Platforms (SDPs) its router hooks into, and why – is a quintessential *check-the-box* compliance exercise, suppressing smaller, innovative firms. Heed the lesson from Société Générale (SocGen) \$7.2 billion loss, where policies and procedures were bragged about to avoid enforcement while evading substantive controls.¹² Because different “*echo chambers*” will stream their own fragmented BBOs, regulators cannot legally mandate which feeds a broker must look at. **Disputes will exponentially increase.**

Furthermore, Large Trader ID (LTID) creates major enforcement risk¹³ – sequence drift in the noisy *Consolidated Audit Trail* (CAT)¹⁴ database can perversely flip the timing of rapid-fire adjustments and cancellations in enforcement. To illustrate, if an HFT cancels an order at 10:00:00.000001 and an exchange logs a new quote at 10:00:00.000002, the order should be

⁹ Per SEC [Market Data Infrastructure Rules](#) (MDIR), “In adopting the Reg. NMS Amendments, the Commission recognized that the data portion of the national market system, which had not been updated since the late 1970s, has not kept pace with new data processing and communications techniques, resulting in what has effectively become a two-tiered market based on data access.” See this empirical research about [Exchanges optimally restricted access to price information](#).

¹⁰ <https://www.finra.org/filing-reporting/rule-605-and-606-reports> ;

https://www.databoiler.com/index_html_files/DataBoiler%20SEC%20Market%20Structure%20202303.pdf

¹¹ https://www.databoiler.com/index_html_files/DataBoiler%20SEC%204H%2020260917.pdf

¹² <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/5241263/Societe-Generale-chairman-Daniel-Bouton-to-step-down.html>

¹³ When CAT as a centralized repository reconstructs market sequences using third-party commercial data feeds – such as the data provided to the plan processor by Algoseek – to reconcile the SIP, it is impossible not to have sub-millisecond sequence drift (+ *initial bias* that exacerbates the gap between subscribers of proprietary feeds and the public consolidated tape). Because LTIDs are automatically stamped onto these drifting sequences, the CAT can be weaponized to penalize Wholesalers and any “*Large Trader*” for artificial anomalies created by the SRO's own database.

¹⁴ https://www.databoiler.com/index_html_files/DataBoiler%20SEC%20CAT%2020260622.pdf

dead before the quote prints. However, if the consolidated Securities Information Processor (SIP) data processing loop buffers those messages incorrectly, CAT might sequence them in reverse. A mis-sequenced string of rapid-fire quote adjustments can look like deliberate spoofing, phantom liquidity layering, or quote stuffing. The automated system flags the event as an anomaly and attributes it directly to the firm's stamped LTID, shifting the burden of proof to the market participant to prove their internal logs were the accurate ones. This structural distortion creates false signals of spoofing or quote stuffing, running a high risk that flawed data will be *weaponized to penalize blameless market participants and chill market participation*.

Reference to 79 FR 5592, footnote 711 regarding the Dodd-Frank Volcker Rule.¹⁵ It said *"The Agencies are not adopting a 'transaction-by-transaction' approach because the Agencies are concerned that such an approach would be unduly burdensome or impractical and inconsistent ..."* We reiterate our comments on our March 31, 2023 comment to the SEC,¹⁶ *"practically, can every broker-dealer have dynamic price shopping capabilities like 'Booking.com' or 'Ticketmaster' – it is economically not viable. Even if given the sophisticated algorithms to determine 'where' and 'when' in indicating 'most favorable price,' it is humanly impossible for the SEC or FINRA examiners to objectively decipher if there may or may not be BestEx violation or conflicted transactions ... Attempting to try use CAT for enforcement is like finding a needle in a haystack."*

On a separate note, the SIP data does NOT capture or process real-time Automated Market Maker (AMM) pool states or smart-contract conditions for **on-chain execution models**. A SIP-derived NBBO updates at a microsecond cadence. This is a mismatch in systems. An order waiting for blockchain block inclusion takes anywhere from 400 milliseconds on Solana to 12 seconds on Ethereum. There is no single quoted price on AMM. Rescinding OPR creates more questions than answers for **on-chain execution models** in satisfying BestEx.¹⁷

Other than the US advantages derived from a default waterfall model,¹⁸ *"OPR"* is the most distinguish feature to set the US apart from rest of the world. Our argument is not solely from the perspective of investor protection, but also a tactical need to preserve the US competitive advantages.

OPR are widely known for these purposes:

- Prevents market exploitations by mandating multi-market routing that *stops predatory trade-through arbitrage* and operating alongside anti-locking¹⁹ regulations in ensuring orders execute at the best available price.²⁰
- Allows **diversified trading venues to collectively work as one**, especially in view of the historical contexts where a wave of Electronic Communication Networks (ECNs) disrupted the traditional floor-based model.²¹

A lesser-known indirect feature of OPR is:

¹⁵ <https://www.federalregister.gov/documents/2014/01/31/2013-31511/prohibitions-and-restrictions-on-proprietary-trading-and-certain-interests-in-and-relationships-with#footnote-711-p5592>

¹⁶ <https://www.databoiler.com/index.htm/files/DataBoiler%20SEC%20Market%20Structure%20202303.pdf>

¹⁷ <https://www.finra.org/sites/default/files/NoticeComment/Douro%20Labs%20-%20FINRA%205310%20Letter%20%28Notice%2026-15%29.pdf>

¹⁸ <https://globalriskinstitute.org/publication/incentives-behind-clearinghouse-default-waterfalls/>; Clearinghouses implicitly leverage or orchestrate the entire US financial system to provide capital to members while banks provide liquidity, the FED serves as backstop and provide settlement infrastructure (i.e. not rely solely on their own balance sheets but uses).

¹⁹ <https://www.investopedia.com/terms/l/lockedmarket.asp>

²⁰ <https://www.sec.gov/files/rules/final/2025/33-11377.pdf>

²¹ <https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf>

- **Promotes** cross-market price formation. OPR incentivizes aggressive limit orders, which tightens bid-ask spreads and accelerate NBBO refresh rates. Functioning in tandem, the SIP operates as a centralized, trusted anchor that broadcasts this real-time pre-trade market data globally. This transparency effectively serves an “**advertising function**” for the broader Reg. NMS framework. By offering a highly visible, equitable, and deeply liquid trading environment, this structural *reinforces investor confidence* and *systematically attracts international capital to US markets*.

LACK OF STANDARDS across different market centers’ rebate and incentive systems is at the **CORE** of all issues.

Proliferation of order types, offer new pricing schemes, latency advantages, and/or other perks (rebates, bundled or discounted services through integration or strategic alliances) are different ways to segment order flows that convolute the markets. It is hard to curb conflict of interests or “*milking the cow*” behaviors because different market centers (Exchanges, ATSS, Systematic Internalizers (SIs), SDPs, etc.) do need different capabilities to optimize reach and attract new participants to their markets.

Rather than advancing a total repeal that induces “*Europeanized*” market chaos, FINRA and the SEC should support a **Venue Trading Volume Threshold** alternative. Implementing a rolling 1% average daily volume threshold, surgically strips protected status from illiquid, fringe venues while successfully preserving a hyper-liquid, protected public core for dominant exchange groups. This programmatic middle ground safely reduces market data rents and connectivity fees without hollowing out public market depth, degradation of the NBBO, or stripping broker-dealers of the trustworthy reference tape required to fulfill their holistic Duty of BestEx.

Last but not least, can order protection be replaced by a competing market force – one must first address the question of **who owns the data** and **what gets paid**.²² For that, we recommend a Copyright Licensing Mechanism to be administered by Clearinghouses, see pages 13-15 of our August 31, 2026 comment letter to the SEC and CFTC.²³ It treats order flow, quotes and trades as a copyrighted “*song*” and the trading venues as “*streaming platforms*.” Also, the SEC should require SROs to adopt time-lock encryption to make market data available securely in synchronized time.²⁴ This will be similar to the “*synchronized disconnect*” at 8 pm Eastern Time for the 23/5 trading in the US.¹¹

We wish the FINRA can return to its glorious past – the National Association of Securities Dealers (NASD) representing the interests of market participants rather than siding with the other SROs or the SEC. To maintain its integrity as an independent SRO, FINRA should formally advise the SEC that the whole rescission of OPR represents an untenable policy path that threatens public price discovery and weakens the US Capital Markets’ prominent position.

Please see [Annex 1](#) for our response to specific questions. Feel free to contact us with any questions and please keep us posted where our expertise might be helpful.

Sincerely,

Kelvin To

Founder and President

Data Boiler Technologies, LLC

This letter is also available at: https://www.DataBoiler.com/index_html_files/DataBoiler%20FINRA%20BestEx%2020260925.pdf

²² https://www.databoiler.com/index_html_files/DataBoiler%20Copyright%20Licensing.pdf

²³ https://www.databoiler.com/index_html_files/DataBoiler%20CFTC%20SEC%2020260831.pdf

²⁴ <https://www.linkedin.com/pulse/market-data-myths-versus-truths-kelvin-to/>



CC: Financial Industry Regulatory Authority (FINRA)

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Ms. Stephanie Dumont, Executive Vice President and Head of Market Regulation and Transparency Services

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Securities and Exchange Commission (SEC)

The Honorable Paul S. Atkins, Chairman

The Honorable Hester M. Peirce, Commissioner

The Honorable Mark T. Uyeda, Commissioner

Mr. Jamie Selway, Director of the Division of Trading and Markets

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ANNEX 1 – Data Boiler’s response to specific FINRA questions

1. *Best Execution Post-611 and 610(e)*

Assuming that the trade-through rule and related definitions in Regulation NMS are rescinded as the SEC proposes, FINRA requests comment below on associated changes that may be warranted to its best execution guidance.

FINRA’s request for comment on best execution changes, explicitly conditioned on the assumption that the SEC will rescind OPR as proposed, represents a fundamental administrative misstep. By designing guidance for a hypothetical market structure while the underlying federal rulemaking remains open, FINRA is effectively prejudging an unfinalized SEC proposal and creating an unstable regulatory environment. FINRA cannot casually assume the destruction of the market’s pricing anchor and then demand that broker-dealers shoulder the compliance burdens of navigating that self-inflicted fragmentation. To preserve its statutory integrity, FINRA must reject this passive assumption and unequivocally advise the Commission that a total rescission of the Order Protection Rule strips the market of the objective baseline required to evaluate best execution fairly

a. How should FINRA’s best execution guidance address member firms’ process for making decisions to connect, not connect or disconnect from specific execution venues in the absence of the trade-through rule protecting certain venues?

FINRA’s BestEx guidance cannot logically answer this question under its current premises, because assuming the complete absence of a trade-through rule before the SEC finalizes its proposal forces FINRA to design a compliance framework built on a legal vacuum. However, if forced to operate within a post-Rule 611 landscape, FINRA’s guidance must entirely abandon rigid, check-the-box connectivity mandates and adopt a flexible, principles-based framework centered strictly on empirical, data-driven Transaction Cost Analysis (TCA). However, standard tools like TCA and Smart Order Router (SOR) are not the holy grail. Real-world market participants are actively counting the securities inventory and margin constraints of themselves and their opponents. Policy makers must recognize this microstructural reality rather than prescribing certain trade practices, technologies, or demanding additional data reporting requirements. Any added burden heightens the cost to transact in the US, eroding the competitiveness of US markets while completely failing to improve the trust factor if the market is left without OPR.

A fundamental limitation for policymakers pursuing evidence-based regulations is that every quantitative model faces a harsh trade-off between tractability and reality. In practice, liquidity is a moving target that no static framework can accurately capture. The U.S. has historically preserved execution quality by avoiding the rigid, bureaucratic liquidity calibrations that plague European markets and perversely drive order flow into dark pockets.

By forcing broker-dealers to constantly document and justify connectivity decisions across a deregulated equity tape, FINRA is attempting to enforce a static compliance illusion onto a highly dynamic, fractured market architecture. Because the SEC failed to build an empirical, data-driven foundation analyzing the cross-asset ripple effects of a post-Rule 611 landscape, FINRA possesses no objective administrative footing to construct these enforcement standards. FINRA must reject this arbitrary expansion of its interpretive guidance, as regulators cannot logically mandate administrative order over a market structure explicitly designed for fragmentation.

i. Are there specific standards that members may apply or should be required to apply, or factors to consider, when making venue connection decisions (e.g., volume or liquidity thresholds, access fees or rebates, connectivity or data costs, order types, latencies or speed bumps)?

With all due respect, FINRA is seeking objective compliance “*standards*” from the industry at the exact moment its enabling agency – the SEC – is deliberately dismantling the only objective, time-tested standard that exists. By pushing for the complete rescission of OPR, the SEC is legally stripping the NBBO of its enforcement teeth. This irony turns the public tape into a lagging, Europeanized landscape of disconnected “*echo chambers*.” It is contradictory for FINRA to ask broker-dealers to establish highly standardized criteria for venue connection and execution quality, when the regulators themselves are consciously choosing to erode the synchronized pricing anchor required to measure those standards.

Degrading the public SIP feed is a self-artifact gutting a time-tested superior model – OPR which is simpler and more effective than the cumbersome MiFID II liquidity calibration. A fundamental limitation for policymakers pursuing evidence-based regulations is that every quantitative model faces a harsh trade-off between tractability and reality; liquidity is a moving target that no static framework can capture, and because the SEC failed to model the cross-asset ripple effects of a post-Rule 611 landscape, FINRA possesses no objective administrative footing to mandate rigid connection standards.

Consequently, FINRA’s guidance must abandon bureaucratic, check-the-box connectivity requirements and instead support a flexible, principles-based framework where member firms evaluate venues through empirical TCA. Connection decisions should be driven organically by a firm’s long-term execution performance and a holistic matrix of commercial factors – including rolling volume benchmarks, proprietary data-feed costs, and cross-asset delta-hedge latency – without forcing broker-dealers to shoulder the administrative burden or regulatory hindsight of chasing phantom quotes across an explicitly fragmented market. Please also see our response to [Q1d-ii](#).

- ii. *In the absence of defined “automated quotations” and “automated trading centers” for trade-through rule purposes, under what circumstances would firms consider quotes to be or not be immediately accessible?*

Addressable liquidity is a fluid concept in Europe. The UK Financial Conduct Authority has opted to shift away from it, particularly in the context of Systematic Internalizers (SIs) and post-trade transparency reforms. The adoption of FIX Market Model Typology (MMT) flags in equity market data feeds raise concerns about latency; the appropriate placement of trade lifecycle information; and doubt if Over-The-Counter (OTC) trades are truly assessable by anyone.²⁵

The current interpretive framework for FINRA Rule 5310 is built entirely around traditional market structures like centralized exchanges, ATS and SIPs, it creates more questions than answers for an **on-chain execution model** in satisfying best execution if rescinding OPR. SIP data does NOT capture or process real-time Automated Market Maker (AMM) pool states or smart-contract conditions. A SIP-derived NBBO updates at a microsecond cadence. This is a mismatch in systems. An order waiting for blockchain block inclusion takes anywhere from 400 milliseconds on Solana to 12 seconds on Ethereum. There is no single quoted price on AMM. What constitutes as an expected effective execution price for a specific order size, rather than flat displayed quotes – the SEC lacks sufficient guidance, hence FINRA cannot produce its own guidance.

Cost profiles (network fee, bridge fees to route across separate blockchains, smart-contract protocol interaction fees, slippage, pre-funding and capital lock up) are not comparable to traditional markets’ clearing

²⁵ <https://www.linkedin.com/pulse/addressable-liquidity-otc-equity-trading-kelvin-to-e76we/>

costs. Moreover, regulators should scrutinize **mempool exploitation** (automated bots that monitor public transaction queues) in Maximal Extractable Value (MEV)²⁶ especially during high-volatility spikes.

The whole rescission of OPR represents an untenable policy path. Self-regulatory authority is NOT a mandate to fill regulatory vacuums left by agency omissions. Therefore, FINRA must return to the SEC rather than attempting to enforce guidance over a deficient record. If the SEC's policy objective is to *"deemphasize speed as key trading success"*,²⁷ then mandate the use of time-lock encryption to make market data available securely in synchronized time. If the SEC desires to eliminate the multi-billion-dollar technology and data-fee burden imposed by rent-seeking, low-volume venues, then at least consider adopting the **Venue Trading Volume Threshold for Protected Quotes** alternative that will yield better outcomes than rescinding OPR.

iii. *Should best execution guidance distinguish between displayed and non-displayed liquidity, or between venues that offer displayed liquidity, non-displayed liquidity or both? If so, how?*

This question, or the rigidity in this implicit proposal for a bifurcated approach of displayed versus non-displayed liquidity seems heavily influenced by continental Europe. Data Boiler is a member of the Data Expert Group appointed by the European Commission since July 2024.²⁸ The EU's calibration regime suffered from a major flaw: mechanical righteousness in a mathematical model for classifying "*liquid*" instruments versus reality.

Whoever asks this question either lacks the sophisticated understanding of the US equity market structure, or it might be an attempt to drive divisiveness to segregate those who can afford the non-display proprietary feeds versus subscribers of the public display SIP feed. Anyone experienced in equity trading would know a better way to manage the ever-rising cost of market data/ exchanges' Proprietary Products (PPs) is by mixing and matching the use of SIP with selected PP(s) to optimize between cost and one's trade appetite/ style.²⁹

PPs non-display usage varied depending on whether one is being a hunter (performance optimizers, asset gatherers), or is a farmer (asset maximisers, retail) types of firms along the industry value chain.³⁰

Performance optimizers, latency arbitrageurs, alternative investment/ hedge funds, etc. would want expanded core data, particularly the depth-of-book that is pending to be implemented under the MDIR, while they are unlikely to switch to SIP and their demand for PP is inelastic. If given the sell side and buy-side a choice to use an improved performance of SIP for pre-trade data, they would selectively drop usage of certain PPs to save cost. US experience has shown low-latency subscribers to SIPs yield 30+% savings from subscribing only to 7 of the 11 top proprietary feeds.

SIP must be a product of reasonable compromise, if not a close substitute, to Trading Venues' proprietary products or Trade Reporting Facilities' (TRFs) value-added services to achieve the regulatory goal of *"affect competitive pressures for existing sellers of market data, resulting in cheaper, higher quality and more*

²⁶ <https://chain.link/article/mev-protection-mechanisms> ; <https://a16zcrypto.com/posts/article/mev-explained/> ; <https://owasp.org/www-project-smart-contract-top-10/2023/en/src/SC05-front-running-attacks.html> ; <https://blocksec.com/blog/harvesting-mev-bots-by-exploiting-vulnerabilities-in-flashbots-relay>

²⁷ <https://www.sec.gov/newsroom/speeches-statements/2014-spch060514mjw>

²⁸ <https://ec.europa.eu/transparency/expert-groups-register/screen/members/consult?memberId=131743&memberTypeId=3&lang=en&fromExpertGroups=3938>

²⁹ <https://www.sifma.org/wp-content/uploads/2019/01/Expand-and-SIFMA-An-Analysis-of-Market-Data-Fees-08-2018.pdf> ; <https://www.sec.gov/comments/4-729/4729-4559257-176198.pdf> ; <https://www.greenwich.com/market-structure-technology/market-data-spending-roll> ; <https://tpicap.com/burtontaylor/sites/g/files/escbpb181/files/burton-taylor/reports/2023-09/Research%20Analysts%20Data%20Usage.pdf>

³⁰ <https://www.linkedin.com/pulse/smile-curve-changes-securities-value-chain-evolves-kelvin-to/>



*accessible data for its users.” MDIR’s §242.603(b) “requires SRO to provide ... to all Competing Consolidators and Self-Aggregators in the same manner and using the same methods ... as such SRO makes available any information to any other person.” It aims to address fairness concerns about exchanges optimally restricted access to price information.³¹ Currently it is NOT a level playing field because of **initial bias**.³² We urge the SEC to require trading venues to *make market data available in synchronized time*.*

We are deeply concerned by the SEC’s approval of an amended SRO fee schedule that arbitrarily reclassifies critical data categories – such as expanding “Non-Display Use” fees to encompass “*Derived Data*” – while manipulating the definitions governing Professional versus Non-Professional users, Direct versus Indirect Access.³³ Also, under the unbundled new licensing policies, the legacy Tape A feed is restricted strictly to retail “*Non-Professional*” usage, meaning securities professionals do not lose data access but are *forced to migrate* to newly created, higher-cost infrastructure tiers. This transition eliminates the traditional CTA/UTP professional bundle, allowing the Plan Administrator to *arbitrarily apply punitive “Non-Display Use” fees* to any institutional desk ingesting the unbundled data for algorithmic or compliance routing. The new CT Plan Administrator who will be replacing CTA and UTP, is requiring broker-dealers to sign the new license agreement before the April 1, 2027 deadline, or else face disconnection from SIP.

This structural overreach acts as a direct detriment to innovations.³⁴ It represents an alleged overstepping of the SROs and Plan Administrator’s limited, explicitly conferred authority. Crucially, the Plan Administrator possesses no legal rights or technical know-how to discern and enforce a “*derived data*” clause, as they are completely unequipped to operate like ASCAP or BMI in the music industry, which relies on explicit statutory mandates to administer digital performance and copyright royalties for complex derivative works like engineering mixes. Because the SEC has never formally defined what constitutes as “*derived data*” within the statutory bounds of the SIP. The CT Plan Operating Committee cannot unilaterally fabricate these expansive definitions to impose new burdens on broker-dealers. Allowing SROs to exercise unchecked, non-codified definitions to extract rent on a firm’s downstream intellectual property represents a fundamental violation of administrative law and the “*fair and reasonable*” fee mandates of Exchange Act Section 11A.

Regulators and the industry should NOT forget these widely acknowledged concerns: “*onerous administrative obligations on data users; ambiguous language in the agreement; frequent unilateral amendments to the agreement; general lack of transparency on terms and conditions; excessive fees; increase of fees through penalties; and overly burdensome audits.*”³⁵ To maintain public trust in the neutrality of the rulemaking process, SEC Trading and Markets Director Jamie Selway should recuse himself from this matter given his prior

³¹ https://www.bayes.citystgeorges.ac.uk/_data/assets/pdf_file/0011/366599/sale-price-information-cass-knowledge.pdf

³² Without [TLE](#) to make market data available securely in synchronized time, it causes “*initial bias*” that exacerbates the gap between subscribers of proprietary feeds and the public consolidated tape. NYSE’s rooftop antenna service is a [controversy](#), it is used by high frequency trading (HFT) firms such as Virtu, as well as McKay Brothers and its sister company Quincy Data that advocate for “*level the playing field*.” NASDAQ’s [equalization project](#) in removing its GPS antenna may ease conflicts among subscribers of collocation service. Yet, a directive like China banning HFTs from using client-dedicated servers co-located within exchange data center, it merely pushes the latency arms race to the nearest neighborhood. We criticize the SEC for not going far enough with the [latency requirement](#) (same manner and using the same methods) in Market Data Infrastructure Rules. Not until a mandate of [market data available securely in synchronized time](#) and the questions of [who owns the data](#) being addressed, inequitable situations will remain.

³³ <https://www.sec.gov/files/rules/sro/nms/2026/34-105778.pdf> ; <https://cdn.databp.com/tenants/dataact/CT-Plan-Policies.pdf> ; <https://cdn.databp.com/tenants/dataact/CT%20Plan%20Distribution%20Agreement.pdf> ; <https://cdn.databp.com/tenants/dataact/CT+Plan+Data+Usage+Agreement.pdf>

³⁴ https://www.tradersmagazine.com/featured_articles/webull-rolls-out-mcp-server/

³⁵ https://eur-lex.europa.eu/eli/reg_del/2025/1156/oj

advisory role at DataBP, which is directly affiliated with DataCT – the newly appointed independent administrator of the Consolidated Tape Plan.

Be on a high alert that foreign adversaries may want to reduce the US prominent position and bring it to their low-level of standards. The current US framework preserves block execution quality by letting the market organically route size via limit orders, Intermarket Sweep Orders (ISOs), and dark pools. This flexible architecture prevents the severe information leakage that plagues European institutional execution.

FINRA must stop being divisive and recognize that many financial institutions in the US have concurrent access both displayed and non-displayed liquidity. Neither the SEC nor the FINRA have authority to force a market participant to choose exclusively between accessing displayed or non-displayed liquidity. This bifurcated approach of displayed versus non-displayed liquidity will **reduce serendipity**.

By legally protecting displayed quotes, the OPR in tandem with the SIP – which supposed to be a lightweight close substitute for exchanges' PPs³⁶ – represents one the most critical Reg. NMS mechanism in driving the US market's competitive advantage over foreign jurisdictions. It will be like Europe if OPR is rescinded, perversely driving order flow away from transparent exchanges and into dark, unregulated pockets.

iv. *Should FINRA consider additional guidance regarding routing to affiliated venues? If so, what issues are of concern?*

FINRA lacks the statutory authority to independently expand its interpretive guidance over routing to affiliated venues, as any attempt to do so would create an impermissible regulatory overreach that bypasses the SEC's sole jurisdiction under Exchange Act Section 15A. While the industry shares concerns regarding potential conflicts of interest, informational advantages, and structural arbitrage loops inherent to vertical integration, these are macro-market structure and registration issues that belong exclusively within the Commission's formal rulemaking record. Because the SEC's foundational proposal under File No. S7-2026-20 failed to provide a comprehensive, cross-asset economic impact analysis regarding corporate affiliation and routing mechanics, FINRA possesses no objective administrative footing to mandate connection standards or restrictive criteria. Self-regulatory authority is strictly a mandate to enforce existing rule sets, not a blank check to patch regulatory vacuums left by agency omissions; therefore, FINRA must reject this arbitrary expansion and push the matter back to the SEC rather than forcing broker-dealers to navigate an unbacked, subjective compliance framework.

v. *Is there additional data that would be informative to firms in making these determinations?*

We strongly rebuke FINRA and the SROs' thinly veiled attempt to expand their regulatory data-capture dragnet under the pretext of clarifying BestEx compliance. Requesting that member firms identify or surrender the "*additional data*" they utilize to evaluate venue connectivity or internalization mechanics is a predatory attempt to standardize and police proprietary industry intelligence.

A fundamental limitation for policymakers pursuing evidence-based regulations is that every quantitative model faces a harsh trade-off between tractability and reality; liquidity is a moving target that no static framework can capture. Because the SEC's record under File No. S7-2026-20 is explicitly silent on cross-asset options linkages and delta-hedging workflows, FINRA possesses no objective administrative footing to

³⁶ [https://www.databoiler.com/index.htm_files/DataBoiler Europe 2024.pdf](https://www.databoiler.com/index.htm_files/DataBoiler%20Europe%202024.pdf)



construct an expanded data-reporting regime. Forcing broker-dealers to compile and expose these internal analytical factors does nothing to improve execution quality; rather, it creates an illegal, hyper-bureaucratic paper trail that violates the Paperwork Reduction Act (PRA) and serves as an artificial barrier to entry designed to benefit entrenched incumbents.

- b. *Do members anticipate making significant changes to their NMS stock order handling, routing, and execution policies, procedures, or processes in the absence of a trade-through requirement? If so, what changes and why?*

If OPR is completely rescinded, FINRA member firms anticipate being forced to make radical, highly disruptive overhauls to their algorithmic routing architectures and internal compliance processes to navigate a fragmented, “Europeanized” landscape. Because a complete rescission of the OPR legally strips the NBBO of its enforcement teeth, firms will be forced to abandon traditional passive compliance models and rapidly hardcode complex “*Slippage Skew Parameters*” into their pricing black boxes to dynamically adjust for uncompensated trade-throughs across unlinked venues. Quant desks and execution routers will explicitly pivot away from public lit exchanges – which will become starved of volume and prone to micro-flash crashes – and instead, hyper-concentrate order flow into a few macro-brokers or private SDPs that can guarantee synchronized, atomic cross-asset fills. Furthermore, to defend against an exponential surge in BestEx liability under FINRA Rule 5310, firms will have to expend significant capital to build exhaustive, bureaucratic “*Material Markets*” documentation and expensive TCA infrastructure just to statistically justify routing choices around a broken public tape.

- c. *The trade-through rule under Rule 611 applies only to protected quotations, generally limited to displayed round lot quotations in NMS stocks on automated trading centers. However, FINRA understands that many firms today also actively participate in equity markets that are not subject to a trade-through rule, including orders for odd lots in NMS stocks (including fractional share orders), and over-the-counter (OTC) equity securities.*

- i. *How do member firms’ order handling, routing and execution practices for odd lots in NMS stocks and OTC equity securities differ from such policies, procedures and processes for round lots in NMS stocks? Are these differences due to the absence of a trade-through requirement or the characteristics of the market?*

Rule 600(b)(69) of the MDIR explicitly targets the structural handling of odd lot information to improve public visibility. We welcome the positive impact of round-lot modifications in narrowing spreads, and recent NASDAQ analysis explicitly reaffirms that order protection is essential to market quality.³⁷ The next major phase of structural modernization relies on the expiration of the SEC’s temporary exemptive relief for aggregated odd-lot depth data on May 1, 2028. However, if OPR is rescinded as proposed, the core economic benefits of the MDIR framework would subside, rendering the newly visible data practically toothless.

- ii. *Are there elements of firms’ best execution processes for odd lots and OTC equity securities that commenters intend to leverage in connection with round lots in NMS stocks in a post-611 environment? If so, what specific elements and why?*

Rather than improving execution quality, trying to scale these fragmented, unprotected routing processes to standard NMS equities would exacerbate market fragmentation and impair price discovery. In turn, it will result in a severe hollowing out of visible market depth.

³⁷ <https://www.nasdaq.com/economic-institute/the-print/does-order-protection-matter-data-says-yes>

- d. *If the trade-through rule is rescinded, there would no longer be protected quotations under Regulation NMS. However, the Securities Information Processors (SIPs) would continue to publish the NBBO.*
- i. *Will the NBBO remain an important benchmark from which to measure price improvement for best execution purposes, including when internalizing orders?*

While the NBBO will remain the benchmark, its reliability as a true reflection of the market could change if OPR is rescinded. If exchanges know their quotes are no longer “*protected*” from being bypassed, display liquidity on the public order books would dry up. Market participants might post less size at the inside market, leading to quote fading, widening of spread, and reducing NBBO refresh rate. If public display liquidity decreases, the NBBO might technically represent the so-called “best public price,” but it may represent very shallow volume. Wholesalers would still measure price improvement against it, but the benchmark itself might become easier to beat, potentially masking a degradation in absolute execution quality. See our August 17, 2026 comment letter to the SEC for further discussion about multi-asset linages, delta-hedge slippage, and other adverse consequences.² The SEC proposal to rescind OPR perversely favors the elites, allowing private echo chambers to weaponize price discrimination and capture massive risk premiums while starving the public order book of diverse volume and leaving the broader financial infrastructure fragile and blind.

- ii. *Other than the NBBO, what would be appropriate alternative benchmarks to measure execution quality (e.g., short term average prices such as time-weighted average price or volume-weighted average price), or appropriate principles for use in selecting alternatives? Would such alternative benchmarks be more or less appropriate than the NBBO in particular circumstances for particular types of orders? Is there additional data that would be informative to firms in making these determinations?*

When evaluating execution quality beyond the traditional **NBBO**, the financial industry relies on sophisticated, macro-level alternative benchmarks designed to capture market reality over extended time horizons. For large, institutional parent orders that cannot be executed instantly without moving the market, metrics like **Volume-Weighted Average Price (VWAP)** and **Time-Weighted Average Price (TWAP)** track execution efficiency relative to intraday market density and time increments. Furthermore, institutional asset managers favor **Implementation Shortfall (IS)** to calculate the precise “*slippage*” or total economic cost between the initial investment decision price and the final average execution price. While these benchmarks are essential for slicing massive order flow into discrete child orders without causing immediate market impact, they are inherently complex and introduce highly subjective variables that contrast sharply with the binary certainty of a snapshot quote.

Attempting to mandate dynamic, multi-layered price shopping creates an economically non-viable landscape for mid-sized and regional broker-dealers, who lack the multi-million-dollar technology budgets required to compete with ultra-low latency wholesalers. This shifts the market toward a fractured framework reminiscent of Europe’s deeply **flawed MiFID II calibration regime**, where rigid mathematical attempts to define shifting liquidity misfired, inadvertently driving institutional order flow away from transparent lit exchanges and into fragmented, dark pockets to avoid ruinous information leakage.

Ultimately, replacing a definitive infrastructure utility like NBBO in tandem with OPR, forces an unbearable regulatory burden on both market participants and oversight agencies. Without an objective, automated rule to police trade-throughs, determining a **BestEx violation** becomes a humanly impossible task for regulatory

examiners. Broker-dealers can endlessly justify bypassing a displayed price by citing market impact, quote-fading latency, or venue toxicity, drowning compliance desks in infinite subjective debates.

Attempting to use the opaqued **Consolidated Audit Trail (CAT)** database to retrospectively decipher a firm's algorithmic intent at any given millisecond transforms enforcement into an administrative nightmare – effectively searching for a needle in an ever-expanding digital haystack. Sequence drift in the noisy CAT database can perversely flip the timing of rapid-fire adjustments and cancellations in enforcement.¹⁴ This structural distortion creates false signals of spoofing or quote stuffing, running a high risk that flawed data will be weaponized to penalize blameless FINRA members.

Public confidence in market integrity erodes as the SEC continues to tolerate chronic national market disorders and data distortions within CAT and SIP. This instability creates a chilling effect discouraging market participation and places undue burden on market participants. In turn, capital will migrate toward digital assets, gaming platforms, and offshore jurisdictions, jeopardizing the dominant position of the US financial system. The SEC and the US Department of Justice (DOJ) must assess whether CAT data was weaponized for political or commercial reasons that benefit the SROs and their vendors.

- iii. *FINRA understands that many firms today actively participate in equity markets without a centralized, consolidated cross-market quote like the NBBO, including OTC equity securities and in the overnight hours for NMS stocks when the SIPs are not currently operating. How do firms currently benchmark and assess execution quality in these markets in the absence of an NBBO? Are there aspects of these processes that commenters believe should be explicitly noted in best execution guidance, including for NMS stocks when the NBBO is no longer protected?*

There is a line between private rights and social costs.³⁸ FINRA should NOT get caught in the fight between Lit Exchanges and OTC bilateral trades. FINRA's inquiry into how firms independently benchmark execution quality in the absence of an NBBO touches upon highly proprietary, distinct operational methodologies, and asking broker-dealers to codify these processes is essentially demanding that the industry unveil its "*secret sauce*" – an intrusive overreach that FINRA has no statutory right or authority to interfere with.

Market participants utilize a wide variety of diverse, highly customized systems to evaluate execution quality when the SIP is offline or non-existent. Particularly, those collocated with exchanges, subscribers of PPs, some would algorithmically isolating *toxic versus natural liquidity*.³⁹ An ATS operates as a midpoint-only venue using continuous, AI-driven price optimization to minimize *adverse selection*.⁴⁰ Some firms rely on specialized multi-venue sampling, others deploy localized volume-weighted average price (VWAP) algorithms, and multi-asset market makers frequently construct complex, synthetic internal reference prices tied to real-time derivatives and parallel offshore books.

One size does not fit all. These proprietary, dynamic frameworks are highly protected intellectual property developed at immense private expense to navigate fragmented liquidity landscapes. They are tailored to a firm's specific risk profile, client base, and technical capabilities, making it impossible – and highly inappropriate – to flatten them into a rigid, singular regulatory guideline.

³⁸ <https://iea.org.uk/wp-content/uploads/2016/07/THE%20MYTH%20OF%20SOCIAL%20COST.pdf>

³⁹ <https://patents.google.com/patent/US7587347B2/en> ; <https://patents.google.com/patent/US7987128B2/>

⁴⁰ <https://patents.google.com/patent/US20210272201A1/en>



By attempting to extract these competitive, proprietary mechanics under the guise of expanding its best execution guidance, FINRA should avoid violating basic principles of administrative law and exceeding its limited enforcement mandate, which is confined to verifying disclosure compliance rather than dictates on algorithmic design. **SRO authority is not an open invitation to map out, standardize, or police a firm's unique mathematical routing advantages and internal trade analytics.**

Asking how firms evaluate unstructured OTC markets or paper-thin 23x5 overnight stock spaces is a transparent attempt by the regulator to reverse-engineer private industry solutions to patch a massive regulatory vacuum left by the SEC's structurally flawed deregulation.

FINRA must recognize that in any market environment stripped of the OPR, it possesses no objective administrative footing to codify or evaluate these fragmented benchmarking practices. Any attempt to explicitly note or mandate specific benchmarking factors in its official guidance would create an unworkable, elastic compliance trap that arbitrary penalizes firms for their proprietary trade logic while failing to provide a uniform, legally binding price backstop.

- e. *In the absence of a trade-through rule, members would no longer be required by Regulation NMS to route to automated market centers displaying the best available round lot price. However, FINRA expects that a number of venues—including national securities exchanges—will continue to provide displayed round lot quotes.*
- i. *For what reasons or under what circumstances might it be consistent with a firm's best execution obligations not to access displayed liquidity?*

Under a fragmented market structure stripped of the Order Protection Rule's legal boundaries, forcing broker-dealers to blindly route to every displayed quote creates a dangerous compliance illusion that perversely harms execution quality. In a post-Rule 611 environment, the public tape loses its enforcement teeth and degrades into a series of unlinked, disconnected trading "*echo chambers*" streaming conflicting, uncoordinated prices. Consequently, circumstances routinely arise where a firm's holistic Best Execution obligations under **FINRA Rule 5310** dictate that bypassing thin, toxic, or stale displayed quotes is the only responsible mechanism to protect a client's order from severe information leakage and execution slippage.

A firm's BestEx obligations might not access displayed liquidity under the following specific circumstances:

- **Bypassing Fringe Venues to Prevent Adverse Selection:** Institutional volume is justified in bypassing public continuous trading hours on minor venues to avoid adverse selection and front-running by predatory algorithms.
- **Mitigatory Flight to Primary Auctions:** When continuous intraday hours become toxic, volatile, and unpredictable due to a hollowed-out public order book, routing away from displayed quotes to hoard order flow for centralized opening and closing auctions preserves execution quality.
- **Avoiding Severe Tracking Errors in ETPs:** Index-tracking Exchange-Traded Products are justified in bypassing small exchanges to execute block size exclusively on premium venues when unlinked books produce uncorrelated, fragmented underlying stock drops.
- **Executing Share Repurchase Programs Under Rule 10b-18:** Corporate buybacks may purposefully avoid accessing displayed quotes across unlinked, crossed trading chambers, where establishing a valid, trustworthy "*independent bid*" becomes a compliance impossibility.



- **Preventing Cross-Asset Delta-Hedge Slippage:** Multi-asset options market makers must bypass unprotected equity venues when execution speed and fill guarantees fall out of sync with highly protected options exchanges, preventing catastrophic timing lags on their hedging legs.
- **Mitigating Asymmetric Margin Overhauls:** Portfolio managers may choose to route past certain displayed quotes when unlinked equity venues force clearinghouses to strip perfect 1:1 margin offsets and demand highly punitive variation margin haircuts on delta-hedged books.
- **Insulating Against “Dynamic Slippage Skew” and Trade-Through Propensities:** Quantitative desks are justified in bypassing specific displayed liquidity hooks if a venue exhibits a high historical propensity to allow uncompensated trade-throughs, structurally downgrading the value of that quote.
- **Evading Biased and Weaponized CAT Data:** Firms may steer flow away from fast-moving displayed quotes on high-latency venues to eliminate sub-millisecond sequence drift that perversely frames rapid-fire adjustments as phantom liquidity or spoofing.
- **Avoiding Predatory Maker-Taker Rebate Games:** Sophisticated routers may choose to bypass venues streaming “*phantom quotes*” designed purely to capture rent-seeking data fees rather than facilitate genuine, robust price discovery.

Because the SEC’s foundational proposal under **File No. S7-2026-20** failed to build an empirical, data-driven baseline analyzing cross-asset ripple effects, **FINRA possesses no objective administrative footing to construct rigid compliance standards or penalize firms for disconnecting from certain displayed markets.** Forcing broker-dealers to chase fragmented, untradeable quotes across rent-seeking, low-volume venues simply shifts an expensive, bureaucratic burden of proof onto market participants to compile endless “*Material Markets*” paperwork.

- ii. *For what reasons or under what circumstances might it be consistent with best execution to route a customer’s order to access displayed liquidity that is at a price inferior to the best displayed price in the market?*

Accessing a nominally inferior displayed price is consistent with BestEx under the following circumstances:

- **Size Clearance and Block Optimization (“Size Clears Size”):** When executing a large institutional order, routing to a single venue displaying a larger block at an inferior price eliminates the severe information leakage, multi-venue latency, and rapid price impact that would occur if the smart order router attempted to slice the parent order across multiple thin, top-of-book quotes.
- **Neutralizing Predatory HFT and Information Leakage:** Slicing an order to interact with a fragmented top-of-book quote on an unlinked venue alerts predatory high-frequency trading (HFT) algorithms. Routing directly to a deeper, inferior displayed price on a premium exchange seals the order within a single matching engine, preventing market-makers from front-running the residual legs of the trade.
- **Sub-Millisecond Sequence Drift and Stale Quotes:** In an unprotected tape architecture, sub-millisecond data-ingestion lags create severe sequence drift within the Consolidated Audit Trail (CAT). A top-of-book quote on a high-latency fringe venue is frequently already dead or filled; routing to a stable, albeit inferior, active quote on a primary venue avoids a high-probability message rejection or partial fill.
- **Synchronizing Cross-Asset Delta-Hedge Legs:** For multi-asset options market makers, an equity quote cannot be evaluated in a vacuum. Options matching wheels must achieve atomic, synchronized fills; routing to a nominally inferior equity quote is mandatory if that venue can guarantee an instant, sub-



millisecond fill that anchors a highly protected options position, preventing uncompensated timing lags and synthetic spread widening on the derivative leg.

- **Total Cost Profile Optimization (Fees vs. Rebates):** The net execution price to the customer is determined by subtracting access fees and adding rebates. A top-of-book quote may be completely neutralized by exorbitant, rent-seeking connectivity or data fees charged by a low-volume venue, making a nominally inferior price on a low-fee or high-rebate venue cheaper for the client on a net-effective basis.
- **Avoiding Localized Micro-Flash Crashes and Volatility Locks:** During extreme volatility spikes, individual exchange order books thin out unevenly. Attempting to interact with a fragmented "best" quote on an isolated secondary venue exposes the order to catastrophic localized slippage; routing to a deeper, more robust liquidity layer at an inferior price tier preserves structural capital safety.

WARNING: FINRA must reject the urge to construct highly rigid, bureaucratic criteria to police these choices. Self-regulatory authority is not a mandate to fill regulatory vacuums left by agency omissions. Shifting an expensive, backward-looking administrative burden of proof onto broker-dealers to constantly compile "Material Markets" paperwork to justify bypassing an unlinked quote is a detriment to financial innovation. A broker's routing diligence must be evaluated by holistic, realized portfolio performance metrics, not by an arbitrary requirement to chase an uncoordinated and systematically degraded public standard.

iii. *Should FINRA consider providing more specific guidance regarding best execution standards for routing and internalization decisions? If so, what guidance and why?*

Because the SEC's foundational proposal under File No. S7-2026-20 failed to build an empirical, data-driven foundation analyzing the cross-asset ripple effects of an unprotected equity tape, FINRA possesses no objective administrative footing to construct more specific guidance. Self-regulatory authority is strictly a mandate to enforce existing rule sets, not a blank check to patch regulatory vacuums left by agency omissions. Any attempt by FINRA to dictate more granular routing or internalization parameters over an unbacked federal record represents an impermissible regulatory overreach that will inevitably penalize broker-dealers for structural defects caused directly by the regulators themselves.

If FINRA issues any further guidance, it must **strictly avoid prescriptive mandates** and instead explicitly reinforce member firms' principles-based operational autonomy. The only constructive guidance FINRA can offer under a fragmented architecture are:

- **Explicitly Reject "Check-the-Box" Routing Mandates:** Guidance must state that broker-dealers are not required to maintain costly, defensive technology connections to fringe, low-volume venues purely out of fear of regulatory hindsight. Connectivity and internalization decisions must be recognized as proprietary commercial judgments.
- **Acknowledge Cross-Asset Risk Realities:** Guidance must formally shield firms from execution quality liability when routing logic prioritizes the structural safety of multi-asset linkages – such as localizing equity order flow to achieve atomic, synchronized fills for an options delta-hedge – over a nominally superior but high-latency equity quote.
- **Narrow Oversight to 605/606 Accuracy:** FINRA must formally advise the Commission that in the absence of a legally binding Trade-Through Rule, the regulator's objective enforcement boundaries must narrow strictly to verify the mechanical accuracy of public disclosures under **SEC Rule 605 and Rule 606**.

If FINRA stands by its good heritage to support the greater good of investment community to save the NMS from chaos, it **cannot demand that broker-dealers shoulder the cost of resolving the SEC's policy missteps.**

If the regulatory objective is truly to deemphasize speed as a factor for trading success, the correct mechanism is mandating time-lock encryption to synchronize market data access.

If the goal is to eliminate data-fee waste, the Commission must implement a **Venue Trading Volume Threshold** to strip protection from minor venues.

iv. *Is there additional data that would be informative to firms in making these determinations?*

See our response to [Q1a-v](#).

f. *Should FINRA consider articulating standards for firms in providing price improvement to different customer orders?*

i. *If so, what considerations or factors should be included? Please be specific.*

ii. *Should guidance address scenarios involving decisions to route an order to another venue or internalize an order when paying for order flow, or more generally the decision to internalize orders? If so, what guidance would be helpful?*

Absolutely NOT. FINRA must completely reject the articulation of any such standards, as prescribing rigid price-improvement, order handling, or internalization formulas fundamentally morphs an independent SROs into a central-planning command economy, like a Communist system, which destroys free-market pricing mechanics. This directly contradicts the SEC's stated principle under the current administration to encourage competing market forces to maintain the orderly function of the market and minimize regulatory intervention. If every market participant is forced to conform to the same one-size-fits-all BestEx "*guide*" for price discovery prescribed by regulators, it would be a detriment to the "*Variety*" (diversity) factor among the 4Vs (*Veracity, Velocity, Volume*), disrupting the essential equilibrium of US financial system.

Price improvement and internalization are not administrative line-items that can be rationed by regulatory decree. They are the direct products of competitive, principal-driven risk allocation. Under a fractured market structure stripped of the OPR legal boundaries, the NBBO will lose its enforcement teeth, turning the public tape into a lagging reflection of uncoordinated prices. In this "*Europeanized*" landscape, forcing a standardized, state-prescribed framework onto internalization or payment for order flow (PFOF) decisions represents an unworkable regulatory contradiction. It forces broker-dealers to chase *phantom quotes* and defend their routing logic against a systematically broken benchmark, effectively penalizing lawful, competitive trading desks for structural defects caused directly by the regulators themselves.

g. *Should FINRA provide additional clarification regarding the "prevailing market conditions" that may affect the execution of a customer's order, for example the liquidity, price discovery, reference price reliability, venue characteristics and market participant composition specific to the trading session in which the order is received and executed?*

No. FINRA lacks both the jurisdictional authority and the macro-prudential mandate to independently define or clarify what constitutes "*prevailing market conditions*" versus a "*market stress condition*." Evaluating systemic liquidity, price discovery parameters, reference price reliability, and market participant composition across distinct trading sessions falls strictly within the statutory purview of the SEC, the CFTC, and other primary Prudential Regulators (the Federal Reserve, the OCC, and the FDIC). SROs do not possess the legal right to unilaterally declare or redefine macroeconomic

states to police broker-dealer routing logic. Any operational protocols that actively alter or manage prevailing market or stress conditions – such as invoking volatility interruption mechanisms, circuit breakers, or related exchange-wide trading halts – explicitly require formal approval from the respective federal commissions. FINRA attempting to insert its own granular, interpretive standard into these definitions oversteps its enforcement boundary that conferred by the SEC and introduces immense regulatory confusion into the financial system.

- h. FINRA has discussed the role of order handling disclosures in the context of extreme market conditions, noting that, while meaningful disclosures may inform customers' expectations in extreme conditions, they do not excuse order handling procedures that are unfair or otherwise inconsistent with a member firm's best execution obligations. Should FINRA consider providing any additional guidance regarding order handling in extreme conditions, and the role of customer disclosures in those conditions?*

See our response to [Q1g](#).

- i. Do commenters believe that one or more Rule 5310 safe harbors should be developed, such that activity falling within their scope would be considered to be in compliance with a firm's best execution obligations? If so, what specific circumstances or scenarios should such safe harbors address (e.g., firms routing a directed order to a specified venue; executions pursuant to documented regular and rigorous methodologies; large order executions meeting a specified benchmark(s))? What would be appropriate parameters or conditions for safe harbor relief in each instance?*

FINRA cannot legally orchestrate safe harbor conditions or penalize firms for execution quality variance when the regulators themselves have consciously chosen to erode the synchronized pricing anchor required to measure compliance. Developing artificial, compliance-driven safe harbors under Rule 5310 is futile because once the core pillars of Reg. NMS – the OPR and a legally binding SIP framework – are collapsed, the NBBO loses its structural and legal authority. Completely rescinding the OPR creates a structural smoke screen that makes enforcing critical anti-fraud provisions – such as **front-running**, **conflict-of-interest** mandates, and the legal **distinction between clients and counterparties** – practically impossible. See our response to [Q1d-ii](#) and [Q1d-iii](#).

Under a fragmented market structure stripped of an enforceable NBBO, the public tape ceases to be a single source of access. When order flow fractures across dozens of unlinked, private SDPs and dark crossing networks, bad market environments will inevitably drive out good, displayed liquidity. Because the legal mandate guaranteeing price protection is gone, predatory algorithms can exploit cross-market latency gaps to systematically front-run customer orders. Wholesalers can perversely conflate their fiduciary duties, internalizing retail orders at inferior prices as counterparties while pocketing asymmetric margins before a client's quote can adjust.

By pushing for this total repeal under File No. S7-2026-20, the SEC is creating a massive compliance blind spot that FINRA possesses no objective administrative footing to police or regulate through expanded guidance. A fundamental limitation for policymakers pursuing evidence-based regulations is that every quantitative model faces a harsh trade-off between tractability and reality; liquidity is a moving target that no static framework can capture.

Proposing alternative benchmarks or prescriptive parameters will not rescue the regulatory framework. They merely function as an administrative band-aid on a self-inflicted structural void. In an unlinked, “*Europeanized*” market landscape explicitly designed for fragmentation, the definition of a single “*best market*” becomes a mathematical and statistical impossibility. Consequently, FINRA’s legitimate self-regulatory authority must narrow itself strictly to disclosure-based enforcement under SEC Rules 605 and 606.

A fundamental limitation for policymakers pursuing evidence-based regulations is that every quantitative model faces a harsh trade-off between tractability and reality; liquidity is a moving target that no static framework can capture. Because the SEC's foundational proposal under File No. S7-2026-20 failed to build an empirical, data-driven foundation analyzing the cross-asset options ripple effects and delta-hedging constraints of a post-Rule 611 landscape, FINRA possesses no objective administrative footing to codify safe harbor conditions.

Attempting to prescribe uniform benchmarks for directed orders, large blocks, or "*regular and rigorous*" routing logic forces broker-dealers to chase phantom quotes and defend their routing architecture against a broken public tape. Once the OPR pillar collapses, the regulatory framework fractures. FINRA cannot legally or logically force broker-dealers to compile rigid "Material Markets" paper trails to defend themselves against a systematically broken NBBO.

- j. *How should FINRA approach oversight for compliance with best execution obligations in the absence of a trade-through rule? For example, what types of data should FINRA consider in overseeing compliance with Rule 5310?*

See our response to [Q1a-iv](#), [Q1a-v](#) and [Q1i](#).

- k. *What policies, procedures, and processes should FINRA members have in place to assess their best execution compliance assuming rescission of Rules 610(e) and 611?*

Heed the lesson from SocGen \$7.2 billion loss, where policies and procedures were bragged about to avoid enforcement while evading substantive controls.¹² Such requirements benefit ONLY the lawyers and big consulting firms, while exacerbating the gap between the Haves and Have-Nots.

FINRA has implemented Rule 610(e) through FINRA Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks). The SEC stated that it anticipates that most, if not all, SROs would seek to amend their locking and crossing rules.

- l. *If SROs rescind their locked and crossed rules, what scenarios do members believe may present the potential for challenges in meeting their best execution obligations if the SEC adopts its proposal?*

FINRA Rule 6240 would become entirely invalid and operationally dead if SEC Rule 610(e) is rescinded. FINRA Rule 6240 does not prohibit locking just any price; it specifically bans members from displaying quotes that lock or cross a "*protected quotation*." Because a protected quotation is a strict legal creation defined by OPR, the concept of a "*protected quotation*" ceases to exist in the equity market. Without that statutory definition, Rule 6240 loses its grammatical and legal target, rendering it textually toothless.

If the Commission deletes the rule, FINRA cannot independently keep Rule 6240 active to police NMS stocks, because doing so would create a direct conflict with the SEC's stated policy goal: allowing locked markets to exist as a form of "*legitimate competitive quoting behavior*".

FINRA BestEx obligations will become an administrative and economic impossibility under the following scenarios:

- **The "Locked Equity / Crossed Option" Arbitrage Loop:** Since Rule 610(e) will be gone for stocks, HFT algorithms will intentionally lock or cross equity venues (e.g., a \$10.01 bid on NASDAQ against a \$10.00 ask on the NYSE). Arbitrageurs will aggressively exploit the strict, legally protected options NBBO to lock in riskless derivative-to-cash spreads before options market makers can adjust their pricing models, creating severe cross-asset dislocations.
- **Uncompensated Delta-Hedge Slippage and Timing Lags:** Options market makers do not quote derivatives in a vacuum; they survive by instantly delta-hedging their risk using underlying NMS stocks. Completely unlinking the underlying equity market while keeping the Options Order Protection NMS Plan active creates a severe market

asymmetry, forcing options market makers to face massive timing lags and unhedged execution slippage that will force them to drastically widen options quotes.

- **Wholesaler Internalization Arbitrage and Client Conflation:** Retail wholesalers will function much like European Systematic Internalizers (SIs), quoting customized, proprietary prices to specific brokers based entirely on isolated risk profiles and flow toxicity. This structural fragmentation allows wholesalers to internalize a retail stock order at an inferior price on the deregulated equity side while simultaneously executing the client's options leg at a protected price on an options exchange, pocketing an asymmetric margin premium on the combined trade while perversely conflating their roles as fiduciaries versus counterparties.
- **Sub-Millisecond Sequence Drift and Weaponized Audit Data:** In a market dominated by multiple, unlinked single-dealer "*echo chambers*," separate venues will stream conflicting versions of the BBO. Processing software misalignments and data-ingestion lags across uncoordinated venues will cause severe sub-millisecond sequence drift. This structural distortion creates false signals of spoofing, quote stuffing, or phantom liquidity layering, running a high risk that flawed data will be weaponized in enforcement to penalize blameless market participants.
- **The Proliferation of Bureaucratic "Material Markets" Paper Trails:** In the absence of a synchronized national price backstop, the burden of proof shifts entirely onto broker-dealers to conduct expensive, backward-looking statistical defenses. Firms will be forced into a defensive, check-the-box compliance exercise to justify their routing designs through rigid, expensive "Material Markets" documentation, creating a massive administrative barrier to entry that systematically suppresses smaller, innovative firms.
- **The Erosion of Basket Arbitrage and High ETP Tracking Errors:** Exchange-Traded Products (ETPs) rely entirely on Authorized Participants (APs) instantly sweeping underlying stock baskets across public venues at the absolute best national price. Without a legally enforced, locked/crossed-prohibited NBBO, underlying stock prices will fragment into venue-specific silos, exposing APs to unhedged execution slippage, forcing them to widen ETP bid-ask spreads, and causing severe tracking errors for index-tracking, small-cap, and liquid thematic funds.

If the SEC and SROs dismantle these foundational market boundaries, **FINRA cannot demand that broker-dealers shoulder the administrative and compliance costs of resolving that self-inflicted policy misstep.**

m. Is there a need for further order handling guidance regarding locked and crossed markets? If so, what guidance would be appropriate, and should it differ for locked vs. crossed markets? For example, should FINRA provide best execution guidance that addresses members crossing the market in executing a customer order?

See our response to [Q1f](#).

n. How would access fees or other transaction costs impact order handling decisions in the potential presence of locked or crossed markets?

Instead of thoroughly deciphering the noumenon of equity market structure, hashing out relevant details of how access fee rebate, payment for order flow (PFOF), and market data/ market structure issues are all intertwined,⁴¹ the SEC opted to defer the implementation of Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders.⁴²

If OPR is rescinded, SDP can selectively choose exactly which institutional clients, quantitative funds, and retail aggregators are allowed to interact with its liquidity. If a participant exhibits predatory trading behavior (**toxic flow**),

⁴¹ https://www.databoiler.com/index_htm_files/DataBoiler%20Noumenon%20Equity%20Market%20Structure.pdf

⁴² <https://www.federalregister.gov/documents/2026/06/15/2026-11997/order-granting-temporary-exemptive-relief-pursuant-to-section-36a1-of-the-securities-exchange-act-of>

the bank can instantly terminate their access or alter their pricing tier without violating any “*fair access*” mandates. Also, SDPs do not face the regulatory caps on access fees or the rigid transparency mandates imposed on ATS dark pools. SDP can offer customized, deeply discounted, or highly complex pricing matrices to specific strategic clients to “*lock in*” their flow, completely bypassing the standard disclosure forms required to alter an ATS fee structure.

Amid all this we have reservations with the approach by the last administration to recalibrate the access fee cap to indirectly limit the access fee rebates, which does not preclude the Commission from right courting the policy direction in addressing the core problem of Reg. NMS – i.e., **LACK OF STANDARDS across different market centers’ rebate and incentive systems**. Without knowing the ultimate resolution or “*negotiation*” of access fee rebates, rescinding OPR alone without the corresponding Reg. NMS fixes is a high-stakes gamble on free-market efficiency over regulatory guardrails. Please also see our response to [Q1i](#).

2. Access Fees and Transaction Costs

FINRA has long recognized that the costs of a venue may not inappropriately affect a firm’s order routing decisions. At the same time, the reasonable diligence standard under Rule 5310 requires firms to consider, among other things, the character of the market for the security and the accessibility of quotations, and “transaction costs” is explicitly listed as a factor members should consider in conducting their regular and rigorous reviews of execution quality.

In light of market structure developments, including the Commission’s indication that it plans to review the access fee caps under Rule 610(c) of Regulation NMS by the end of this year, FINRA is soliciting comment on whether new, modified or supplemental guidance may be appropriate with respect to the interplay between transaction costs—including venue access fees—and a firm’s best execution obligations.

- a. *Should FINRA supplement or modify its best execution guidance to address the costs involved with connecting to and accessing liquidity on particular venues, including access fees, when determining where to route customer orders? If so, how?*

See our response to [Q1d-ii](#), [Q1d-iii](#), [Q1f](#), and [Q1n](#).

- b. *How do member firms view access fees as affecting their ability to obtain best execution? Should costs, such as access fees, be reflected in the price obtained for the customer? If so, how?*

I wrote about the “**Animal Farm**” phenomenon in 2019,⁴³ quoted “a group of elite firms are able to negotiate with the exchanges for order flow and get some ‘premium rebates’ in return. Unfortunately, others who also contributed do not get the same rewards. Consequently, the big get bigger.” The problem persists as of today. The Commission did tell the exchanges to better **justify the fees** they charge.⁴⁴ The Commission also approved the **recalibrate the Access Fee Cap** but delayed compliance multiple times from November 1, 2026 to November 1, 2027. We have said it in the past that the recalibration is another attempt to “**FINESSE**” the situation, while the hard efforts and honorable goal in promoting FRAND (fair, reasonable and nondiscriminatory) should be applauded. However, these well-intentioned policies come too far behind market developments. We at Data Boiler do support curbing price discrimination practices, although we despise regulatory *price control* in general.⁴⁵ Here, however, our analysis shows the Have-Nots will be hurt more than the Haves. **LACK OF STANDARDS across different market centers’ rebate and incentive systems** is at the CORE of all issues.

⁴³ <https://www.linkedin.com/pulse/animal-farm-market-data-negotiate-more-equal-kelvin-to/>

⁴⁴ <https://www.reuters.com/article/us-sec-exchanges/sec-tells-exchanges-to-better-justify-the-fees-they-charge-idUSKCN1S523T/>

⁴⁵ <https://www.cato.org/commentary/problems-price-controls>

FREE redistribution of displayed market data for Retail and other freebies, such as zero commission, subsidized investors education programs, etc. are indeed **at the expense of price discrimination practices** that further heighten costs on Proprietary Products (PPs), exacerbating the latency difference, and/or changing rebates/incentives for others.

Today's market centers are analogous to Private Clubs favoring collaboration. Colocation as a means of allowing a limited number of Haves to also enjoy the privileges (connection speed and faster order input) as the top Elites is a controversy. Even if the Have-Nots are willing to commit their limited resources to compete with the Haves in using collocation, it is not widely available and affordable to most market participants. Empirical research has proven that Exchanges **optimally restrict access to price information**³¹ by charging a high fee so that only a fraction of speculators buy their Proprietary Products (PPs). In turn, many choose to collaborate with the Haves for outsourced execution rather than compete.

Without a mass market solution, or so long as the Consolidated Tape (CT) is NOT in competition with PPs, everyone is and will continue to be subservient to telecom infrastructure vendors. Therefore, we recommend the policy makers to mandate proper security protection over both SIPs/Competing Consolidators (consolidated tape) and PPs; requiring synchronization of both SIP/Competing Consolidators and PP in accordance with an Atomic Clock and prohibits circumvention of security measures; plus, requiring market centers to maintain a connectivity disparity ratio (< 2.5 to 4 times).

Volume tiers to be based on total aggregate volume submitted to the exchange, with the associated tiered pricing applied to all members uniformly is not necessary more equitable as explained in this NASDAQ article,⁴⁶ quoted *"the SIP treats all quotes and trades equally ... that's not fair either. In fact, many say the SIPs support fragmentation, rewarding venue competition more than quote competition."* **WHAT GETS PAID and WHO GETS** **WHAT** should NOT be dictated by regulators, nor by a small group of people in a *"governance committee"*. We advocate for a 4-Part test⁴⁷ that taken directly from the music industry's copyright laws for objective rate setting.

Access fee rebate, payment for order flow, and market data/ market structure issues are all intertwined. The noumenon of rebate incentives serves as royalty payments for the use of others' copyrighted material. The prevailing market problem is **WHO OWNS THE DATA**.⁴⁸ Policy makers should consider Exchanges, ATSS, SIs, SDPs, and market data vendors as different streaming platforms to have the right focus.

There are many relevant use-cases to learn from the Music Industry (e.g., licensing terms for direct usage, allowing the re-use of contents, and derivative works). According to Prof. Hannes Datta, Prof. George Know, and Prof. Bart J. Bronnenberg in their study,⁴⁹ *"adoption of streaming leads to: INCREASES in QUANTITY of consumption ... INCREASES in VARIETY of consumption... INCREASE in DISCOVERY of NEW music ... Streaming revenue are climbing not only because more consumers are adopting streaming, but because consumers' OVERALL consumption of music is GROWING as well. Streaming creates a MORE LEVEL PLAYING FIELD for SMALLER artists... Streaming EXPANDS consumers' ATTENTION to a WIDER SET of artists... Streaming INCREASES consumer WELFARE by reducing search frictions (e.g., ENHANCING DISCOVERY) and help users DISCOVER NEW HIGH-VALUE CONTENT."*

⁴⁶ <https://www.nasdaq.com/articles/whos-really-setting-prices>

⁴⁷ <https://www.govinfo.gov/content/pkg/FR-2016-05-02/pdf/2016-09707.pdf>

⁴⁸ [https://www.databoiler.com/index.htm/files/DataBoiler Copyright Licensing.pdf](https://www.databoiler.com/index.htm/files/DataBoiler%20Copyright%20Licensing.pdf)

⁴⁹ https://thearf-org-unified-admin.s3.amazonaws.com/MSI/2020/06/MSI_Report_16-136_revised.pdf

“Discovery” in the context of Capital Markets, can encompass VERACITY in price discovery, VELOCITY in filling orders/ finding matches, as well as discovering unknowns.⁵⁰

Rebates in the form of **standardized copyright royalties**⁵¹ across market centers encourage **content creation** and helps **build communities**. CT must be a meaningful mass market alternative to PPs to shake up the dynamics, hierarchy of choices, or ‘context effects’ (similarity or compromise) per Decision Field Theory. More will commit resources to compete if giving them a fighting chance. 4Vs are essential to contrive a more Equitable New Paradigm and grow the overall pie. There are bigger pieces for everyone, including Exchanges. See pages 13 to 15 of our August 31, 2026 comment letters to the SEC for additional thoughts.²³

- c. *How should a firm’s decision to pass through access fees and rebates—or, alternatively, to absorb them—factor into a firm’s best execution obligations? How do member firms assess the relationship between transaction fees and opportunities for price improvement? For example, where a superior displayed price is available on a higher cost venue, should FINRA provide more specific guidance regarding how a member should weigh the better price against the higher access fee? Should the analysis turn on the displayed price or the net cost of execution to the customer?*

See our response to [Q2b](#).

- d. *Would the modification or elimination of access fee caps under Rule 610(c) of Regulation NMS affect these considerations? If so, how?*

See our response to [Q2b](#).

3. *Best Execution Review Standards*

As discussed above, Supplementary Material .09 to Rule 5310 requires regular and rigorous reviews of execution quality if a firm does not conduct an order-by-order review. FINRA has stated in prior guidance that regular and rigorous review alone (as opposed to an order-by-order review) may not satisfy best execution requirements when routing or internally executing larger-sized orders. Further, in recognition of the unique conflicts that may arise, FINRA has also stated in prior guidance that any orders that a firm determines to execute internally (i.e., on a proprietary basis out of the firm’s inventory) would be subject to an order-by-order analysis of execution quality.

- a. *Should order-by-order reviews continue to be required for internalized order flow? If not, what additional measures could be part of a firm’s regular and rigorous reviews that would help ensure that potential conflicts of interest do not interfere with a firm’s duty to its customers?*

No. FINRA lacks the statutory authority to mandate an order-by-order review standard, and attempting to enforce such a microscopic requirement directly contradicts established federal regulatory precedent. In designing macro-prudential regulations, federal agencies have explicitly rejected transaction-level mandates due to their severe operational unworkability. Specifically, in 79 FR 5592 (Footnote 711) regarding the implementation of the Dodd-Frank Volcker Rule, the joint regulatory agencies—including the SEC, CFTC, Federal Reserve, OCC, and FDIC—unequivocally stated: *“The Agencies are not adopting a ‘transaction-by-transaction’ approach because the Agencies are concerned that such an approach would be unduly burdensome or impractical and inconsistent ...”*¹⁵ Because FINRA’s self-regulatory powers are strictly derivative of the SEC’s authority, it cannot unilaterally fabricate

⁵⁰ <https://www.pmi.org/learning/library/characterizing-unknown-unknowns-6077>

⁵¹ [https://www.databoiler.com/index.htm_files/DataBoiler BIG OPP.pdf](https://www.databoiler.com/index.htm_files/DataBoiler%20BIG%20OPP.pdf)

a granular “*order-by-order*” auditing standard that federal regulators themselves have formally rejected as an impractical economic burden.

- b. *Under what circumstances do firms believe an order-by-order best execution review is practicable given developments in order routing technology? Conversely, under what circumstances is an order-by-order review not practical or justified when considering investor outcomes?*

FINRA is exceeding its Self-Regulatory Authority to ask for that.

- c. *Where a firm conducts an order-by-order review, what specific processes should a firm undertake in executing its order-by-order review, and how would such processes differ from a regular and rigorous review? Should FINRA consider a smarter order router (SOR) with built-in best execution logic to constitute an order-by-order review and, if so, under what circumstances or conditions? Should some form of aggregate periodic review be explicitly required as a complement, or alternative, to the order-by-order standard?*

By floating questions regarding whether a Smart Order Router (SOR) with built-in logic should constitute an order-by-order review, FINRA is attempting to regulate the internal algorithmic “*secret sauce*” of market participants without any objective administrative footing. In a post-Rule 611 landscape where the NBBO is stripped of its legal teeth, the public tape functions solely as one of the **sources of access, not a universal anchoring reference price to depend on for compliance**.

Mandating order-by-order verification against a fragmented, unlinked market tape would create an impossible compliance nightmare characterized by sub-millisecond sequence drift and artificial audit anomalies within the CAT. Forcing all firms to utilize identical, regulatory-prescribed SOR parameters would completely destroy the “*Variety*” factor among the 4Vs, stripping the financial ecosystem of the operational diversity required to absorb risk and clear trades efficiently.

To avoid administrative overreach and immediate procedural challenges, FINRA must reject these intrusive inquiries and confine its enforcement boundaries to verifying the mechanical accuracy of disclosures.

- d. *Consistent with Rule 5310.09, FINRA has described execution quality considerations that member firms should evaluate: 1) the price obtained, including the extent to which an execution results in price dis-improvement; 2) the extent to which an order may obtain price improvement at other venues; 3) the likelihood that an order will be partially or fully executed; 4) the speed of execution; 5) the size of execution; 6) transaction costs; and 7) customer needs and expectations. Are there other considerations that would be useful to explicitly acknowledge in revised FINRA guidance, such as where customer interests and expectations also involve information leakage concerns or where there was urgency to execute? Please be specific.*

The resulting effect of rescinding OPR is like Europe; investment firms may decide to choose an endogenous selection to trade on certain exchanges or with dealers and then review the performance every 6 months. This reduces incentives for broker-dealers wanting to up their game in execution performance.⁴ It sparks a “*Gresham’s Law of Microstructure*” and fuels a race to the bottom. Heed the lesson from SocGen \$7.2 billion loss, where policies and procedures were bragged about to avoid enforcement while evading substantive controls.¹² Such requirement benefits ONLY the lawyers and big consulting firms, while exacerbating gap between the Haves and Have-Nots. FINRA must completely reject the articulation of any such standards, as prescribing rigid price-improvement, order handling, or internalization formulas fundamentally morphs an independent SROs into a central-planning command economy, like a Communist system, which destroys free-market pricing mechanics.

This directly contradicts the SEC's stated principle under the current administration to encourage competing market forces to maintain the orderly function of the market and minimize regulatory intervention. See our response to [Q1d-ii](#), [Q1d-iii](#), [Q1f](#), and [Q1n](#).

4. Institutional Orders

Rule 5310 applies to transactions “for or with a customer or a customer of another broker-dealer.” Under FINRA Rule 0160(b)(4), the term “customer” does not include a broker-dealer. Rule 5310 thus applies to transactions with all customers. A key element of best execution’s reasonable diligence standard that members must observe when handling a customer order is considering the expectations of the customer (along with other factors, such as the terms and conditions of the order that result in the transaction, as communicated to the member and persons associated with the member). While small, retail orders are generally entered with the expectation of a full and prompt execution at the best available price, institutional customers with larger orders and more complex trading strategies may be balancing additional considerations (such as protecting against information leakage).

a. Would additional guidance regarding best execution obligations be helpful for firms with institutional customers?

While FINRA Rule 0160(b)(4) explicitly excludes broker-dealers from the definition of a “customer,” it is well-established that institutional clients with large block orders possess vastly different execution expectations than small retail orders. Institutional desks purposefully balance a non-linear matrix of market impact, localized liquidity depth, and aggressive protection against information leakage.

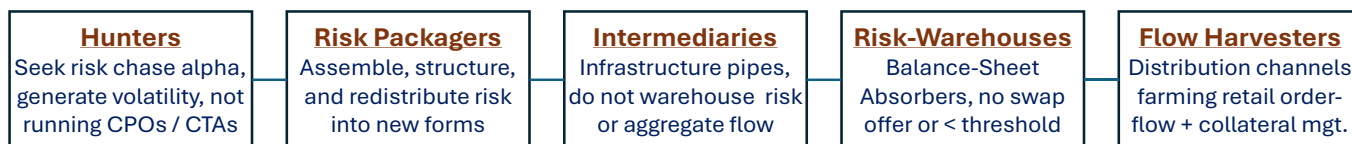
If OPR is rescinded, it will create a structural smoke screen that makes **distinguishing between clients and counterparties** – and enforcing vital **anti-fraud**, **front-running**, and **conflict-of-interest** mandates – practically impossible. See our response to [Q1i](#), [Q1d-ii](#), and [Q1d-iii](#). In this “*Europeanized*” landscape of unlinked single-dealer “*echo chambers*,” a displayed quote that appears superior on paper will frequently be completely untradeable, illusory, or economically toxic to a large parent order.

FINRA possesses no objective administrative footing to issue expanded guidance for institutional workflows.

Self-regulatory authority is strictly a mandate to enforce existing rule sets, not a blank check to patch regulatory vacuums left by agency omissions. Attempting to pass granular guidelines on how institutional smart order routers (SORs) should weigh “*customer expectations*” versus venue characteristics is invasive. We despise prescriptive approach that detriment to operational diversity required to absorb risk, cross block size, and facilitate organic price discovery. The number of FINRA members are already in significant decline in the past decade – this is a bigger concern for Reg. NMS that policy makers should address.

b. What are the most important differences between retail and institutional customer expectations that FINRA should take into account in updating its best execution guidance?

Retail and institutional order routing operate on completely opposing execution paradigms that cannot be flattened into a rigid, one-size-fits-all regulatory standard. Traditional regulatory categories (broker, dealer, exchange, fund) obscure the underlying economic behavior that actually determines **how risk is created, transformed, routed**, and ultimately **absorbed**. When we classify firms by what they do with risk, the industry resolves into five distinct layers: **Hunters**, **Risk Packagers**, **Intermediaries**, **Risk-Warehouse**, and **Flow-Harvesters**. This **behavioral taxonomy** captures the economic incentives and microstructure functions of each participant. It accurately reflects observable phenomena or market dynamics that explains why certain firms must be categorized differently than regulatory labels or legacy market conventions suggest.



In the discussion below, CFTC / National Futures Association (NFA)-regulated entities are marked with ★

Hunters: Risk Seekers

At the left edge of the value chain sit the **Hunters** – firms whose business model depends on *seeking risk*, *chasing alpha*, and *attacking volatility*. These include proprietary trading firms, HFT shops, hedge funds, proprietary desks of Commodity Trading Advisors (CTAs) ★, volatility arbitrage funds that are NOT Commodity Pool Operators (CPOs) or CTA, and retail traders who actively pursue leveraged exposures. Hunters generate the raw market pressure that drives liquidity, volatility, and price discovery. They initiate trades, take directional views, and create the exposures that downstream layers must either transform or absorb. Their behavior is defined by short-term Profit-and-Loss sensitivity and a willingness to embrace uncertainty. In a *perfect market*, if a market cannot be gamed (arbitraged), it means the prices are stuck. In another word, the market is “*inefficient*”. Per the Economist – *Don’t shoot the Messenger*.⁵²

Risk Packagers / Transformers: Manufacturers of Synthetic Exposure

To the right of Hunters sit the **Risk Packagers**, the “*Alchemists*”, of the derivatives world. These firms do not seek risk for alpha; instead, they **manufacture**, **reshape**, and **re-syndicate** risk into new forms. They take raw exposure generated by Hunters and convert them into structured, synthetic, or retail-friendly products. This category includes Exchange Traded Funds / Notes (ETF/ETN) issuers, structured product desks, index providers, CPO ★, volatility Exchange Traded Product (ETP) manufacturers, Contract for Difference (CFD) brokers [**banned in the US**], and synthetic perpetual swap platforms ★, such as Binance, Bybit, OKX, BitMEX, and Deribit. These firms create leveraged tokens, perpetual swaps, inverse swaps, structured vaults, tokenized derivatives, and other synthetic exposures. Their role is **transformative**: they package risk, embed convexity, and distribute exposure to downstream users. They behave like manufacturers, NOT risk absorbers.

Intermediaries: Neutral Infrastructure for Execution, Routing, and Clearing

The third layer consists of **Intermediaries**, the neutral infrastructure that enables risk to move through the system. These firms do not seek risk and do not manufacture it; instead, they provide **execution**, **routing**, **liquidity access**, **analytics**, **clearing**, and **settlement**. This category includes regulated trading venues (e.g. Stock / Option Exchanges, Designated Contract Markets ★, Swap Execution Facilities ★, Foreign Boards of Trade ★), ATSs, SDPs, ECNs, RFQ networks (★ if using CFTC regulated derivatives), smart order routers, liquidity aggregators, TCA vendors, market-impact analytics providers, clearinghouses (e.g. Derivative Clearing Organizations ★), swap data repositories ★, and TRFs. In crypto, this includes CME Clearing ★, Coinbase Derivatives Clearing ★, and non-US clearing engines such as Deribit, BitMEX, and Hyperliquid. Intermediaries are the “*pipes*” of the ecosystem — they match orders, move collateral, manage margin, and ensure the mechanical functioning of markets. They are essential but economically neutral.

Risk Warehouses: Absorb Market Exposure

Directly downstream of Intermediaries sit the Risk-Warehouses, the balance-sheet institutions that absorb market risk itself. These actors include swap dealers ★ (FalconX also offers prime brokerage service), bank dealer entities

⁵² <https://www.economist.com/leaders/2007/01/18/dont-shoot-the-messenger>

(★ if using CFTC regulated derivatives), insurance companies, pension funds, commodity merchants (Glencore, Trafigura), corporate treasuries, and energy producers. They hedge long-term exposures, manage inventory risk, and provide the balance-sheet capacity that **stabilizes** markets. They interact directly with intermediaries because they absorb directional market exposure rather than client flow. Their behavior is defensive and long-horizon: they monetize stability, not volatility.

Flow Harvesters: Absorb Client Exposure

At the far right of the value chain are the **Flow-Harvesters**, firms that warehouse **client flow** rather than market risk. These include Retail Foreign Exchange Dealers (RFEDs) ★, retail futures brokers (Futures Commission Merchants [FCMs] with retail books ★), Introducing Brokers ★, and other retail broker-dealers, custodians, prime brokers (registered as FCMs but do not make markets in swaps, have no balance-sheet risk books, and do not take principal risk nor hedge market risk ★, such as Hidden Road, Copper PB), and crypto settlement networks such as Fireblocks, BitGo, and ClearLoop. These are regulated primarily as technology infrastructure providers or banking/trust utilities under state and federal banking laws. These actors provide financing, margin, custody, collateral mobility, and counterparty credit warehousing. They scale with client relationships rather than market volatility. Their role is to **absorb client exposure**, **NOT market exposure**, which is why they sit downstream of risk-warehousing institutions.

Why This Taxonomy Matters

This five-layer behavioral taxonomy aligns **economic incentives**, **microstructure behavior**, and **regulatory architecture** into a single coherent model in explaining how risk truly moves through the derivatives and crypto-derivatives ecosystem:

- **Hunters create risk**,
- **Packagers transform it**,
- **Intermediaries route it**,
- **Risk-Warehouses absorb market exposure**, and
- **Flow-Harvesters absorb client exposure**.

It clarifies regulatory boundaries: CFTC/NFA oversight applies only to entities operating within the US derivatives jurisdiction – DCMs, SEFs, DCOs, SDRs, swap dealers, RFEDs, FCMs, IBs, CTAs, and CPOs. Offshore crypto venues, CFD brokers, synthetic perpetual swap manufacturers, and commodity merchants do NOT receive ★ stars because they are not CFTC registrants, even though they may be subject to certain CFTC rules. ★ starred items are blind spot to both the SEC and FINRA. Ever since the CAT was introduced over a decade ago, market participants have stressed the need to analyze the interplay between SEC-regulated securities markets and CFTC-regulated commodity and future markets. The recent memorandum of understanding between the SEC and the National Futures Association (NFA) is a step in the right direction.⁵³ The SEC-CFTC harmonization initiative maintains existing statutory boundaries while collaborating to unify cross-market analysis.⁵⁴

Multi-asset convergence between TradFi and DeFi is inevitable and new risks have emerged. For example, the SEC approved \$DOJE is a crypto Exchange Traded Fund (ETF) with underlying “assets” being MEME Coin, despite a

⁵³ <https://www.sec.gov/files/sec-nfa-2026.pdf>

⁵⁴ <https://www.isda.org/2025/10/02/a-path-to-greater-cftc-sec-alignment/> ; <https://www.sec.gov/files/isda-sifma-letter-cftc-sec-harmonization-letter-051926.pdf> ; <https://www.sec.gov/newsroom/speeches-statements/selway-remarks-global-exchange-fintech-conference-060426>

statement by the SEC Division of Corporate Finance on Feb 27, 2025⁵⁵ which stated that “MEME Coins for entertainment and social cultural purposes are NOT securities.” Also, any “Digital Collectables” that do not involve Commodity Exchange Act regulated commodity options, futures, or leveraged OTC transactions would be outside scope of CFTC’s oversight.⁵⁶

Reliance on the regulated structure of the product and the transparent disclosures for the valuations and the regulatory controls may be an insurmountable reality. That guardrails may merely displace **fraud** and **manipulation risk** from SEC-regulated markets, rather than preventing that risk from proliferating elsewhere. Bad actors / foreign adversaries play across markets and payment systems simultaneously. All five Dodd-Frank regulatory agencies (SEC, CFTC, OCC, FRB, FDIC) must break down silos and work in unison to safeguard US financial stability. See our June 22, 2026¹⁴ and August 31, 2026²³ comment letters for an elaborated discussion.

- c. *What execution quality factors under Supplementary Material .09(b) to Rule 5310 do institutional customers find most important to execution of their orders? What factors, if any, do institutional customers not find as important as retail customers?*

Under the “**regular and rigorous review**” framework of FINRA Rule 5310 Supplementary Material .09(b), institutional customers handling large block trades or complex algorithmic strategies find the **likelihood of execution (fill rates)**, **size of execution**, and **transaction costs (including venue access fees)** to be the most critical metrics. Because these massive parent orders must be parsed into smaller child orders over hours or days, institutional participants place a premium on minimizing market impact and preventing information leakage across fragmented venues. Consequently, they do not find localized **speed of execution** or traditional snapshot **price improvement/ dis-improvement metrics** (such as price adjustments measured in fractions of a cent against a static NBBO at a single millisecond) nearly as important as retail customers do. While an immediate retail market order demands instant execution velocity and baseline price matching, institutional workflows willingly trade immediate speed for size discovery and macro-level cost optimization across deep liquidity pools. See our response to [Q4a](#) and [Q4b](#) for our reservations.

- d. *How do members’ order handling, routing and execution policies, procedures or processes differ with respect to institutional customers’ order flow? Is specific guidance needed to address orders handled via algorithmic trading strategies? If so, what guidance would be helpful?*

Broker-dealers handle institutional order flow through fundamentally separate frameworks than retail flow, shifting from automated, instant-routing systems to highly customizable algorithmic trading strategies and parent-child parsing logic designed to minimize market impact across multiple dark and lit venues. Because of structural complexity, we doubt the usefulness of regulatory guidance or the effectiveness of standardized metrics for evaluating algorithmic slippage against macro benchmarks (like VWAP or Implementation Shortfall). Without the statutory definition of “*protected quotation*” under OPR, FINRA Rule 6240 would become entirely invalid and operationally dead. FINRA cannot legally orchestrate safe harbor conditions or penalize firms for execution quality variance when the regulators themselves have consciously chosen to erode the synchronized pricing anchor required to measure compliance. Developing artificial, compliance-driven safe harbors under Rule 5310 is futile because once the core pillars of Reg. NMS – the OPR and a legally binding SIP framework – are collapsed, the NBBO loses its structural and legal authority. Completely rescind the OPR creates a structural smoke screen that

⁵⁵ <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>

⁵⁶ https://www.databoiler.com/index_html_files/DataBoiler%20CFTC%2020250818.pdf



makes enforcing critical anti-fraud provisions – such as **front-running**, **conflict-of-interest** mandates, and the legal **distinction between clients and counterparties** – practically impossible. See our response to [Q1d-ii](#) and [Q1i](#).

- e. Some members have indicated that price-oriented best execution standards may not adequately account for challenges experienced when printing pre-negotiated block trades with institutional customers. Do commenters agree? Should FINRA provide further guidance regarding the application of best execution obligations to larger trades?

Agree. See our response to [Q1a-iv](#), [Q1a-v](#), [Q1d-ii](#), [Q1d-iii](#), [Q1f](#), and [Q1n](#).

- f. *FINRA understands that some institutional customers may seek liquidity (whether through direct access or through a broker-dealer acting as agent) on request-for-quote (RFQ) platforms or single dealer platforms (SDPs) operated by broker-dealers.*
- i. *How should use of such platforms be considered from a best execution perspective, both for the operator of the RFQ platform or SDP and the broker-dealer providing access to the platform, if applicable? Is there a need for further guidance regarding best execution in the context of these platforms?*

FINRA should NOT get caught in the fight between Lit Exchanges and alternative off-exchange liquidity hubs (SDPs/ RFQ platforms) to preserve its neutral and independent status. **Further micro-level regulatory guidance is structurally counterproductive.** Attempting to write prescriptive rules for RFQs and SDPs introduces a severe administrative paradox:

Chasing an Algorithmic Moving Target: Much like the failed liquidity calibrations of Europe's MiFID II, static parameters cannot capture the fluid nature of bilateral negotiation protocols. Layering compliance-driven safe harbors onto private platforms creates artificial constraints that disrupt organic, institutional price discovery.

“Directed Order” Legal Shield: If an institutional participant uses its own sophisticated smart order router to ping an SDP, they are deliberately executing a customized trading strategy. Forcing the platform operator to retroactively second-guess the client's structural intent via standardized metrics creates a redundant, conflicting layer of fiduciary liability.

FINRA's position must remain strictly venue neutral. A broker-dealer can mathematically justify their routing decisions via comprehensive TCA and regular reviews, the market – not the regulator – should decide whether a trade belongs on a lit exchange or a private platform. However, standard tools like TCA and SOR are not the holy grail. Real-world market participants are actively counting the securities inventory and margin constraints of themselves and their opponents. Policy makers must recognize this microstructural reality rather than prescribing certain trade practices, technologies, or demanding additional data reporting requirements. Any added burden heightens the cost to transact in the US, eroding the competitiveness of US markets while completely failing to improve the trust factor if the market is left without OPR.

If FINRA issues heavy-handed, tailored guidance for off-exchange platforms, it risks picking winners and losers in a market-driven tech race. **A regulator's statutory mandate is to protect the integrity of the execution process, not to dictate market architecture.**



- ii. *Where an institutional customer directly accesses an SDP or RFQ platform (not through another broker-dealer), do firms believe that the platform operator owes the institutional customer best execution obligations beyond the requirements in Supplementary Material .08 to Rule 5310?*

See my 2019 article that is still valid today – **“Fiduciary, Suitability, Best Interest and What Not.”**⁵⁷

Without OPR, FINRA can only go after suitability compliance, but NOT BestEx. See our response to [Q1a-iv](#), [Q1a-v](#), [Q1d-ii](#), [Q1d-iii](#), [Q1f](#), and [Q1n](#).

- g. *Supplementary Material .08 to Rule 5310 clarifies best execution standards when a customer gives instructions regarding order handling, including for directed orders. Is further guidance needed regarding the best execution treatment of directed orders, or orders with special handling instructions or customer-specific customizations?*

No way can SEC/ FINRA provide an exhaustive list of all special handling instructions or customer-specific customizations, or it would take FOREVER to create such *“Masterpiece”* guidance. The original Dodd-Frank Volcker Rule RENTD provisions was the de-facto guide in the simplest form to address most, if not all, nuances⁴¹ in the US capital markets. Unfortunately, Volcker compliance has been watered down substantially and reduced to focus primarily on market risk. Continuously beefing-up Supplementary Material or requiring additional policies and procedures from broker-dealers ONLY satisfies the regulators’ CURIOSITY, but serves little to no purpose in supporting investor protection or price discovery. Heed the lesson from the SocGen case.¹² Stop wasting valuable resources and focus on a vital few key controls, such as dismantling the opaque and money pit CAT, and consider our 3-Tiers distributed Agentic alternative for cross-markets cross-assets market monitoring.

- h. *How do members view their best execution obligations in the context of larger “parent” orders that may be broken into multiple smaller “child” orders for execution? What, if any, supplemental or modified guidance should FINRA consider for parent-child orders?*

Many FINRA members maintain that forcing an order-by-order, child-slice compliance review against a static millisecond NBBO is structurally flawed. Doing so would penalize a smart order router for intentionally bypassing a small, displayed top-of-book quote to prevent tipping off high-frequency predatory algorithms ahead of completing the broader parent block. Indeed, FINRA lacks the statutory authority to mandate an order-by-order¹⁵ review standard, see our response to [Q3a](#).

Because institutional customers routinely utilize *“not held”* designations to grant brokers time and price discretion, FINRA members view their fiduciary mandate as an overarching process standard aimed at achieving the most favorable aggregate price for the entire block under shifting market conditions. Again, rescinding OPR and shifting the burden of proof to broker-dealer under FINRA Rule 5310 is unjust.

5. *Introducing and Receiving Firm Obligations*

By its terms, Rule 5310 applies to any transaction “for or with a customer or a customer of another broker-dealer.” Supplementary Material .04 to Rule 5310 further states that a member firm’s duty to provide best execution to a customer of another broker-dealer does not apply where another broker-dealer is simply executing a customer order against the member’s quote. Rather, the duty arises only when an order is routed to the member for purposes of order handling and execution.

FINRA has reminded firms that they cannot wholly transfer to another person their best execution obligations, although other firms may also acquire that best execution obligation. Accordingly, when a firm receives customer orders from a

⁵⁷ <https://www.linkedin.com/pulse/fiduciary-suitability-best-interest-what-kelvin-to/>

routing firm for purposes of order handling and execution, both the routing firm and the executing firm have best execution obligations, although the routing firm and the executing firm may have different best execution obligations. FINRA has also repeatedly stated that payment for order flow may not interfere with a broker-dealer's duty to obtain best execution, and inducements such as payment for order flow and internalization may not be taken into account in analyzing market quality.

- a. Should FINRA provide additional guidance regarding the best execution obligations of different firms in the routing chain for an order? If so, what scenarios or issues should such guidance address?*

No, FINRA should not provide additional guidance regarding the split best execution obligations of different firms in a routing chain. Attempting to craft prescriptive, micro-level rules for multi-layered routing would introduce a catastrophic standard of subjective liability that fractures the core machinery of market execution.

If FINRA tries to dictate exactly where the routing firm's liability ends and the executing firm's liability begins, it creates a **fiduciary paradox**. If the SEC continues its push to erode the centralized, synchronized pricing anchor of the NBBO and the OPR, there is no longer a uniform baseline to measure compliance. Forcing regulators to determine whether an execution failure was caused by the router's algorithmic selection or the wholesaler's internal matching engine creates a subjective blame-game that cannot be objectively policed, even with the CAT.

If the SEC/FINRA attempts to micro-manage this chain with new "*safe harbors*" or standardized metrics, it merely provides a compliance-driven smoke screen. Wholesalers can easily utilize proprietary, complex transactional algorithms to obscure principal profits inside a cloud of macro-level "*price improvement*" justifications.

If an executing firm consistently delivers poor fill rates or toxic information leakage, the routing firm moves its flow to a competitor, except when their business model may have the end-customers relationship locked-in and they could not care about fiduciary responsibilities until the next 6-months BestEx review – i.e., IBG/ YBG. Additional regulatory intervention would tie the hands of smaller broker-dealers, forcing them to absorb unbearable compliance costs to monitor a shifting, unanchored web of multi-firm liability.

Attempting to issue specialized guidance for the routing chain – especially at a time when the broader market structure faces extreme pricing fragmentation – is a trap. It forces the regulator to orchestrate artificial compliance conditions for an interconnected tech stack where FINRA CAT LLC does not have any analytical capability to decipher in real-time (NOTE: CAT has T+5 regulatory access).

- b. Supplementary Material .09(c) to FINRA Rule 5310 provides that a member that routes its order flow to another member that has agreed to handle that order flow as agent for the customer (e.g., a clearing firm or other executing broker-dealer) can rely on that member's regular and rigorous review as long as the statistical results and rationale of the review are fully disclosed to the member and the member periodically reviews how the review is conducted, as well as the results of the review. Should FINRA provide any additional guidance regarding a routing firms' best execution obligations in this scenario? If so, what should such guidance address?*

No, FINRA should not provide any additional guidance regarding a routing firm's obligations under Supplementary Material .09(c). The existing rule establishes a perfectly balanced, practical allocation of compliance burdens that market participants thoroughly understand. Layering further guidance onto this section would actively disrupt the clearing and introducing broker-dealer ecosystem, creating unnecessary legal exposure for smaller firms.

Layering prescriptive review standards onto this section is unnecessary and dangerous, particularly in a market structure characterized by persistent speed asymmetries and latency arbitrage. Completely dismantling the OPR would strip the SIP NBBO benchmark of its statutory authority. In a post-OPR environment, prices across various

exchanges and dark pools will diverge dynamically. Any new guidance would inevitably attempt to standardize how frequently an introducing firm must review the statistical results or define what constitutes a “*sufficiently disclosed rationale*.” This opens the door to immense **compliance creep**. Regulatory examiners would begin second-guessing the subjective business judgment of investment firms, transforming a clean, disclosure-based reliance framework into an administrative minefield.

- c. *Rule 5310 specifically prohibits inter-positioning, stating that no member or person associated with a member shall interject a third party between the member and the best market for the subject security in a manner inconsistent with best execution. Do commenters believe any additional guidance would be helpful with respect to the inter-positioning aspects of Rule 5310?*

Complex institutional orders typically pass through smart order routers, algorithms, or multi-dealer matching networks to find liquidity. If FINRA attempts to issue new, hyper-specific guidance on what technically constitutes “*inter-positioning*” within an automated tech stack, it risks misclassifying routine, value-added technology providers, or clearing agents as prohibited middlemen. Forcing firms to constantly defend their routing logic against a rigid, over-engineered definition of inter-positioning would stifle technological innovation and impede standard institutional liquidity aggregation.

If OPR is completely rescinded, the public NBBO will lose its structural authority as a definitive boundary. Proving that an inter-positioned third party caused an inferior execution requires a stable, unquestioned pricing benchmark to measure the loss. Without a legally binding SIP baseline, trying to enforce an expanded inter-positioning framework becomes a subjective guessing game.

6. *Extended Trading Hours*

A firm’s best execution obligations apply to all transactions for or with customers, regardless of the time when an order is received or a transaction is executed. Firms that participate in extended hours trading—generally meaning trading outside of regular trading hours, which are 9:30 a.m. to 4:00 p.m. on business days—must comply with all FINRA and SEC rules applicable to such trading, including without limitation Rule 5310, and must ensure they meet their supervisory obligations for extended hours activity under FINRA Rule 3110.

As described in the model risk disclosure that firms are required to provide under FINRA Rule 2265 (Extended Hours Trading Risk Disclosure), extended hours trading may present unique risks, including lower liquidity, higher volatility, changing prices and wider spreads. FINRA has observed increasing retail participation in extended hours trading over the past few years, including in the overnight hours as alternative trading systems (ATs) have offered trading during the overnight session, and such participation may continue to grow as several national securities exchanges have announced plans to begin offering overnight trading sessions. In light of these developments, FINRA requests comment generally on what additional guidance regarding best execution obligations for extended hours trading may assist firms in navigating best execution obligations in this evolving landscape.

- a. *Supplementary Material .06 to FINRA Rule 5310 sets forth specific considerations for orders involving securities with limited quotations or pricing information, which may be applicable to trading during extended hours. Do commenters believe additional guidance would help firms apply the considerations in Supplementary Material .06 to extended hours trading, and if so, what should such guidance address?*

Supplementary Material .06 was designed for securities with limited quotations, but overnight trading is a distinct structural void where market makers automatically widen their spreads to absorb unhedged directional inventory

risk while equity options markets are offline. While FINRA Rule 2265 correctly identifies core extended hours risks like lower liquidity, higher volatility, and wider spreads, the rising retail participation across ATSs and national securities exchanges is fundamentally defined by a two-tier, asymmetrical market architecture.

A critical safety blind spot exists because the public SIP is legally prohibited from aggregating non-exchange ATS quotes overnight, forcing liquidity into isolated private pools running on proprietary price collars. Consequently, a stock can be locked at a ceiling on one ATS while actively trading at a different price on another, leaving the SIP's new Overnight Best Bid Offer (OBBO) highly fragmented or empty at 3 am ET. True market-wide safety remains impossible without a unified overnight mechanism to link these capital pools. Meanwhile, SDPs freely decouple from traditional pricing, quoting unique, proprietary prices backed by their corporate balance sheets. By effectively acting as private central clearinghouses during the night. This conflates clients with counterparties, heightening potential conflict of interest.

A major structural friction point ignored by standard BestEx guidance is the mandatory, market-wide maintenance window from 8 pm to 9 pm ET. During this hour, matching engines go dark to clear memory caches and programmatically advance trade-date metadata. Under FINRA rules, the 10-second trade reporting clock is suspended during this rollover, allowing brokers to queue trades internally. Prescriptive guidance fails because it cannot govern execution quality during an active infrastructure rollover when the public market is legally offline.

For the night session, liquidity provision is governed by voluntary electronic market makers with dynamic quote widths. Electronic market makers, such as Citadel Securities, Virtu Financial, and Jane Street are not bound by the same tight daytime quoting constraints. Because individual equity **options markets are closed during overnight hours**, these firms cannot buy puts or calls to hedge their directional stock inventory conventionally. To protect their balance sheets against thin overnight order books, their algorithms utilize predictive "*inventory skewing*" to automatically widen their bid-ask spreads significantly. Supplementary Material .06 cannot objectively police these closed-loop "*echo-chamber*" because they construct their own "*truths*" using proprietary pricing models insulated from public tape discovery. FINRA should not get caught in fight between lit exchanges and these platforms.

Firms also used CFTC-regulated index futures, exotic derivative products, and complex cross-border sweeps executed through foreign affiliated entities to dynamically transact and mitigate their risk at night (e.g., short-selling 23-hour E-Mini futures on CME Globex or correlated dual-listed assets/ADRs in Tokyo or London), all of which operate entirely outside the statutory scope of the SEC and FINRA. Attempting to pass rigid, equity-only routing standards over an unbacked federal record will perversely penalize broker-dealers for structural defects caused directly by the regulators themselves, while ignoring the vital global loops that actually determine overnight market quality.

Supplementary Material .06 guidance typically relies on traditional forensic and surveillance tools to retrospectively evaluate execution quality. However, the enclosed record notes that traditional metrics – especially those using '*Z-score*' anomalies to flag price spikes – are broken in thin-liquidity overnight windows. Because order books are thin, small, legitimate trades look exactly like aggressive price manipulation, leading to a flood of false positives that overwhelm compliance teams.

FINRA possesses no objective administrative footing to construct additional prescriptive guidance for extended hours trading, as attempting to codify rigid compliance rules over the structurally fragmented overnight landscape represents an unworkable regulatory contradiction. Because the SEC's record under **File No. S7-2026-20** completely failed to establish an empirical baseline analyzing the cross-asset linkages, delta-hedging constraints,

and structural gaps of an unprotected overnight equity tape, FINRA cannot fix these macro-market deficiencies by simply writing more rules to police member firms' smart order routers. Forcing broker-dealers to compile rigid paper trails to justify why they bypassed a crossed or illiquid overnight quote on a rent-seeking fringe venue is irrelevant to enhance investor protection but creates a barrier to entry for smaller firms.

It is the SEC's job to explicitly require trading platforms to systematically deactivate standard *"Stop-Market"* and *"Market Orders"* overnight, enforcing the use of Limit or Stop-Limit orders to prevent retail accounts from filling into deep liquidity holes and triggering automated broker liquidation cascades. Also, the SEC and the CFTC should focus on macro-systemic safety – such as implementing cross-asset symmetrical halts with CME Globex index futures or deploying a centralized Copyright Licensing Mechanism to transform toxic exchange data rents into a robust clearinghouse Default Insurance Fund.

- b. *How do members' current order handling, routing and execution policies, procedures or processes differ with respect to extended hours trading? Do these processes distinguish between retail and institutional order flow in extended hours? If so, how?*

Please see our September 17, 2026 comment letter to the SEC on 24-Hour Trading.¹¹ Heed the lesson from SocGen \$7.2 billion loss, where policies and procedures were bragged about to avoid enforcement while evading substantive controls.¹² Such requirements benefit ONLY the lawyers and big consulting firms, while exacerbating gap between the Haves and Have-Nots.

7. *Held and Not Held Orders*

In the equity securities market, a "not held" order generally refers to a market or limit order for which the customer has given the broker-dealer time and price discretion in handling the order. A not held order allows the broker-dealer to exercise judgment to "work" the order to obtain a better fill for the customer, rather than requiring immediate execution of the order. By contrast, a "held" order is said to be "held" to the market, meaning that the broker-dealer must attempt to execute the order immediately. Generally, not held orders are characteristic of institutional order flow—which may involve, for example, relatively large orders for which the institutional customer may seek to minimize price impact—while held orders typically characterize retail orders which seek immediate executions and rely less on broker-dealer order handling discretion.

Rule 5310 does not, by its terms, distinguish between held and not held orders. However, FINRA has previously stated that if the broker-dealer's judgment is properly exercised, the broker-dealer is relieved of its normal time of execution responsibilities with respect to the not held order. In such circumstances, FINRA has clarified that the broker-dealer has a clear responsibility to work to obtain the best fill considering all of the terms agreed to with the customer and the market conditions surrounding the order.

FINRA is concerned regarding the broad categorization of small, retail customer orders as not held when the customer expects these orders to be immediately and fully executed at the best price available in the marketplace (once executable).

- a. *FINRA has observed some firms including "blanket" provisions in new account agreements or other customer documentation, including retail customers, stating that all or a subset of the customer's orders will be treated as not held. FINRA is considering the need for guidance regarding the use of such blanket disclosures in customer documentation, given that these orders remain subject to best execution requirements. What considerations, if any, may warrant such a blanket provision, and what modifications of the best execution obligation should result, if any?*

A “*not held*” designation grants a broker-dealer price and time discretion to hunt for liquidity – a sophisticated operational tool meant exclusively for institutional block traders balancing market impact against information leakage. Forcing a retail client – whose baseline expectation is immediate execution at the best available price – to sign a blanket pre-emptive, pre-arranged contractual waivers buried in standard retail onboarding agreements is a structural distortion. It acts as an administrative liability shield, allowing a firm to systematically stall execution, pocket wider spreads, and internalize flow while claiming “*discretionary immunity*.” FINRA do have statutory authority here to regulate member firms’ usage of boilerplate text to contract out of their fiduciary duties.

On a separate note, when different players deploy specialized signal detection or obfuscation techniques to dodge adverse selection and toxic flow, they are playing active defense. If a broker dynamically holds an order for milliseconds to shield it from an aggressive HFT predatory sweep, that is a legitimate engineering response to a prevailing market condition. FINRA should refrain from micro-regulating the real-time tactical routing, signaling, and obfuscation tools that desks use to survive toxic market conditions.

- b. *FINRA has also observed instances where a firm receives held orders from retail customers but routes the orders away for handling and execution as not held. FINRA is considering the need for guidance regarding when, if ever, such change in categorization of order should affect the applicable best execution obligations. What considerations should be taken into account?*

A broker-dealer cannot unilaterally strip away a retail investor’s baseline expectation of a full and prompt execution at the best available price by simply altering a technical routing flag downstream. If an introducing firm accepts a retail order as “*held*,” its fiduciary contract with that client is locked. Passing that order to a wholesale market maker or an off-exchange venue with a “*not held*” instruction may be a tactical action to navigate a fragmented market. However, if the “*not held*” flag is utilized to systematically stall the execution queue to facilitate internal matching, capture a high exchange rebate, or allow a wholesaler to trade ahead of the client, it represents a predatory evasion of BestEx duties.

The SEC provides no framework on how to judge underlying intent by realized economic outcomes – such as net-effective price improvement – rather than by mechanical routing semantics. Forcing firms to defend a technical routing flag under the threat of regulatory hindsight will result in bureaucratic paper-chasing that penalizes blameless market participants who are actively deploying dynamic, cross-asset routing shields to dodge toxic order flow. FINRA should refrain from altering a firm’s BestEx obligations when a “*held*” retail order is routed away as “*not held*.” FINRA possesses no objective administrative footing to establish granular rules here.

- c. *Is there any other specific best execution-related guidance that FINRA should consider regarding the treatment of orders as held or not held?*

See our response in parts a and b.

- d. *FINRA understands that firms may implement processes to help combat fraud, such as account takeovers, that could involve holding orders that would otherwise be executed immediately. Should FINRA consider providing flexibility or specific guidance regarding the application of best execution obligations in the context of firms’ efforts to protect customers from fraud-related risks? If so, what circumstances would warrant flexibility and what considerations should be taken into account?*

Attempting to blend fiduciary execution duties with anti-fraud triage represents an unworkable regulatory overreach. A broker-dealer’s foundational mandate to protect customer accounts from fraud, identity theft, and

account takeovers is an entirely separate legal and operational framework governed by SEC Regulation S-ID (identity theft), FINRA Rule 2090 (Know Your Customer), and anti-money laundering (AML) statutes.

Attempting to carve out microstructural “*BestEx flexibility*” or specialized order-holding parameters under FINRA Rule 5310 to manage security incidents creates a dangerous compliance trap. It forces compliance teams to evaluate real-time cyber threats using execution-quality metrics, while perversely providing a regulatory loophole for firms to systematically delay legitimate orders under the guise of “*fraud prevention*” to pocket wider spreads or facilitate internal matching. The correct operational protocol is to instantly freeze the account or reject the incoming traffic at the outermost hardware layer—never to leave a retail order in a state of suspended animation on an unprotected public tape.

Allowing firms to “*hold*” orders under vague anti-fraud exceptions would institutionalize retail price discrimination if OPR were rescinded. Retail wholesalers could exploit these ambiguous delays to internalize automated retail flow at nominally inferior prices on their private single-dealer platforms (SDPs), claiming “*fraud-mitigation immunity*” while perversely conflating clients with counterparties.

8. Listed Options

FINRA notes that best execution obligations under Rule 5310 apply broadly to transactions in any security, including without limitation listed equities, OTC equity securities, fixed income securities, security futures, security-based swaps, listed options and OTC options. FINRA has provided guidance on best execution obligations that apply when firms receive, handle, route or execute customer orders in equities, options and fixed income securities, and also provided specific guidance regarding additional considerations for best execution for fixed income securities. In that vein, FINRA welcomes comment on any additional or clarifying guidance that members believe would be helpful regarding best execution for any other specific types of securities.

In particular, FINRA recognizes that the market structure for listed options differs from the market structure for listed equities, which may warrant additional considerations for best execution standards. For example, unlike NMS stocks, listed options are traded only on national securities exchanges, not on ATSS or through wholesalers, and there are many more listed options than listed equities. In the listed options market, introducing firms typically route retail options order flow to consolidators for further routing to exchanges for execution, and executions on options exchanges can be executed in multiple ways, including by initiating auctions, in the context of a quote-driven rather than order-driven market.

The above narrative by FINRA seems to be a calculated, half-truth engineered to build an artificial administrative silo between the equity and options market structures. By pretending that arguments concerning options and derivatives are “*outside the scope*” of the SEC proposal (File No. S7-2026-20) in Reg. NMS, the SEC and FINRA are operating in a state of complete microstructural denial.

The SEC proposal erroneously treats the US equity market as an isolated ecosystem, completely ignoring the profound downstream effects that the rescission of OPR will have on the listed options market. While the Commission hosted an *Options Market Structure Roundtable* in April 2026, that discussion stuck entirely to isolated derivatives debates – such as strike proliferation, retail auction mechanics, and specialist allocations – completely **failing to anticipate the cross-asset execution and hedging dislocations** that this equity proposal will mandate. Policy makers cannot ignore the profound downstream effects that an underlying equity regime change will inevitably have on the listed options markets.

Options market makers do not quote derivatives in a vacuum; they survive by instantly **delta-hedging** their risk using the underlying NMS stocks. If the Commission completely repeals equity price protections while keeping the Options Order

Protection NMS Plan active, a severe market asymmetry is born. Options market makers will face uncompensated timing lags and execution slippage on their equity hedging legs as the underlying market fragments into unlinked books.

To absorb this unhedged equity execution risk, options market makers will be forced to drastically widen their options quotes on strictly protected options exchanges. By failing to model the delta-hedge timing loop, the SEC proposal if adopted “as-is”, it will *drive up transaction costs and widen synthetic spreads, increase frictions and predatory cross-asset arbitrage*, as well as *wholesaler internalization arbitrage* harming retail, pension and mutual funds. By leaving options fully protected while equities transition to a volume-threshold model, the SEC introduces a severe **asymmetric market structure gap**.

We anticipate the options market will face **heightened operational strain, structural tracking errors, and predatory cross-asset arbitrage** if the SEC's proposal is adopted as-is to completely rescind Rules 611 and 610(e). Expected changes to Options Market's behavior include:

- **Extreme Synthetic Spread Widening:** Options market makers quote spreads based on their ability to instantly clear risk in the underlying stock. If the equity NBBO widens or fragments due to the loss of Rule 611, options market makers will naturally widen their options quotes to price in the execution uncertainty of the underlying stock leg.
- **Severe “Intermarket Linkage” Latency Gaps:** The automated systems that route options to prevent trade-throughs will remain active. However, because the underlying stocks will no longer have a single “protected” endpoint, options matching engines will experience intermittent routing stalls as they wait for volatile, unprotected equity legs to fill.
- **Explosive Volume Growth in Complex Orders:** Because executing standalone equity legs becomes riskier, institutional traders will pivot heavily toward multi-leg complex orders (e.g., stock-option buy-writes, delta-neutral straddles) executed entirely on options exchanges. This forces the options exchange to handle the equity leg execution internally, shielding the trader from open-market equity trade-throughs.

Arbitrageurs and HFTs will find highly profitable gaps in the rule mismatch:

- **The “Locked Equity / Crossed Option” Arbitrage Loop:** Since Rule 610(e) will be gone for stocks if the proposal is adopted, the equity market can freely lock or cross across venues. HFTs will intentionally cross an equity market (\$10.01 bid on Nasdaq / \$10.00 ask on NYSE) while exploiting the strict, legally protected options NBBO to lock in a riskless derivative-to-cash spread before the options market maker can adjust their pricing models.
- **Predatory Option-to-Stock Front-Running:** Predatory algorithms can monitor massive, unprotected equity blocks trading through the public stock tape. Because those equity prints do NOT require a Rule 611 sweep, the HFT can anticipate the subsequent delta-hedging flow of the options market makers and aggressively buy up the related options contracts ahead of them, trapping the market maker into a toxic hedge.
- **Wholesaler Internalization Arbitrage:** Retail wholesalers can internalize a retail stock order at an inferior price on the equity side (perfectly legal if equity OPR is rescinded) while simultaneously executing the client's option leg at a strictly protected price on an options exchange, pocketing an asymmetric margin premium on the combined trade.

The structural misalignment will **force risk management desks to abandon traditional passive compliance models**:

- **Transitioning to Asymmetric Cross-Asset Margin Overhauls:** Clearinghouses will no longer treat a long stock position as a perfect 1:1 margin offset for a short call option. Risk models must incorporate an “**Asymmetric Execution Haircut**.” Because the stock leg can be traded through, the clearinghouse will demand significantly higher variation margin on the equity side of a delta-hedged portfolio to buffer against cross-venue slippage.
- **Abandoning Static Delta Models for “Dynamic Slippage Skew”:** Options market makers historically calculated their delta hedges assuming instantaneous, clean execution on equity venues at the displayed NBBO. If the proposal is

adopted, delta-hedging will be highly volatile, subject to uncompensated trade-throughs. Quantitative desks will hardcode a **Slippage Skew Parameter** into their pricing black boxes. The model will automatically downgrade the value of an equity quote based on the specific venue's historical propensity to allow trade-throughs, shifting quote parameters dynamically.

- **Hyper-Concentration of Routing with Integrated Cross-Asset Brokers:** Firms often split their order routing desks, using separate prime brokers or execution algorithms for stock versus options. To minimize the timing risk between an option fill and its underlying stock hedge, market participants will explicitly route *only* to macro brokers who run **synchronized cross-asset matching wheels**. If a broker cannot guarantee a combined, atomic option-and-stock fill within a sub-millisecond window, they will be entirely stripped of institutional order flow.

FINRA can, and should, warn and remind the Commission of how the SEC's attempt to completely rescind the OPR is fundamentally flawed. However, FINRA cannot legally or logically demand that broker-dealers expend capital to absorb and correct the fallout of that structural policy misstep. This cross-asset dislocation can be cleanly avoided by adopting the **Venue Trading Volume Threshold alternative**, which preserves a highly liquid, protected equity core tape that market makers can safely hedge against.

- Do commenters believe that further best execution guidance specific to listed options would be useful? If yes, what specific scenarios do firms believe exist with respect to order handling, routing and execution in the listed options market that the guidance should address (e.g., unbundling)?*

No. Further prescriptive Best Execution guidance specific to listed options would be entirely useless and legally counterproductive; attempting to issue isolated derivatives guidance over a fragmented equity market represents an unworkable regulatory overreach. We are aware that the US financial system maintains a strict legal wall between the price protections granted to stocks versus options. The Options Order Protection and Locked/Crossed Market Plan is an independent NMS plan created and enforced jointly by options exchanges themselves, not a direct clause of equity OPR.⁵⁸ Yet, the SEC proposal **failed to analyze or formally address the cross-asset options market behaviors, potential structural arbitrage loops, or shifting delta-hedging risk management practices**. This artificial silo allows retail wholesalers and options consolidators to exploit cross-market structural fragmentation to the direct detriment of investor protection.

A wholesaler can internalize a retail stock order at a nominally inferior price on the deregulated equity side while simultaneously executing the client's options leg at a protected price on an options exchange, pocketing an asymmetric margin premium on the combined multi-leg trade while perversely **conflating their roles as fiduciaries versus counterparties**. The SEC provides absolutely no framework on how to judge the underlying intent of these cross-asset manipulations by realized economic outcomes – such as net-effective price improvement – rather than by mechanical routing semantics.

FINRA can, and should, warn and remind the Commission of how the SEC's attempt to completely rescind the OPR is fundamentally faulted. However, FINRA cannot legally or logically restrict members' engagement in activities that are explicitly or implicitly permissible under that choice – even as those choices inflict immense harm on investment communities and systematically erode the preeminent position of US capital markets. FINRA must entirely refrain from expanding its BestEx guidance into cross-asset routing logic where it possesses zero objective administrative footing.

⁵⁸ <https://www.sifma.org/news/blog/rethinking-trade-through-prohibitions-beware-of-the-market-structure-octopus>

- b. *Execution quality disclosures under Rule 605 of Regulation NMS apply only to covered orders in NMS stocks, not to listed options. In the absence of Rule 605 reports for options, what information is available to firms to evaluate execution quality for listed options? Is there additional data that would be informative to firms in making these determinations?*

Firms rely on fragmented, voluntary, and non-standardized private data ecosystems – predominantly proprietary TCA providers, direct exchange execution drop-copies, and localized vendor consensus feeds – to evaluate execution quality for listed options in the absence of a standardized SEC Rule 605 reporting mandate. However, standard tools like TCA and SOR are not the holy grail. Real-world market participants are actively counting the securities inventory and margin constraints of themselves and their opponents. Policy makers must recognize this microstructural reality rather than prescribing certain trade practices, technologies, or demanding additional data reporting requirements. Any added burden heightens the cost to transact in the US, eroding the competitiveness of US markets while completely failing to improve the trust factor if the market is left without OPR.

A fundamental limitation for policymakers pursuing evidence-based regulations is that every quantitative model faces a harsh trade-off between tractability and reality; liquidity is a moving target that no static framework can capture. Because options are complex, multi-dimensional instruments requiring immediate multi-leg or cross-asset alignment, a static data template modeled after traditional equity frameworks is structurally unworkable. If the OPR is completely rescinded, the underlying cash equity tape degrades into an uncoordinated reflection of unlinked prices aggregated by a SIP that functions would NOT be an absolute source of truth.

In this fragmented environment, the private data currently used to evaluate options execution quality will become severely distorted. Forcing a rigid or expanded disclosure mandate onto listed options under the threat of regulatory hindsight will do nothing to solve these structural imbalances. FINRA can, and should, warn and remind the Commission of how the SEC's attempt to completely rescind OPR is fundamentally flawed, but cannot legally or logically demand that broker-dealers expend private capital to absorb and correct the fallout of that structural policy misstep.

- c. *Is further guidance needed on how introducing firms should evaluate execution quality for customer orders in listed options, both across consolidators and across the options exchanges to which consolidators route orders for execution? Should such guidance consider the responsibilities of order entry firms vis-a-vis consolidators and the circumstances under which customer orders are exposed for price improvement opportunities? If so, what should such guidance address?*

No. Any attempt by FINRA to prescribe how introducing firms evaluate execution quality across consolidators and options exchanges will only institutionalize a central-planning command economy, like a Communist system, which destroys free-market pricing mechanics. This directly contradicts the SEC's stated principle under the current administration to encourage competing market forces to maintain the orderly function of the market and minimize regulatory intervention. It represents an unworkable regulatory overreach that forces independent SROs to dictate commercial routing strategies.

- d. *As the SEC noted in its proposal to rescind Rule 611 and the locked and crossed provisions of Rule 610(e), which are only applicable to NMS stocks, listed options have their own rules prohibiting trade-throughs and locked and crossed markets, as set forth in the Options Order Protection and Locked/Crossed Market Plan. If these requirements for listed options were to be modified or eliminated, do commenters believe additional or modified best execution guidance for listed options would be required?*

No. Attempting to **FINESSE** the current Options Order Protection and Locked/Crossed Market Plan through more cosmetic Best Execution guidance is egregious and structurally futile. If these trade-through and locked/crossed market requirements for listed options were to be modified or eliminated, FINRA should reject the articulation of any additional or modified prescriptive routing formulas under Rule 5310.

No better way, other than requiring all trading venues to make market data available securely in synchronized time and adopting a copyright licensing mechanism to address the **WHO OWNS THE DATA** and **WHAT GETS PAID** core problem can truly allowing competing market force to replace the OPR.

9. Emerging Technologies

FINRA has observed the rapid evolution of new and emerging technologies in recent years that may impact firms' order handling, routing and execution processes. For example, artificial intelligence (AI), including large language models (LLMs) and other generative AI (Gen AI) tools, has rapidly evolved in the last few years. FINRA has previously recognized that AI presents promising opportunities for members to enhance their products and services for investors and achieve operational and compliance efficiencies, while also reminding members to be mindful of the potential implication of the use of AI for their regulatory obligations. In particular, FINRA has reminded member firms that FINRA's rules continue to apply when member firms use Gen AI or similar technologies in the course of their businesses, just as they apply when member firms use any other technology or tool. Similarly, the development of tokenized securities and other crypto asset innovations involving blockchain or other distributed ledger technologies may present both opportunities and challenges for firms in the course of their businesses.

FINRA recognizes that emerging technologies like AI and tokenized securities implicate a range of complex regulatory questions. While a full consideration of issues related to these topics is beyond the scope of this Notice, FINRA welcomes any feedback from commenters regarding the application of best execution obligations in the presence of such new technologies, including with respect to tokenized securities and member firms' use of AI in their order handling, routing, and execution decisions and processes.

One cannot jump to the “*How*” when the “*What*” has NOT been properly defined. Despite the EU being the first to come up with their Artificial Intelligence (AI) Act and Canada being at the forefront of digital assets laws, there is NO first mover advantage in rule making. It is better late than never if we can get it right when framing the regulatory solutions to the problems in the AI and Crypto spaces. This 3-part sequel aims to decipher the noumenon of and define what AI, DeFi, tokenization and cryptocurrencies truly are.



Download our full whitepaper at:

https://www.databoiler.com/index_html_files/DataBoiler%20Clone%20Wars.pdf

Putting geopolitics, AI, and Crypto into a common perspective, the problem faced by humanity boils down to:

- We all screwed ourselves by *overreliance* on *global supply chain, technologies, bureaucratic financial systems*;
- Corps keep *cloning / rehashing* the same legacy products and pandering it or sold *counterfeits* to the mass market;
- Authorities blame it on inadequate *penetration*, and many try to find *scapegoats* to escape their own blame;
- Most people have IBG / YBG mentality and choose to do what is *easy* but neglect the consequences of *shortcuts*;
- *Greed* and *laziness* are to blame; tensions rise where *Ruthless* (TraFi) and *Reckless* (DeFi) created each other;
- Sarcastically, in the end everyone wants everything and the world back to “*Normal*”, when the “*NORM*” may indeed mean “*it does not matter if we do not know how to do anything.*” Social norms evolve overtime.

a. *FINRA notes that best execution is as fundamentally important for investors in tokenized securities as it is for investors in traditional securities, and therefore the fundamental duty of best execution is applicable irrespective of the manner in which the security is created and the technology on which it is traded or settled. Nonetheless, there are market differences that may come to bear on the manner in which firms execute their best execution duties due to the mechanics of how securities are traded or the information available to broker-dealers. Should FINRA consider providing any best execution guidance specific to tokenized securities?*

FINRA should refrain from providing prescriptive BestEx guidance specific to tokenized securities. Attempting to enforce centralized, rigid routing compliance rules onto decentralized on-chain assets represents a profound administrative contradiction.

Tokenization (Securitization for Capital Velocity): Tokenization is NOT a new asset class, but an alternative asset-gathering and fractionalized distribution mechanism that equates to a modern form of securitization. Its core features – Fictionalization, Programmability, Composability, and Atomicity – aim to make illiquid underlying assets tradable and liquid. It acts as a tool for capital velocity and property access rather than traditional ownership, challenging historical notions of property rights.

DeFi (The Alchemy of Finance): DeFi is an automated network of smart contracts that oversimplifies complex real-world rights and obligations into immutable code. It functions across unlinked on-chain environments that operate in structural silos, plagued by limited access to off-chain data and severe interoperability friction. DeFi represents an endogenous convergence to TradFi but introduces severe structural immutability, rendering it incapable of capturing legal nuances, renegotiations, or unforeseen market stress events.

Cryptocurrencies (Uncountable, Uncapped Inventory): Other than stablecoins, many cryptocurrencies are uncountable digital assets characterized by unlimited or uncapped supply, behaving more like “*non-cashable gambling chips*” than standard corporate shares. Because they lack a centralized issuer or initial underwriting anchor, their market value cannot be quantified or policed by traditional securities inventory metrics (such as the Volcker Rule's RENTD provisions). They exist either as energy-tied Proof-of-Work protocols or Proof-of-Stake systems that are inherently vulnerable to voting paradoxes and the tyranny of the majority.

The SEC approved \$DOJE is a crypto Exchange Traded Fund (ETF) with underlying “*assets*” being MEME Coin, despite a statement by the SEC Division of Corporate Finance on Feb 27, 2025⁵⁵ which stated that “*MEME Coins for entertainment and social cultural purposes are NOT securities.*” Also, any “*Digital Collectables*” that do not involve Commodity Exchange Act regulated commodity options, futures, or leveraged OTC transactions would be outside scope of CFTC’s oversight.⁵⁶ Before Congress and the Commissions sort through these entanglements, FINRA can ONLY observe policy directions, but NOT develop its own rules outside self-regulatory authority.

- b. *Do members currently use AI to facilitate their order handling, routing or execution decisions? If so, how? If not, do members plan to incorporate AI technology in these processes in the future? Should FINRA consider providing any best execution guidance specific to the use of AI?*

No. FINRA should refrain from providing any BestEx guidance specific to the use of AI.

Market participants utilize a wide variety of diverse, highly customized systems, including AI, to evaluate execution quality when the SIP is offline or non-existent. Particularly, those collocated with exchanges, subscribers of PPs, some would algorithmically isolate *toxic versus natural liquidity*.³⁹ An ATS operates as a midpoint-only venue using continuous, AI-driven price optimization to minimize *adverse selection*.⁴⁰ Some firms rely on specialized multi-venue sampling, others deploy localized VWAP algorithms, and multi-asset market makers frequently construct complex, synthetic internal reference prices tied to real-time derivatives and parallel offshore books.

One size does not fit all. These proprietary, dynamic frameworks are highly protected intellectual property developed at immense private expense to navigate fragmented liquidity landscapes. They are tailored to a firm's specific risk profile, client base, and technical capabilities, making it impossible – and highly inappropriate – to flatten them into a rigid, singular regulatory guideline.

Standard tools like TCA and SOR are not the holy grail. Real-world market participants are actively counting the securities inventory and margin constraints of themselves and their opponents. Policy makers must recognize this microstructural reality rather than prescribing certain trade practices, technologies, or demanding additional data reporting requirements. Any added burden heightens the cost to transact in the US, eroding the competitiveness of US markets while completely failing to improve the trust factor if the market is left without OPR.

The SEC provides absolutely no framework on how to judge the underlying intent of AI-driven routing behavior by realized economic outcomes – such as net-effective price improvement – as opposed to mechanical routing semantics. Consequently, FINRA possesses zero objective administrative footing to probe into a firm's internal algorithmic "*secret sauce*."