



Municipal Securities Rulemaking Board

Marcia E. Asquith
Corporate Secretary, EVP
Board and External Relations
FINRA

Ronald W. Smith
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MSRB

February 7, 2023

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: Regulation Best Execution (Release No. 34-96496; File No. S7-32-22)

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) and Municipal Securities Rulemaking Board (“MSRB”) appreciate this opportunity to preliminarily comment on the Securities and Exchange Commission’s (“Commission” or “SEC”) proposal to adopt Regulation Best Execution.¹ The Proposal would create a new SEC-established best execution standard for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers (hereinafter collectively referred to as “broker-dealers”), including requirements for best execution policies and procedures, heightened requirements for conflicted transactions, and requirements for regular reviews of execution quality.

A firm’s duty of best execution owed to its customers is foundational to investor protection and market integrity, and FINRA has long had a robust regulatory program surrounding member firm conduct in this regard, including through market surveillance, examinations, and, where appropriate, enforcement action. As the Commission notes in the Proposal, FINRA’s best execution rule—FINRA Rule 5310 (Best Execution and Interpositioning)—has been amended throughout the years and is accompanied by an extensive body of interpretive guidance that has evolved alongside market changes.² As the Commission also notes, MSRB Rule G-18 (Best Execution) is the best execution rule for transactions in municipal securities and was modeled on

¹ See Securities Exchange Act Release No. 96496 (December 14, 2022), 88 FR 5440 (January 27, 2023) (the “Proposal”).

² See, e.g., *id.* at 5444.



Investor protection. Market integrity.



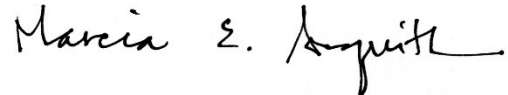
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FINRA Rule 5310.³ Best execution is and will continue to be a priority item for FINRA throughout its regulatory apparatus and remains a cornerstone of the MSRB's investor protection regime.

FINRA and the MSRB recognize that the specific contours of a broker-dealer's best execution obligation may change in some respects if the Proposal is adopted. We also appreciate the need to avoid regulatory duplication and the importance of providing regulatory clarity for broker-dealers if FINRA and MSRB rules would address the same conduct as an SEC rule. For example, when the SEC adopted Regulation Best Interest, both FINRA and the MSRB amended our respective suitability rules.⁴ Similarly, if the Proposal is adopted, FINRA and the MSRB will take appropriate steps to address these concerns by adjusting our best execution rules and guidance accordingly.

We look forward to continued engagement with the SEC and market participants on the regulatory framework around best execution obligations. If you have any questions or would like to further discuss our views, please contact Racquel Russell, Senior Vice President and Director of Capital Markets Policy, FINRA, at [REDACTED] or Saliha Olgun, Interim Chief Regulatory Officer, MSRB, at [REDACTED].

Sincerely,



Marcia E. Asquith
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³ See *id.*

⁴ See, e.g., FINRA *Regulatory Notice* 20-18 (June 19, 2020) (FINRA Amends Its Suitability, Non-Cash Compensation and Capital Acquisition Broker Rules in Response to Regulation Best Interest); MSRB *Notice* 2020-13 (June 26, 2020) (MSRB Harmonizes Rules with Requirements of Regulation Best Interest).