

Alert | Financial Regulatory & Compliance



January 2023

SEC Proposes to Establish a New Best Execution Standard

On Dec. 14, 2022, Gary Gensler, Chair of the U.S. Securities and Exchange Commission (SEC), released a [statement](#) announcing a proposal to establish an SEC rule setting forth a best execution standard for broker-dealers. Chair Gensler expressed his support of the new rule, stating it would help ensure brokers have policies and procedures in place to seek best execution for investors.

Currently, the SEC does not have its own best execution rule. It does, however, enforce best execution duties under antifraud statutes, the Financial Industry Regulatory Authority (FINRA), and the Municipal Securities Rulemaking Board (MSRB) execution rules. Chair Gensler stated that a best execution standard was “too important, too central to the SEC’s mandate to protect investors, not to have on the books as [SEC] rule text.” The Chair noted that the proposed SEC rule would enhance investor protection by providing for additional enforcement capabilities, and he further noted that FINRA’s best execution rule hadn’t been updated since 2014, and that markets had changed vastly since then.

The SEC’s proposal aims to make enhancements to brokers’ duty to investors. Chair Gensler highlighted three such enhancements in his statement:

- Heightened requirements for transactions that involve conflicts of interest with retail investors: brokers would be subject to additional policies and procedures and documentation requirements if the broker has a conflict of interest with respect to a transaction. Additional policies and procedures

include enhanced diligence in seeking best execution and documentation showing the basis for determining that conflicted transactions comply with the best execution standard.

- Narrowing best execution requirement exemptions for introducing brokers: for example, broker-dealers using wholesalers for execution would no longer be able to solely rely on the wholesaler's quality reviews.
- More detailed policies and procedure requirements: policies and procedures would need to include specific considerations that the broker would need to address, such as market evaluation and specified price/non-price considerations, to comply with the new best execution standard.

The proposed rule is open for public comment, and the public comment period will remain open until March 31, 2023, or 60 days after the proposal's publication date in the Federal Register, whichever is later.

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