

HAMILTON
CAPITAL PARTNERS, LLC.

3400 Peachtree Road NE Suite 125 Atlanta, Georgia, 30326

October 8, 2026

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

Re: File No. 4-913 — Roundtable on Preparations for 24-Hour Trading

Dear Ms. Countryman:

Hamilton Capital Partners, LLC (“Hamilton”) is an independent investment adviser registered with the Commission that provides discretionary portfolio management and family-office services, including consulting, wealth management, and administrative support. We submit these comments on the September 17, 2026 roundtable from the perspective of an adviser that must decide whether, when, and for whom to use overnight access, and that must explain its consequences to clients.

An adviser’s duty of best execution is a duty of care, not a duty of access. Our working presumption is that, for long-term advisory accounts, the overnight session is an option to be used deliberately, not a venue to be routed to by default. Rayo Capital Group has asked whether declining to trade overnight can be a defensible fiduciary decision.¹ Commissioner Peirce put the same question to the roundtable panelists. We offer a framework for that decision and practical safeguards for accounts that obtain overnight access. The Commission has approved overnight-session rules for NYSE Arca, Nasdaq, and Cboe EDGX and the 23-hour model of 24X National Exchange; MEMX has filed immediately effective rule changes; and the Commission’s orders approving the Equity Data Plan amendments set December 6, 2026 as the compliance date for 23/5 operation of the securities information processors, the date on which the exchanges plan to launch, subject to SIP, TRF, and DTCC readiness.²

In summary, we ask for: (1) interim staff views, before the planned launch, confirming that a written session policy adopted and reviewed as described in Comment 1 is a reasonable means of meeting an adviser’s best-execution obligation for the sessions it excludes, and addressing monitoring, execution

¹Letter from Christian Narvaez, Rayo Capital Group (Sept. 15, 2026), File No. 4-913. See also Hester M. Peirce, Commissioner, SEC, Stock Around the Clock: Remarks at the Roundtable on Preparations for 24-Hour Trading (Sept. 17, 2026) (putting the same question to the panelists), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-roundtable-091726>.

²Exchange Act Rel. No. 34-102400 (Feb. 11, 2025), 90 Fed. Reg. 9794 (Feb. 18, 2025) (SR-NYSEARCA-2024-89) (approval of NYSE Arca temporary Rule 7.34-E(T)); Rel. No. 34-105199 (Apr. 10, 2026) (SR-Nasdaq-2025-109) (approval); Rel. No. 34-105587 (May 29, 2026) (SR-CboeEDGX-2026-019) (approval); Rel. No. 34-106310 (Sept. 9, 2026) (SR-MEMX-2026-28) (notice of filing and immediate effectiveness); Rel. No. 34-105532 (May 21, 2026) (SR-NYSEARCA-2026-53) (notice of filing and immediate effectiveness; operative date conditioned on the Equity Data Plans’ readiness for 23/5 trading and a further rule filing); NYSE, Extended-Hours Trading FAQ v4.0 (Aug. 2026) (planned launch subject to approvals, SIP availability, and DTCC modernization). See also Rel. No. 34-101777 (Nov. 27, 2024), 89 Fed. Reg. 97092 (Dec. 6, 2024) (24X National Exchange approval order); Rel. No. 34-106061 (Aug. 7, 2026), 91 Fed. Reg. 52756 (Aug. 14, 2026) (temporary conditional relief permitting the 24X Market Session from January 24, 2027 only if the Equity Data Plans miss the December 6, 2026 implementation date); Rel. No. 34-105779 (June 26, 2026), 91 Fed. Reg. 40082 (July 1, 2026) (CTA and CQ Plans), and Rel. No. 34-105780 (June 26, 2026), 91 Fed. Reg. 40058 (July 1, 2026) (UTP Plan) (orders approving the Equity Data Plan amendments; compliance required beginning December 6, 2026).

data, disclosure, allocation, and recordkeeping; (2) account-level custodial conventions for adviser-managed accounts — a regular-hours default, dual elections for overnight eligibility, explicit order eligibility, notice to the adviser, and an escalation channel (Comment 2); (3) a published mapping of the date conventions that apply to overnight executions, including the trade date that fixes the same-day affirmation deadline, coordination with Treasury and the IRS on tax dates, and confirmation and statement enhancements (Comment 3); (4) overnight operation of protective holds, a regular-hours-only account restriction for vulnerable clients, a Regulation Best Interest answer, and coordination with the Department of Labor (Comment 4); (5) a statement of examination expectations and expanded public data (Comment 5); and (6) a disclosed official-close valuation default for statements, fees, and performance (Comment 6).

In this letter, regular trading hours are 9:30 a.m. to 4:00 p.m. Eastern Time, subject to scheduled early closes; the existing early and late sessions generally run 4:00 to 9:30 a.m. and 4:00 to 8:00 p.m.; the overnight alternative trading systems generally operate from 8:00 p.m. to 4:00 a.m.; and the planned exchange overnight sessions begin at 9:00 p.m. All times are Eastern. A “session policy” is a written policy that limits the sessions in which an adviser enters discretionary orders, whether to regular trading hours only or to every session other than the overnight session; a regular-hours-only policy is the broader of the two.

1. Best execution for advisers in an overnight market

Under the Commission’s 2019 interpretation, an adviser must seek execution that provides the most favorable total cost or proceeds under the circumstances and must periodically and systematically evaluate the execution quality it obtains.³ Nothing in that standard requires an adviser to trade in every session a venue chooses to operate, and access to a session does not, by itself, establish that using it serves a particular client’s best interest.

The staff’s September 10 memorandum reports that overnight trading averaged 0.9% of NMS share volume and 0.8% of dollar volume per trade date in August 2026, and that each day’s ten most active overnight names accounted, on average, for 43.4% of that session’s share volume. In the second quarter, the individual and institutional account categories together represented approximately 16% of overnight account-side share volume and 31% of account-side dollar volume; both sides of a trade enter those calculations, and the classifications do not identify adviser-managed accounts.⁴ These figures describe participation and concentration, not execution quality.

Huang and Schwarz placed approximately 32,000 one-share marketable limit orders through three brokers in about two dozen symbols across the extended and overnight sessions between January and July 2025. The negative price improvement at each broker and the 25.4% trade-through rate they report concern the extended-hours portion of that experiment, not a separately reported overnight result.⁵ “Trade-through”

³Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Rel. No. IA-5248, 84 Fed. Reg. 33669, 33674–75 (July 12, 2019) (§ II.B.2).

⁴SEC Div. of Trading & Markets, Office of Analytics & Research, Staff Memorandum, Roundtable on Preparations for 24-Hour Trading Supporting Data, File No. 4-913 (Sept. 10, 2026), at 2, 6, 23 (tbl. 3), and 25 (tbl. 5 & n.7). Table 5 counts both the buy and the sell side of each trade; the individual and institutional categories are 9% and 7% of overnight share volume and 17% and 14% of overnight dollar volume.

⁵Letter from Xing Huang & Christopher Schwarz (Sept. 9, 2026), File No. 4-913, § II, at 5–6 & n.11 (the reported price-improvement and 25.4% trade-through results concern the extended-hours portion of the experiment; footnote 11 notes that overnight execution quality also differs across brokers but reports no overnight results).

there is an execution-price comparison, not a finding of a Rule 611 violation. The evidence supports caution; it does not establish that regular-hours execution is always superior. A session policy for long-term accounts can be reasonable when it rests on the adviser's assessment of client needs, reasonably available execution information, order characteristics, liquidity, costs, and operational capacity, with documented exceptions and reassessment as conditions change.

FINRA's Regulatory Notice 26-15 asks whether supplemental best-execution guidance for extended-hours orders would help.⁶ From the adviser's side the answer is yes. We ask the Commission, or the Division of Investment Management by staff statement or FAQ, to address six adviser-side points before the planned launch:

- (a) An adviser may adopt, disclose, and follow a written session policy, subject to documented exceptions where the client's circumstances and the adviser's capabilities support execution in an excluded session. Such a policy permits advance order entry for later regular-hours execution. The assessment supporting the policy should consider the client mandate, order size and type, available liquidity, total execution costs, and operational capacity, and should compare alternative execution opportunities where material; the periodic and systematic review should use information reasonably available and be proportionate to the service and order flow. We ask for confirmation that a session policy adopted on that basis, disclosed to clients, and reviewed periodically and systematically is a reasonable means of meeting the adviser's best-execution obligation with respect to the sessions it excludes; that order-by-order justification is not required; and that an adviser declining overnight access on that basis is not required to document each overnight opportunity it did not take, client-specific circumstances being addressed through the policy's exceptions process. We do not ask the staff for a safe harbor, which a staff statement cannot provide. If the Commission concludes that advisers need that certainty, a Commission interpretation or rule would be the appropriate instrument, and we would support one.
- (b) Advice and monitoring are owed at a frequency consistent with the client's best interest and the scope of the agreed relationship.⁷ A venue's operating hours do not alone create a duty of continuous overnight monitoring. An advisory agreement may define when instructions are accepted and acted upon while preserving the monitoring obligations the relationship requires, and may provide that an instruction received outside those hours will be reviewed and acted upon in the next agreed service period. That provision governs when the adviser acts; the adviser's record of the instruction continues to show the actual date and time of receipt (see Comment 1(f)). A client's authorization of overnight trading at the custodian does not compel the adviser to provide services it has not agreed, and is not equipped, to provide.
- (c) Orders executed outside regular trading hours are excluded from Rule 605's covered-order definition, so no Rule 605 statistics exist for overnight executions.⁸ Rule 606 is not subject to the same exclusion, but its reports do not provide the session separation commenters have requested.⁹ The public execution-quality evidence in this file concerns the existing extended-hours sessions; the overnight session is addressed only in passing, and neither the file nor the staff's

⁶FINRA Regulatory Notice 26-15, § 6 (July 24, 2026).

⁷Rel. No. 1A-5248, 84 Fed. Reg. at 33675-76 (§ II.B.3).

⁸17 C.F.R. § 242.600(b)(27), as amended by Rel. No. 34-99679 (Mar. 6, 2024).

⁹Huang & Schwarz, *supra* note 5, § II; Letter from Zeyuan Li, W-Axis Lab (July 23, 2026), File No. 4-913.

memorandum provides standardized, session-specific execution-quality comparisons that an adviser could use in an ongoing review. That gap is itself a relevant consideration in adopting a session policy. We support session-level Rule 605 and 606 reporting, including clarity on held and not-held treatment, and ask that it be treated as an adviser-compliance priority as well as a broker-dealer one. Pending standardized public reporting, an adviser should be permitted to use reasonably available information, including custodian or executing-broker session-level statistics that the adviser has evaluated, as an input to its own review — an input, not a substitute. Data limitations inform the assessment without suspending the duty, and they do not require an adviser that declines overnight participation to purchase overnight data, construct hypothetical fills, or conduct test trades.

- (d) The availability of overnight sessions does not, by itself, make an adviser's existing Form ADV Part 2A, Item 12 disclosure materially inaccurate. Whether a newly adopted session policy does so depends on what the brochure says; where it does, the adviser must amend promptly, and in every case the ongoing obligation to inform clients of material information affecting the advisory relationship continues.¹⁰ An adviser whose disclosure remains accurate may describe its session policy in its next annual updating amendment.
- (e) Differences in session eligibility will arise from client elections, account restrictions, restrictions placed by a client's representative, and the adviser's own session policy. We ask for confirmation that an adviser that aggregates orders across accounts may allocate executions obtained in a session among the accounts eligible for that session, consistent with its allocation policies and procedures, and that a difference in session eligibility does not, standing alone, establish that accounts ineligible for the session were disadvantaged. The adviser's allocation policies would still need to address how eligibility is determined before an order is entered, partial fills, the sequencing of orders across sessions, and any change in allocation made after execution results are known, and the adviser's disclosure and conflict-of-interest obligations are unaffected.
- (f) Rule 204-2(a)(3) requires the adviser's memorandum of each order to show, among other things, the date of entry.¹¹ We ask for confirmation that, for an order entered for execution in an overnight session, the memorandum satisfies the rule by recording the calendar date and time of entry with the time zone and the session designation as a term of the order, and that the venue-assigned trade date need not be substituted for the date of entry.

2. Custodial platform defaults for adviser-managed accounts

Custodial platforms serve both adviser-managed and self-directed accounts, and their defaults should reflect the three-party relationship among custodian, adviser, and client. Graungaard has proposed regular-hours defaults for retail stop and market orders.¹² NYSE Arca describes an overnight-execution control for entering and clearing firms.¹³ MEMX's filing illustrates why account and order instructions matter: an order entered without a session designation defaults to a Day order eligible from the overnight

¹⁰Form ADV, Part 2: Instructions for Part 2A of Form ADV, Instruction 4; see also Form ADV, Part 2: General Instructions, Instruction 3 (ongoing fiduciary obligation to inform clients of material information affecting the advisory relationship).

¹¹17 C.F.R. § 275.204-2(a)(3).

¹²Letter from Tomas Graungaard (Aug. 18, 2026), File No. 4-913.

¹³NYSE FAQ v4.0, *supra* note 2 ("Trading During the Overnight Session") (risk control permitting Entering Firms and Clearing Firms to prohibit orders from executing during the Overnight Session).

session through the end of regular trading hours.¹⁴ We ask the Commission to encourage the following account-level practices for accounts over which a registered adviser exercises discretion:

- (a) New discretionary advisory accounts default to execution during regular trading hours. Existing, separately authorized early- or late-session settings are preserved unless changed through the account process; neither enables overnight access automatically. Overnight eligibility requires both an affirmative adviser participation election and an affirmative account election by the client or by a representative acting within verified authority, and the custodian's advisory account documentation should include a client authorization permitting the adviser of record to set session eligibility for the account. Authenticated electronic elections, including in-app elections, may be accepted if the required disclosures are presented, consent is affirmative rather than preselected, an audit record is retained, and the adviser of record receives electronic notice of every election, revocation, and re-enablement. The client or authorized representative may revoke overnight authorization promptly; the adviser may disable its own participation without a client veto, with notice and implementation under the account agreements; and re-enablement requires both elections. Trading authority alone does not necessarily empower an adviser to restrict a client's direct orders, which is why the authorization belongs in the account documentation. No opt-in overrides a legally required restriction or an applicable protective hold.
- (b) An order is eligible for overnight execution only under an explicit overnight instruction and valid account authorization; regular-hours resting orders do not migrate automatically, and stop and stop-limit orders are not triggered by overnight prints. The exchange filings restrict overnight order types, and Nasdaq and MEMX cancel orders resting on their books at 8:00 p.m.¹⁵ An exchange-book purge is distinct from a broker-held good-till-cancelled instruction that may later be resubmitted. Custodians should explain which instructions survive, how orders are resubmitted, and which session restrictions continue to apply, and these conventions should be uniform across custodians through the appropriate self-regulatory-organization process.
- (c) For a client-directed overnight order in an opted-in advisory account, the custodian provides the adviser prompt electronic notice of the order and its disposition, including corrections and cancellations, before the next regular-hours opening where practicable and no later than the next business day, so that the adviser can reconcile positions, tax lots, and client instructions without monitoring through the night. The custodian should likewise notify the adviser of any rejected attempt to enter an overnight order in an account that has not opted in; such an attempt is a red flag for account takeover or exploitation and a relevant event under the adviser's identity-theft program where Regulation S-ID applies.¹⁶
- (d) The FINRA Rule 2265 risk disclosure is delivered at overnight opt-in in a concise, prominent format that custodians can also furnish to advisers for client discussions, and delivery and the

¹⁴Rel. No. 34-106310, supra note 2, at 6–7 (an order entered without a trading session designation defaults to a Day order “eligible to participate from the Overnight Trading Session through the end of Regular Trading Hours”).

¹⁵Rel. No. 34-105199, supra note 2 (limit orders only; orders on the book cancelled at 8:00 p.m.); Rel. No. 34-106310, supra note 2 (same; priced pegged orders also permitted); Rel. No. 34-105587, supra note 2 (limit orders only).

¹⁶17 C.F.R. §§ 248.201–202 (Regulation S-ID), which applies to a registered investment adviser that offers or maintains covered accounts.

affirmative election are recorded.¹⁷ This timing and presentation would supplement the rule's existing requirements.

- (e) A custodian offering overnight access maintains an escalation channel throughout the sessions it offers, identifies the responsible broker or support function, discloses in the opt-in disclosure its time limits and procedures for cancellations, error corrections, and disputes, and states who bears responsibility for an erroneous overnight execution in an adviser-managed account that the adviser did not enter. Account restrictions operate consistently across app, web, API, and every other order-entry channel. These measures allocate responsibilities expressly; they do not require every adviser to staff a 24-hour trading desk.

3. Trade date, tax lots, wash sales, and the period-end boundary

For pre-midnight overnight executions, the calendar date of execution and the assigned trade date differ. CAT Alert 2026-02 provides an 8:00 p.m.-to-8:00 p.m. Industry Member trade date beginning with the planned December 6 session; weekends and holidays are not CAT trade dates.¹⁸ FINRA's amended TRF rules use the same time boundary but assign the following calendar day even if it is a weekend or holiday, require separate execution-time and trade-date fields, and limit that definition to TRF reporting.¹⁹ The exchange materials assign executions from 9:00 p.m. until midnight to the following calendar day;²⁰ Blue Ocean ATS already assigns executions from 8:00 p.m. until midnight to the following trade day.²¹ Barrett has discussed the relationship to clearing dates.²² These purpose-specific conventions do not by themselves establish the treatment required for every client report or tax computation:

- (a) Statements, fees, and performance. A sale at 9:30 p.m. on Wednesday, March 31, 2027 would carry an April 1 trade date under the exchange conventions reviewed. Its treatment on the client's statement requires separate identification of the transaction cutoff, the valuation timestamp and price source, and the recognition of unsettled positions and cash; a period-end fee or performance calculation cannot be determined from the assigned trade date alone. Custodians and advisers should document their methods, prevent omission or double counting of securities and proceeds, and explain legitimate differences among reports. Because the custodial statement is the document a client uses to check the adviser's fee invoice, the statement legend should state the custodian's period-end cutoff rule — execution time or assigned trade date.
- (b) Tax reporting. The Form 1099-B instructions call for the trade date in Box 1c;²³ section 1091 measures the wash-sale window from the date of sale or disposition;²⁴ and the revenue rulings

¹⁷FINRA Rule 2265.

¹⁸CAT Alert 2026-02, 23x5 Trading: CAT Reporting Requirements (Sept. 23, 2026).

¹⁹Rel. No. 34-105922 (July 15, 2026) (SR-FINRA-2026-015) (amending FINRA Rules 6320A, 6320B, 6380A, and 6380B; implementation tied to the SIP amendment); see also FINRA Regulatory Notice 26-07 (Mar. 9, 2026).

²⁰Rel. No. 34-105587, *supra* note 2; Rel. No. 34-106310, *supra* note 2; NYSE FAQ v4.0, *supra* note 2 (trades 9:00–11:59 p.m. carry the following calendar day's trade date; trades 12:00–4:00 a.m. carry the same calendar day's trade date).

²¹Blue Ocean ATS, Frequently Asked Questions (trades executed between 8:00 p.m. and midnight ET carry the following trade day).

²²Letter from Thom Barrett, Citizens' League (Sept. 16, 2026), File No. 4-913.

²³IRS, Instructions for Form 1099-B (2026), Box 1c; see *id.*, Box 1g (a broker must report a loss disallowed under § 1091 where both the sale and the purchase occur in the same account with respect to covered securities with the same CUSIP number, and is permitted but not required to report other disallowed losses).

apply trade-date principles to acquisition, disposition, and the year of sale, defining the trade date as the date on which the contract to buy or sell is made.²⁵ That definition points to the calendar day of execution, but none of the authorities we reviewed addresses a venue- or facility-assigned trade date that differs from it. The venue schedules we reviewed provide no Friday-evening or pre-holiday overnight session and therefore no calendar-year crossover under those schedules,²⁶ but a one-day difference can affect wash-sale and holding-period calculations. A broker is required to report a disallowed wash-sale loss only where the sale and the purchase involve covered securities with the same CUSIP number in the same account, although it may report more broadly; an adviser engaged to provide tax-lot or tax-management services tracks wash sales across the client accounts it has agreed to cover, using the information available to it and in coordination with the client's tax professional, and those accounts can include the client's IRA or Roth IRA at another custodian, where a purchase of substantially identical securities within thirty days before or after the sale disallows the loss without any increase in the basis of the IRA.²⁷ Inconsistent dates across custodians therefore fall on the adviser's tax-lot records rather than the broker's. Treasury and IRS clarification would allow brokers and advisers to apply consistent treatment, without assuming that a self-regulatory-organization reporting date governs federal tax law.

- (c) Confirmations. Rule 10b-10(a)(1) requires the transaction date and time, or a statement that the time will be furnished on written request.²⁸ For overnight fills, we propose that confirmations show the execution date and time with the time zone, the assigned trade date, and a session identifier, with the same session labeling on periodic statements. These are requested enhancements, not a reading of the existing rule.
- (d) Allocation, confirmation, and affirmation. Rule 15c6-2 requires a broker-dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a transaction subject to Rule 15c6-1(a) to have written agreements with the relevant parties, or written policies and procedures reasonably designed, to ensure that the process is completed as soon as technologically practicable and no later than the end of the day on trade date,²⁹ and Rule 204-2(a)(7)(iii) requires the adviser, for those transactions, to keep each confirmation received and each allocation and affirmation sent or received, with a date and time stamp for each allocation and affirmation.³⁰ For an execution at 9:30 p.m. that carries the next day's trade date, neither rule says whether the end of the day on trade date is the calendar day of execution or the

²⁴26 U.S.C. § 1091(a).

²⁵Rev. Rul. 66-97, 1966-1 C.B. 190 (the trade date is "the date on which the contract to buy or sell the security is made," the settlement date is "the date on which the security is delivered and payment is tendered," and stocks and bonds "are considered acquired or sold on the respective 'trade dates'"); Rev. Rul. 93-84, 1993-2 C.B. 225 (a cash-basis taxpayer reports the gain or loss from a year-end regular-way sale of stock on an established securities market "in the year in which the trade date falls"); see also Rev. Rul. 2002-44, 2002-2 C.B. 84 (reciting both rulings in the short-sale context).

²⁶Rel. No. 34-105199, supra note 2; Rel. No. 34-105587, supra note 2; Rel. No. 34-106310, supra note 2; NYSE FAQ v4.0, supra note 2; Blue Ocean ATS FAQ, supra note 21; NYSE, Holidays and Trading Hours (2026–2027).

²⁷Rev. Rul. 2008-5, 2008-3 I.R.B. 271 (loss on a sale of stock is disallowed under § 1091 where the taxpayer causes his or her IRA or Roth IRA to purchase substantially identical stock within the 61-day window, and the basis of the IRA is not increased).

²⁸17 C.F.R. § 240.10b-10(a)(1).

²⁹17 C.F.R. § 240.15c6-2(a)–(b), adopted by Rel. No. 34-96930 (Feb. 15, 2023), 88 Fed. Reg. 13872 (Mar. 6, 2023).

³⁰17 C.F.R. § 275.204-2(a)(7)(iii).

assigned date, and the adviser's time stamps may straddle midnight. We ask the Commission to state which date fixes the deadline for overnight executions, how the adviser's records should reflect both the execution time and the assigned trade date, and how exceptions are to be handled.

We ask the Commission and the self-regulatory organizations to publish a mapping, by purpose, among execution timestamps, venue session dates, CAT and TRF trade dates, same-day affirmation deadlines, clearing and settlement dates, ex-dividend and record-date entitlements and due-bill processing, corporate-action elections, and customer reporting conventions for overnight executions, explaining where differences are legitimate. The mapping should cover the 8:00 to 9:00 p.m. hour, Sunday through Thursday, in which the alternative trading systems trade while the exchanges, the securities information processors, and the trade reporting facilities are closed: on a typical August 2026 trade date it accounted for 21.2% of the overnight session's ATS share volume, and the staff identifies it as the planned SIP and TRF maintenance window.³¹ We also ask for coordination with Treasury and the IRS on section 1091, holding periods, year of disposition, and Form 1099-B treatment.

4. Senior and vulnerable clients, and retirement accounts

Our family-office work includes multigenerational families, older clients, and retirement assets. Rule 2165 permits a member firm to hold a disbursement or transaction in a Specified Adult's account on a reasonable belief of financial exploitation, subject to authorization, notice, review, and duration conditions; it does not authorize a hold merely because a trade appears unwise.³² Rule 4512 requires reasonable efforts to obtain a trusted contact; that designation alone confers no decision-making or trading authority, although a trusted contact may separately hold authority under another valid instrument.³³ Proposed Rule 2166 would permit temporary delays for suspected third-party fraud against any customer, and related amendments would extend Rule 2165 holds and broaden the personnel who may authorize them; these changes remain a proposal.³⁴ An adviser is not a member firm, and state financial-exploitation statutes do not fill the gap for an adviser whose clients live across the country: of the forty-four jurisdictions NASAA lists as having enacted its Model Act, twenty-seven define "investment adviser" to exclude SEC-registered advisers, so their hold authority never reaches the adviser's own accounts; fourteen reach the firm but differ on whether transactions as well as disbursements may be held and for how long; and the other three, like the eight jurisdictions with no such law (New York among them), give an SEC-registered adviser no hold authority at all.³⁵ A custodial account restriction placed under the

³¹Staff Memorandum, supra note 4, at 14 & n.5.

³²FINRA Rule 2165(b)(1)(A) (reasonable belief), (b)(1)(B) (notice), (b)(1)(C) (internal review), (b)(2)–(4) (duration and extensions), (c) (supervisory procedures; authorization limited to persons in a supervisory, compliance, or legal capacity), and (d) (records).

³³FINRA Rule 4512(a)(1)(F) and Supplementary Material .06; FINRA, Investor Insight: Trusted Contact (the designation itself does not authorize decisions or transactions in the account).

³⁴Rel. No. 34-106275 (Sept. 3, 2026) (SR-FINRA-2026-018), 91 Fed. Reg. 57407 (Sept. 9, 2026) (proposing FINRA Rule 2166 and amendments to Rules 2165 and 4512).

³⁵NASAA, Model Act to Protect Vulnerable Adults from Financial Exploitation (adopted Jan. 22, 2016), and NASAA's list of enacting jurisdictions, <https://www.nasaa.org/industry-resources/senior-issues/model-act-to-protect-vulnerable-adults-from-financial-exploitation/>. The counts are drawn from the enactments themselves, as in effect and read on October 2, 2026; the three listed jurisdictions whose laws reach neither group are Nevada (training and reporting only), Rhode Island (broker-dealers only), and Puerto Rico (banks, cooperatives, and insurers). Illinois Public Act 104-0662 (approved July 30, 2026; effective July 1, 2027) adds Section 18.5 to the Illinois Securities Law of 1953, under which dealers, salespersons, investment advisers, and investment adviser representatives may place a transactional hold on a transaction or disbursement from an eligible adult's account for up to fifteen business days, extendable by forty-five, and adds those persons as mandated reporters under the Adult Protective Services Act; it is enacted but not yet in effect and is not counted. The Securities Law defines "investment adviser" to

account agreement is an operational control that can be deployed for clients in every state, subject to the account agreement and applicable law; it complements statutory holds, reporting duties, and court remedies where they exist. We request the following:

- (a) FINRA and the Commission should clarify the operation of Rule 2165 holds, and Rule 2166 delays if adopted, during overnight sessions. Member procedures should provide for overnight escalation, authorization, and required notices; existing applicable holds should be honored by every order-entry channel; and overnight consent should not override a hold while it remains valid.
- (b) Firms should offer a regular-hours-only account restriction at the request of the client or of a representative whose verified authority extends to that instruction, including an appropriately authorized trustee, guardian, or attorney-in-fact; an adviser's trading authority does not by itself include authority to restrict client-directed orders, which the account authorization described in Comment 2(a) would supply. A restriction placed at the request of a representative acting under a fiduciary instrument should not be removable by an in-app election. A request to remove it — whether from that representative, a successor, or the client — should be acted on only after an authenticated review of the requester's authority under the governing instrument, applicable law, and any controlling court order, and of any protective hold then in effect; the client keeps whatever authority applicable law, the instrument, and any such order preserve, as a principal under a power of attorney ordinarily retains the power to revoke it.³⁶ Whether a requester may lift the restriction is a separate question from whether a particular order should then be accepted, which remains subject to the firm's procedures. A removal request from the representative who placed the restriction should itself be reviewed where the circumstances suggest exploitation by that representative. A restriction the client set may be removed by the client through an authenticated affirmative election, with delivery of the Rule 2265 disclosure, notice to the adviser of record, and effectiveness deferred to the next business day so that the adviser can reach the client; a removal request inconsistent with the client's circumstances should itself be reviewed under the firm's Rule 2165 procedures. Enabling overnight access in a discretionary advisory account must also satisfy the adviser participation election in Comment 2(a). A trusted contact without separate account authority may alert the firm and request consideration of a restriction but cannot impose or remove one, and member firms' procedures should treat a report from the adviser of record as a basis for review under the firm's Rule 2165(c) procedures.
- (c) The Commission should explain when a broker-dealer's solicitation of a retail customer to enable overnight trading constitutes a recommendation of an investment strategy. The answer depends on the facts; enabling a feature is not always a recommendation. Where Regulation Best Interest

exclude a federal covered investment adviser (815 ILCS 5/2.11), although its definition of "investment adviser representative" reaches a federal covered adviser's representatives who have a place of business in Illinois (815 ILCS 5/2.12b). The Uniform Securities Act (2002) definition excludes a "federal covered investment adviser"; compare N.J. Stat. Ann. § 49:3-49(g) (excluding advisers registered under § 203 of the Advisers Act) with Minn. Stat. § 45A.01, subd. 7 ("Investment adviser includes a federal covered investment adviser").

³⁶See, e.g., N.Y. Gen. Oblig. Law § 5-1511 (a principal may revoke a power of attorney by delivering a signed revocation to the agent, and the agent must comply with the revocation notwithstanding the principal's actual or perceived incapacity unless the principal is subject to a guardianship under article 81 of the Mental Hygiene Law).

applies, all four component obligations — Disclosure, Care, Conflict of Interest, and Compliance — apply.³⁷

- (d) The Commission should coordinate with the Department of Labor on overnight access through ERISA plan brokerage windows, including provider selection and monitoring, participant disclosures, and the scope of the relevant fiduciary responsibilities. We propose regular-hours defaults with an affirmative participant election for overnight access as a protective policy for consideration. Such a default can support, but does not itself establish, a prudent assessment under ERISA section 404(a)(1)(B);³⁸ the assessment should address the circumstances of the plan and the service, including liquidity, costs, participant needs, and operational safeguards, and the proposal does not assume that overnight access is inherently imprudent.

5. Examination expectations for advisers, and the data needed to meet them

We ask the Division of Examinations to state its approach to overnight trading in adviser examinations through its fiscal 2027 priorities, a risk alert, FAQs, or another suitable communication, and to confirm that an adviser's decision to decline overnight access will not, standing alone, be treated as a deficiency. The adviser's process should be evaluated on its facts, its client mandates, and the information reasonably available to it, including its treatment of custodian-provided statistics as an input under Comment 1(c). Periodic and systematic execution review should be distinguished from the at-least-annual review of the compliance program required by Rule 206(4)-7,³⁹ and the scope of execution review should be proportionate to the adviser's services and order flow. We also ask that the Office of Analytics and Research update its September 10 memorandum quarterly and extend it, where feasible, to effective and quoted spreads, price improvement, and fill rates by session and by account-holder type, with stated methodologies and limitations, so that an adviser can document a reasoned decision from a public source rather than from a single custodian's statistics.

6. The official close as the valuation reference for statements, fee billing, and performance

Advisory billing methods and performance valuation conventions vary. A portal's displayed price, a periodic statement value, and the value used for fees or performance can legitimately differ; what matters is that the timestamp, price source, and purpose of each are clear. An overnight last sale is also not always a price formed overnight. The staff memorandum attributes the pronounced overnight volume spikes near 9:00 and 11:40 p.m. to non-ATS batch reports carrying the ".W" modifier, including fractional-share liquidations priced off the prior day's official close and ETF trades priced at a subsequently published NAV.⁴⁰ Under both securities information processors' data-feed specifications, trades reported with the average-price and extended-hours sale conditions update consolidated volume but not the consolidated last sale or the high and low; FINRA's trade-reporting guidance says the same of .W reports; and NYSE states that trades in its Overnight, Early, and Late Sessions carry the T sale condition and are not last-sale

³⁷17 C.F.R. § 240.15l-1(a)(1)–(2) (Disclosure, Care, Conflict of Interest, and Compliance Obligations).

³⁸29 U.S.C. § 1104(a)(1)(B).

³⁹17 C.F.R. § 275.206(4)-7(b).

⁴⁰Staff Memorandum, *supra* note 4, at 11 & n.4.

eligible.⁴¹ A portal price labeled “last” after an overnight print may therefore be neither the official last sale nor a price formed overnight, and the display alone does not tell the client which.

Where applicable, the custody rule requires an adviser to have a reasonable basis, after due inquiry, for believing that the qualified custodian sends account statements at least quarterly; it does not prescribe the valuation method.⁴² We propose that custodians and advisers adopt and disclose a consistently applied policy for listed equities that uses the primary listing market’s official closing price, including a scheduled early close, as the default reference for periodic statements, fee billing, and performance reporting, with stated exceptions for stale or unavailable closes, trading suspensions, corporate actions, and other methods permitted by applicable requirements and the governing agreements. Fee calculations must follow the advisory agreement and its disclosure, and the same valuation consistency underlies performance presented under the Marketing Rule.⁴³

Systems should identify the valuation timestamp and price source, distinguish informational portal prices from statement and billing values, reconcile the values used for statements, fees, and performance, and explain legitimate differences. ETF market prices should be distinguished from NAV. Commenters have described the closing auction’s role in concentrating liquidity;⁴⁴ our proposal is a disclosed default with defined exceptions, not a requirement that every report use the same mark.

⁴¹UTP Plan, UTP Data Feed Services Specification v4.1 (Sept. 2026), § 3.14.2 (sale conditions W, T, and U update consolidated volume but not the consolidated last sale or high and low), <https://www.utpplan.com/DOC/UtpBinaryOutputSpec.pdf>; Consolidated Tape Association, CTS Pillar Multicast Output Binary Specification v2.11b (Jan. 29, 2026) and v2.12b (July 1, 2026), Field Descriptions, “Sale Condition” (codes B (Average Price Trade), T (Extended Hours Trade), and U (Extended Hours Sold (Out of Sequence)) update volume only), <https://www.ctaplan.com/tech-specs>; FINRA, Trade Reporting Frequently Asked Questions, FAQ 408.5 (“Trades reported with the .W modifier will not update the high, low or last sale prices for the security.”); NYSE FAQ v4.0, *supra* note 2 (“Sale Conditions, Corporate Actions, CAT”) (trades in the Overnight, Early, and Late Sessions use the “T” sale condition and are not Last Sale eligible).

⁴²17 C.F.R. § 275.206(4)-2(a)(3).

⁴³17 C.F.R. § 275.206(4)-1.

⁴⁴Letter from Patrick Blonien & Alexander Ober (Aug. 14, 2026), File No. 4-913; Letter from Tim Quast, Modern Networks IR LLC (Sept. 15, 2026), File No. 4-913.

Conclusion

The infrastructure for overnight trading has been built by the venues, the clearing agency, and the data plans. The layer between the platform and the client — the adviser's policy, the custodian's default, the confirmation, the statement, the tax lot, and the hold on a vulnerable client's account — is still being built. We ask for timely staff views on existing adviser duties and examination practice, practical account controls and reporting conventions, and coordination with Treasury, the IRS, and the Department of Labor. Staff guidance can clarify the staff's approach but cannot create a binding safe harbor or alter legal obligations;⁴⁵ Commission interpretation or rulemaking should be used where needed, and any mandatory opt-in, account control, or confirmation or statement enhancement would require the appropriate Commission or self-regulatory-organization process. Custodians and advisers can meanwhile adopt the voluntary controls, escalation procedures, and disclosed valuation policies described above. We would welcome the opportunity to discuss these points with the staff of the Divisions of Trading and Markets, Investment Management, and Examinations.

Respectfully submitted,

HAMILTON CAPITAL PARTNERS, LLC

By:


Alonso Munoz
Chief Investment Officer

By:


Mark Robison, Esq.
General Counsel

Principal office: 3400 Peachtree Road NE, Suite 125, Atlanta, GA 30326

Questions may be directed to Mark Robison at mark.robison@hamiltoncapllc.com

⁴⁵Jay Clayton, Chairman, SEC, Statement Regarding SEC Staff Views (Sept. 13, 2018) (staff statements are nonbinding and create no enforceable legal rights or obligations), <https://www.sec.gov/newsroom/speeches-statements/statement-clayton-091318>.