

September 16, 2025

Hon. Paul Atkins, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Submission in Advance of the Commission Roundtable on Rule 611 of Regulation National Market System, File Number 4-862

Dear Chairman Atkins,

The Healthy Markets Association appreciates the opportunity to participate in the Commission’s Roundtable review of Rule 611 of Regulation NMS, the Order Protection Rule (“OPR”). We write in strong support of retaining Rule 611, with targeted modifications to better reflect the evolution of today’s equity market structure.

Healthy Markets Association is a non-profit member organization focused on improving the transparency, efficiency, competitiveness, and fairness of the capital markets. Our members include public pension funds, investment advisers, broker-dealers, national securities exchanges, and data firms.¹ Every day, we work with chief investment officers, portfolio managers, trading desk heads, operations teams, risk managers, compliance officers, and other professional investment team staffers engaged in the trading process. Our expertise and focus is on market plumbing.²

I. We Recall Trading Before Rule 611 Was Adopted – It Wasn’t Great

Rule 611 was adopted in 2005 to prohibit “trade-throughs”—executions at prices inferior to protected quotations—in order to strengthen intermarket price protection and promote investor confidence in displayed limit orders.³ The Commission emphasized that the rule was intended to encourage the use of displayed non-marketable limit orders, enhance price discovery, and prevent investors’ market and marketable limit orders from receiving inferior executions.

While HMA has been working on these issues since our launch in 2015, I have personally been concerned with best execution for far longer. And I can remember a world before the Order Protection Rule. It wasn’t always pretty. Brokers and exchanges were regularly executing orders at wildly inferior prices, harming investors.

¹ To learn more about HMA, please visit <https://healthymarkets.org>.

² HMA has submitted over one-hundred comments on rulemakings and petitions to capital markets regulators and Congress on trading-related policies, copies which are available on our website.

³ Regulation NMS, SEC, 70 Fed. Reg. 37496 (June 29, 2005).

Back then, I headed up order-routing at a very large online retail broker. I recall that most of my customers' Nasdaq listed orders would generally be priced quickly. Nasdaq at the time deployed an automated system and the then market-makers would offer size through the small order execution system (SOES), so we would receive executions for my former firm's customers generally in about 1-2 seconds (which was quite fast at the time).

By contrast, I recall that my customers' executions for listed orders were much slower, often taking upwards of 15 seconds or more for an execution. Worse, the prices received were often vastly inferior to the displayed public quotes.

I recall going to visit one of our key order-flow providers at the time to understand why things were so slow, frankly, awful for our customers. What could we do better to help our customers get better executions?

I recall spending a day on the Chicago stock exchange with the QQQ trader, who at the time commanded over 20% of the daily volume in QQQ stock (QQQ was the most active stocks for retail then and one of the most active stocks period). I would watch our customer orders come in to the QQQ trader and then watch as the trader sometimes sent the order out over the Intermarket Trading System to get a better published price. Generally about 30 seconds later, the NYSE specialist would "DK" the order back with no fill as shares ahead. This scenario happened over and over and over again. In fact the problem was so bad, that a then newer electronic exchange, Archipelago, created a morning TV series that routinely mocked the arcane system. For those with internet sleuthing skills, you might be able to find a much younger version of me appearing in an episode with a live ferret, attempting to "ferret" out the best price.

Back then, we also had a problem with frequently locked and crossed markets. Back then, none of the market centers we utilized would execute our customers' orders in that condition, and that condition was quite common.⁴ These were not flickering quote situations, either. Very significant portions of many, many trading days were locked or crossed market conditions. These could last for minutes or a time, and often happened several times a day.

There was no simple way around it. In fact, some market participants began to purposefully engage in practices to lock markets and garner "free" rebates. Even some retail customers at the time were engaging in the practice.⁵

⁴ See SEC Planning Memorandum from John McCarthy, Eric Swanson, and Matt Daugherty to Lori Richards, SEC, Mar. 3, 2003, available at <https://www.sec.gov/news/studies/2009/oig-509/exhibit-0527.pdf>.

⁵ See Editorial, *Locked and Crossed Markets*, Traders Magazine, Apr. 30, 1999, available at <https://www.tradersmagazine.com/news/locked-and-crossed-markets/>.

Trade throughs and locked/crossed markets were a huge problem, leading to unfilled orders, and harmed investors. We had to spend days educating hundreds of call center staff that were continuously fielding irate customer calls on account of being traded through. I, and many others, begged regulators to intervene.⁶ And they finally did.

The Commission didn't do exactly what we wanted. The rule was clunkier than we thought it needed to be. And the incentives don't always line up. But it was far, far better for investors and market efficiencies than the world before.

Put simply, Rule 611 and 610(e) were adopted to provide a backstop for investor's execution quality – ensuring that they generally wouldn't receive prices worse than displayed liquidity on an exchange. That approach worked.

II. Rule 611 Remains a Critical Backstop for Investors

Despite seismic advances in computing technology and the speed of markets since it was adopted, Rule 611 continues to serve as an essential backstop for investors, providing all investors confidence that their orders will not be traded through.⁷ Without such protections, retail and institutional investors alike would have limited recourse to proactively ensure execution quality.

And this was a central aim of Rule 611: to protect ordinary investors from receiving inferior executions in a fragmented market. Retail traders and even many institutional traders usually cannot continually connect to and monitor dozens of market data feeds. By mandating that visible best quotes be respected, Rule 611 ensures that *invisible, better-priced orders cannot not be bypassed*.

While some larger institutions may have both the technology and capabilities to fully protect themselves in a complex environment, the same cannot be said for the majority of institutions out there. Many rely upon and outsource their trade execution and monitoring decisions to third parties, the modern “market makers.”

But these firms also run at a profit. As Virtu Financial's Doug Cifu explained on CNBC, market making firms segment orders they want to access from brokers with retail and smaller institutional orders, and they either pay the broker in the form of payment for order flow, provide the customer with price improvement, or both.⁸ As Mr. Cifu explained:

⁶ See Meeting Memorandum, Chris Nagy meeting with the SEC Division of Market Regulation, Joe Hall, Counsel to Chairman Donaldson, and Susan Ameal, Counsel to Commissioner Atkins, Sept. 16, 2004, *available at* <https://www.sec.gov/files/rules/proposed/s71004/s71004-492.pdf>.

⁷ Letter from Tyler Gellasch, HMA, to Brent J. Fields, SEC, Apr. 3, 2017, *available at* <https://healthymarkets.wpengine.com/wp-content/uploads/2018/04/04-03-17-HM-letter-comment.pdf> (“2017 HMA OPR Letter”).

⁸ Interview of Doug Cifu by Andrew Ross Sorkin, Squawk Box, CNBC, Mar. 11, 2021, *available at* <https://x.com/SquawkCNBC/status/1369995291148050432?s=20>.

- “Overall, through the course of a month we will provide more price improvement to Fidelity than we do Robinhood;”
- “What we do every day is capture as much bid offer spread as we can and then we negotiate and say hey if we capture 100 units we can give you 70 units back;” and
- “We are Switzerland” [and don’t care whether the retail broker or its customer gets the “profit share” payment from Virtu].⁹

And to compound this issue, larger firms with more market power or “juicer” (aka, less informed) order flow generally receive better pricing.¹⁰ I’ve seen it first hand.

But even those margins are now somewhat effectively constrained by OPR. Essentially, this whole system is premised on the backstop being the best protected prices. That’s not the best standard for investors, but it sure beats nothing.

Transaction cost analysis (TCA) is also a major issue. Larger firms have the financial capabilities and budget to either create in-house or outsource to a third party the cost of TCA in nearly all asset classes. TCA costs, particularly real-time or near real-time TCA can be very expensive particularly for a small firm, especially across asset classes.

In fact, for several years after leaving that firm, I helped brokers and investors with their policies, procedures, and practices related to TCA. And what I learned truly shocked me. I was often stunned by how little some of the most prominent financial firms knew about their own execution quality. And some firms simply ignored the true impacts on their customers.

It seems like few firms are worried about the execution quality for retail trades.

And this is all before we examine investment advisers. The Commission seems to frequently forget that most institutional investors also trade through retail trading channels. And while investment advisers have their own duty of best execution,¹¹ Nearly no smaller advisers have any decent “tools” to assess best execution. Many are simply compelled to rely upon the minimum “check the box” compliance sheets provided by their custodians. For example, they generally don’t receive customized Rule 605 reports about their customer trades. And yet, blind reliance on their broker or custodian to provide best execution is not a sufficient answer; especially if they don’t have the basic backstop of Rule 611.

⁹ Id.

¹⁰ Press Release, *Citadel Securities Paying \$22 Million for Misleading Clients About Pricing Trades*, SEC, Jan. 13, 2017, available at <https://www.sec.gov/newsroom/press-releases/2017-11>

¹¹ Commission Interpretation Regarding Standard of Conduct for Investment Advisers, SEC, IA Rel. No. 5248, Jun 5, 2019, available at <https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf>

As the Commission found when it was first considering adopting Rule 611 that “many of the investors whose orders were executed at inferior prices might not be aware they in fact had received an inferior price from their broker and trading venue.”¹²

Rule 611 was intended to protect those investors from poorly priced executions that they likely didn’t know were poor. Conversely, removing Rule 611 removes that backstop for best execution.

Let me wind the clock back for my next historical example. Back in 2005, I was Chairman of the SIFMA Options Committee. Back then, not unlike now, options trading was booming with retail investors. Regulation NMS had just rolled out, but there were no mandated SEC Rule 605 reports for the options markets (as is still the case today).

Our SIFMA Committee began working to create a “best execution” disclosure regime for option trades. Happily, my successor to the Committee saw this project through to completion,¹³ and beginning in 2008, option trades had some public quantitative metrics available. However, since the program did not have any regulatory mandate, by early 2012 it had quietly vanished. Today, it is nearly impossible to find any remnants of those best execution reports. They just vanished.

And although I was not part of this particular endeavor, nearly the exact same thing happened with the Financial Information Forum’s voluntary retail execution disclosures on equities, which even included quality information about odd-lots.¹⁴ That laudable program was designed to provide apples-to-apples comparisons across brokerage firms. We used them briefly, and found them extremely informative. However, they were not mandated. Perhaps because we and others saw some of the massive market disparities, those reports seem to have stopped.

Putting it bluntly, if there is not proper guidance or mandated disclosure in place, brokers and trading venues will always gravitate to the lowest common denominator – which will be greater margins for the middlemen and inferior executions for investors. Worse, smaller and less sophisticated investors are likely to receive the worst executions.

III. Rule 611 Has Been Effective in Reducing Trade-Throughs and Protecting Displayed Liquidity

¹² *Memorandum on Rule 611 of Regulation NMS*, SEC Division of Trading and Markets Staff to the EMSAC, at 6, (Apr. 30, 2015), available at <https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf> (“May 2015 EMSAC Meeting Memo”).

¹³ SIFMA letter to the U.S. Options Exchanges, Apr. 29, 2008, available at <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-the-us-options-exchanges-on-recommendations-for-improving-best-execution-reports-for-options-exchanges.pdf>

¹⁴ See *Voluntary Retail Order Execution Quality*, FIF, available at <https://fif.com/index.php/archive-working-groups/retail-execution-quality/retail-execution-quality-overview>

When adopting Rule 611, the Commission believed it would (1) reduce trade-throughs and execution costs, (2) speed up order processing, and (3) improve displayed liquidity.

And we now know what happened.

Trade-throughs dropped. For example, Nasdaq's own data indicated internalizer trade-throughs fell from about 3.2% to 1.4% after Rule 611 was proposed.¹⁵

In fact, data released by the Commission Staff just last week reflects just how effective Rule 611 has been on discouraging trade-throughs.¹⁶

The Staff Report found that the overall trade-through rate was less than 2.5% without the one-second lookback, and fell to 0.6% or lower after applying the lookback. During regular trading hours, the trade-through rate for round lots was just 0.06% in corporate stocks.¹⁷ This results in billions of dollars of investor savings. However, those savings are very difficult to quantify, simply because we will never know by how much a broker or execution venue would have substituted an inferior price for the prices at which the trades were executed.

Going back to my simple QQQ analogy, once 611 was adopted, the lack of calls from complaining clients about trade throughs simply vanished. We eliminated staff and streamlined operations as a result.

Order processing sped up. By enforcing instantaneous checking of quotes, the rule also put pressure on markets to automate. In practice, equity markets became almost fully electronic – both major exchanges merged with advanced electronic networks,¹⁸ and routers achieved near-instant best-price executions.

The Commission had estimated that, in 2003, “inferior prices for investors whose orders traded through accessible quotations” cost those customers \$320 million.¹⁹ That's a lot of investor savings. But investors didn't necessarily know about it. As the SEC Staff summarized for the EMSAC, when the Commission adopted Rule 611, it noted “that many of the investors whose orders were executed at inferior prices might not be aware they in fact had received an inferior price from their broker and trading venue.”²⁰

So trade throughs declined. Executions became more likely and predictable. Markets sped up. And investors saved money.

¹⁵ *May 2015 EMSAC Meeting Memo*, at 6.

¹⁶ *Trade-Through Roundtable Supporting Data*, SEC, (Sept. 9, 2025), available at <https://www.sec.gov/files/trade-through-roundtable-supporting-data.pdf>.

¹⁷ *Id.*, at 3-4.

¹⁸ *The Trade Through Rule*, Congressional Research Service, at 5, June 6, 2005, available at https://www.congress.gov/crs_external_products/RS/PDF/RS21871/RS21871.3.pdf#

¹⁹ *May 2015 EMSAC Meeting Memo*, at 7.

²⁰ *May 2015 EMSAC Meeting Memo*, at 6.

IV. Challenges in the Current Application of Rule 611

Rule 611, however, didn't come without costs and create some new concerns. None of them are new. And all of them have been considered by the Commission, its staff, and leading market participants before.

When the SEC created the now-defunct Equity Market Structure Advisory Committee ("EMSAC"), examining Rule 611 was amongst the group's very first tasks at the EMSAC's first ever meeting.²¹

Then-Commissioner Dan Gallagher raised concerns with Rule 611, but also noted the impact on best execution. Rather than simply scrap the rule, Gallagher argued that the agency should "further clarify a broker's duty of best execution [and] review how FINRA implements its own best execution requirement for broker-dealers."²² More than a decade later, we agree that Rule 611 is inextricably linked with best execution, and any material changes to it should be compensated by other changes to serve the same purposes.

Another expert commenter at that meeting, who now happens to be the Director of the Division of Trading and Markets, also raised some concerns with the "unintended consequences" of Rule 611.

While Mr. Selway was then an executive at ITG, he suggested that the Commission:

- "create a "de minimis" exemption to Rule 611, under which market centers with volume below a certain threshold level, such as 1 percent of the consolidated tape, do not enjoy price protection from displayed quotations";
- "create a block exemption to Rule 611, under which large trades above a certain size, such as 10,000 shares or \$200,000 in value, could execute without triggering an obligation to protect quotations at superior prices";
- "repeal the prohibition of locked markets"; and
- "lower the access fee cap."²³

The EMSAC continued to examine the rule and alternatives. As a subcommittee presented for the full EMSAC some various options, it noted that "[e]nhanced best execution guidance is needed for execution and routing activities, understanding that

²¹ *Transcript of the Equity Market Structure Advisory Committee Meeting*, SEC, May 13, 2015, available at <https://www.sec.gov/spotlight/emsac/emsac-051315-transcript.txt> ("May 2015 EMSAC Meeting Transcript").

²² Remarks of the Hon. Daniel Gallagher before the Inaugural Meeting of the Equity Market Structure Advisory Committee, SEC, May 13, 2015, available at <https://www.sec.gov/newsroom/speeches-statements/gallagher-remarks-inaugural-sec-equity-market-structure-advis> or.

²³ May 2015 EMSAC Meeting Transcript, at 0115.

much of the burden would fall on retail firms who would have to enhance their current monitoring procedures.”²⁴ That was true then, and it’s still true today.

While Rule 611 continues to serve an important investor-protection function, several challenges have emerged:

1. Routing Complexity and Costs. Rule 611 has increased order-routing complexity, heightened connectivity costs, and contributed to fragmentation among trading venues.²⁵
2. Large Institutional Orders. Rule 611 can create sub-optimal outcomes for large institutional trades, where strict compliance may prevent optimal block execution strategies.²⁶
3. Top-of-Book Limitation. By protecting only the national best bid and offer (NBBO), Rule 611 fails to incentivize deeper liquidity provision. We note that, many years ago, Ameritrade argued that protecting depth-of-book limit orders would better encourage displayed liquidity.²⁷

Despite years of studying these negative impacts of Rule 611, the Commission has not materially changed the rule. That said, given its inclusion on the agency’s formal regulatory agenda this year,²⁸ we anticipate forthcoming proposals to change it.

V. Recommended Modifications

Repealing Rule 611 alone would expose investors to significantly worse execution quality. Further, it would disproportionately negatively impact retail investors and smaller institutions, who will lack the financial resources, access to data, and market power necessary to effectively review their execution quality and ensure their brokers fulfill their best execution obligations.

That said, we agree with commenters who suggest revising how the Commission approaches trade-throughs and order protection. To balance investor protection with market efficiency, we respectfully urge the Commission to:

1. **Strengthen Best Execution – First.** At root, Rule 611 is intended to provide an external backstop to brokers’ fulfillment of their best execution obligations. Any

²⁴ See Memorandum: Framework for Rule 611 & 610 Discussion, Regulation NMS Subcommittee to the EMSAC, SEC, at 4, Apr. 3, 2017, *available at* <https://www.sec.gov/spotlight/emsac/emaac-regulation-nms-subcommittee-discussion-framework-040317.pdf>.

²⁵ *Id.*, at 5; *see also*, Trade-Through Roundtable Supporting Data, at 7.

²⁶ See 2017 HMA OPR Letter.

²⁷ Comment Letter from Ameritrade, Inc. on Regulation NMS, File No. S7-10-04 (Jan. 26, 2005), at 5 (supporting “Voluntary Depth Alternative”) *available at* <https://www.sec.gov/files/rules/proposed/s71004/pmesposito012605.pdf>

²⁸ *Agency Rule List - Spring 2025*, SEC, Office of Info. and Regulatory Affairs, Office of Mgm’t and Budget, *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=rue&agencyCode&showStage=active&agencyCd=3235.

changes to Rule 611 will expose investors to risks of inferior executions. Accordingly, the Commission should work with FINRA to improve brokers' fulfillment of their best execution obligations, and investors' ability to hold their brokers' accountable, first. This should include:

- waiting until Rule 605 disclosures are being made and FINRA Rule 6152 is fully implemented,²⁹ so that investors can understand their broker's routing practices and review for best execution;³⁰ and
 - working with FINRA to enhance FINRA's enforcement of its Best Execution Rule, including by requiring specific disclosures of any trade-throughs, strengthening FINRA's firm trade-through reporting, along with explanations, in plain English, to the customers on their trade confirmations that would clearly show if an investor received an inferior price.
2. **Ensure Odd-Lot Quotations Are Included on the SIPs – First.** Today, the majority of orders are in odd lot increments. And many trades are executed in odd-lot sizes. However, the market data feeds have nevertheless continued to exclude odd-lot quotations. For over a decade, HMA and others have urged the Commission to fix this error, and add odd-lot quotations to the SIPs. Despite adopting rules to do so, the NMS Plan Participants have not done it. Because having these quotations is essential to determining execution quality for odd-lots, the Commission should wait until NMS participants finally publish odd-lot quotations to the public data feeds.³¹
 3. **Provide Targeted Flexibility for Block Trading.** Today, the vast expansion of most order-types have all been created in and around rule 611 mainly to avoid predatory traders.³² The Commission should consider pilots or expanded exceptions for institutional block trades and block/institutional order-types such as portfolio or capital commitment orders, where strict adherence to Rule 611 may harm execution quality.³³
 4. **Consider Depth-of-Book Protection.** A voluntary or pilot program extending protection beyond the NBBO could encourage liquidity provision and further

²⁹ Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, May 2, 2025, *available at*

<https://healthymarkets.org/wp-content/uploads/2025/05/Ltr-to-SEC-re-FINRA-Order-Disclosure-Rule-6152-1.pdf>.

³⁰ 2017 HMA OPR Letter, at 2 (stating that “[w]e believe that the elimination of the Order Protection Rule and the prohibition on locked and crossed markets prior to significant reforms to Rules 605, 606, and 610 would likely result in significant harm to investors.”).

³¹ Letter from Tyler Gellasch, HMA to SIP Operating Committee, July 18, 2022, *available at*

https://healthymarkets.org/wp-content/uploads/2022/07/7-18-22-Odd-Lot-Proposal-Letter-to-CTA_UTP-1.pdf.

³² Phil MacIntosh, *Demystifying Order Types*, KCG, Sept. 2014, *available at*

https://www.smallake.kr/wp-content/uploads/2016/02/KCG_Demystifying-Order-Types_092414.pdf.

³³ See, *id.* (reflecting complex order types designed to address Rule 611's potentially negative implications for significant-size orders).

improve execution quality.³⁴ Like many of these issues, the notion of Depth Protection has been considered for decades, going back to the agency's Advisory Committee on Market Information.³⁵

5. **Apply Protections to All Significant Trading Venues.** Consider shifting order protection from being available to only registered securities exchanges to any venues with above a “de minimis” market share, which we would preliminarily suggest should be 1% execution volumes, determined on a trailing 6 month basis.³⁶ The Commission should consider excluding these de-minimus venues from voting on or collecting revenues from the NMS market-data plans.
6. **Directly Address the Protected Quotation-Enabled Abuses of Venues Charging Excessive Access Fees and Offering Distortive Incentives.** Changes to Rule 611 should be coordinated with reductions in access fees and distortive order-routing incentives under Rule 610.³⁷ However, we strongly recommend that Rule 610(e), *locking and crossing quotations*, remain “fully intact.”

VI. Conclusion

Rule 611 continues to play an essential role in ensuring fair and efficient markets. Outright repeal would risk significant harm to investors, particularly retail participants, and undermine market confidence. At the same time, targeted modifications can modernize the rule, reduce unnecessary costs, and address institutional concerns—while maintaining its core investor protections. However, those modifications should also be accompanied by tweaks to other rules (including FINRA Rule 5310).

If you have any questions, please contact me at chris@healthymarkets.org. Thank you for your consideration.

Respectfully submitted,



Christopher Nagy, Research Director

³⁴ See Ameritrade Comment Letter, *supra* note 8, at 5–6.

³⁵ See *Advisory Committee on Market Information*, SEC, available at <https://www.sec.gov/divisions/marketreg/marketinfo.shtml> (reflecting meetings in 2000 and 2001).

³⁶ Of the 16 registered stock exchanges in operation, 7 exchanges: Cboe BYX, Cboe EDGA, LTSE, Nasdaq BX, Nasdaq PSX, NYSE National and NYSE Texas generally have trading volumes below 1%, with LTSE being the lowest at approximately 0.01% market-share.

³⁷ See, Statement of Tyler Gellasch, Executive Director, Healthy Markets Association, before the U.S. House Committee on Financial Services, 115th Cong. (2017), at 4–5 (recommending reductions in access fees and distortive incentives).