

December 12, 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 December 16, 2025 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 on Rule 611 of Regulation NMS, the Order Protection Rule.

As we explained in our September 16, 2025 letter to you,¹ and our remarks in the September 18th Roundtable on Trade Through Prohibitions, the Order Protection Rule serves an important function of protecting investors from inferior executions, and should not be repealed. However, the Commission could make some targeted modifications to better reflect the evolution of today's equity market structure, enhance best execution, improve the enforceability of best execution, and promote more fair, orderly, and efficient markets.

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.² 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.³

HMA first advocated for retaining, but modifying, Rule 611 in 2015.⁴ At that time, we noted that "Rule 611 is both extremely complex, and open to more than its fair share of criticism."⁵ At the time, we recommended that the Commission:

1. Update Rules 605 and 606;

¹ Letter from Chris Nagy, HMA, to Hon. Paul Atkins, SEC, September 16, 2025, *available at* <https://www.sec.gov/comments/4-862/4862-658187-1965294.pdf> ("2025 Roundtable Letter").

² To learn more about HMA, please visit <https://healthymarkets.org>.

³ 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.

⁴ Statement of Dave Lauer, HMA, Before the Equity Market Structure Advisory Committee, SEC, May 13, 2015, *available at* <https://www.sec.gov/comments/265-29/26529-15.pdf> ("2015 Statement to EMSAC").

⁵ 2015 Statement to EMSAC, at 1.

2. Modernize best execution and disclosure requirements to supplement or replace Rule 611;
3. Shift the order protection responsibility from the exchanges to the brokers;
4. Re-examine execution venues' order handling and routing, including complex order types;
5. Reduce market data costs and revenue sharing; and
6. Explore ways to promote trading in displayed markets and reduce conflicts of interest.⁶

While the Commission has made laudable efforts on our first recommendation, the Commission's proposed rule on Best Execution was deeply flawed and never finalized, and its efforts to address market data costs have been inconsistent and insufficient.

As we did over a decade ago, we welcome the Commission's revisitation of the Order Protection Rule.⁷

While we wish to reiterate our remarks from the Commission's prior roundtable and our many prior letters addressing the importance of the rule to investors,⁸ In the interest of brevity, below, we highlight some themes that clearly emerged from the Commission's most-recent roundtable.⁹

Rule 611 Anchors Best Execution by Ensuring Investors Receive the Best Displayed Price

Several panelists emphasized that the Order Protection Rule provides a baseline guarantee that investors—particularly retail and institutional investors trading in fragmented markets—receive executions at the best displayed price across national exchanges. Without this protection, brokers could route orders in ways that privilege internalization, speed, or payment incentives over best price.

This isn't news to the Commission staff. In 2017, HMA wrote:

⁶ 2015 Statement to EMSAC, at 2.

⁷ We do not, however, welcome reconsideration of Rule 610, which we believe would likely be an unmitigated disaster for most market participants. While many public commenters today do not recall the damage caused by frequent and sometimes prolonged locked and crossed markets, we do. It was deeply problematic for investors.

⁸ See, e.g., 2015 Statement to EMSAC; see also, Letter from Tyler Gellasch, HMA to Brent Fields, SEC, Apr. 3, 2017, *available at* <https://healthymarkets.wpengine.com/wp-content/uploads/2018/04/04-03-17-HM-letter-comment.pdf> ("2017 Letter to EMSAC").

⁹ Additional quotes from panelists from the September 16, 2025 Rule 611 Roundtable Transcript attached as Appendix 1.

Rule 611 serves as an imperfect backstop to a broker's best execution obligation, by ensuring that an investor should not generally receive an execution outside the prevailing market. If the backstop is removed or weakened without the implementation of new protections, investors will be more at risk to their brokers' conflicts of interest. Brokers will remain incentivized to route orders for reasons other than best execution, but will have even less of a standard against which to measure their own obligations. And investors will remain largely unable to identify and police abuses. Put simply, removing Rule 611 now will harm investors.

This is not a theoretical concern, as data suggests that brokers are already making order routing decisions based on their own bottom lines, and not necessarily the execution quality received for their customers. Currently, these practices are bound by Rule 611 to result in executions that are within the market prices. This acts as a practical limit to the number of trade-throughs which is what the Commission originally sought to reduce through the adoption of the rule. It caps the amount of losses an investor could suffer from a conflicted broker.¹⁰

That is still how the rule operates today, except that the retail trading markets have grown as a portion of the volume traded each day, thus making the rule even more important to the trading markets than it was a decade ago.

As BlackRock's Hubert De Jesus recently told the Commission,

I just wanted to make one note on best execution and Rule 611. You know, the common thought is if you eliminate Rule 611, that brokers' best execution obligations will prevent them from trading through better price quotations. And I think that would be true for us in how we expect our brokers to behave. But Rule 611 also applies to all market centers, which it doesn't just include broker-dealers, but also includes exchanges and alternative trading systems. And so there is sort of this corner case that might exist if you eliminate Rule 611 that a market center gets an order, there's a better price quote on a different exchange, and then they don't route out. And that was something that we saw happening before Reg NMS was put into place.¹¹

Exactly.

¹⁰ 2017 Letter to EMSAC, at 9.

¹¹ Remarks of Hubert De Jesus, BlackRock, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 191.

The Order Protection Rule Preserves the Integrity of the NBBO and Supports Price Competition

Multiple speakers stated that trade-through protection is essential to preserving the National Best Bid and Offer as a meaningful benchmark for execution quality. If trading centers could routinely execute at inferior prices, the NBBO would lose informational value, harming both displayed liquidity and public price discovery.

The Order Protection Rule Protects Displayed Liquidity and Encourages Quote Competition

Panelists stressed that the certainty of execution at the best price incentivizes market makers and exchanges to post competitive quotes. Without the Order Protection Rule, liquidity providers would very likely widen spreads or reduce displayed size (or both) due to uncertainty about their ability to execute against incoming order flow.

The Order Protection Rule Maintains a Level Playing Field Across Trading Centers

Speakers noted that the rule is particularly important in a fragmented market with powerful internalizers, wholesalers, and ATSS. By establishing a uniform price-protection regime, the Order Protection Rule and Rule 610 ensure that displayed markets compete on equal footing with dark or off-exchange venues.

Removing or Weakening the Order Protection Rule Risks Investor Harm and Market Instability

Participants warned that eliminating trade-through protection would lead to inconsistent execution quality, increased investor costs, reduced quote quality, and potential erosion of public markets. Retail and institutional orders would be at greater risk of being executed at inferior prices, especially in less liquid names or fast markets.

Removing the Order Protection Rule Will Not Reduce Exchange Data Costs

As we have argued for many years including at the Commission's most recent roundtable, the Order Protection Rule is not responsible for the proliferation of market data costs. Rather, the rampant rise in market data costs is due to the broken SRO filing process.¹²

As Peter Haynes of TD Securities told the Commission in his remarks regarding Canada's Threshold Rule:

¹² Letter from Tyler Gellasch, HMA to Hon. Gary Gensler, SEC, October 29, 2021, *available at* <https://www.sec.gov/comments/sr-cboeedga-2021-017/srcboeedga2021017-9360012-261666.pdf>

I don't think anyone disconnected from any of the venues that were less than two and a half percent. Once you've dealt with those up-front costs, plus the combination of best ex requirements, essentially you've onboarded and absorbed most of the cost. So I don't anticipate that you would see a significant number of people disconnecting to those additional marketplaces, especially if they're affiliated with exchanges you're already connected to.¹³

While All Investors Worry About Price, Retail and Institutional Investors Have Different Definitions of What That Means

Individual retail traders looking to execute smaller trades that could be readily filled by displayed liquidity are likely to be very well protected by the trade through rule today, as are most institutional investors.

However, the execution prices for individual orders are not likely to be particularly valuable for measuring execution quality for institutional investors. Overall trade executions, based on explicit and implicit trading costs, are likely far more important. Put simply, if an institutional investor has 20,000 shares to execute in a small-cap stock, hitting a protected quotation on an exchange for 100 shares may be more detrimental than advantageous, as it may signal the intention, leading to higher overall costs for the entire 20,000 share trade. Accordingly, an institution's view of best execution – and its transaction cost analysis – are likely to focus on the all-in cost of the execution of the entire 20,000 share trade, not just whether it received a great price on the first 100 shares.

Modernization Is Possible—But It Should Preserve Core Price Protections

Putting it all together, the panel's overriding message was not: "Yes — Rule 611 must be scrapped immediately." Rather it was: "We need a serious, data-driven re-assessment of Rule 611 — and likely a structural reform — to align the rule with today's market realities."

While some panelists supported targeted refinements (e.g., latency allowances, odd-lot visibility, or size-based flexibility), many panelists reinforced that the bedrock principle of best displayed price protection should be retained to preserve investor confidence.

V. Recommended Modifications

As we stated previously and as expounded upon by numerous panelists at the September 18, 2025 roundtable, repealing the Order Protection Rule alone would

¹³ Remarks of Peter Haynes, TD Securities, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 104-105.

expose investors to significantly worse execution quality. Further, as we previously stated, a repeal 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.

For example, HMA is aware of one smaller institutional investor that expended significant resources to overhaul its execution quality review processes to better identify trades where its brokers routed and executed orders at worse than publicly displayed prices. It nearly instantly found numerous instances of it from just one broker, and when confronted, these instances stopped. There is no practical way for most institutional investors or retail investors to do that same thing.

The Commission must be cognizant of the reality that any changes to Rules 610 and 611 will have different impacts on different investors, even “institutional” ones.

That said, we agree with commenters and panelists 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, as the Commission heard repeatedly at the roundtable, the Order Protection Rule is intended to provide an external backstop to brokers’ fulfillment of their best execution obligations.¹⁴ Any 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:

¹⁴ Remarks of Robert Colby, FINRA, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 225 (“Without clear standards, best execution will be applied either through Staff interpretations or through exams and enforcement actions. The latter is not ideal. So if 611 and the supporting rules are changed or if they disappear, then the SEC and FINRA staff will need to collectively work on what interpretations are necessary to give substance to best execution.”); see also, Remarks of Joe Saluzzi, Themis Trading, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 241 (“Again, I don’t think the answer is to get rid of OPR. I think OPR -- obviously, we all have best execution responsibilities and that overrides everything. But OPR is a way of keeping that intact. It’s kind of like checking things, making sure you don’t go out of control. And it keeps FINRA’s job a little bit better, maybe they don’t have to analyze everybody so much. But OPR is important.”).

- waiting until Rule 605 disclosures are being made and FINRA Rule 6152 is fully implemented,¹⁵ so that investors can understand their broker's routing practices and review for best execution;¹⁶ and
- working with FINRA to enhance FINRA's enforcement of its Best Execution Rule¹⁷, 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. As we have repeatedly noted, brokers print price improvement statistics on client trade confirmations today. This would essentially be clearly identifying the price dis-improvement.
- Because the relevant manner in which best execution is analyzed for retail differs significantly from that of best execution for institutional orders, those differences should be addressed. For example, while best execution for retail orders should be analyzed on an order-by-order basis, institutional orders should be analyzed differently, specifically, on a parent order basis.
- Additionally, best execution for advisers that custody through retail channels must be addressed. Firms that custody through retail channels should be provided sufficient disclosures and information (such as a best execution report card) so that they may meet their best execution objectives.

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. While the implementation of revised “round lot” sizes has already improved the markets, more must be done.

¹⁵ 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>.

¹⁶ 2017 Letter to EMSAC, at 2 (stating 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.”).

¹⁷ See Statement of Robert Colby, FINRA, before the Roundtable on Trade Through Protection, SEC, Transcript, at 262–263, *available at* https://www.sec.gov/files/Trade_Through_Prohibitions_Roundtable_Transcript.pdf (“[Rule] 5310 is a pretty old rule. ... The question is, what's the right level? Where's the cutoff? It's not so much what you do with 611, it's what you do with the supporting rules.”).

Notably, on November 3rd, 2025, the new round lot definition was rolled out as part of the Commission's recent Regulation NMS reforms. According to a recent study,¹⁸ overall trading costs in Nasdaq-100 basket securities declined materially.

Put simply, spreads narrowed a lot.

While proprietary exchange data feeds continue to offer odd-lot quotation information, the public 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.¹⁹

- 3. Provide Targeted Flexibility for Block Trading.** A significant number of investors have both active trading and institutional accounts, according to research from the FINRA Investor Education Foundation.²⁰ Of the households that own investments outside of retirement accounts (i.e., taxable brokerage accounts like those used for active trading), an overwhelming majority also own a retirement account like a 401(k) or an IRA. The market-structure rigidly forces "pooled retail" into a market structure that generally caters to active traders in smaller trading increments (e.g. best price in small sizes versus best price for different sizes).

The Commission should allow institutional investors to pursue a more flexible best execution standard - one that fits the goals of the fund for institutional block trades and block/institutional order-types such as portfolio or capital commitment orders.²¹

- 4. Consider Depth-of-Book Protection.** A voluntary or pilot program extending protection beyond the NBBO could encourage liquidity provision and further improve execution quality.²² Like many of these issues, the notion of Depth

¹⁸ See *New Round Lots Helped Decrease Spreads*, Phil Mackintosh and Nicole Torskiy, Nasdaq, December 4, 2025 available at <https://www.nasdaq.com/articles/new-round-lots-helped-decrease-spreads>

¹⁹ 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.

²⁰ Source: FINRA Investor Education Foundation, "Insights: Financial Capability—A Snapshot of Investor Households in America" available at https://www.finrafoundation.org/sites/finrafoundation/files/2024-10/A-Snapshot-of-Investor-Households-in-America_0_0_0.pdf at 1.

²¹ See, *Id.* (reflecting complex order types designed to address Rule 611's potentially negative implications for significant-size orders).

²² 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>

Protection has been considered for decades, going back to the agency's Advisory Committee on Market Information.²³

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.²⁴
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 610.²⁵ However, we strongly recommend that Rule 610(e), *locking and crossing quotations*, remain “fully intact.”

VI. Conclusion

The Order Protection Rule is not merely a technical routing rule—it is a fundamental investor-protection mechanism that sustains price competition, fairness, and trust in U.S. equity markets. Outright repeal would expose investors to harm, and disproportionately negatively impact retail investors and those less-capable of identifying and stopping poor executions.

Put another way, repealing or materially altering the Order Protection Rule would create new complexities while fundamentally disadvantageous to all investors. It would also disproportionately harm smaller investors. The Commission should proceed extremely cautiously, and only after significantly improving best execution and enforcement practices. If you have any questions, please contact me at chris@healthymarkets.org. Thank you for your consideration.

Respectfully submitted,



Christopher Nagy, Research Director

²³ See Advisory Committee on Market Information meeting December 14, 2000, SEC, *available at* <https://www.sec.gov/divisions/marketreg/marketinfo/121400mtg.htm>

²⁴ Of the 17 registered stock exchanges in operation, 8 exchanges: 24X, 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.

²⁵ 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).

Appendix 1

Selected Quotes from the Commission's September 18, 2025 Roundtable on Trade-Through Prohibitions

(“Trade-Through Prohibitions Roundtable Transcript,” available at: https://www.sec.gov/files/Trade_Through_Prohibitions_Roundtable_Transcript.pdf)

Chris Isaacson (Cboe Global Markets): “If changes to trade-through rules are pursued, we recommend a measured approach that also considers other aspects of Reg NMS and market structure that may need to be revisited in concert to foster greater innovation and competition, such as best execution, expectations, the prohibition on locked markets, and access fee caps in equities.” *Transcript, at 44.*

Peter Haynes (TD Securities): “I’m not suggesting the -- in terms of the trade-at rule, if you look at dark trading in Canada, it’s only 5 or 10 percent of the market. Certainly, the trade-at rule that exists in Canada is the primary reason why we have a very low percentage of trade that happens in the dark or off exchange.” *Transcript, at 106.*

Chris Nagy (Healthy Markets Association): “Well, first of all, let’s look at the trade-through rule itself. Okay? It’s an imperfect prophylactic protection for investors against bad prices. But the fact of the matter is once 611 came into place, it worked. And it still works today. Instead of saving investors millions, it’s saving investors billions.” *Transcript, at 144.*

Robert Colby (FINRA): “So I come to this roundtable not to praise the trade-through rule, nor to bury it. Rather, I want to address best execution. Like everybody else that’s been here, I want to address best execution, because it is the fundamental and foremost principle of fair markets. And it is the structure that flows through the markets and it’s what all market structure rules should be designed to support.” *Transcript, at 224.*

Robert Colby (FINRA): “Without clear standards, best execution will be applied either through Staff interpretations or through exams and enforcement actions. The latter is not ideal. So if 611 and the supporting rules are changed or if they disappear, then the SEC and FINRA staff will need to collectively work on what interpretations are necessary to give substance to best execution.” *Transcript, at 225.*

Robert (Bob) Colby (FINRA): “So baseline, 5310 is a pretty old rule. ... The question is, what’s the right level? Where’s the cutoff? It’s not so much what you do with 611, it’s what you do with the supporting rules.” *Transcript, at 262–263.*

Daniel Gerhardstein (FIA/PTG & Jump Trading): “We propose the repeal of Rule 611 be accompanied by enhanced FINRA best execution requirements, which would require the broker-dealers publicly disclose to and adhere to routing policies and procedures. *Transcript, at 236.*

Joe Saluzzi (Themis Trading): “Again, I don't think the answer is to get rid of OPR. I think OPR -- obviously, we all have best execution responsibilities and that overrides everything. But OPR is a way of keeping that intact. It's kind of like checking things, making sure you don't go out of control. And it keeps FINRA's job a little bit better, maybe they don't have to analyze everybody so much. But OPR is important.” *Transcript, at 241.*