

Statement of Tyler Gellasch, President and CEO of the Healthy Markets Association (HMA)

For the Hearing *From Order to Execution: Ensuring Efficient and Transparent Equity Markets*

before the Subcommittee on Capital Markets of the House Committee on Financial Services

May 20, 2026

Dear Chairman Hill, Ranking Member Waters, Chairwoman Wagner, Ranking Member Sherman, and Members of the Committee, the Healthy Markets Association appreciates the opportunity to offer this statement for your hearing *From Order to Execution: Ensuring Efficient and Transparent Equity Markets*. We appreciate your interest in equity markets plumbing.

The 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, exchanges, and data firms. Our expertise and focus is on market plumbing – from order to execution to reporting to analysis. We work with chief investment officers, portfolio managers, trading desk heads, operations teams, risk managers, data analysts, compliance officers, and other professional investment team staffers engaged in the investment process.

HMA has submitted over one-hundred comments on rulemakings and petitions to capital markets regulators,¹ and has been cited hundreds of times in proposals and final rules by the SEC, CFTC, and other regulators. For example, HMA's commentary has helped shape several equity markets rules, including Regulation NMS Rules 605, 606, 610, 612, and 613. We have similarly been deeply involved in regulatory consideration of changes to Rule 603, Rule 611, broker duties of best execution, Regulation ATS, Rule 15c2-11, and more. We have also appeared before several regulatory roundtables and meetings, ranging from the SEC's Equity Market Structure Advisory Committee in 2015 to both of the SEC's Roundtables on the Order Protection Rule last year.²

¹ Key Communications with Regulators, Congress, and the Administration, HMA, *available at* <https://healthymarkets.org/publications/regulatory-letters-testimony>.

² Letter from Chris Nagy, HMA, to Hon. Paul Atkins, SEC, Sept. 16, 2025, *available at* <https://healthymarkets.org/wp-content/uploads/2025/09/611-Roundtable-9-16-25.pdf>; Letter from Chris Nagy, HMA to Hon. Paul Atkins, SEC, Dec. 12, 2025, *available at* <https://healthymarkets.org/wp-content/uploads/2025/12/611-Roundtable-12-15-25.pdf>.

In the pages that follow, we explain how the SEC's market structure rules were carefully crafted to address specific equity market structure concerns. As markets have evolved, so have the rules. In fact, many of the current rules adopted within Regulation NMS (Reg NMS) actually existed before Reg NMS, and have been modified in the subsequent years.

All of these changes have direct impacts on the markets, and clear "winners" and "losers." Reg NMS attempts to make US markets more fair, orderly, and efficient. The rules generally protect investors from receiving terrible prices. And they generally give investors information to make better broker and venue selections, as well as trading decisions. Reg NMS has made our markets faster, more inter-connected, and more efficient. It has been a boon to investors, but it hasn't been as one-sided for market intermediaries, many of whom might profit from the elimination of the prohibition on trade-throughs, for example.

Reg NMS is far from perfect. but changes to one rule may have significant impacts on the operations and efficacy of others. That is one of the reasons why the SEC has often studied issues for years – even more than a decade – before making tweaks. We urge you to exercise similar caution here.

We acknowledge that costs in high speed, highly interconnected markets are significant. But the SEC has tools to protect market participants and the markets from data and access fees and restrictions. Several years ago, the SEC under then-Chair Jay Clayton started to breathe life into those tools, but those efforts have been largely abandoned. Congressional appropriators urged former Chair Gary Gensler to exchanges' fee filings and access, but he chose to ignore the suggestion. We hope you press on. We encourage you to direct the SEC to make use of its statutory powers to tamp down costs of market access and market data, as HMA, SIFMA, and others have long suggested.

Several essential market rules and tools, including the Consolidated Audit Trail, are governed by so-called National Market System Plans. These plans place the exchanges and FINRA in control, and not the SEC. They are mired in governance problems, complexity, and funding concerns that should be simply unacceptable. We urge you to abolish the plans and bring these regulatory functions – including the CAT – back to the SEC, where they belong.

Lastly, our capital markets need the SEC to have the budget, authority, and leadership necessary to know what's going on in the markets, and police them. That means the agency and its tools (which should include the CAT) must be appropriately funded, and the Commission should have a full complement of five members

(representing both major political parties). Transparency, integrity, and stability are important for the markets, and for the regulators that oversee them.

Reg NMS: Each Rule Has a Purpose

Before we talk about tweaking the rules even further, we should understand what the rules were intended to do, and then assess the extent to which we still agree with those objectives and whether the rule still achieves them. And then we might want to assess the potential other impacts of the rule, and whether additional modifications could be more effective means towards achieving the desired outcomes.

Strong stock trading rules have existed since traders first gathered to sign the Buttonwood Agreement in 1792. They agreed to trade with each other on fixed commissions. In the centuries that followed, trading has changed from hand gestures on a floor to microwave towers. And back office recordkeeping has gone from paper stock certificates and books, to reams of printer paper, to computer files.

The advent of the internet and high-speed communications necessitated a modernization of the rules by the late 1990s. It was clear that the idea of the “National Market System,” which had been codified by Congress in the 1975 Act Amendments, was not working as intended. The stock market was decidedly not integrated across different trading centers, and investors were often the losers.

By the early 2000s, long periods of the trading day were mired in locked and crossed markets, essentially blocking investors from being able to execute at prices they were willing to pay. Investors often were unaware of the market prices, and if they were, they were often unable to execute trades at those prices. When they were able to have their trades executed, their prices were often far worse than available at other exchanges at the same time. So-called “trade throughs” were exceedingly common.

Regulation NMS may have been adopted in 2005, but many of its component rules pre-existed it. Whether new or repackaged, however, each component of Regulation NMS serves a distinct purpose.

The heart of the market is the market price. Investors looking to trade are always acutely sensitive to knowing the best prices at which they could buy or sell. But when you ask for price, you also typically want to know volume. The price at which you can buy 5 shares is often different from the price at which you can buy 500,000 shares.

So how much stock should we determine to be the benchmark for the prevailing “market price”? Historically, brokers operated in 100 share increments, typically referred to as a “round lot.” So that was naturally the benchmark volume that regulators used.

But, again, the question is really about price. But which prices? Is it the best price on the main NYSE, or what about Nasdaq? Or any of their other affiliated exchanges? Or what about the exchanges operated by Cboe or MIAX? What about prices offered by non-exchange trading venues, such as Automated Trading Systems (ATs) or internalizers?

The point of the 1975 Act Amendments was to integrate trading at all of the main trading centers, which, at that time, were the exchanges. And so, the SEC adopted Rule 600 to ensure the concept of a “national best bid” and a “national best offer” for a round lot across the various exchanges.³

Historically, many investors often were unaware of current prices and recent trades across different venues when they were looking to trade, so the SEC adopted rules to ensure that investors had accurate prices (Rule 603, aka the Vendor Display Rule).⁴ When the SEC repackaged the prior version of the rule into Reg NMS, it reduced the amount of required information to be displayed and the circumstances in which it must be displayed.⁵

In general, investors and other market participants want to know whether they are likely to get good prices from their trading venues. But they have historically not had particularly comprehensive or comparable information. Even prior to the adoption of Reg NMS, the SEC created a general best execution reporting mechanism for exchanges. And it continued those requirements with Rule 605 in Reg NMS.⁶ Notably, the SEC has recently updated these requirements to give investors and other market participants more useful information.⁷ Those reforms are currently scheduled to go into effect on August 1, 2026.⁸

³ 17 CFR § 242.600.

⁴ 17 CFR § 242.603.

⁵ *SEC Staff Provides Insight Into Firms' Obligations When Providing Stock Quote Information to Customers*, FINRA, Reg. Notice 15-52, Dec. 9, 2015, available at <https://www.finra.org/rules-guidance/notices/15-52>.

⁶ 17 CFR § 242.605.

⁷ See, *Disclosure of Order Execution Information*, SEC, 89 Fed. Reg. 26428 (Apr. 15, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-04-15/pdf/2024-05556.pdf>.

⁸ See, *Frequently Asked Questions: Rule 605 of Regulation NMS*, SEC, Apr. 1, 2026, available at <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-rule-605-regulation-nms>.

Similarly, how brokers handle investors' orders often have immediate impacts on the quality of those investors' executions. Investors generally need to know how their brokers have treated their orders, and how they are likely to treat their future orders, in order to make informed decisions on which brokers to use and how. The SEC adopted rules decades ago to help investors – particularly, retail investors – ascertain that information. And that led to nearly instantaneous changes in how some brokers routed their orders. The SEC repackaged those requirements in Rule 606, which requires order routing disclosures. In 2018, former SEC Chairman Jay Clayton led the SEC into materially revising those disclosures, in an effort to benefit institutional investors as well.

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Because investors could be blocked from accessing the markets or effectively discriminated against, Rule 610 was adopted to generally require “fair and non-discriminatory access to quotations,” amongst other things.¹⁰ And because many investors found that their orders were left unexecuted in times of locked and crossed markets, the SEC adopted rules to prohibit locked and crossed markets (Rule 610(d)).¹¹

In the decades leading up to the implementation of Reg NMS, investors' brokers would send trades to one market center, where they would be executed at prices that were much worse than the prices that were available at other market centers. This is commonly referred to as a “trade-through.” Rule 611 (commonly referred to as the “Order Protection Rule” or “Trade Through Rule”) was explicitly designed to prevent exchanges from executing trades at prices that were worse than available on other exchanges.

As HMA shared with the SEC's Equity Market Structure Advisory Committee a decade ago:

Rule 611 is one of the only explicit protections that investors have to force their brokers to demonstrate best execution. This point cannot be overstated. The state of best execution in the US is abysmal. Simply stated, the regulatory expectations of best execution have not kept pace with the changing execution environment. Quantitative analytics of execution results need to play a much larger role in best execution analyses. Regulators have offered little help. Comprehensive data is difficult to find, analyze, and interpret. There has been no material

⁹ *Disclosure of Order Handling Information*, SEC, 83 Fed. Reg. 58338 (Nov. 19, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2018-11-19/pdf/2018-24423.pdf>.

¹⁰ 17 CFR § 242.610.

¹¹ 17 CFR § 242.610(e).

guidance for investors on how to quantitatively measure broker performance. Rule 611 is, essentially, the best defense we have.¹²

While the SEC and FINRA have contemplated changes to brokers' best execution obligations, they have not made any substantive reforms. Put simply, Rule 611 remains an essential protection for institutional and retail investors.¹³ That said, its repeal would most immediately and dramatically negatively impact retail investors, as history has demonstrated that they generally lack the information, resources, and market power needed to protect themselves from poor execution quality.

Historically, trading has occurred at fixed pricing increments. At the turn of the last century, the SEC mandated that trading, which had historically occurred in fractions (such as 1/8th of a dollar) changed to decimals. And the benefits to investors were nearly instantaneous. As then SEC Acting Chairman Laura Unger testified to Congress about the change:

[F]rom December 2000 to March 2001, quotation spreads in securities listed on the New York Stock Exchange ("NYSE") narrowed an average of 37%, and effective spreads narrowed 15%. An even more dramatic reduction in quotation spreads was observed in Nasdaq securities, with spreads narrowing an average of 50% following decimalization, and effective spreads narrowing almost as much.¹⁴

Interestingly, fixing the increments too small could also lead to market abuses and predatory trading practices, such as quotation fading and front-running. Establishing the "right" minimum trading increment is important to protect investors and minimize investors' trading costs. Rule 612 was adopted to generally prohibit orders on exchanges for most stocks at a pricing increment smaller than a penny.¹⁵

Separately, as we discuss in greater detail below, the SEC has implemented, and subsequently modified, rules for both the provisions of the public market data stream

¹² 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>.

¹³ See, 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>; see also Letter from Chris Nagy, HMA, to Hon. Paul Atkins, SEC, Dec. 12, 2025, *available at* <https://healthymarkets.org/wp-content/uploads/2025/12/611-Roundtable-12-15-25.pdf>.

¹⁴ *Remarks of Hon. Laura Unger, SEC, before the Subcommittee on Securities and Investment, Committee on Banking, Housing, and Urban Affairs of the United States Senate, May 24, 2001, available at* <https://www.sec.gov/news/testimony/052401tslu.htm>.

¹⁵ 17 CFR § 242.612.

(provided by the Securities Information Processors)¹⁶ and the regulatory record of orders, modifications, and executions (aka, the Consolidated Audit Trail).

The Consolidated Audit Trail Is Both Too Little and Too Much

The Consolidated Audit Trail (CAT) is the primary mechanism to identify and analyze market events and abuses.

The CAT was established by Rule 613 because, by the late 2000s, federal securities regulators were acutely aware that they did not have a comprehensive view of who was doing what in the markets. Market manipulators, who were often based abroad, were coming into the US capital markets and engaging in abuses and manipulations.

In April 2010, the SEC proposed a Large Trader Reporting Rule, but it and FINRA were aware that – even if the rule was adopted – they would still be missing way too much critical market information. In fact, just weeks later, the world saw the collective regulatory black holes in securities oversight after the May 6, 2010 Flash Crash. Months of subpoenas and recreating the markets – even when there was a known, massive market event – proved a stunningly difficult task.

In the aftermath, the SEC proposed¹⁷ and then adopted the Consolidated Audit Trail.¹⁸ But the SEC made two fateful choices that have sadly plagued the CAT ever since.

First, the SEC established the CAT as a so-called National Market System (NMS) Plan. By doing that, the SEC essentially outsourced the primary governance, design, and implementation to the exchanges and FINRA.

Second, the SEC did not clearly establish how the CAT would be paid for. Like the rest of the CAT, the SEC essentially ducked that responsibility, and left it up to the exchanges and FINRA to come up with a “Funding Plan.”

¹⁶ The regulation of the market data streams is an extraordinarily complex endeavor. HMA has written several comment letters on it, and the SEC has adopted significant rules and orders related to changes of it. The governance, provision, and costs of market data are generally important to market participants, and are in significant flux at the moment. That said, they are outside the scope of our remarks here. If you are interested, please see our comments at <https://healthymarkets.org/publications/regulatory-letters-testimony>.

¹⁷ *Consolidated Audit Trail*, SEC, 75 Fed. Reg. 32556 (June 8, 2010), available at <https://www.govinfo.gov/content/pkg/FR-2010-06-08/pdf/2010-13129.pdf>.

¹⁸ *Consolidated Audit Trail*, SEC, 77 Fed. Reg. 45722, (Aug. 1, 2012), available at <https://www.govinfo.gov/content/pkg/FR-2012-08-01/pdf/2012-17918.pdf>.

The SEC retained final “approval” powers over the CAT, but by taking this approach, the SEC dodged making all the tough decisions, and the direct financial responsibility. The CAT costs do not come out of the SEC’s budget.

With over a dozen cooks in the kitchen, most of whom were fierce competitors and none of whom were highly incentivized to get the CAT up and running, the project was plagued by delays and missed deadlines. There were protracted disputes over who should build it, who should run it, what data should be collected, and how it should be funded.¹⁹ A complex process was established to hire a contractor. And a contractor was hired. And then, the contractor was fired and quickly replaced with FINRA.

Happily, with a strong hand by former SEC Chairman Jay Clayton and his Trading and Markets Division Director, Brett Redfearn, the SEC finally pushed the CAT into full operation around a decade after it was proposed.²⁰

Since then, FINRA retired its Order Audit Trail System²¹ – leaving the CAT as the only automated way for regulators to see who’s doing what in the markets.

While the information it collects is essential for overseeing the markets, the information comes at a direct cost. For example, options data is enormous (and costly to store and survey), so the SEC has excused a lot of it – generally by fiat, without a formal notice-and-comment rulemaking. In fact, the SEC has made a lot of changes, including in February 2025²² and March 2026,²³ that reduced the data collected, called for the deletion of older data, and imposed a fee cap on future CAT changes.

¹⁹ See, e.g., *Remarks of Tyler Gellasch, HMA, before the Subcommittee on Capital Markets, Securities, and Investment of the Committee on Financial Services of the House of Representatives*, Nov. 30, 2017, available at <https://healthymarkets.org/wp-content/uploads/2024/03/HFS-Testimony-11-30-17.pdf>.

²⁰ See, e.g., *Statement on Status of the Consolidated Audit Trail*, Hon. Jay Clayton, SEC, Nov. 14, 2017, available at <https://www.sec.gov/newsroom/speeches-statements/statement-status-consolidated-audit-trail>; see also, *Update on the Consolidated Audit Trail: Data Security and Implementation Progress*, Hon. Jay Clayton, Brett Redfearn, and Manisha Kimmel, Aug. 21, 2020, available at <https://www.sec.gov/newsroom/speeches-statements/clayton-kimmel-redfearn-nms-cat-2020-08-21>.

²¹ *Order Audit Trail System*, FINRA, Reg. Not. 21-21, June 17, 2021, available at <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-21.pdf>.

²² *Order Granting Exemptive Relief, Pursuant to Section 36(a)(1) and Rule 608(e) of the Securities Exchange Act of 1934, from Certain Provisions of Section 6.4(d)(ii)(C) and Appendix D, Sections 9.1, 9.2 and 9.4 of the National Market System Plan Governing the Consolidated Audit Trail*, SEC, Exch. Act Rel. No. 102386, Feb. 10, 2025, available at <https://www.sec.gov/files/rules/sro/nms/2025/34-102386.pdf>.

²³ *Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail, as Modified by the Commission, to Further Reduce the Costs of the Consolidated Audit Trail*, SEC, Exch. Act Rel. No. 105107, Mar. 27, 2026, available at <https://www.sec.gov/files/rules/sro/nms/2026/34-105107.pdf>.

Collectively, the changes make it harder for regulators to identify and investigate manipulations and market events, but they also make the CAT cheaper. We understand the desire for cost savings for the exchanges and FINRA, who are trying to finance the CAT and for firms like Citadel that will likely be funding it in the future, but we also can't help but notice that a single significant market event could render these savings immaterial.

Meanwhile, the SEC has essentially been engaged in hand-to-hand combat with the exchanges and other market participants about how to fund the CAT for more than a decade. Proposals were made and rejected by the SEC. And the SEC finally approved a model, but that was challenged in court by Citadel and the American Securities Association. As a result, the CAT has been, and continues to be, funded by essentially the good will of exchanges. They are compelled by SEC rules to build and operate the CAT, but they don't have a mechanism to pass those costs along to other market participants. And, as we discussed earlier, it isn't coming out of the SEC's budget. So the current funding mechanism of the CAT is not sustainable.

Not surprisingly, on April 16th, the SEC released a 82-page "Concept Release" on the CAT, which included a whopping 105 multi-part questions.²⁴ We imagine there will be a lot of comments about the content and the funding of the CAT.

The CAT is the only reasonably effective means to police the public equities market. Killing it isn't an option because its predecessor, the Order Audit Trail System, has been fully dismantled and cannot be resurrected. But fixing CAT is an urgent imperative. CAT's governance is fatally flawed. CAT now contains insufficient data to perform its essential function (like excluding address information), but also includes more options-related data than is likely essential. And, of course, there's the funding challenge.

In September 2024, HMA petitioned the SEC to take dramatic action.²⁵ Specifically, we urged the SEC to:

- move the current CAT reporting regime directly under Commission authority and operations as a Commission-controlled regulatory tool;
- end the CAT NMS Plan, and rescind the related CAT Funding Order;
- establish a funding mechanism to reimburse verified CAT-related expenses incurred by the exchanges and FINRA to date;

²⁴ *Concept Release on Consolidated Audit Trail and Other Audit Trails and Data Sources*, SEC, Exch. Act Rel. No. 34-105251, Apr. 16, 2026, available at <https://www.sec.gov/files/rules/concept/2026/34-105251.pdf>.

²⁵ Letter from Tyler Gellasch, HMA, to Hon. Gary Gensler, SEC, File No. 4-843, Sept. 19, 2024, available at <https://www.sec.gov/files/rules/petitions/2024/petn4-843.pdf> ("HMA Petition").

- limit access to to the CAT to just the Commission and such other governmental regulators as the Commission may deem necessary, such as the Commodity Futures Trading Commission;
- clarify that entities reporting data to the CAT have no liability for the safekeeping of the data once it is submitted to the CAT; and
- ensure that any access to any personally identifiable information is appropriately protected.²⁶

We hope these changes are implemented soon.

The SEC, FINRA and Congress Should Keep Improving the Rules

Stock markets evolve rapidly, and the rules need to evolve with them.

Over a decade ago, the SEC and FINRA identified several severe shortcomings in disclosures related to order routing and execution. They (and federal prosecutors) identified abuses by some of the largest trading firms and non-exchange trading venues (ATSs). They found that many firms had been lying to their customers about how their orders were handled, and that execution quality reports didn't have enough information and detail to actually be useful in the modern area. So the SEC proposed and later adopted rules to improve order routing and execution disclosures, as well as oversight of ATSs trading stocks. Those changes have been implemented.

The SEC also found that trading increment sizes are really important. After Congress mandated the Tick Size Pilot, the SEC implemented it. We and many others warned that the pilot would be a disaster for investors.²⁷ And it was. So the SEC shut it down as quickly as it could – but after it cost investors hundreds of millions of dollars in unnecessary costs.²⁸ The SEC then explored narrowing the minimum trade increment for stocks that often trade off-exchange at increments far more refined than a penny. And it found that reducing the ticks to under a penny would generally save investors

²⁶ HMA Petition, at 2.

²⁷ See, e.g., *Institutional investors unhappy with tick size pilot*, The Hedge Fund Journal, Oct. 20, 2017, available at <https://thehedgefundjournal.com/news/institutional-investors-unhappy-with-tick-size-pilot/>.

²⁸ See, Bill Alpert, *Congress' Failed Stock Market Experiment Cost Investors \$900 Million*, Forbes, Sept. 14, 2018, available at <https://www.barrons.com/articles/sec-tick-size-pilot-program-1536961160>; *Assessment of the Plan to Implement a Tick Size Pilot Program*, SEC, July 3, 2018, available at <https://www.sec.gov/files/TICK%20PILOT%20ASSESSMENT%20FINAL%20Aug%202.pdf>; see also Richard Johnson, *Lessons We Can Learn from the Failure of the Tick Size Pilot Program*, Coalition Greenwich, Sept. 27, 2018, available at <https://www.greenwich.com/blog/lessons-we-can-learn-failure-tick-size-pilot-program>.

millions of dollars. So it adopted changes to narrow the minimum trading increments in 2024, but after multiple delays, they are still not yet implemented. Some market participants are asking the SEC to indefinitely delay those reforms. After more than a decade of study and careful consideration, the SEC should push forward with implementing its trading increment reforms.²⁹

Similarly, over more than a decade, the SEC heard from hundreds of investors, from trillion dollar asset managers to retail traders that the upper limit on fees exchanges can charge for trades, 30 cents per 100 shares, was much, much higher than off-exchange prices, and often led to significant market distortions and costs to investors. So the SEC proposed a transaction fee pilot. But when that rule was thrown out in court, because it was originally framed as a “pilot,” but was really a massive market overhaul, the SEC didn’t give up. It proposed and unanimously adopted changes to reduce that fee. Again, some market participants are asking the SEC to indefinitely delay that change. After more than a decade of careful consideration, bipartisan rule changes, and years of court battles, the SEC should finally implement reforms to exchange transaction fee caps.³⁰

The SEC’s staff is well aware of the long, deliberative history of these essential reforms. Notably, the SEC’s current Director of the Division of Trading and Markets, Jamie Selway, was formerly an executive in the trading industry and was a member of the agency’s Equity Market Structure Advisory Committee (“EMSAC”).

There were other areas that the EMSAC considered recommending reforms – such as the Order Protection Rule and the Vendor Display Rule. These rules generally both impose costs on brokers, to the express benefit of investors. Tweaking them could potentially be a “win-win” for both sides, but eliminating them or materially weakening them could also remove essential protections from investors, subjecting them to very poor prices. But that could be a “win” for brokers, market makers, and some exchanges.

For example, as the Commission heard repeatedly in its Rule 611 roundtables on changes to the Order Protection Rule, the rule remains a “backstop to best execution,” and thus performs an essential baseline for all investors – not just retail investors.³¹ We understand that the SEC is considering changes to these rules, but we hope they focus

²⁹ Letter from Tyler Gellash to Hon. Paul Atkins, SEC, May 11, 2026, *available at* <https://www.sec.gov/comments/4-862/4862-773627-2366455.pdf> (“HMA Objection to MEMX Letter”).

³⁰ HMA Objection to MEMX Letter.

³¹ Letter from Chris Nagy to Hon. Paul Atkins, SEC, September 16, 2025 *available at* <https://www.sec.gov/comments/4-862/4862-658187-1965294.pdf>, See also Letter from Chris Nagy to Hon. Paul Atkins, SEC, December 12, 2025 *available at* <https://www.sec.gov/comments/4-862/4862-684147-2116554.pdf>

on changes to improve the rules' operations and efficiencies, while still serving their important purposes.

We at HMA first called on the SEC to revise Rule 611 in 2016, and we welcome this step forward.³² But potential future reforms should not stall already hard-fought progress.³³

Further, while we welcome Congressional interest, we urge you to not directly engage in some of the technical nuances of market structure rulemaking. Each tweak to each rule will have a clear set of “winners” and “losers.” For example, the repeal of the Order Protection Rule might help brokers and exchanges both avoid costs and provide inferior trade prices; they are likely to lead to a sharp increase in “trade throughs,” as existed before the rule was adopted. Further still, as the Tick Size Pilot should make clear, these hyper-technical issues are likely best addressed by the SEC working with market participants and Congress, as opposed to statutory changes.

Lastly, we note that one of the overarching complaints with our current market structure is that the costs are very high for market intermediaries, such as brokers. Certainly, exchanges' costs for access and market data (including connectivity and other products and services) are now much, much higher than they were decades ago. Some market participants are suggesting that the SEC modify its Vendor Display Rule or repeal the Order Protection Rule to help them avoid these costs.³⁴

However, the evidence suggests that these approaches will not reduce costs, but will likely harm investors.

In our view, the explosion of data costs is the direct result of a long-running failure of the SEC to enforce the law.

Regulation NMS didn't create the need for market data or access. Canada, for example, doesn't have an equivalent rule set to the US, and yet market data and access have grown nearly exponentially and are extremely high there.

Unlike in Canada, however, the SEC has statutorily-enshrined tools to directly combat this market problem. Specifically, Congress mandated that the SEC ensure that exchanges' and FINRA's rules are “non discriminatory” and not “unduly burdensome on competition.” But even more directly, the exchanges' and FINRA's fees, costs, and

³² Letter from Tyler Gellasch to Brent J. Fields, SEC, April 3, 2017 *available at* <https://healthymarkets.wpengine.com/wp-content/uploads/2018/04/04-03-17-HM-letter-comment.pdf>.

³³ See HMA Objection to MEMX Letter.

³⁴ See, e.g., *Transcript of the Roundtable on Rule 611*, SEC, at 107, (Dec. 12, 2025), *transcript available at* <https://www.sec.gov/files/rule-611-roundtable-transcript.pdf> (remarks of Jeff Starr, Charles Schwab).

charges need to be “equitably allocated” and “reasonable.” Yet, those requirements were essentially ignored by the SEC for decades.

HMA, SIFMA, and other market participants spent years urging the SEC to act. The SEC tried very hard under the leadership of former Chairman Jay Clayton to breathe life into those requirements, including by stopping exchanges from implementing some cost hikes, offering up new staff guidance,³⁵ and attempting to vacate hundreds of fee changes. It didn’t work for long, and all of that work appears to have been since abandoned.

We urge you to push the SEC to finally enforce the law, and if necessary, direct it to do so.

“Round-the-Clock” Trading Is Not Always Wonderful

One seemingly inevitable change has been the march towards round-the-clock trading.

As a technical matter, modern technology allows for capital markets to – at least theoretically – operate around the clock. Of course, operating around the clock would introduce many new challenges for market participants, only some of which are operational. Systems tend to need “down time” for software and hardware maintenance and updates. Records need to be reviewed, scrubbed, and finalized. Accounts need to be reconciled and the complex processes of clearing and settlement need to occur. And margins need to be calculated for not just trading firms, but for others who may rely upon those prices.

As we have previously shared with the SEC:

Executions in “off” hours of lesser liquidity imposes greater risks for all investors – not just those who execute at those times. Unquestionably, traders who search for liquidity in thin markets may receive poor execution quality, but those executions may also negatively impact non-trading market participants (or regulators) who may look to those trading prices for regulatory compliance, risk monitoring, customer contractual, or other reasons. These impacts may also include additional counterparty risk management.³⁶

³⁵ *Staff Guidance on SRO Rule Filings Relating to Fees*, SEC, May 21, 2019, available at <https://www.sec.gov/about/staff-guidance-sro-rule-filings-fees>.

³⁶ Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, June 28, 2024, available at <https://healthymarkets.org/wp-content/uploads/2024/07/24X-Application-Comment-Ltr-6-28-24-1.pdf>.

Here are some basic questions we might have, for example:

- What products should be permitted for extended hours trading? Less liquid products may be more sensitive to price movements, and may be more easily manipulated.
- Who should conduct surveillance and how should that surveillance occur for extended hours trading?
- How should price bands or other market price swing constraints apply to extended hours trading? Should any bands be adjusted to accommodate the variances in trading volumes?
- What should be the reporting obligations for trading venues and other market participants for orders, messages, and executions? For example, what are the official prices for publication and dissemination to the public, such as daily prices?
- What, if any, obligations should there be on market participants to monitor and access liquidity in extended hours trading? Is, for example, an investment adviser violating its duties by not monitoring or trading overnight?
- How will clearing and settlement function?
- How, specifically, will margin be calculated and when? If a stock price moves 7% overnight in a thinly-traded market, as it easily might, could non-trading market participants find themselves subject to margin calls when they wake up in the morning? What are the firm and market-wide implications of either margin calculation policy path?
- How much time does a venue reasonably need to perform maintenance, testing, and improvements? Is an hour a week “off” enough for the venues and those who connect and depend upon them?
- How can diverse market participants build and test systems in “downtime” or otherwise “safe” environments? Regulators, trading centers, and other market participants frequently coordinate their downtime to ensure they may safely test their systems.

In reality, trading is aggregating on the opening and closing auctions, and trading before, during, and after so-called “normal” trading hours is often quite thin. This leads to often much higher prices to trade for investors (including from wider effective spreads). In fact, for years, many market participants have debated mechanisms to aggregate liquidity, including periodic batch auctions and perhaps even shortening the trading day.³⁷ If trades happen when buyers and sellers can bump into each other, there is a greater chance of that happening when they need to conduct their business during shorter time horizons. Institutional investors, such as pension funds and endowments,

³⁷ See Budish, Eric B. and Cramton, Peter C. and Shim, John J., *The High-Frequency Trading Arms Race: Frequent Batch Auctions as a Market Design Response*, Chicago Booth Research Paper No. 14-03, (Feb. 17, 2015), available at <https://ssrn.com/abstract=2388265> or <http://dx.doi.org/10.2139/ssrn.2388265>

are already struggling to find liquidity during the normal trading day. Spreading trading out is often just making that liquidity harder to find.

There are also significantly increased risks of very poor prices for investors. For example, just this past weekend, an HMA executive sought to execute a trade in an exchange-traded product, but before sending it, he noticed that the prices were very far away from the “in-session” prices from the Friday before. So he didn’t execute the market order over the weekend, and waited until Monday. The Vendor Display Rule and his own expertise allowed him to avoid an extremely costly trading error that most ordinary investors would have been very unlikely to spot. On the other hand, however, his retail brokerage firm and a market maker were likely far less happy that he waited to trade, as it likely materially reduced their profits (that would have come at his expense).

And there are greater risks for market abuses. We note that Blue Ocean ATS, which operates an overnight trading venue, was just days ago fined by FINRA for inadequate anti-money laundering compliance programs and supervisory systems that failed to detect, report, and prevent potential market manipulation, including spoofing, layering and further manipulative order entry patterns.³⁸

We have been urging the SEC to be cautious in its permissions to market participants to extend the trading day. The technology upgrades necessary to make these changes happen is not trivial, but it is also not impossible to overcome. Ensuring that the changes don’t materially degrade the integrity and stability of our markets, however, is a much trickier matter.

Recommendations and Conclusion

Since the adoption of Reg NMS, and over several tweaks to the rules and updated guidance over the intervening two decades, trading has become more transparent, executions more certain, and trading costs much lower for investors. Billions of shares trade daily in time horizons measured by nanoseconds at spreads and prices often measured in hundredths of a penny per share. This has been a boon for investors large and small.

³⁸See *Memorandum: Blue Ocean ATS Acceptance, Waiver, and Consent*, FINRA, May 4, 2026, available at https://www.finra.org/sites/default/files/fda_documents/2024080158101%20Blue%20Ocean%20ATS%20CRD%20306512%20AWC%20vrp.pdf.

But while equity trading markets have become fairer, cheaper, faster, and more interconnected, they have also become more costly and complex for intermediaries, including brokers, data firms, and exchanges. And that has happened at the same time that many of their margins have been compressed by the market forces unleashed by Reg NMS and the computer age.

To keep improving our equity markets, we urge you and the SEC to, first and foremost, generally exercise caution. As the ill-fated Tick Size Pilot and Transaction Fee Pilot demonstrate, changes should be made carefully, and based on facts and analysis, not conjecture by self-interested market intermediaries. We urge you to recognize that most market structure battles are between exchanges, brokers, and data providers, and investors end up being the ones paying the price. Repealing Rule 611, delaying the implementation of changes to Rule 610(c), delaying the implementation of changes to 612, and fundamentally weakening the Vendor Display Rule would absolutely serve intermediaries at the expense of investors.

There are some specific steps we believe Congress should take without delay. Specifically, we urge you to:

- compel the SEC to write rules to implement the provisions of the Exchange Act requiring SRO fees and access requirements;
- abolish all NMS Plans (including the CAT Plan), which would bring essential rules and regulatory functions back under the direct control of the appropriate federal regulator, the SEC;
- robustly fund the CAT and the SEC's enforcement priorities to maintain market integrity; and
- work with the SEC, the President of the United States, and the US Senate to ensure that the SEC is composed of five Commissioners, as intended, to ensure balanced and consistent rules and enforcement priorities.

Regulation NMS and the CAT provide the foundation for the most robust and liquid equities markets in the world. We urge you and the SEC to continue to build upon and improve them so that they may continue to foster the transparency, integrity, and stability upon which our markets – and economy – depend.