HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

August 17, 2026

Via Email to Rule-Comments@sec.gov

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

Re: The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, File Number S7-2026-20[1]

Dear Ms. Countryman:

The Healthy Markets Association[2] writes to object to the Commission's proposal to rescind Rule 611 and Rule 610(e) of Regulation NMS.[3]

As the Commission explained over twenty years ago, the Order Protection Rule is a "backstop to a broker's duty of best execution on an order-by-order basis."[4] The Commission's proposed repeal of that backstop, combined with its failure to adopt any meaningful, enforceable rules related to best execution on an order-by-order basis, would open the door for massive investor losses, and far less fair, orderly, and efficient markets. It was not offered pursuant to a reasoned, balanced consideration of facts and analysis.[5] And, by deferring the redefinition of best

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[1] *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS*, SEC, 91 Fed. Reg. 36656, June 17, 2026, *available at* https://www.govinfo.gov/content/pkg/FR-2026-06-17/pdf/2026-12163.pdf (the "Proposal").

[2] 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 members collectively have over a trillion dollars of investments in stocks, bonds, US treasury securities, private equity funds, and other "traditional" assets. Some of our members have exposure to digital assets, as well as investments in digital asset market participants, such as digital asset exchanges. 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. Our expertise and focus is on market plumbing. 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. HMA's comments have been cited hundreds of times on final rules by the Commission and other regulators.

[3] HMA was honored to be invited to participate in the Commission's two 2025 roundtables on the Order Protection Rule. Our written submissions, which we wish to incorporate into this comment file record, are attached hereto. See, Letter from Chris Nagy, HMA, to Hon. Paul Atkins, SEC, Sept. 16, 2025, *available at* https://www.sec.gov/comments/4-862/4862-658187-1965294.pdf (**Exhibit 1**) and Letter from Chris Nagy, HMA to Hon. Paul Atkins, SEC, Dec. 12, 2025, *available at* https://www.sec.gov/comments/4-862/4862-684147-2116554.pdf (**Exhibit 2**).

[4] *Regulation NMS*, SEC, 70 Fed. Reg. 37496, at 37506, (June 29, 2005), *available at* https://www.govinfo.gov/content/pkg/FR-2005-06-29/pdf/05-11802.pdf ("NMS Adopting Release").

[5] In addition to substantive concerns related to the Commission's facially inadequate collection of facts and one-sided analysis, we are also troubled that the proposal was offered by a Commission with no voices from a minority political party. Congress was very clear when creating the Commission that the agency should not be subject to one-party, ideological rule.

execution in a post-Rule 611 world to FINRA and leaving key terms related to the National Best Bid and Offer unresolved, it is effectively impossible to accurately estimate either the purported benefits and cost savings (claimed by the Commission) or the losses and impacts on investors, without making significant assumptions about future rule changes.

Ultimately, the Proposal is poor policy resulting from an inadequate regulatory process; it should be rescinded or materially revised and reproposed.

Background on the Order Protection Rule

By the late 1960s, it was clear that the public capital markets of the United States were too fragmented, and needed to be compelled to be stitched together.

In 1973, Securities and Exchange Commission Chairman G. Bradford Cook delivered remarks on "Democracy in the Markets" in which he asserted that the need to:

> provide assurance that [an investor's] buy or sell order will be executed at the best available price -- no matter where that price exists in the system. The central market system will create new competition between market-makers from New York to California and that competition will be seen "live" in the quotation display systems in the offices of thousands of broker-dealers. With the new system, the broker will not only have the means but the obligation to direct the investor's order for a listed stock to the best market for that stock.[6]

President Nixon's Commission Chairman knew very well that brokers needed to be compelled to access better prices for their customers, or else they wouldn't… and their customers would suffer. Under Chairman Cook's leadership, the agency worked to create what would become known as the national market system.

Facing significant pushback from some market participants, including the New York Stock Exchange, the Commission worked with Congress to ensure that the agency had the power it needed to effectuate that system. Congress passed the Securities Act Amendments of 1975 to, amongst other things, "foster the development of a national securities market system and a national clearance and settlement system [and] make uniform the Securities and Exchange Commission's authority over self-regulatory organizations."[7] Part of that effort was to statutorily authorize a consolidated market data stream to integrate trading at different exchanges.

In the decades that followed, the US capital markets continued to outpace and outperform the rest of the world. And deregulated, fixed brokerage commissions created unprecedented participation by smaller, individual investors. However, by the late 1990s, new challenges and opportunities had arisen. Market concentration remained extreme. As the Congressional

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[6] Remarks of Hon. G. Bradford Cook, SEC, before the Economic Club of Chicago, Apr. 25, 1973, *available at* https://sechistorical.org/wp-content/uploads/1973_0425_CookDemocracyT.pdf.
[7] The Securities Act Amendments of 1975, Public Law No. 94-29 (1975).

Research Service explained in the early 2000s, "The NYSE accounts for 99% of the volume of all registered stock exchanges; its only significant domestic competitor is Nasdaq, which is not technically an exchange."[8]

Trading became increasingly computerized, and brokers began to seek alternatives.

In part to address perceived abuses by the dominant exchanges and some of their main trading partners (including specialists), the Commission began to promote more aggressive competition amongst trading venues. So-called "electronic communications networks" and other trading mechanisms took root.

The Commission's effort to *promote market competition and fragmentation* included encouraging[9] and ultimately approving NYSE's repeal of its Rule 390, adopting Regulation ATS,[10] and explicitly permitting exchanges to be for-profit entities.[11]

In this suddenly re-fragmented world, investors and market participants encountered a number of new problems that were not unlike the very problems Congress and the Commission sought to address in the 1970s with the creation of the national market system. Investors looking to buy stock might have seen enough shares available for sale on one exchange at $10 per share, but then could end up buying the shares at another market center for more. These instances were commonly referred to as "trade-throughs," as they reflected a trade that executed at a price that was worse than the best available.

And so, the Commission sought to create a compromise between its desire to (1) promote competition amongst different market centers, its desire for fair, orderly, and efficient markets, and its desire to protect investors from poorly priced trades.

The heart of this compromise are Rules 611 and 610(e).

Rule 611 requires trading centers to establish, maintain, and enforce policies reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed elsewhere in the market.[12] As the Commission staff has explained:

> When multiple trading venues successfully compete for order flow in the same NMS stocks, the order flow will be dispersed among them. Particularly in the absence of effective linkages among the different trading venues, the

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[8] Mark Jickling, *The Trade-Through Rule*, Cong. Research Service, RS21871, June 6, 2005, *available at* https://www.congress.gov/crs-product/RS21871?hl=%22market+structure+issues%22&s=4&r=158.

[9] *See, e.g.*, Testimony of Hon. Arthur Levitt, SEC, *Concerning Market Structure Issues Currently Facing the Commission*, before the Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, U.S. Senate (106th Cong. 1999) at 14-15.

[10] *Regulation of Exchanges and Alternative Trading Systems*, SEC, 63 Fed. Reg. 70844, Dec. 22, 1998, *available at* https://www.govinfo.gov/content/pkg/FR-1998-12-22/pdf/98-33299.pdf.

[11] *Id.*, at 70848 (explaining the Commission's changed view that "registered exchanges may structure themselves as for-profit organizations.").

[12] *Regulation NMS*, SEC, Exch. Act Rel. No. 34-51808, 70 Fed. Reg. 37496 (June 29, 2005), *available at* https://www.govinfo.gov/content/pkg/FR-2005-06-29/pdf/05-11802.pdf ("NMS Adopting Release").

> fragmentation of order flow can complicate brokers' efforts to obtain best execution of investor orders and can detract from the opportunity for investor orders to meet directly.[13]

In order to provide those effective linkages, Rule 611 "requires a 'trading center' to implement policies and procedures that are reasonably designed to prevent 'trade-throughs' on that trading center of 'protected quotations' [at other trading centers] that do not fall within one of the exceptions."[14]

Rule 611 principally serves two purposes: promoting competition for displayed liquidity and ensuring investors generally have good prices for their executions.

In establishing Rule 611, the Commission noted that many commenters expressed the view that "limit orders typically establish the "market" for a stock," and that "In the absence of limit orders setting the current market price, there would be no benchmark for the submission and execution of marketable orders."[15] At the time, some market intermediaries argued that "competition" alone was sufficient to prevent trade-throughs,[16] rendering a trade-through rule unnecessary.

While the Commission staff did not have nearly as complete or accurate data at its disposal as it does today (largely, because of the Consolidated Audit Trail), it was able to easily rebut those self-interested, unsubstantiated claims that trade-through protections were unnecessary.

For example, using an extremely conservative, three second look-back window, the Commission staff found that "***the overall trade-through rates for Nasdaq stocks and NYSE stocks were, respectively, 7.9% and 7.2% of the total volume of traded shares***."[17] Equally troubling was the average significance of the trade-throughs. The staff study also found that "the amount of the tradethroughs was significant—2.3 cents per share on average for Nasdaq stocks and 2.2 cents per share for NYSE stocks."[18]

These trade-throughs would amount to hundreds of millions of dollars per year – in 2003.

That said, significant trade-throughs were to be expected. Traders, including many of the people who work with HMA, recall trade-throughs being all-too-common during the period. By the early 2000s, many market participants were already operating on price discrepancies measured in millisecond time increments, and so it was likely that the real "trade-through" percentage was much, much higher than the Commission's estimate.

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[13] Memorandum from the Staff of the Division of Trading and Markets to the SEC Equity Market Structure Advisory Committee, Rule 611 of Regulation NMS, SEC, at 5, Apr. 30, 2015, *available at* https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf ("2015 SEC Staff Rule 611 Memo").
[14] 2015 SEC Staff Rule 611 Memo, at 3.
[15] NMS Adopting Release, at 37506.
[16] Letter from Kevin J. P. O'Hara, Archipelago Holdings, Inc., to Jonathan G. Katz, SEC, Sept. 24, 2004.
[17] NMS Adopting Release, 37507 (emphasis added).
[18] NMS Adopting Release, 37507 (emphasis added).

The Commission found that the trade-through problems persisted in retail execution channels as well, and that:

> The fact that, in 2003, nearly 1 of 30 of these millions of trades appears to have been executed at a price inferior to an automated and accessible quotation is troubling. Given that one of the primary benefits of the Order Protection Rule is to backstop a broker's duty of best execution on an order-by-order basis, Nasdaq's data appears to indicate a continuing need for regulatory action to reinforce the fundamental principle of best price for all NMS stocks.[19]

Further, "the Order Protection Rule, by establishing effective intermarket protection against trade-throughs, will materially reduce the trade-through rates in both the market for Nasdaq stocks and the market for exchange listed stocks.[20]

Unsurprisingly, that is exactly what happened.

Since its implementation, Rule 611 and Rule 610 have saved investors billions of dollars while promoting more fair, orderly, and efficient markets.

Principally, Rule 611 has formed a "backstop for best execution" – exactly as it was envisioned upon its adoption. In general, investors' orders are now very rarely executed at prices worse than the quotations that are protected by Rule 611. The volume of shares included in trade-throughs has fallen precipitously.

When the Commission and its now-defunct Equity Market Structure Advisory Committee examined the impact of Rule 611 on trade-throughs, it found that trade-through rates fell by approximately 95% between 2003 and 2014 for NYSE- and Nasdaq-listed stocks, reflecting a dramatic and sustained reduction in investors receiving inferior executions.[21] This saved investors billions of dollars per year.

Rule 611 has also come to functionally provide investor protections and more fair and efficient markets well beyond protected quotations on registered securities exchanges.

As the Commission staff explained over a decade ago:

> Trading center is defined broadly to include all of the types of venues that execute trades in today's equity market structure, including registered exchanges, ATSs (both dark pools and ECNs), off-exchange market makers, and any other broker-dealers that execute trades internally, whether as principal or agent.[22]

[19] NMS Adopting Release, at 37508.
[20] NMS Adopting Release, at 37506.
[21] 2015 SEC Staff Rule 611 Memo.
[22] 2015 SEC Staff Rule 611 Memo, at 3.

As a result, in addition to the exchanges, Alternative Trading Systems and retail broker dealers – including those offering trading for many smaller institutional investors – typically ensure that their customers' executions are at prices that are not worse than the NBBO.

Put another way, the trade-through protections afforded by Rule 611 now effectively serve as a market-wide protection for investors, effectively inoculating nearly all investors – retail and institutional alike – from the risks created by their own brokers and trading centers, including risks posed by their brokers' conflicts of interest (including receipt of payment for order flow), faulty systems, incompetence, inability to ensure basic price protections, and more.

The rule has also ensured investor confidence in the US equity markets – exactly as many investor advocates and the Commission predicted in 2005.[23]

Further, by guaranteeing that displayed protected quotations would be honored across markets, Rule 611 was intended to encourage investors and market makers to post public quotes rather than withhold liquidity, thereby strengthening the National Best Bid and Offer and the broader price-discovery process that all investors continue to rely on today.

While off-exchange trading volumes have risen sharply over the last several decades in the US and abroad, that volume of trading has arguably no relationship to the incentive and quality of the protected quotations. As mentioned above, nearly all of the off-exchange trading in the US in NMS stocks uses the protected quotations as their benchmarks, if not matching prices. So those prices are still incredibly important.

Because of Rule 611, there is tremendous value to brokers and market makers in providing protected quotations – to not just their benefit, but also to the benefit of the millions of market participants who rely upon those prices. Put simply, they set the market prices, and they get paid for it. Even further, because of the price-time priority mechanism on exchanges, brokers and market makers with unprotected quotations on exchanges (typically odd-lot sizes) that are posted prior to protected quotations at the same price are also beneficiaries.

Today, protected quotations often lead to penny-wide spreads, and many would be less, if the Commission had previously permitted subpenny quotations on exchanges. However, bizarrely, after the Commission finally elected to narrow the artificially wide minimum quotation increments for exchanges in 2024, and won a legal challenge to that decision, the agency has chosen to delay that important implementation to November 2027–for now.[24] Bizarrely, the Proposal does not materially address the Commission's inextricably related decision to (1) permit sub-penny off-exchange quotations and executions, while also (2) refusing to generally permit sub-penny

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[23] *NMS Adopting Release*, at 37506 (citing Letter from Barbara Roper, Consumer Federation of America, to Jonathan G. Katz, SEC, June 17, 2004, at 2; Letter from Ari Burstein, Investment Company Institute, to Jonathan G. Katz, SEC, June 30, 2004, at 7).

[24] *Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, from Compliance with Rule 600(b)(89)(i)(F), Rule 610(c) and Rule 612 of Regulation NMS, as Amended*, SEC, Exch. Act Rel. No. 105616, June 11, 2026, *available at* https://www.sec.gov/files/rules/exorders/2026/34-105656.pdf.

quotations on exchanges (including even after adopting revisions to tick sizes) – even though those separate policy determinations likely have a far greater impact on the quality of the quotations at the top-of-book.

Sadly, unlike the impact of the rule on trade-throughs, there is no clear study to assess this impact, largely because the Commission has instituted other changes (and permitted other trading activities) that have permitted the proliferation of off-exchange trading and non-displayed liquidity.

Background on the Prohibition on Locked and Crossed Markets

Rule 610(e), also adopted in 2005 as part of Regulation NMS, requires exchanges and national securities associations to maintain rules reasonably designed to prevent their members from displaying quotations that lock or cross another trading center's protected quotation;[25] that is immediately accessible automated quotations[26] where the best bid equals (locked) or exceeds (crossed) the best offer available elsewhere. Manual quotations, which may be valuable in certain circumstances, are governed by general best execution standards, are generally flagged and omitted from the NBBO and order protection.[27] The rule was adopted as a companion to Rule 611: while the trade-through rule protects investors once an order is routed, Rule 610(e) protects the integrity of the quotation itself, ensuring that the prices disseminated to the public accurately reflect actual, executable trading interest rather than a jumble of contradictory bids and offers across venues.

The economic rationale for the prohibitions are similar to the market-linkage goals outlined by Congress in 1975 and underpinning Rule 611 more broadly: with multiple competing trading centers, the risk increases that uncoordinated quoting activity could produce locked or crossed markets that would confuse investors and vendors relying on consolidated market data. That confusion may complicate order-routing decisions built on the assumption of an orderly, hierarchical NBBO, and quite frankly, lead to sometimes lengthy periods where investors may be unable to access liquidity at prices displayed in exchange quotations.[28] By requiring venues to actively manage their quotes relative to one another, Rule 610(e) was intended to promote fair and orderly markets and to preserve investor and vendor confidence in the accuracy of displayed prices.

Rules 600, 611 and 610(e) work together to define what a "protected quotation" reliably means.

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[25] 17 C.F.R. § 242.610(e).
[26] 17 C.F.R. § 242.600(b)(6) and 7.
[27] 17 C.F.R. § 242.600(b)(7)(ii), (iii) and (iv); see also, FINRA (ADF) Rule 6250(d)(1).
[28] Sidley Austin, "SEC Proposes Rescission of the Order Protection Rule" (June 2026), *available at* https://www.sidley.com/en/insights/newsupdates/2026/06/sec-proposes-rescission-of-the-order-protection-rule.

As with Rule 611, the case for Rule 610(e) has only grown stronger as the number of trading venues has proliferated, from eight exchanges trading NMS stocks in 2005 to 17 today, since more venues quoting independently means more opportunities for locked or crossed conditions without a coordinating rule.

Removing that coordinating mechanism now, when fragmentation is at its highest point since Regulation NMS was adopted, risks reintroducing exactly the kind of quote confusion and routing complexity the rule was designed to prevent, this time across a far larger and fragmented set of venues than originally existed in 2005. Worse, as discussed below, removing Rule 610(e) when there are likely to be inextricably linked "tokenized equities" trading alongside their equity counterparts gives rise to extreme levels of market complexity and confusion.

The Proposal

The Unusual Prelude to the Proposal

Shortly after Chairman Atkins rejoined the Commission, revisions to Rule 611 were put on the agency's formal rulemaking agenda.[29] This wasn't entirely unsurprising, given that the Chairman had voted against Regulation NMS when he was last at the agency, and had privately signalled to market participants and policymakers that he wanted to repeal it.

Just months after his arrival, the agency announced that it was hosting a roundtable discussion on Rule 611.[30] The roundtable was not an agnostic, dispassionate examination of the rule, however. To the contrary, in announcing the roundtable, Chairman Atkins outlined his view:

> Reg NMS and its Rule 611 have not served investors or broker-dealers well, given the market distortion and resulting gamesmanship by those that seek to take advantage of the Reg NMS structure. It is incumbent upon the Commission to give the public an opportunity to weigh in on items in our rulebook that deserve a refresh, and I look forward to the input we will receive on various aspects of the Rule 611 trade-through prohibition applicable to NMS stocks and the analogous NMS plan trade-through prohibition applicable to listed options.[31]

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[29] *Amendments to the Trade-Through Rule*, SEC, RIN 3235-AN50, *available at* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=3235-AN50.

[30] Press Release, *SEC Announces Roundtable on Trade-Through Prohibitions*, SEC, July 21, 2025, *available at* https://www.sec.gov/newsroom/press-releases/2025-99-sec-announces-roundtable-trade-through-prohibitions.

[31] Press Release, *SEC Announces Roundtable on Trade-Through Prohibitions*, SEC, July 21, 2025, *available at* https://www.sec.gov/newsroom/press-releases/2025-99-sec-announces-roundtable-trade-through-prohibitions.

Over the next few months, the Commission staff assembled a roundtable of market experts to participate. HMA was honored to be invited to participate, and we shared an extensive letter on the topic before the event and oral remarks at it.[32]

At the roundtable, Chairman Atkins reiterated his criticisms of Rule 611, leaving market participants – including HMA – with the clear understanding that his objective was to repeal the Order Protection Rule.

But that stood in sharp contrast to the rest of the discussion. While a small minority of particularly conflicted participants argued against Rule 611, a balanced reading of the submissions to and statements made at the roundtable clearly relay market participants' appreciation for Rule 611, and how its removal would negatively impact investors.

A representative of the world's largest asset manager, for example, shared:

> I think at the outset it probably makes sense to note that Reg NMS, and in particular Rule 611, has been very instrumental and beneficial in integrating independent marketplaces into the cohesive market system that we have today. And as a result, it makes sense to note that U.S. equity markets function exceedingly well today and, as was highlighted earlier in the panel, are fairly widely admired around the globe. …
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> So similar to kind of taking the keystone off of an arch, you kind of want to make sure that you are adjusting all the other rules in Reg NMS to make sure we are not introducing unintended consequences by eliminating or modifying Rule 611. We would suggest that the SEC should consider a balanced approach where Rule 611 could be refined to address fragmentation in cost by introducing a market share threshold. But this needs to be accompanied by corresponding adjustments to other roles that would address additional economic incentives for exchange proliferation and market fragmentation. [33]

Similarly, FINRA Chief Legal Officer Bob Colby, who is perhaps singularly most responsible for setting and enforcing brokers best execution obligations, explained:

> 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.

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[32] Letter from Chris Nagy, HMA, to Hon. Paul Atkins, SEC, Sept. 16, 2025, *available at* https://www.sec.gov/comments/4-862/4862-658187-1965294.pdf.

[33] *See, e.g.*, Remarks of Hubert De Jesus, BlackRock, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 125-126, *available at* https://www.sec.gov/files/Trade_Through_Prohibitions_Roundtable_Transcript.pdf.

…

> 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.[34]

Underscoring the need for additional best execution safeguards if Rule 611 was removed, HMA explained "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."[35]

Market participants also clearly prebutted some of the Proposal's subsequently claimed potential "benefits" of repealing the Rule, such as claims that it would reduce market data fees.

Perhaps because the roundtable record so thoroughly failed to support the Chairman's objective of repealing Rule 611, on November 21, 2025, the Commission took the unusual step of subsequently announcing that it was hosting another roundtable. We were initially encouraged by the announcement, in part because, unlike the announcement of the first Rule 611 roundtable, this announcement did not make any predetermined, broad declarations about the merits of Regulation NMS or Rule 611.

HMA was honored to be invited to participate, again. We sent the Commission another extensive letter on the topic before the event[36] and traveled with a small handful of other market participants to Austin, Texas to engage in the important discussion.

As the transcript for both roundtables demonstrates, market participants, including HMA, made it clear that repealing Rule 611 and the prohibition on locked and crossed markets – without significant other reforms – would have both profoundly negative effects on investors and complex market implications.

The Release

On June 11th, the Commission proposed to eliminate Rule 611 in its entirety, striking the trade-through prohibition and the related defined terms in Rule 600 that give it operative effect.[37] In place of the current regime, the Commission proposed to rely exclusively on broker-dealers'

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[34] Remarks of Robert Colby, FINRA, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 224-225.

[35] Letter from Chris Nagy, HMA, to Hon. Paul Atkins, SEC, Sept. 16, 2025, at 5, *available at* https://www.sec.gov/comments/4-862/4862-658187-1965294.pdf.

[36] Letter from Chris Nagy, HMA to Hon. Paul Atkins, SEC, Dec. 12, 2025, *available at* https://www.sec.gov/comments/4-862/4862-684147-2116554.pdf.

[37] The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, SEC, Exch. Act Rel. No. 34-105655; File No. S7-2026-20 (June 11, 2026), Section III, *available at* https://www.sec.gov/files/rules/proposed/2026/34-105655.pdf ("Proposing Release").

existing best execution obligations to police execution quality – but then acknowledged that those standards would likely need to (separately) change.

The Proposal would simultaneously rescind Rule 610(e), removing the requirement that exchanges and associations maintain rules reasonably designed to prevent their members from displaying quotations that lock or cross another trading center's protected quotation. Notably, the Proposal does not eliminate the analogous trade-through and locked/crossed market protections that apply to listed options under the Options Order Protection and Locked/Crossed Market Plan, leaving equities as the sole market in which these protections would be removed.

Lastly, as discussed further below, the Commission has requested comment on some downstream questions (including whether exchanges will voluntarily maintain locked/crossed market restrictions, how best execution guidance and FINRA Rule 5310 should evolve in Rule 611's absence, and what happens to access fee caps and market data revenue-sharing formulas once protected quotations cease to exist).

This Isn’t the Commission’s First Review of Regulation NMS

At root, the Rule 611 explicitly protects investors from inferior priced executions, and so it also removes from market intermediaries potential profits at investors’ expense. Put another way, it restrains some market intermediaries profits for the benefit of investors and the markets overall.

Over the years since its adoption, some market participants have lodged essentially three complaints against Rule 611, the first two of which are related. First, some market participants have criticized Rule 611 as essentially compelling them to pay for connections and data feeds from venues with protected quotations. Second, and relatedly, as an extension of the argument that the protection quotation creates essentially captured revenues for an exchange, there is an incentive to essentially create new exchanges simply to capture those revenues, with little to no benefits to the markets, but at the cost of unnecessary complexity and fragmentation. The third, albeit far less common, criticism of the rule, is that it requires institutional investors trading large volumes of covered securities to essentially sweep the displayed, protected quotations before engaging in other trading. This direction, some have argued, could lead to tipping off other traders in the markets, and higher overall implementation costs for those orders.

Over a decade ago, the Commission established the Equity Market Structure Advisory Committee (EMSAC) to examine several issues related to stock trading. The EMSAC’s very first meeting was dedicated to examining Rule 611 and the market structure it had produced.[38]

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[38] Agenda for May 13, 2015 Meeting, Equity Market Structure Advisory Committee, SEC, *available at* https://www.sec.gov/spotlight/emsac/equity-market-structure-advisory-committee-agenda.shtml.

In that meeting, Joe Ratterman, the founder and former Chairman of BATS and then Board Member of Cboe Global Markets, outlined the key tradeoffs in repealing Rule 611 clearly and succinctly:

> From a market structures perspective, … it would simplify our market if we didn't have to worry about 611, I agree, and I think I made that point earlier, that clearly our systems could get simpler. Our software could get easier to manage and maintain if we didn't have to help our customers maintain compliance with Rule 611. But … it's something I felt pretty strongly and you affirmed it, that the retail experience, you can look your retail investors in the eye and say, put an order in here or at Ameritrade or wherever. You're going to get the best price, guaranteed by law. That's a pretty big back and forth that we have with this rule, is to look any investor in the eye and say, no matter what broker you use, what day of the week you go in, no matter what path you insert yourself into the system, you come out with the best price guaranteed by law.
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> So this is one of those ones where I personally make the tradeoff that a little more complexity yields this benefit, this statement that I can make without any hesitation, without any hedging. You're going to get the best price by law every time, no matter how you enter our market.
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> And that's what 611 does. So there's a benefit there that can't be overstated or overlooked, that if we start peeling back, we might have to say, well, if you get a good broker, you're going to get a good price. Or most of the time you get a good price, and most of the time is pretty good.[39]

It was widely accepted at that meeting of industry participants and experts across the markets (including HMA),[40] that Rule 611 was an essential component of ensuring best execution for investors. The EMSAC continued to explore the issue for several more years. In 2017, at the request of the EMSAC, HMA shared that:

> 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.

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[39] Transcript of the May 14, 2015 Meeting of the EMSAC, SEC, at 205-206, *available at* https://www.sec.gov/spotlight/emsac/emsac-051315-transcript.txt (Statement of Joe Ratterman).

[40] See, e.g., Remarks of David Lauer, HMA, before the EMSAC, SEC, May 13, 2015, *available at* https://www.sec.gov/comments/265-29/26529-15.pdf.

> 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.[41]

After extensive study, the EMSAC's Regulation NMS Subcommittee did not reach a consensus on a clear regulatory path forward on Rule 611–unlike several other areas of NMS stock trading.

Similarly, the Commission has made several very significant changes to Regulation NMS over the past decade.

Specifically, the Commission has voted to:

- impose new requirements on ATSs trading NMS stocks;[42]
- enhance disclosures of order routing by brokers pursuant to Rule 606;[43]
- enhance execution quality disclosures by market centers pursuant to Rule 605;[44]
- lower access fee caps under Rule 610(c);[45]
- reduce the minimum pricing increments for exchanges under Rule 612;[46] and
- revise the structure, governance, and operations of the public market data plans.[47]

While the first two reforms have been implemented, the latter three have been relegated by the Commission to years of regulatory limbo. Separately, a divided Commission proposed, but never adopted, a new rule for Best Execution.[48]

While tweaks and reforms to Rule 611 have been considered since it was first implemented, at no time has a repeal of either Rule 611 or Rule 610(e) ever been seriously, publicly contemplated by the Commission or staff.

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[41] 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.
[42] *Regulation of NMS Stock Alternative Trading Systems*, SEC, 83 Fed. Reg. 38768 (Aug. 7, 2018), available at https://www.govinfo.gov/content/pkg/FR-2018-08-07/pdf/2018-15896.pdf.
[43] *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.
[44] *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.
[45] *Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders*, SEC, 89 Fed. Reg. 81620 (Oct. 8, 2024) *available at* https://www.govinfo.gov/content/pkg/FR-2024-10-08/pdf/2024-21867.pdf.
[46] *Id.*
[47] *See, e.g., Market Data Infrastructure*, SEC, 86 Fed. Reg. 18596 (Apr. 9, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2020-28370.pdf.
[48] *Regulation Best Execution*, SEC, 88 Fed. Reg. 5440 (Jan. 27, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2022-27644.pdf.

The Proposals Do Not Sufficiently Identify or Analyze the "Problems" They Seek to Address

While acknowledging that "since the adoption of these rules, the structure of the U.S. equity markets has evolved dramatically, and today's markets are highly automated, interconnected, fast, and competitive,"[49] the Proposal seems to entirely ignore the critical role Rules 611 and 610(e) have had in creating that environment.

Instead, the Proposal argues that "Rule 611 and 610(e) have led to a myriad of consequences in today's trading environment, including increased costs and market structure complexity, limiting order handling and execution choice, and contributing to exchange proliferation and fragmentation of trading on equity exchanges."[50]

The Proposal boldly claims that "given this highly automated and interconnected nature of our equity markets today, Rule 611 is not needed to backstop a broker's duty of best execution to seek the most favorable terms for customer orders reasonably available under the circumstances."[51]

The Proposal then frames the repeal of 610(e) as a logical companion to the Rule 611 repeal: once protected quotations no longer exist, the Commission argues that the regulatory rationale for policing locked and crossed markets weakens as well, since the automated routing and quoting technology that did not exist in 2005 could ostensibly manage cross-market quoting activity without a regulatory backstop. The Commission further suggests that rescission of Rule 610(e) could somehow improve price discovery and produce tighter spreads by allowing more competitive quoting practices than the current prohibition permits.[52]

In his prepared remarks upon the Proposals' release, Chairman Atkins explained:

> I am very pleased that we are convening to discuss what I have viewed as a grave misstep since I served as Commissioner in the Aughts: that is, Rule 611, also known as the "Trade-Through Rule."
>
> I have opposed the Trade-Through Rule since its inception and have elaborated on my concerns, from this very stage and elsewhere, many times since then.
>
> While a central aim of Rule 611 was to incentivize displayed liquidity, we have seen trading activity increasingly occur elsewhere the last two decades. I am concerned that what the Rule rather incentivized was a proliferation of new

[49] Proposal, at 36657.
[50] Proposal, at 36657.
[51] Proposal, at 36657.
[52] Proposal, at 36670.

trading venues, which in turn fragmented liquidity and created an increasingly complex, costly, and opaque marketplace for order execution.[53]

In announcing the first of the two roundtables that preceded the Proposal, and again in his statement supporting the Release, Chairman Atkins loosely identified two principal harms he attributes to Rule 611. First, he has argued that the rule has fueled exchange proliferation and, with it, rising costs and complexity.[54] Second, he has argued that the rule forces institutional investors to exhaust the often-limited liquidity displayed at the NBBO, thereby exposing their trading intentions, inviting information leakage, and driving up their trading costs.

Both justifications are facially flawed, and neither is directly, materially addressed by the Proposal. Further, the very limited data and analyses offered in the Proposal to support those claims, however, fail woefully short of their assigned task. To the contrary, extensive data and analysis already within the Commission's possession demonstrate the fallacies of the agency's own claims.

Specifically, the Proposal oddly does not identify the mechanism through which Rule 611 purportedly causes the proliferation of exchanges, much less how that materially negatively impacts investors. And it certainly doesn't describe how allowing brokers to execute their customers' orders at worse prices off-exchange somehow solves that perceived problem.

Rule 611 only requires that a trading center not trade through a better-priced protected quotation. Brokers may use smart order routers, third-party market makers, intermarket sweep orders, and other tools to trade on, or using prices referenced on, a trading center without maintaining direct connectivity to it.[55] As the Commission is well aware, brokers are not compelled by Rule 611 to connect to every exchange. For example, Robinhood was not

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[53] Hon. Paul S. Atkins, Statement at the SEC Open Meeting on the Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, SEC, June 11, 2026, *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-statement-open-meeting-061126-statement-sec-open-meeting-trade-through-rule-locked-crossed-markets-provisions-regulation-nms.

[54] Paul S. Atkins, Remarks at the Roundtable on Trade-Through Prohibitions, SEC (Sept. 18, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-091825-remarks-roundtable-trade-through-prohibitions ("Chairman Atkins First Roundtable Remarks").

[55] Letter from Cboe Global Markets, Inc. to Hon. Paul S. Atkins, Chairman, SEC, Dec. 15, 2025, *available at* https://cdn.cboe.com/resources/government_relations/Cboe-Response-Rule-611-Roundtable-December-.pdf.

connected to exchanges during the memestock frenzy several years ago.[56] Further, Rule 611 does not compel brokers or any other party to offer quotations on every exchange.

A simple cross country comparison further illustrates this point. For years, Canada had an order protection rule. However, its market remained highly concentrated and unfragmented. If the order protection rule is, by itself, driving fragmentation, then Canadian markets should have experienced this significant change, but they did not.[57] The Proposal essentially ignores this inconvenient fact.

We acknowledge that market participants may opt to connect and buy data from additional trading centers, as they would with or without Rule 611. The Proposal goes further, however, and suggests that Rule 611 somehow creates monopoly pricing for data.

Yet, rescinding Rule 611 does nothing to rescind Rule 603 (the Market Data Rule) or the underlying SIP revenue-allocation formula. Nor does it repeal or modify the exchanges' proprietary data and connectivity fees. The Commission has authority – well outside of Rule 611 – to take action to protect investors from fees that it believes are discriminatory, burdens on competition, unreasonable, or inequitably allocated.

We strongly believe that market data is often overpriced, and that some exchanges have abused their powers over market participants for access and data feeds. We have filed dozens of objections with the Commission over these issues – spanning nearly a decade. SIFMA has filed many more.

If the Commission agrees that exchange data and connectivity pricing can be burdens on innovation and competition, it can simply exercise its statutory authority under the Exchange Act to suspend and disapprove them.

And yet the Proposal doesn't raise or analyze this alternative mechanism to addressing these issues. The Proposal doesn't explain why it is essentially choosing to ignore the Market Data Rule and market data and connectivity fee structures directly, and instead eliminating an unrelated investor-protection rule – and hoping (without data or analysis to support it) that costs would fall as a byproduct.

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[56] See, *Game Stopped: How the Meme Stock Market Event Exposed Troubling Business Practices, Inadequate Risk Management, and the Need for Legislative and Regulatory Reform*, Majority Staff Report for the Committee on Financial Services, at 11 (117th Cong. 2022), *available at* https://democrats-financialservices.house.gov/uploadedfiles/6.22_hfsc_gs.report_hmsmeetbp.irm.nlrf.pdf (explaining "There is currently no FINRA or SEC requirement for broker-dealers to be active members of a public exchange, and on January 28, 2021, Robinhood was not connected to the New York Stock Exchange, Nasdaq, or any other public exchange where it could have routed customer trades for execution. Instead, Robinhood was solely reliant on its market maker firms to execute trades, most of whom were struggling under significant operational stress in the face of historic volume and volatility. Had the market makers Robinhood routinely routed orders to been unable to accept its order flow, the company would have been unable to execute trades for its customers.").

[57] See, Remarks, HMA, before the May 14, 2015 Meeting of the EMSAC, SEC, at 166, *available at* https://www.sec.gov/spotlight/emsac/emsac-051315-transcript.txt.

Worse, the Commission has already been presented with direct evidence that repealing the Order Protection Rule will not materially reduce data costs. Again, Canada should provide a useful reference point for the Commission, although it appears to have been largely ignored in the Proposal. As mentioned above, Canada used to have an order protection rule. It then instituted a market share threshold. Under the Commission's logic, market data prices paid by market participants should have fallen in Canada once its order protection rule was repealed. However, the revisions to the order protection rule in Canada did not materially reduce market data costs for market participants, nor did firms generally disconnect from smaller venues.[58]

On the second point, which is the purported fear that large traders would have greater trading costs because they may tip off predatory trading strategies when they execute against protected quotes, the concern is already substantially addressed by the existing rule. Rule 611 has, since 2005, contained an intermarket sweep order ("ISO") exception that allows institutional investors and their brokers to execute a block trade outside the NBBO precisely by simultaneously routing orders that satisfy the better-priced protected quotations at other venues, without first "sweeping" through each venue sequentially or otherwise exhausting displayed liquidity. Institutional traders and their brokers use ISOs precisely to solve the problem the Chairman describes today, under current Rule 611. To the extent execution costs for large orders remain a genuine concern, broadening or refining the existing ISO exception, or offering another targeted fix (such as a direct block exemption), would be more than adequate to address the concerns. The Proposal appears to brush aside these widely-discussed alternatives, to instead propose a wholesale rescission of a core investor protection. A rare, minor, and readily remedied inconvenience for a very small handful of institutional investors that are generally well equipped to protect themselves is not a sufficient basis to expose all investors to significantly greater execution price risks.

A Reasonable Interpretation of the Commission's Recent Odd-Lot Reforms Directly Contradicts the Proposal's Claims

Any reasonable analysis of the Commission's recently implemented rule changes to the odd-lot definition, and corresponding market changes in execution quality and trade-through frequency and severity instantly dispels the Commission's claim in the proposal that "competition" or "technology" would magically remedy brokers' conflicts of interest.

The Proposal mischaracterizes the Commission's own recent success in reducing investor costs through its changes to the round lot definition, and the application of the order protection rule.

[58] Remarks of Peter Haynes, TD Securities, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 104-105, *available at* https://www.sec.gov/files/Trade_Through_Prohibitions_Roundtable_Transcript.pdf.

Rule 611 explicitly applies directly to round lots only, which were historically 100 share increments. But the Commission recently changed that, and thus expanded the application to more quotations.

Investors started receiving better priced executions on trades at and above the newly protected quotation sizes, while those that remained below the protected quotation threshold continued to exhibit higher instances of trade-throughs. For stock trade sizes that remained below the new threshold, trade-through rates decreased over share sizes from 1 share to 40, while off-exchange trade-through rates were much higher than on-exchange trade through rates.

However, the Proposal looks at this data, and somehow reaches a wildly inconsistent, contradictory conclusion that since "trade-through rates of unprotected quotes fall as trade size increases, indicating that Rule 611 may not significantly affect the trade-through rates of round-lot orders."[59] This is not unlike looking at an intersection with four stop signs, observing that crashes are infrequent, and then using that as justification to remove all the stop signs.

As MIT Finance Professor and former SEC Director of the Division of Trading and Markets Haoxiang Zhu explained in his recent comment:

> Equally striking, for stocks that switched to the 40-share round lot size, orders with 1 share and 5 shares still had a 24% and 10% probability of trading through the unprotected best quote … In sum, the Commission's own data analysis reveals insufficient market discipline: investors have not obtained the best prices in the absence of trade-through protection. The off-exchange evidence is particularly concerning, given that virtually all marketable retail orders are executed off-exchange.[60]

These predictable findings from the Commission's recent success in reducing investors' costs by expanding the application of the Order Protection Rule are consistent with the Commission's findings of the impact on protected quotations when the Order Protection Rule was first proposed and implemented (as discussed above).

The Proposal's analysis of odd-lot execution trade-throughs is nothing short of bizarre. As University of Virginia law professor and former Commission staffer Edwin Hu has explained, the Commission's data and analysis are deeply flawed, noting

> First, the Commission's trade-through statistic understates the frequency with which investors execute at prices inferior to a better price then displayed elsewhere, and a material part of that understatement is attributable to how the measure is constructed rather than to the market. Second, the Commission's own natural experiment on the November 2025 round-lot change does not establish that trade-through protection has ceased to matter, and in fact is

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[59] Proposal, at 36689.
[60] Letter from Haoxiang Zhu, MIT, to Vanessa Countryman, SEC, July 12, 2026, *available at* https://www.sec.gov/comments/S7-2026-20/s7202620-957479-2957766.pdf.

> consistent with protection continuing to reduce trade-throughs at the newly protected size.[61]

Specifically, the Proposal's analysis counted as trade-throughs only orders that could be completely satisfied by the odd-lot quote. Thus, an order for 50 shares that bypassed a better priced odd-lot order for 40 shares would not count. That means the data necessarily undercounts significantly the number of shares that were traded-through. When there are multiple markets quoting at a better price, standard industry practice in routing a larger order is to use an ISO or otherwise route so as to access those better-priced quotes simultaneously. The real issue isn't whether a single quotation could fill the order, but whether the aggregated quotations at that price could.

The Commission staff's analysis thus does not reflect market reality or existing industry practices. And even then, it is incapable of rationally explaining how the measurable decline in trade-throughs based on share sizes that is tightly correlated to the time in which the application of Rule 611 was expanded, and applied to just those securities, is somehow not a result of the change.

Repeated trade-throughs of unprotected quotations demonstrate that – despite two decades of competition, market evolution, and regulatory changes – brokers and market makers remain fully willing and capable of providing their customers with inferior prices for unprotected order sizes while simultaneously claiming to their customers and regulators (presumably, with straight faces) that they are providing "best execution."

Institutional And Retail Investors Will Face Greater Risks and Costs, And the Proposal Will Distort Competition To Favor Larger Investors Over Smaller Ones

Without a clear understanding of FINRA's best execution standards in a post 611-world, the only reasonable conclusion is that the repeal of Rule 611 would essentially expose all investors to much greater trading costs. The Proposal essentially ignores this.

As the Commission is well aware, the US brokerage market is largely bifurcated between the brokers serving the largest institutional customers, typically those with more than $10 billion in assets, and so-called "retail" brokers. Rule 611 protects both sets of customers, but the precise nature is different for each.

For large institutional investors, their brokers often use smart order routers and complex routing strategies to determine the appropriate on- and off- exchange execution strategies. Many of

[61] Letter from Edwin Hu, UVA, to Vanessa Countryman, SEC, Aug. 12, 2026.

these investors – which include HMA's members – often obtain or create complex execution quality reports, including trade-through identifications and analyses, which are typically benchmarked against the NBBO. These reports often form the heart of their Best Execution Committees' analyses.

Notably, several HMA members have found using their own independent analyses spanning several years that some of their brokers' strategies included routing to lower fee or higher rebate opportunities (to the benefit of the brokers), leading to sometimes significant or persistent trade-throughs. Put simply, some of their brokers tried – even with Rule 611 – to get away with inferior executions and trade-throughs against their customers' wishes, and it was only because our members had expended hundreds of thousands of dollars on complex transaction cost analyses that they were able to identify, and later stop, instances of being fleeced by their brokers.

However, our members' experience has demonstrated that simply identifying trade-throughs and other inferior execution quality for their brokers isn't enough. We have seen instances where even investors with tens of billions of dollars in assets were unable to persuade their brokers to improve their executions, while other institutions were able to have their brokers respond quickly. It seems that investors would need more than to just be able to see the trade-throughs, but also have sufficient market power (often viewed as potential future order flow) so as to incentivize brokers to make more investor-friendly routing decisions.

Not all large investors have the expertise, resources, or commitment to engage in that analysis. Today, many large institutional investors don't do that, in part, because Rule 611 protects them from the most egregious of trade-throughs, whether on- or off-exchange.

However, a repeal of Rule 611 would force all large institutional investors in US equities to either (1) cast themselves and their beneficiaries to the mercy of their brokers or (2) pay for costly transaction cost analyses, hope that they have the relevant data and resources to identify poor trade executions, and attempt to police their brokers through the exercise of their market power (such as by threatening to use other brokers).

The Proposal fails to identify, much less quantify the new and expanded costs of more robust transaction cost analysis, broker follow up, and worse execution quality for large institutional investors. Some of these costs may be borne by asset managers, in the form of greater adviser and administrative costs, while others may be borne directly by fund investors, in the form of worse execution pricing. None of these issues are materially explored in the Proposal, as it instead suspends reality to assume that "competition" and "technology" will magically overcome brokers' and market makers' incentives, their opportunity, their conflicts of interest, and their market power over investors of different types. And that is for the large institutional investors who may be best insulated from the negative consequences of a repeal.

Nearly all smaller institutional investors, by contrast, trade using predominantly "retail" brokerage channels, much like individual investors. These institutional investors are often trading through brokers where their accounts are custodied, and it is impractical, if not impossible, to select other brokers for execution.

The vast majority of these "retail" brokers route their orders to the same handful of market makers, who provide executions off-exchange. That trading, of course, is measured against the NBBO used for Rule 611. And their execution quality is, likewise, measured against that NBBO. As a result, Rule 611 is, for all of these investors, an effective backstop for their best execution pricing.

A repeal of Rule 611 would essentially expose all of these investors trading through "retail" channels to much greater trading costs.

Even with Rule 611 in place, some brokers have long histories of routing their customers' orders to venues that pay them the most, as opposed to those that provide their customers with the best prices.[62] This is often readily found by comparing average "price improvement" statistics for so-called "retail" brokers to the "average" payment for order flow revenues for those same brokers.

As Virtu Financial executive Doug Cifu explained on CNBC in March 2021, the market maker was "Switzerland," and agnostic as to whether and how much of what it paid brokers was kept by the brokers as payment for order flow, versus what the broker would share with customers in the form of "price improvement."[63] Put another way, Cifu acknowledged that the retail brokers for whom his firm was executing orders were explicitly choosing to give their customers worse prices in order to accept greater payments for order flow–despite FINRA guidance that brokers' incentives should never come at the expense of their customers' prices.[64] This still persists.[65]

This phenomenon becomes readily apparent when one looks at brokers' payment for order flow and price improvement statistics, as there appears to be a fairly direct tradeoff between the amount of "price improvement" brokers negotiate for the customers and "payment for order flow" those same brokers negotiate for themselves.

Repealing Rule 611 would remove the backstop that restrains these brokers from generally operating within the confines of the NBBO, and would instead allow them to profit even more directly at the expense of their customers' execution prices.

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[62] See, e.g., Testimony of Steven Quirk, TD Ameritrade, before the U.S. Senate Permanent Subcommittee on Investigations, Cmte. on Homeland Security and Government Affairs, hearing on "Conflicts of Interest, Investor Loss of Confidence, and High Speed Trading in U.S. Stock Markets" (113th Cong. 2014) (response to questioning from U.S. Senator Carl Levin). Notably, Quirk is currently a senior executive at Robinhood.

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

[64] See generally, r/options, Reddit.com, *available at* https://www.reddit.com/r/options/comments/m9h7if/comparing_payment_for_order_flow_routing_reports/.

[65] See, e.g., Adam Nasli, *Payment for Order Flow: A Brief Guide for Traders and Investors*, Broker Chooser, Sept. 2025, *available at* https://brokerchooser.com/education/investing/payment-for-order-flow.

While a larger institutional investor may be willing and able to spend hundreds of thousands or millions of dollars a year on sophisticated transaction cost analysis and broker engagement to police its execution quality, it would make little to no sense for smaller institutional investors and retail investors to expend those sums. And even if they do, the relative cost per dollar saved makes it generally infeasible.

Further, these smaller institutional investors and retail investors may have little practical choice to avoid worse execution pricing. They may be fully captive to their custodial brokers, or the costs and complexity of routing through other brokers that provide better pricing may be prohibitive.

An investor trading hundreds of thousands or millions shares a day can reasonably invest in services to ensure it doesn't lose a penny or two per share in trade pricing, but an investor trading 17 shares or 1000 simply won't. It makes no sense to spend thousands of dollars on trade execution quality monitoring if you can't act to save money, and even if you could, the penny or two per share saved is only for a few hundred or thousand shares traded.

These fundamental differences in the ability to monitor trade performance and avoid poor transaction pricing will have material impacts on the long term performance of different investors – based upon their relative size – and thus, on the competition between them. If Rule 611 is repealed, larger investors making the exact same trading decisions are likely to experience materially better pricing for their transactions over time, leading to better overall performance, and increased competitiveness.

In sum, by removing price protections from all investors, the Commission will disproportionately leave the smallest investors the most exposed to higher costs and worse performance.

The Proposal's Assumed "Cost Savings" For Market Intermediaries Are Not Reasonably Ascertained

The Proposal, citing a submission by a retail broker that does not provide specific cost estimates, "assumes that rescinding Rule 611 and Rule 610(e) would reduce the time it takes to update trade execution systems and SORs by 5% to 10%."[66] It further assumes that "[l]arger broker-dealers that connect to more exchanges are likely to have more complicated SOR systems that are more costly to maintain and update."[67]

Oddly, the Proposal offers no data to support either statement.

Worse, the Commission seems to assume that brokers and exchanges will now cease scanning multiple venues for better pricing and routing orders to those venues with better prices.

[66] Proposal, at 36722 (citing Robinhood).
[67] Proposal, at 36722.

However, this should be a component of brokers' best execution obligations. And the precise obligations are, by the Commission's own admission, left outside of this Proposal.

Nevertheless, by acknowledging some cost savings by brokers regarding their SORs, the Proposal is implicitly acknowledging that brokers are today scanning venues and making routing decisions based on pricing that they believe would be more advantageous to their customers' execution pricing, and that they would stop doing that if the repeal passes. This admission, however, is facially inconsistent with the Proposal's separate declaration that "competition" and "interconnected" markets and "technology" would – even without Rule 611 – be sufficient to keep brokers routing orders in their customers' best interests for execution pricing.

Rule 611 Promotes Pricing Competition, Not the Competition for Order Flow

Rule 611 promotes competition for the top of the displayed order book, which then serves as a protection price for the rest of the markets – whether executed on- or off-exchange. It has done that by every reasonable measure. Protected quotations are typically extremely tight and market sensitive. That competition between on-exchange market makers and brokers to provide the protected quotation – while often fierce – is typically only for a few hundred or thousand shares in a security at any one time. But the prices resulting from that competition reverberate through the thousands or millions of shares that are traded in that security throughout the day – both on- and off-exchange.

The promotion of a robust NBBO through the promotion of tight, protected quotations, however, is very different from the promotion of on-exchange trading. The Commission explicitly recognized this distinction when it adopted Regulation NMS.[68]

The Proposal misleadingly suggests that the rise of off-exchange trading is somehow a failure of the Order Protection Rule to fulfill its mission. Similarly, Chairman Atkins declared in his remarks accompanying the Proposal's release that "[w]hile a central aim of Rule 611 was to incentivize displayed liquidity, we have seen trading activity increasingly occur elsewhere the last two decades."[69]

The introductory framing of the Proposal relies heavily on correlative shifts in market structure rather than causal empirical data. The Proposal observes that the market has changed significantly since 2005, including that off-exchange volume now regularly exceeds 50% of total volumes, and there are now seventeen equities exchanges. From those objectively true

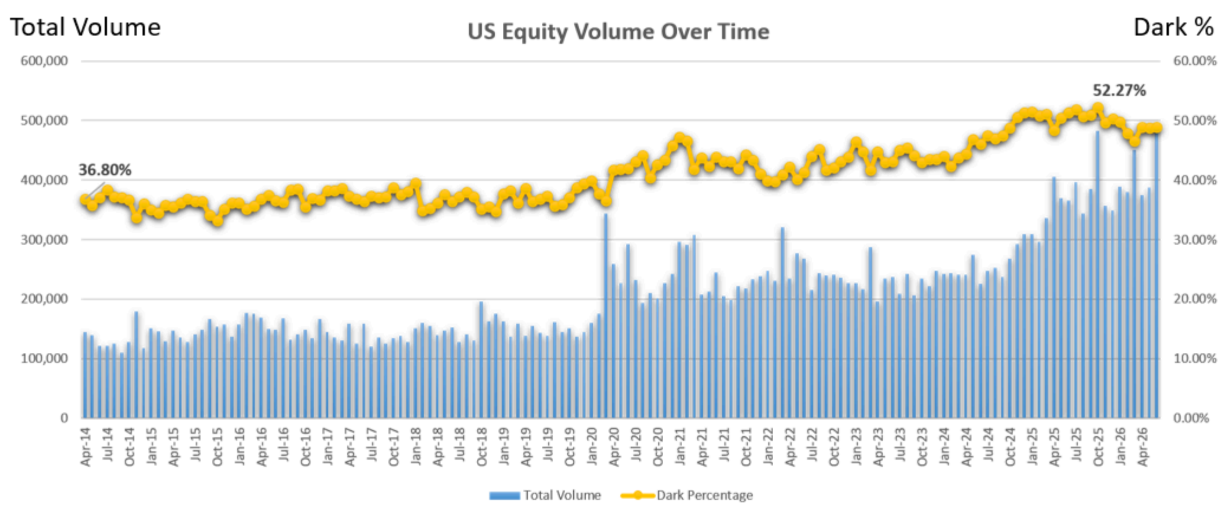
[68] NMS Adopting Release, at 37501.
[69] Hon. Paul S. Atkins, Statement at the SEC Open Meeting on the Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, SEC, June 11, 2026, *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-statement-open-meeting-061126-statement-sec-open-meeting-trade-through-rule-locked-crossed-markets-provisions-regulation-nms.

statements, the Proposal then leaps to the conclusion that Rule 611 is somehow a primary culprit of these shifts.

While the price protections afforded by the rule generally apply both on- and off-exchange, the competition for price protection is not determinative in where the bulk of shares are traded.

The Commission should not misconstrue the role of Rule 611 in promoting competition for better pricing (and a more robust NBBO) with the separate competition between trading centers – whether exchanges or not – for order flow. The most impressive success of Rule 611 is how effectively it promotes market efficiency both on- and off-exchange while also protecting investors, while still not distorting the separate competition for the bulk of order flow.

In this latter competition, however, off-exchange trading centers are clearly winning. Over just the past dozen years or so, we have seen a significant increase in retail market participation, and commensurate with that, a significant increase in overall volumes and the percentage of off-exchange trading. As presented below, the percentage of off-exchange trading has commensurately increased from 36.80% in April of 2014 to Over 52% in October 2025.[70]



HMA and our members broadly support the competition of on- and off-exchange market centers. That said, we have been concerned with the rise of off-exchange trading in recent years, as off-exchange market centers may discriminate against investors, offer unfair access, or otherwise negatively impact the overall markets.

The Commission has, independently of Rule 611 and 610(e), permitted off-exchange trading venues to operate with several significant conflicts of interest and structural and regulatory advantages over on-exchange trading. For example, the Commission has permitted payment-for-order flow models to persist, despite repeated calls to limit the practice. It has permitted off-exchange trading centers to accept an infinite number of sub-penny trading

[70] Healthy Markets Association, Market Structure Insights, 2026.

increments and generally not regulated the process through which they may incentivize order flow. The Commission has permitted off-exchange trading centers to offer infinitesmally small, insignificant "price improvement" as a mechanism to bypass deeper on-exchange liquidity.

If the Commission wants to rebalance the competition between exchanges and off-exchange trading centers for order flow, it should stop delaying the implementation of its previously approved transaction fees and tick sizes. Further, the Commission should directly adopt a Best Execution Rule for brokers and directly regulate order routing incentives and fees of off-exchange trading centers – as it does exchanges.

A rise in off-exchange trading is not unique to the United States, nor is it unique to countries with an order protection rule. Rule 611 doesn't stop that, but it does ensure that the rise doesn't come along with a massive loss to investors from trade-throughs.

In sum, market makers and brokers compete to be protected by offering tighter spreads on displayed liquidity as a result of Rule 611, but that is a different competition from trading centers competing for the vast majority of order flow. The Proposal's limited discussion and the Chairman's statements conflate these separate and distinct competitions, and thus inaccurately link the Order Protection Rule to the rise of off- exchange trading, with absolutely zero data or credible analysis to support that assertion.

The Proposal Essentially Ignores the Elephant in the Room - Tokenized Stock Trading

Despite spanning 267 pages, the Proposal never fully addresses the repeals' direct and indirect impacts on the Commission's other policy priorities, most notably, the tokenization of equity securities. Rather than acknowledge the obvious impacts of the rule on tokenized equities, the Proposal simply explains that:

> technology such as distributed ledger technology (''DLT'') allows issuers to tokenize a security by issuing it in the format of a crypto asset and facilitate trading among market participants. The use of DLT, including smart contract applications undergirding automated market makers, has introduced new methods of trading securities and opened access to such trading to various types of market participants. Such innovative technology also raises challenges and questions relating to current equities market structure and the application of current regulatory requirements.[71]

That single paragraph is the entirety of the Commission's discussion of the interplay between the repeals and the trading of tokenized equities.

[71] Proposal, at 36660.

This Proposal's omission of references to, data, or analysis regarding its impact on tokenized equities trading is jarring, in part, because of its obviousness. The repeals of Rule 611 and Rule 610(e) will have similarly massive impacts on tokenized stock trading, which, in turn, will have significant impacts on traditional equities trading. The Commission is well aware of these interlocking effects, as digital asset firms and experts have not exactly been shy about their beliefs that the rules restrict stock token trading centers and unregistered brokers for stock tokens.

Crypto market commentators have characterized the Proposal as the most consequential crypto market structure rule this year.[72]

The press headlines have been crystal clear on the impact:

- *"SEC plan to scrap 'Rule 611' positive for tokenized US stocks: Galaxy,"*
- *"Benchmark says SEC's NMS proposal is the 'most consequential' US crypto rule this year*,"
- *"SEC Plan to Scrap Rule 611 Could Be the Biggest Regulatory Unlock Yet for Crypto Tokenized US Stocks."*

As Galaxy Digital's head of research put it, firms trading tokenized NMS stocks under the current rule "would commit trade-throughs constantly and arguably be an illegal trading center."[73] As another expert in digital assets has argued, Rule 610(e) essentially compounds the same problem, since token prices can drift in ways that lock or cross the displayed NBBO as liquidity moves through the pool.[74] Equity research analysts have also flagged Securitize, Coinbase, Galaxy Digital, and others as likely near-term beneficiaries of repeals, on the theory that removing Rule 611 would clear the principal legal obstacle to trading tokenized US equities.[75]

Industry commentary has been similarly clear that the shift from a per-trade NBBO mandate to a broker-level best execution standard (the same standard the Commission proposes to substitute for Rule 611 across all equities, not just tokenized ones) is what "makes AMM-based tokenized

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[72] *See, e.g.*, Brian Denga, *Benchmark says SEC's NMS proposal is the 'most consequential' US crypto rule this year*, The Block, June 15, 2026, *available at* https://www.theblock.co/news/regulation/2026-06-15-benchmark-sec-nms-proposal-most-consequential-us-crypto-rule-this-year-404768.

[73] Jesse Coughlin, *SEC plan to scrap 'Rule 611' positive for tokenized US stocks: Galaxy*, Cointelegraph, June 12, 2026, *available at* https://cointelegraph.com/news/sec-plan-to-scrap-rule-611-a-boon-for-tokenized-us-stocks-galaxy.

[74] Noelle Achison, *The SEC, tokenization and structural change*, Cryptoismacro, June 18, 2026, *available at* https://www.cryptoismacro.com/p/the-sec-tokenization-and-structural.

[75] Brian Denga, *Benchmark says SEC's NMS proposal is the 'most consequential' US crypto rule this year*, The Block, June 15, 2026, *available at* https://www.theblock.co/news/regulation/2026-06-15-benchmark-sec-nms-proposal-most-consequential-us-crypto-rule-this-year-404768.

equities workable."[76] Many commentators have made the clear connection between the repeal of Rule 611, and resolving "the core incompatibility" between the traditional equities markets and the potential tokenized markets[77] For example, one commentator has argued that Rule 611 is the reason "on-chain equities couldn't trade onshore" and noting that with it gone, a broker could satisfy its duty simply by routing client orders to an on-chain venue.[78]

In other words, there would be no need to route to the venues with the best prices for underlying investors. And that is precisely the point.

As described more fully elsewhere in this letter, some stock market intermediaries are likewise very excited about trading tokenized stocks while subject to different trading rules than stocks. As Robinhood's co-founder, Chairman, and CEO explained just days ago in an investor call:

> The other thing I'm very excited about is stock tokens. So here, I'll show you what they look like. This is NVIDIA. So, if you're a customer outside the US, you can get exposure to NVIDIA through stock tokens. And they have certain advantages over traditional stocks, even. They're tradable 24/7, including Saturdays and holidays. And you can even send it on chain - you can see the address, you can receive just like you would any crypto. And this makes it really easy to expand ownership worldwide. All you need is an internet connection and to be connected to the blockchain. And looking ahead, we're going to continue to push on this. We're working on adding lots more stocks...[79]

Leading law firms have also observed the connection between the proposed repeal of Rule 611 and its impact on stock tokenization.

For example, one leading law firm identified "Integration of Tokenized NMS Stocks" as one of its principal open questions in the Proposal, noting that the Proposals "do not explain how tokenized instruments would fit within the existing equity market structure," including whether tokenized trades would be reflected in consolidated market data or the NBBO at all.[80]

Another leading law firm's summary reached a similar conclusion, observing that although "the proposal does not focus on tokenized securities, the rescission of Rule 611 may reduce certain market structure challenges associated with applying trade-through requirements in emerging

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[76] Ahmed Barakat, *SEC Plan to Scrap Rule 611 Could Be the Biggest Regulatory Unlock Yet for Crypto Tokenized US Stocks*, CryptoNews, June 13, 2026, *available at* https://cryptonews.com/news/sec-rule-611-rescission-tokenized-stocks/. cryptonews
[77] *See, e.g.*, *Id*.
[78] See, Simon Tayler, LinkedIn, June 12, 2026, *available at* https://www.linkedin.com/posts/sytaylor_just-in-the-sec-moved-to-kill-rule-611-activity-7471197846256533504-XFK4/.
[79] Statement of Vladamir Tenev, Robinhood, Q2 2026 Earnings Call Transcript, *available at* https://investors.robinhood.com/static-files/f44ea493-9c52-4744-9671-7720e1ac7b2f.
[80] Sidley Austin, LLP, *SEC Proposes Rescission of the Order Protection Rule*, June 16, 2026, *available at* https://www.sidley.com/en/insights/newsupdates/2026/06/sec-proposes-rescission-of-the-order-protection-rule.

trading environments that are not interconnected in the same manner as traditional equities markets."[81]

Lastly, as the Commission heard at its first roundtable,

> It is also very important to think about a no-trade-through rule when considering the possibility of a whole new avenue of trading equities in token form outside the current infrastructure might result in a complete decentralization of trading, making the task of finding liquidity difficult if not impossible for institutions.[82]

The Commission cannot have it both ways. If tokenization is, as market analysts, industry experts, and leading law firms overwhelmingly believe, a central driver of this rulemaking, the Commission is obligated to gather the relevant data and analyze it.

And further, as alluded to above, those impacts may be extremely significant. Tokenized versions of US public equity securities could come in various forms, with different sets of rights and obligations, and subject to different regulatory obligations. If the removal of Rule 611 allows for securities to trade-through prices from either the tokenized or traditional, non-tokenized versions of the same securities, there will be very significant impacts – including explosive fragmentation and risks of poor execution prices.

Put simply, given the obvious relationship between the Proposal and its efforts related to tokenization of securities, the Commission must not just identify them, but analyze them. This should include discussions of how a bifurcated market (conventional NMS shares trading without intermarket price protection alongside tokenized versions of the same securities trading through automated market makers with no NBBO reference point at all) would affect institutional and retail investors, price discovery, and market integrity. It did not do so.

The Proposal Inconsistently Ignores Impacts on Related Rules and Practices

As the Commission and market participants have mentioned numerous times, Rule 611 and Rule 610(e) interact with several other rules, including those of the Commission, FINRA, and the exchanges.

The Proposal generally fails to adequately analyze the impacts of its proposed changes on these other rules. Below, we highlight two issues – (1) best execution standards and (2) the

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[81] Aaron K. Washington, *A New Era for Equity Market Structure: SEC Proposes Rescinding Regulation NMS's Trade-Through Rule and Locked/Crossed Market Prohibition*, Skadden, Arps, Slate, Meagher, & Flom LLP and Affiliates, June 18, 2026, *available at* https://www.skadden.com/insights/publications/2026/06/a-new-era-for-equity-market-structure.

[82] Remarks of Peter Haynes before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 42, *available at* https://www.sec.gov/files/Trade_Through_Prohibitions_Roundtable_Transcript.pdf.

actual calculation and use of the NBBO. Without these changes solidified, the full and accurate impacts of the repeals cannot be reasonably assessed or estimated.

Best Execution Needs to be Updated

Other than Rule 611, the Commission does not generally have a best execution rule.[83] Instead, the Commission relies exclusively on FINRA Rule 5310 to provide the sole regulatory framework for best execution.[84] FINRA Rule 5310 was last amended over a dozen years ago. However, FINRA has offered significant guidance in the intervening years, most notably, in 2015 and 2021.

Substantively, FINRA Rule 5310 is about brokers having processes more than objective, measurable results. These processes are generally focused on periodic, after-the-fact reviews of execution quality, rather than real-time routing and execution decision-making. Even further, in most instances, these reviews and processes may be generalized in nature, rather than on an "order-by-order" basis.[85] Because FINRA Rule 5310 is about process over specific order-by-order decision-making or prices, one senior FINRA official has likened bringing enforcement actions – absent a material misrepresentation by a broker – to "nailing jello to a wall."[86]

FINRA Rule 5310 does not generally provide investors with any specific price or other protections for any specific orders.[87] It doesn't require the broker to do any specific analysis upon receipt of any given order (including looking for the best price — which is ostensibly its duty). It also generally doesn't provide an analysis for the specific customer whose order is

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[83] The Commission proposed Regulation Best Execution, but after receiving robust objections (including from HMA) declined to adopt it. *Regulation Best Execution*, SEC, 88 Fed. Reg. 5440 (Jan. 27, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2022-27644.pdf. See also, Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, Mar. 31, 2023, available at https://www.sec.gov/comments/s7-31-22/s73122-20162822-332274.pdf.

[84] *Rule 5310. Best Execution and Interpositioning*, FINRA, *available at* https://www.finra.org/rules-guidance/rulebooks/finra-rules/5310.

[85] In guidance issued over a decade ago, FINRA declared that "order-by-order review of execution quality is increasingly possible for a range of orders in all equity securities and standardized options." *Best Execution*, FINRA, Reg. Notice 15-46 (Nov. 20, 2015), *available at* https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf. Nevertheless, FINRA has not required either the brokers' routing decisions nor the review of them to be done on an "order-by-order" basis. Similarly, in 2021, FINRA again explained that "order-by-order review of execution quality is increasingly possible for a range of orders in equity securities and standardized options, and it is required for any orders that a member firm determines to execute internally." *Best Execution and Payment for Order Flow*, FINRA, Reg. Notice 21-23 (June 23, 2021), *available at* https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-23.pdf.

[86] Anonymous FINRA official, Meeting with HMA Members (name withheld per advanced agreement).

[87] While guidance suggests that brokers' review of internalized order be conducted on an order-by-order basis, that review is after the fact, and also does not afford any real-time, enforceable protections. See, *Best Execution*, FINRA, Reg. Notice 15-46 (Nov. 20, 2015), *available at* https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

being analyzed for compliance after the fact.[88] In sharp contrast to FINRA Rule 5310, the Commission's Rule 611 acts to protect investors' pricing – in real time – on an order-by-order basis.

In fact, filling this order-by-order gap in best execution was an explicit goal of the Commission when it adopted Rule 611. At that time, the Commission determined that it "cannot merely focus on one type of competition—competition among markets to provide trading services—at the expense of competition among orders. The interests of U.S. long-term investors and listed companies require that the NMS continue to promote both types of competition."[89]

The repeal of Rule 611 would leave investors without any order-by-order pricing protections.

Further, because the repeal would also alter the definition and use of the NBBO, it could lead to firms essentially constructing their own NBBOs and routing based upon those determinations. But because execution quality reporting is still measured off the suddenly inconsistently defined NBBOs (plural), investors would have extreme difficulty in assessing and comparing the performances of their market intermediaries.

FINRA Chief Legal Officer Bob Colby made it clear at the first Commission roundtable that removing Rule 611 would necessitate a review of FINRA Rule 5310.[90] And the Proposal itself expressly recognizes the need to re-examine best execution obligations in lieu of the repeal, but the Proposal does not resolve any of the issues raised.

Notably, within days of the release of the Proposal, FINRA released its own review of FINRA Rule 5310, explicitly citing the potential repeal of Rule 611 and Rule 610(e).[91] We appreciate FINRA's proactive review of its standards, but have no assurances that any changes will be made, or if so, what they will be.

The resolutions of these issues would all require separate, not-yet-identified or detailed actions by FINRA and the Commission (including by approving any changes to Rule 5310).

The Commission has previously attempted to approve rules without fully exploring their impacts or costs, and been rejected by the Court of Appeals for the Circuit for the District of Columbia. For example, in 2021, after years of contemplation, the Commission approved a FINRA filing for the creation of a corporate bond reference database. However, the approval left many open

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[88] We recognize that FINRA has asserted that "internalized" orders should be reviewed by a broker on an order-by-order basis for best execution, but that standard is both after the fact, and does not generally apply to orders that the broker may route away to a third party, even if those are in exchange for payments back to the broker, and even if those payments are determined – in part – based upon the profitability of those orders for the third party. See, Supplementary Material .09(b) to Rule 5310; Best execution, FINRA, Reg. Notice 15-46.
[89] NMS Adopting Release, at 37501.
[90] Remarks of Robert Colby, FINRA, before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 224-225.
[91] *Best Execution*, FINRA, Reg. Notice 26-15 (July 2026), *available at* https://www.finra.org/sites/default/files/2026-07/Regulatory-Notice-26-15.pdf.

questions, not least of which was the future cost to market participants. The Commission argued to the court that this information was separate, and needn't be considered along with the approval of the product itself. The court explicitly rejected this piecemeal approach to regulation, noting that these essential facts needed to be considered as part of the approval process itself, and it remanded the Commission's approval of the database.[92]

Rule 611 provides order-by-order price protection for investors. Both the Commission and FINRA acknowledge its repeal would necessitate further reforms to rules, including FINRA's Best Execution Rule. However, the Proposal does not identify what future changes would be, much less how and when those changes would be implemented, or what financial impacts they would have on investors.

That's not what the Administrative Procedure Act requires.

The Proposal Deteriorates the NBBO Content and Quality

Even though several commenters at the roundtables and experts in meetings with the Commission staff have repeatedly stressed the importance of maintaining the integrity of the NBBO as a universally defined, consistent, market-wide standard, the Proposal essentially dodges this essential responsibility.

The Proposal would dramatically change the content and use of the NBBO, but offers no clear guidance on what constitutes the NBBO.

The definition of the NBBO is theoretically broad because it can be affected potentially by any exchange quote regardless of how it is calculated and how the exchange responds to it, provided that it is approved by the Commission.

In practice, Rule 611 has had the effect of limiting the NBBO to automated and accessible quotations. That has led to industry reliance on the NBBO as a single, reliable price benchmark across exchanges and – by action of the Rule's extension to off-exchange trading centers – nearly all trades.

The Proposal would eliminate the automated quotation definition, but wouldn't describe what is a qualifying quotation for the NBBO. The Proposal does not define what the "new" NBBO would look like in any reasonable terms, leaving market participants (both directly, and through the SIP Operating Committee) to essentially make up their own – perhaps inconsistent – determinations.

Given the vacuum the Proposal creates, exchanges and brokers could reasonably end up essentially making up their own, potentially inconsistent determinations.

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[92] *Bloomberg, L.P. v. SEC*, No. 21-1088 (D.C. Cir. 2022), *available at* https://law.justia.com/cases/federal/appellate-courts/cadc/21-1088/21-1088-2022-08-16.html.

The Proposal states that the "Commission recognizes that the quality of consolidated data, including the [NBBO], is critical to the health of our markets,"[93] but it never discusses what affects the quality of the NBBO today, or how that could change if the distinction between automated and manual quotations is removed from Regulation NMS.

There are several new questions raised by the Proposal, but never addressed, including:

- Could a quotation qualify for the NBBO if it doesn't permit orders to be marked IOC?
- What if it doesn't respond to orders "immediately"?
- What if a trading center doesn't execute orders up to the full size of the quotation?
- Could a quotation qualify for the NBBO if it has an asymmetric delay – such as the delay that the Commission expressly rejected from an exchange[94] – as problematic?
- What if the quotation's execution is subjected to randomized delays, which could give rise to extreme information leakage risks?

The resolution of each of these questions will have profound market-wide impacts, and yet the Proposal doesn't seem to acknowledge their existence.

As a result of the new, profound uncertainty created by the Proposal as to the construction and use of the NBBO, it is extremely likely that:

- the NBBO will no longer be used as a common standard to route orders, or measure execution quality against in a useful, comparable way;
- brokers and market makers will develop routing algorithms that disregard the NBBO, and each of those methodologies may vary by trader and trading center;
- while the NBBO (however inconsistently defined) would continue to be required for various regulatory purposes including compliance with the price improvement and other metrics required by Rule 605, that data will be effectively worthless, as it will have little relevance to how firms route or execute; and
- exchanges will be required to adopt a new set of definitions and uses for the NBBO, and then apply those changes to market participants and their own SIP revenue formula.

There are also more directly competitive impacts as well. For example, without the robust NBBO, the utility of the SIP data feed will immediately and profoundly deteriorate. At the same time, there could be growing dependency on exchanges' proprietary data feeds. However, if the Commission and FINRA don't intervene to ensure brokers survey meaningful liquidity sources for pricing on an order-by-order basis, it is possible that brokers and other trading firms may simply ignore liquidity sources because they chose to prioritize keeping their own data and connectivity costs low, even if it would have materially detrimental effects on their customers' execution pricing.

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[93] Proposal, at 36661n.74.

[94] See, *Order Disapproving Proposed Rule Change To Introduce a Liquidity Provider Protection Delay Mechanism on EDGA*, SEC, 85 Fed. Reg. 11426 (Feb. 27, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-02-27/pdf/2020-03915.pdf.

The Commission must more directly address the broad implications of its proposed revisions to the content, quality, consistency, and utility of the NBBO. None of these issues are materially identified, much less analyzed, in the Proposal.

The Commission Heavily Relies Upon a Handful of Unrepresentative Firms Seeking to Profit At the Expense of Investors by Making Stock Trading More Like Digital Asset Trading

In its attempt to justify the proposed repeal of Rule 611, the Commission frequently cites the complaints of a handful of market intermediaries, such Robinhood.[95] Market intermediaries supporting the repeal of Rule 611 and Rule 610(e) are not reasonable representatives of, or advocates for, investors.

Some of them have very long, disappointing regulatory histories.

Robinhood, for example, has settled several significant actions by regulators, including violating its best execution obligations, providing false and misleading information to investors, filing to supervise and maintain technology critical for customers, failing to exercise even basic due diligence for options accounts, not reporting properly to the Consolidated Audit Trail, paying "influencers" with misleading posts, failing to maintain basic clearing systems, failing to provide essential information for blue sheet requests, failing to report customer complaints, and failing to maintain and conduct basic anti-money laundering procedures.[96]

Separately, to the extent that there has been comparable data over the years, Robinhood's unusually high receipt of payment for order flow from its market makers has stood out from its peers, as has its inferior execution quality. Now, it appears that a firm that has repeatedly

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[95] Robinhood was directly cited 23 times in the Proposal. For example, the Proposal cites to Robinhood that "Rule 611 imposes increased costs on market participants." Proposal, at 36722n.690. Oddly, the additional "costs" clearly aren't the costs of connecting to exchanges, as Robinhood was not a member of any exchange for most of its existence – something which gave rise to significant customer disputes during the memestock frenzy.

[96] *In the Matter of Robinhood Financial, LLC*, Financial Industry Regulatory Authority Letter of Acceptance, Waiver, and Consent, No. 2017056224001, Dec. 19, 2019, *available at* https://www.finra.org/sites/default/files/2019-12/robinhood-awc-121919.pdf; *In the Matter of Robinhood Financial, LLC,* Financial Industry Regulatory Authority Letter of Acceptance, Waiver, and Consent, No. 2020066971201, June 22, 2021, *available at* https://www.finra.org/sites/default/files/2021-06/robinhood-financial-awc-063021.pdf*; In the Matter of Robinhood Financial, LLC and Robinhood Securities, LLC,* SEC, Admin. Proc. File No. 3-22405, Jan. 13, 2025, *available at* https://www.sec.gov/files/litigation/admin/2025/34-102170.pdf; *In the Matter of Robinhood Financial, LLC and Robinhood Securities, LLC*, Financial Industry Regulatory Authority Letter of Acceptance, Waiver, and Consent, No. 2019060756501, Mar. 25, 2025, *available at* https://www.finra.org/sites/default/files/2025-03/robinhood-AWC-030725.pdf.

chosen to put its financial best interests ahead of its customers, the markets, and regulators has been platformed as an authority on investor protection and market integrity by the Commission.

We suspect strongly that these intermediaries simply want the US equity markets to trade more like the less-regulated digital asset markets. And that makes sense for them. In the digital asset markets, the broker or venue an investor chooses can have dramatic consequences on the quality of the investor's execution. Prices for even widely traded digital assets, like Bitcoin, may vary materially from trading center to trading center. And while brokers and trading centers may arguably have common law duties of best execution (under principal-agent fiduciary principles), trade-throughs are common and severe – leading to outsized profits for intermediaries at the direct expense of investors.

Robinhood's recent quarterly earnings report demonstrates that the profitability in trading digital assets exceeds – by several orders of magnitude – the profitability in trading US equity securities, per dollar traded.[97]

For example, Robinhood's equity notional values traded were reportedly $956 billion, which generated about $129 million in transaction-based revenues. By contrast, Robinhood's crypto notional values traded were reportedly $40 billion, which generated about $100 million in transaction-based revenues.[98] That means that, per investor dollar traded, Robinhood made nearly 20 times more transaction-based revenues for crypto than it did for equities trades.

Removing Rule 611 would allow Robinhood and other brokers and market makers to make digital asset-like margins and profits on equity securities – decades after Rule 611 made it all-but-disappear. The Commission should protect investors and market efficiencies, and reject these arguments.

The Proposal Fails to Appropriately Analyze Alternatives to Repeal

The Commission's and Chairman's stated primary objections with Rule 611 – its (1) purported support for small, unnecessary exchanges, and the related costs for market participants and (2) purported negative impact on very large institutional investors seeking to execute large trades – are easily addressed with narrow, tweaks to the existing rule.

In fact, then-ITG executive Jamie Selway suggested the Commission consider three actions to address these exact concerns with Rule 611's impact in 2015. Specifically, Mr. Selway suggested:

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[97] Press Release, *Robinhood Reports Second Quarter 2026 Results*, Robinhood, July 29, 2026, *available at* https://investors.robinhood.com/news-releases/news-release-details/robinhood-reports-second-quarter-2026-results.

[98] Robinhood, *Earnings Presentation Second Quarter 2026*, July 29, 2026, at 14, *available at* https://investors.robinhood.com/static-files/f5aa8c24-cd37-4a94-9169-cd04759e02a1.

- a threshold in market share for a market center before its quotations would be protected, such as 1%;
- a block exemption to permit "large trades above a certain size, such as 10,000 shares or $200,000 in value, [to] execute without triggering an obligation to protect quotations at superior prices;" and
- "repeal the prohibition of locked markets under Rule 610(d) and lower the access fee cap under Rule 610(c) from three cents per hundred shares to one cent per hundred shares."[99]

As an alternative to these targeted reforms, Selway suggested that the Commission could repeal Rule 611, but noted that "Rule 611 is a proxy for best execution," and if it was removed, "the industry would benefit from improved standards for best execution, as well as increased disclosure relating to institutional order handling."[100]

If the Commission believes that exchanges with small volumes should not have protected quotations, it should explain, in detail, why, and it should meaningfully identify a potential cutoff in market share (as many commenters have). If the Commission is concerned about market fragmentation, then its concerns with Rule 611 are clearly misplaced. The rule, by definition, pulls trading centers together through a standardized pricing regime. The repeal would obliterate that price linkage, permitting executions at even more venues with even further-from-market prices.

The Commission's stated concerns with fragmentation are facially inconsistent with its separate initiatives for tokenization of equities outside of the traditional Regulation NMS framework. As contemplated by the Commission (and permitted outside of the US), tokenization without direct linkages to the underlying assets has been dramatically fragmenting impacted markets, creating significant volatility and liquidity risks for investors.[101] That is decidedly and unequivocally a push towards greater fragmentation, not less.

If the Commission is concerned with exchanges' data and connectivity fees, then why is it not directly addressing them through the exercise of its Exchange Act powers to ensure those costs are (1) reasonable, (2) equitably allocated, (3) non-discriminatory, and (4) not undue burdens on competition? The Commission did not consider this basic alternative mechanism to reduce market data fees, even though it far more directly addresses the Commission's stated concern than repealing Rule 611.

If the Commission is concerned that some very large institutional investors might be subjected to higher trading costs because of the operation of Rule 611, then it must explain – precisely – the facts underlying the claim. And with those facts in hand, explain why a block trading

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[99] Transcript of the May 14, 2015 Meeting of the EMSAC, SEC, at 115, *available at* https://www.sec.gov/spotlight/emsac/emsac-051315-transcript.txt.
[100] Id., at 116.
[101] Remarks of Peter Haynes before the Roundtable on Trade Through Protection, SEC, Sept. 16, 2025, Transcript, at 42, *available at* https://www.sec.gov/files/Trade_Through_Prohibitions_Roundtable_Transcript.pdf.

exemption wouldn't or couldn't work as well. Again, many commenters, including HMA, have long suggested a reasonable block trading exemption.[102]

Today, institutional investors, including HMA members, use order routing strategies – including ISOs – to effectively mitigate the perceived negative impacts claimed in the Proposal. While we do not believe any exemption is essential, a simple block trading exemption could be readily constructed that would preserve the Rule's general price protections across all trading centers for all investors, while selectively allowing very large institutions to, on rare occasions, essentially opt out for some of their very large, rare trades. This exemption should be conditioned on a clear "opt-out" determination by the investors on an order-by-order basis, and accompanied by enhanced execution reporting on an execution-by-execution basis.

Lastly, we agree with the reduction in the transaction fee cap, as we believe that it distorts order routing behavior. The Commission adopted a rule to make that change, but has since delayed its implementation. The Commission has not analyzed in this Proposal the impact of simply allowing its own other rule change to go into effect. That's a peculiar omission, as it remains clearly directly relevant to this discussion, as Mr. Selway explained over a decade ago.

The Proposal doesn't meaningfully consider any of these less profound alternatives, despite their popularity amongst diverse sets of equities trading market participants. It must.

Conclusion

Two decades ago, the agency implemented a slew of stock trading rules. Nearly overnight, stock trading became far more competitive and efficient. Institutional and retail investors saved billions of dollars per year in trading on- and off- exchanges.

Now, armed with few relevant facts and a facially one-sided analysis, the Commission has proposed to repeal the rules at the heart of those reforms. That's both bad policy and inconsistent with the law.

The Proposal should be rescinded or materially revised and reproposed.

[102] That said, we also note that even this exemption could give rise to abuses, as we saw prior to the adoption of Rule 611 for trading in NYSE-listed stocks that were traded in blocks.

If the Commission seeks to actually address its claimed concerns with market fragmentation, complexity, and costs, we urge the Commission to:

- stop delaying the implementation of already approved tick size and transaction fee changes;
- improve reviews and considerations of exchange rule filings (including those for market data and connectivity);
- revise Regulation ATS; and
- level the playing field between on- and off-exchange market centers.

Respectfully submitted,

Christopher Nagy, Research Director

EXHIBIT 1

HMA | HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

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.

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[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]

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[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:

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[6] See Meeting Memorandum, Chris Nagy meeting with the SEC Division of Market Regulation, Joe Hall, Counsel to Chairman Donaldson, and Susan Ameel, 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.

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[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.

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[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

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[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-advisor.
[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

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[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&currentPub=true&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

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[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

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[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).

EXHIBIT 2

HMA | HEALTHY MARKETS ASSOCIATION

A MEMBER ORGANIZATION

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;

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[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:

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[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.

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[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:

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[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

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[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 Rule[17], 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.

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[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

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[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

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[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.*