

COMMITTEE ON CAPITAL MARKETS REGULATION

August 17, 2026

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

VIA ONLINE PORTAL

Re.: *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS*
(File No. S7-2026-20)

Dear Sir or Madam:

The Committee on Capital Markets Regulation (the “**Committee**”) appreciates the opportunity to comment on the proposed rule of the Securities and Exchange Commission (the “**SEC**”), *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS* (the “**Proposal**”).¹

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-seven leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

The Proposal would rescind Rule 611 of Regulation NMS (the “**trade-through rule**”), which generally prohibits the execution of trades at prices worse than the best price displayed on a national securities exchange.² The trade-through rule is intended to encourage market participants to publicly display quotes on exchanges by prioritizing the best-priced quotes for execution and thereby to promote displayed liquidity in the U.S. equity market.³ Quotes that are not publicly displayed are executed in the “dark,”⁴ although the price and size of the trade are reported after execution.⁵ Studies have generally found that greater public display of quotations improves price

¹ SECURITIES AND EXCHANGE COMMISSION, *The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS*, 91 FED REG 36,656 (Jun. 17, 2026), <https://www.federalregister.gov/documents/2026/06/17/2026-12163/the-trade-through-rule-and-locked-and-crossed-markets-provisions-of-regulation-nms> (the “**Proposal**”).

² Proposal at 36,658.

³ *Id.* at 36,657-8.

⁴ *Id.* at 36,663.

⁵ FINRA, *Rule 6380A*, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6380a> (last visited Aug. 3, 2026).

efficiency and price discovery.⁶ The trade-through rule is also intended to supplement broker-dealers' obligation to seek the best available execution terms for customers.⁷

The Proposal claims that rescinding the trade-through rule would benefit the U.S. equity market, for three main reasons. First, it contends that the rule has failed to enhance displayed market liquidity as intended.⁸ Second, it argues that the trade-through rule has incentivized the proliferation of an excessive number of exchanges, fragmenting volume and increasing trading costs.⁹ Third, it asserts that the trade-through rule is no longer needed to ensure investors obtain the best prices, because advances in order routing capabilities allow broker-dealers to more consistently identify the best execution terms across multiple trading venues.¹⁰

The Proposal would also rescind Rule 610(e) of Regulation NMS, which prohibits trading venues from displaying “locked” quotes – where the best offer to buy (“**bid**”) equals the best-priced offer to sell (“**ask**”) – and “crossed” quotes – where the best bid exceeds the best-priced ask or the best ask is below the best-priced bid (the “**locked/crossed prohibition**”).¹¹ The SEC implemented the locked/crossed prohibition to help ensure that the national best bid and offer (“**NBBO**”) provides a reliable benchmark for order routing and execution decisions.¹² However, the Proposal claims that the U.S. equity market has become sufficiently interconnected to function without such a prohibition and that rescinding it would reduce unnecessary regulatory complexity.¹³

Our discussion focuses primarily on the trade-through rule because it is a central aspect of the current equity market regulatory structure. Our letter proceeds in three parts. Part I briefly provides background on U.S. equity market structure and the policy rationale underlying the trade-through rule. Part II then summarizes the Proposal's rationale for rescinding the trade-through rule. In Part III, we evaluate the Proposal's potential impact on equity market structure and investors. We do not oppose the rescission of the trade-through rule in principle. However, because the trade-through rule is a foundational component of the current equity market regulatory framework, its rescission raises fundamental issues for U.S. equity market structure that the SEC must address. These issues include: (1) evidence that the U.S. equity market is already highly efficient, with lower trading costs than other major jurisdictions, and that competition among trading venues can have beneficial effects on market quality; (2) the potential unintended consequences of rescission, including changes to the composition and reliability of the NBBO, more frequent trade-throughs, reduced displayed liquidity, and increased off-exchange trading; (3) other rules that must be addressed to effectively address unnecessary trading venue proliferation; (4) the implications of

⁶ See, e.g., Amy K. Edwards et al., *The Effect of Hidden Liquidity: Evidence from an Exogenous Shock*, SSRN Working Paper (Dec. 19, 2024), <https://dx.doi.org/10.2139/ssrn.5064340>.

⁷ Proposal at 36,668.

⁸ *Id.*

⁹ *Id.* at 36,666.

¹⁰ *Id.* at 36,668.

¹¹ *Id.* at 36,670.

¹² *Id.* at 36,681.

¹³ *Id.* at 36,671.

rescission for the broader regulatory framework, including rules governing best execution, execution-quality reporting, short sales, and market data; and (5) whether a minimum trading-volume threshold for protected quotations could achieve the Proposal’s objectives without some of the potential costs of rescission.

I. Background

The U.S. equity market is characterized by competition among multiple types of trading venues. The principal categories are national securities exchanges, alternative trading systems (“ATs”), and broker-dealers that execute customer orders against their own inventories. Currently, there are 18 national securities exchanges, which execute approximately 50% of U.S. equity trading by share volume.¹⁴ There are also approximately 225 broker-dealers¹⁵ that account for approximately 40% of trading volume and 33 ATs¹⁶ that account for approximately 10% of trading volume.¹⁷ Together, these exchanges, ATs, and broker-dealers compete for investor order flow, reflecting the SEC’s longstanding objective of promoting competition among trading centers.

The existence of multiple competing execution models creates the possibility that orders routed to one venue may be executed at a worse price than a quotation displayed on another venue. This raises two important policy considerations. First, market participants have less incentive to publicly display competitive quotations to buy and sell shares if those quotations may be ignored. Second, investors may not receive the best publicly displayed price for their orders if their orders are not routed to the venue displaying the best quotation (a “trade-through”).

In 2005, the SEC sought to address these concerns by adopting the trade-through rule. The trade-through rule requires all exchanges, ATs, and broker-dealers to “establish, maintain, and enforce written policies and procedures” reasonably designed to prevent the execution of an order at a price that is inferior to any “protected quotation.”¹⁸ A “protected quotation” is the best quotation publicly displayed on any national securities exchange (i.e., the highest bid and lowest ask across all exchanges).¹⁹

The trade-through rule thus, in practice, requires trading centers to monitor quotations displayed on all exchanges before executing an order. If an exchange or AT receives an order for execution, but another exchange displays a better price, then the policies and procedures of the exchange or AT must prohibit the execution of that order and must either route the order to the other exchange or otherwise avoid executing the order at the inferior price. Similarly, broker-dealers must review

¹⁴ *Id.* at 36,691. See also CBOE, *U.S. Equities Market Volume Summary*, <https://www.cboe.com/markets/us/equities/market-statistics> (last visited Aug. 17, 2026).

¹⁵ Proposal at n. 280.

¹⁶ *Id.* at 36,691.

¹⁷ CBOE, *2025 U.S. Equities Year in Review* (Jan. 26, 2026), <https://www.cboe.com/insights/posts/2025-u-s-equities-year-in-review>.

¹⁸ Proposal at 36,662.

¹⁹ *Id.* at 36,663. Quotes posted on FINRA’s alternative display facility (“ADF”) are also “protected quotations.” However, there are currently no quotes displayed on the ADF.

the best-priced quotes on all exchanges and must have policies and procedures that prohibit the execution of customer orders against their own inventory at prices inferior to the best publicly displayed quotation on an exchange. As a result, market participants generally must maintain connectivity to, and monitor quotations displayed by, all markets capable of displaying protected quotations. This effectively links competing execution venues by ensuring that protected quotations displayed on one market generally cannot be ignored by another.

The trade-through rule also complements broker-dealers' duty of best execution.²⁰ The duty of best execution derives from common law agency principles and requires broker-dealers to seek the best reasonably available terms for customer orders, including with respect to price, execution speed, and the size of the order.²¹ The trade-through rule provides a complementary safeguard for investors by imposing an affirmative obligation on trading centers with respect to price, in addition to broker-dealers' duty of best execution.

II. Summary of the Proposal

According to the Proposal, the trade-through rule has failed to achieve its objective of increasing publicly displayed liquidity in the U.S. equity market, noting that the percentage of trading volume that interacts with publicly displayed quotations has declined since the rule was adopted in 2005.²² The Proposal also argues that the trade-through rule has imposed significant costs by contributing to the proliferation of trading venues and increasing the complexity of the current market structure.²³ It reasons that, because trading venues and broker-dealers generally must connect to every exchange to comply with Rule 611, the rule has encouraged the proliferation of smaller exchanges that generate revenue from charging high fees for connectivity and market data despite attracting relatively little trading volume.²⁴ The Proposal cites data indicating that 10 of the existing 18 exchanges each individually accounts for less than 1% of U.S. equity market trading volume.²⁵ The Proposal further argues that Rule 611 increases compliance costs by requiring market participants to continuously monitor protected quotations across markets and limits broker-dealers' flexibility in handling and executing customer orders.²⁶

The Proposal identifies two principal potential benefits of rescinding the trade-through rule. First, it argues that rescission would reduce compliance costs by eliminating the need to continuously monitor protected quotations across markets and route orders to avoid trade-throughs.²⁷ Second, it argues that rescission would increase competition and innovation by allowing broker-dealers

²⁰ *Id.* at 36,668.

²¹ *Id.* at 36,681.

²² *See id.* at n. 40.

²³ *Id.* at 36,659.

²⁴ *Id.* at 36,666.

²⁵ *Id.* at n. 135. *See also* CBOE, *supra* note 14 (As of August 17, 2026, 11 of the existing 18 exchanges each individually accounts for less than 1% of U.S. equity market trading volume).

²⁶ *See id.* at 36,666-7.

²⁷ *Id.* at 36,702-3.

greater flexibility in how they execute and route orders.²⁸ The Proposal reasons that, absent the trade-through rule, trading venues and broker-dealers would no longer be required to connect to every exchange and instead could choose among markets based on fees, speed, or other competitive factors. According to the Proposal, this flexibility “could foster innovation in trading protocols and venue design and increase competition among trading centers and executing brokers.”²⁹

III. Analysis of the Proposal

Part III evaluates the Proposal’s rationale for rescinding the trade-through rule and identifies issues raised by rescission that the SEC should more fully consider as part of its final rule.

1. U.S. equity market structure is highly efficient

U.S. equity market transaction costs are declining and are substantially lower than they were before the implementation of the trade-through rule.³⁰ The average transaction cost for a retail investor in the U.S. equity market from 2016 through 2022 represented 6 basis points (0.06%) of transaction value, versus an average of 104-127 basis points before the trade-through rule was implemented as part of Regulation National Market System (“Reg NMS”).³¹ U.S. equity market transaction costs for institutional investors are also substantially lower than or comparable to those in other major jurisdictions. For example, as of the fourth quarter of 2025, the average transaction cost for institutional investors in the U.S. equity market represented 26.26 basis points of transaction value, compared to 26.21 basis points in the United Kingdom, 26.97 basis points in the rest of Europe, 37.68 basis points in Japan, and 35.21 basis points in the rest of the Asia-Pacific region.³² Notably, these jurisdictions generally have more centralized and less fragmented equity market structures than the United States and do not maintain a trade-through rule comparable to Rule 611.³³ The U.S. equity market structure thus delivers exceptionally good outcomes for investors. A proposal to rescind a core feature of this structure should therefore be supported by an empirical analysis of rescission’s expected benefits and its potential costs.

Moreover, certain academic literature indicates that competition among trading venues improves market quality. For example, O’Hara and Ye (2011) find that greater fragmentation is associated

²⁸ *Id.* at 36,704.

²⁹ *Id.* at 36,665.

³⁰ See Jonathan Brogaard, *Prepared Testimony Before the Subcommittee on Capital Markets of the House Committee on Financial Services* (Jun. 27, 2024), <https://www.govinfo.gov/content/pkg/CHRG-118hhrg56626/html/CHRG-118hhrg56626.htm>.

³¹ See Thomas K. Brown et al., *Anatomy of Trading Costs for Retail Investors: Savings from Off-Exchange Execution* at 27–8, SSRN Working Paper (Jun. 7, 2024), <https://ssrn.com/abstract=3976300>.

³² VIRTU FINANCIAL, *Virtu’s Equity Global Cost Review 4Q2025*.

³³ See, e.g., PROGRAM ON INTERNATIONAL FINANCIAL SYSTEMS, *International Review of Equity Market Structure Regulation: Phase III* at 16 (May 2021), <https://www.pifsinternational.org/wp-content/uploads/2022/08/PIFS-EMS-Phase-III-05.12.2021-1.pdf>.

with lower transaction costs, faster execution, and more efficient prices.³⁴ Haslag and Ringgenberg (2023) similarly find that competition among trading venues improves market quality for large-capitalization stocks.³⁵ Landsman, Pan, and Stubben (2024) find that competition among trading venues improves pricing efficiency, which allows public companies to respond more efficiently to economically valuable opportunities.³⁶ Indeed, a 2021 study by the Program on International Financial Systems found that equity markets with greater competition among trading venues generally exhibit lower transaction costs than highly centralized markets.³⁷

The Proposal does not consider the overall performance of the U.S. equity market compared to other major jurisdictions or the evidence that fragmentation in the form of competition can be beneficial for market quality.

2. The Proposal's potential unintended consequences

We believe the Proposal's rescission of the trade-through rule presents several potential unintended consequences that warrant further consideration.

i. Reducing the reliability of the NBBO as a pricing benchmark

The Proposal does more than eliminate trade-through protection. By rescinding Rule 611 and eliminating the distinction between automated and manual quotations, it also changes which quotations may be incorporated into the NBBO. Under the current framework, Rule 611 effectively performs a gatekeeping function by limiting protected quotations in practice to those that satisfy minimum standards of accessibility and automatic execution.³⁸ As a result, the NBBO today represents not merely the best displayed prices, but the best displayed prices that market participants generally can access immediately.

The Proposal would remove these gatekeeping requirements without reestablishing the quotation standards that make the NBBO a transparent and reliable benchmark. As a result, quotations that are not immediately executable, or that are subject to intentional access delays, discretionary cancellation, or other limitations, will nevertheless become part of the NBBO. The Proposal does not fully evaluate the implications of this change for the integrity and usefulness of the NBBO as the central pricing benchmark for U.S. equity markets.

The NBBO serves functions beyond Rule 611. It is a central reference point for best execution, execution-quality reporting, customer disclosures, market data dissemination, and numerous SEC

³⁴ Maureen O'Hara and Mao Ye, *Is Market Fragmentation Harming Market Quality?* 100(3) JOURNAL OF FINANCIAL ECONOMICS 459 (2011).

³⁵ Peter Haslag and Matthew C. Ringgenberg, *The Demise of the NYSE and Nasdaq: Market Quality in the Age of Market Fragmentation*, 58(7) JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS 2753 (2023).

³⁶ Wayne R. Landsman, Jing Pan, and Stephen Stubben, *Equity Market Fragmentation and Capital Investment Efficiency*, 70(7) MANAGEMENT SCIENCE 4381 (2024).

³⁷ PROGRAM ON INTERNATIONAL FINANCIAL SYSTEMS, *supra* note 33.

³⁸ Proposal at 36,658.

and SRO rules.³⁹ If quotations that are not immediately accessible or executable become part of the NBBO, the reliability of that benchmark, and the operation of the rules that depend upon it, will be affected. The definition of the NBBO must be uniform, because it is a basic and critical component of equity market infrastructure.

The SEC should therefore further consider how rescinding Rule 611 and eliminating the distinction between automated and manual quotations would affect the composition and function of the NBBO. In particular, the SEC should consider whether additional standards should continue to govern which quotations are eligible to become part of this central market benchmark, such as by requiring that markets contributing quotations to the NBBO provide immediately accessible, firm quotations and offer fair and impartial access to those quotations.

ii. Increased trade-throughs and reduced displayed liquidity

As described above, the trade-through rule was adopted to encourage market participants to publicly display quotations by protecting the best displayed prices from being bypassed.⁴⁰ If those quotations no longer receive such protection, market participants may have weaker incentives to display liquidity on exchanges, particularly where orders can instead be executed internally or on other trading venues without interacting with the best publicly displayed quotation. Indeed, trade-throughs were common before implementation of the trade-through rule and dramatically declined following its implementation.⁴¹

According to the Proposal, U.S. equity market structure has sufficiently modernized in recent decades that the trade-through rule is no longer necessary as broker-dealers can avoid trade-throughs when doing so would increase transaction costs for investors.⁴² However, recent market evidence indicates otherwise. In November 2025, the SEC changed the definition of “protected quotations” for which trade-throughs are effectively prohibited. Prior to November 2025, only 100 share orders (or larger) were protected but the SEC lowered that threshold to 40 share orders for certain higher priced stocks.⁴³ As a result, quotations of 40 to 99 shares that had previously been unprotected became protected under Rule 611.

The Proposal’s economic analysis compares trade-through rates for newly protected orders before and after the change, finding that trade-through rule protection substantially reduced trade-through rates. For affected stocks, the off-exchange trade-through rate fell from 12.6% to 0.2% for 40-

³⁹ See, e.g., FINRA, *Rule 5310: Best Execution and Interpositioning*, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5310>; SECURITIES AND EXCHANGE COMMISSION, *Market Data Infrastructure*, 86 FED. REG. 18596 (Apr. 9, 2021), <https://www.federalregister.gov/documents/2021/04/09/2020-28370/market-data-infrastructure>; *infra*, notes 57-66.

⁴⁰ Proposal at 36,657-8.

⁴¹ SEC DIVISION OF TRADING AND MARKETS, *Memorandum Re: Rule 611 of Regulation NMS* (Apr. 30, 2015), <https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf>.

⁴² See Proposal at 36,667.

⁴³ *Id.* at 36,683 (describing the Market Data Infrastructure Rules’ tiered round-lot definition, effective November 3, 2025).

share trades.⁴⁴ On-exchange trade-through rates also fell from 1.6% to 0.5% for 40-share trades.⁴⁵ Unaffected stocks experienced no comparable decline, supporting the conclusion that the reductions resulted from the extension of trade-through protection.⁴⁶ These results show that when quotations became protected, trade-through rates declined across all types of trading venues.

As the Proposal observes, greater competition among liquidity providers and advances in order routing capabilities that have emerged since the implementation of Rule 611 may mitigate the effects of rescission.⁴⁷ The Proposal should nonetheless consider the implications of these findings for whether trade-throughs would increase if the trade-through rule is rescinded and how the elimination of the trade-through rule's protections would impact investor transaction costs.

iii. Increased off-exchange trading and effects on price discovery

As we noted earlier, only approximately 50% of stock market volume is publicly displayed on an exchange, with the remainder occurring primarily through wholesalers and ATSS.⁴⁸ Because the trade-through rule protects the best publicly displayed quotations on exchanges, it creates an incentive for market participants to interact with displayed exchange liquidity even where orders ultimately execute elsewhere.

Rescinding the rule could alter these incentives. To the extent that broker-dealers are no longer required to account for protected quotations displayed on exchanges, a greater share of order flow may be executed internally or through other off-exchange venues. A decline in publicly displayed trading interest could, in turn, reduce displayed liquidity, widen quoted spreads, and diminish the quality of the price discovery process. The Proposal acknowledges the possibility that rescission could reduce displayed liquidity and widen spreads but does not attempt to estimate the magnitude of these effects.⁴⁹ The SEC should engage in further analysis to understand the effects of the Proposal on internalization rates before proceeding with the Proposal.

3. Other regulatory incentives would continue to drive venue proliferation and require broad market connectivity

The Proposal contends that the current U.S. equity market structure includes a number of exchanges with relatively little trading volume that market participants would not otherwise connect to absent the trade-through rule.⁵⁰ It concludes that rescinding the rule would allow market participants to discontinue connections to such exchanges, thereby reducing unnecessary connectivity costs and improving market efficiency.⁵¹ We agree with the Proposal's objective of

⁴⁴ *Id.* at Table 9 (Panel B).

⁴⁵ *Id.* at Table 9 (Panel A).

⁴⁶ *Id.* at Table 9 (Panel B) (rows for "Round-lot change: None").

⁴⁷ *Id.* at 36,667.

⁴⁸ *Id.* at 36,701.

⁴⁹ *See id.* at 36,705.

⁵⁰ *See id.* at 36,691.

⁵¹ *See id.* at 36,729.

reducing inefficient exchange proliferation. To the extent the current regulatory framework encourages the creation or persistence of trading venues that would not be economically viable absent regulatory requirements, reform could simplify U.S. equity market structure by reducing complexity and connectivity costs that do not meaningfully improve trading outcomes.

However, we are concerned that rescinding the trade-through rule alone may not achieve these objectives, as other aspects of the regulatory framework may continue to create economic incentives for the creation and persistence of such exchanges and broader market connectivity.

First, current regulatory guidance on the scope of broker-dealers' duty of best execution is unclear as to whether that duty requires broker-dealers to connect to smaller exchanges that rarely display the best prices even if the broker-dealer reasonably concludes that accessing those trading venues does not support its overall execution quality.⁵² Broker-dealers may thus continue connecting to every exchange notwithstanding rescission of the trade-through rule. The SEC should therefore coordinate with FINRA to clarify that the duty of best execution does not require connectivity to every exchange and is instead satisfied by a broker-dealer's disclosure to its customers of its routing policies that are based on overall execution quality.

Second, Rule 603(c) of Regulation NMS (the "**Vendor Display Rule**") currently requires vendors that provide market participants with access to consolidated quotation information from equity market trading venues to include quotations from all exchanges regardless of volume.⁵³ As a result, vendors cannot exclude quotations from smaller exchanges based on limited trading volume or customer demand, which may continue to create demand for market data from those exchanges even if the trade-through rule is rescinded.

Another factor is the current methodology for allocating Securities Information Processor ("**SIP**") revenues, which rewards both executed trading activity and displayed quotations.⁵⁴ As a result, exchanges may generate meaningful revenues from displayed quoting activity even where they attract relatively little trading volume. The SEC should therefore consider revising the SIP revenue allocation methodology to place greater weight on executed trading activity relative to quoting activity and to only reward quotations that meaningfully contribute to the market by improving the NBBO or that result in an execution. Such changes would more closely align SIP revenue allocations with economically meaningful trading and quoting activity and could reduce the incentives supporting the creation and persistence of low-volume exchanges. Without addressing these incentives, rescission of Rule 611 alone may not materially reduce venue proliferation.

⁵² See *id.* at 36,723. See also FINRA, *Regulatory Notice 26-15: FINRA Requests Comment on Modernizing FINRA's Best Execution Guidance* (Jul. 24, 2026), <https://www.finra.org/rules-guidance/notices/26-15>.

⁵³ 17 CFR § 242.603(c).

⁵⁴ Proposal at 36,699-700.

Similarly, quotations displayed through FINRA’s Alternative Display Facility (“ADF”) are eligible to participate in SIP revenue allocations.⁵⁵ Although the ADF is currently dormant,⁵⁶ rescission of Rule 611 could increase the attractiveness of displaying quotations through the ADF while avoiding certain regulatory obligations applicable to national securities exchanges. To the extent market participants seek to display quotations through the ADF to participate in SIP revenues, rescission could preserve—or potentially shift—the economic incentives supporting additional displayed trading venues. A proliferation of ATSs quoting through the ADF could also result in quotations from those venues becoming part of the NBBO, while leaving unclear when other market participants would be expected to connect to and access those quotations, thereby working against the Proposal’s objectives of reducing market complexity and compliance costs. The Proposal does not evaluate this possibility.

Accordingly, if the SEC’s objective is to reduce unnecessary venue proliferation, it should consider whether other aspects of the current regulatory framework continue to create economic incentives for new trading venues, independent of Rule 611. Addressing Rule 611 without also evaluating these related incentives may therefore produce fewer reductions in market complexity and connectivity costs than the Proposal anticipates.

4. The Proposal should address the broader regulatory framework

The trade-through rule forms part of a broader regulatory framework governing order routing, market data, execution quality, and market transparency. Accordingly, rescinding Rule 611 may have implications extending well beyond the prevention of trade-throughs. While the Proposal acknowledges that conforming changes to certain SEC and SRO rules may ultimately be necessary, it does not fully evaluate how rescission would affect the operation of these related rules or whether additional regulatory changes may be appropriate. We believe these broader interrelationships warrant further consideration. These include, but are not limited to:

- **Rule 605 Execution Quality Reports.** Rule 605 relies extensively on the NBBO as the benchmark for measuring execution quality.⁵⁷ If rescission of Rule 611 fundamentally changes the composition or reliability of the NBBO, the SEC should evaluate whether Rule 605 continues to provide meaningful and comparable measures of execution quality.

⁵⁵ FINRA, *Letter to Securities and Exchange Commission Re: Joint Industry Plan; Notice of Filing of the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis* (Release No. 34-936 18) at n. 11 (Dec. 17, 2021), <https://www.finra.org/sites/default/files/2021-12/finra-comment-letter-12-17-2021-s7-24-89-SIP-MDI-Fees-1.pdf>; see also Proposal at 36,694.

⁵⁶ FINRA, *Alternative Display Facility (ADF)*, <https://www.finra.org/filing-reporting/alternative-display-facility-adf> (last visited Aug. 17, 2026) (Currently, there are no active quoting ADF participants).

⁵⁷ 17 C.F.R. § 242.605.

- **Regulation SHO Rule 201.** Rule 201's short-sale price test is based on the national best bid.⁵⁸ If quotations that are not immediately accessible or executable become eligible to establish the NBBO, the operation of Rule 201 may also change in ways the Proposal does not evaluate.
- **Best Execution.** The Proposal assumes broker-dealers will gain greater flexibility to determine which markets to access following rescission.⁵⁹ However, unless the SEC and FINRA clarify the continuing application of broker-dealers' duty of best execution, firms may reasonably conclude that broad exchange connectivity remains necessary. The interaction between Rule 611 and best execution therefore warrants further consideration and coordination. In particular, trade-throughs could complicate regulatory assessments of whether broker-dealers have satisfied their duty of best execution when they execute orders without accessing better-priced quotations displayed on other venues because other execution considerations, such as available size, favored the chosen venue. We also note that the Proposal coincides with FINRA's request for comment on modernizing its best execution guidance.⁶⁰ Given the potential interaction between the Proposal and FINRA's initiative, the SEC and FINRA should coordinate their consideration of these issues.
- **Integrity of the NBBO.** As discussed above, Rule 611 currently performs an important gatekeeping function in determining which quotations receive protected status and therefore comprise the NBBO.⁶¹ The SEC should further evaluate whether additional standards governing accessibility, automatic execution, or quotation quality should continue to apply if the distinction between protected and unprotected quotations is eliminated.
- **SIP Revenue Allocation and the ADF.** The SIPs consolidate quotation and trade data from all national securities exchanges and distribute that data to market participants.⁶² Exchanges receive a share of the resulting market data revenue under a formula that rewards displayed quoting activity even if it does not result in trading volume.⁶³ As a result, some smaller exchanges may continue to be able to generate significant revenue despite attracting relatively little trading volume even absent the trade-through rule. In addition, quotations displayed through the FINRA ADF are also eligible for SIP revenue allocations,⁶⁴ which could encourage ATSS to display quotations through the ADF to obtain a share of SIP revenue. Unless the revenue allocation methodology is revised to better align

⁵⁸ 17 C.F.R. § 242.201.

⁵⁹ Proposal at 36,667.

⁶⁰ FINRA, *supra* note 52.

⁶¹ Proposal at 36,658.

⁶² *See id.* at 36,682.

⁶³ *See id.* at 36,689.

⁶⁴ *See supra* note 55.

compensation with meaningful trading activity, rescinding the trade-through rule alone would not eliminate this incentive for inefficient exchange proliferation.

- **Tick Size.** Rescission of Rule 611 could also affect the operation of Regulation NMS's minimum pricing increment requirements (Rule 612), which limit the prices at which market participants may display quotations.⁶⁵ Because those requirements operate within a market structure in which the best displayed quotations receive trade-through protection, we support the SEC's decision to delay implementation of the recently adopted amendments to Rule 612. The SEC should use this period to evaluate whether those amendments remain necessary in light of the Proposal.
- **Vendor Display Rule.** The Vendor Display Rule currently requires broker-dealers to provide a consolidated display of market data for NMS stocks for which they provide quotation information to customers, which must include the "prices, sizes, and market identifications" of the NBBO and the most recent transaction report disseminated under an effective national market system plan.⁶⁶ The SEC should consider how this requirement would operate following rescission of the trade-through rule, particularly the possibility that a broker-dealer may no longer be required to connect to, or may be unable to access a quotation displayed on, a venue that contributes to the NBBO.

5. The SEC should consider more targeted alternatives

The Proposal identifies several alternatives to complete rescission of Rule 611, including retaining trade-through protection only for quotations displayed on exchanges that satisfy a minimum trading-volume threshold.⁶⁷ The SEC may wish to give further consideration to this and other more targeted approaches as potential means of advancing many of the Proposal's stated objectives while preserving important aspects of the current market structure.

A minimum trading-volume threshold for protected quotations could directly address one of the Proposal's principal concerns by reducing the need for market participants to maintain connectivity to exchanges that contribute little trading activity, while preserving trade-through protection for quotations that contribute meaningfully to price discovery and displayed liquidity. Such an approach could reduce incentives for establishing low-volume exchanges whose principal value derives from regulatory requirements rather than trading activity, while avoiding many of the broader market structure and regulatory hurdles raised by complete rescission of Rule 611. The Proposal asserts that a threshold-based approach would not achieve the same reductions in compliance costs for market participants as complete rescission.⁶⁸ That conclusion, however, does

⁶⁵ Proposal at 36,706.

⁶⁶ 17 C.F.R. § 242.600(b)(14)–(15).

⁶⁷ Proposal at 36,730–31.

⁶⁸ *Id.*

not appear to account for the potential compliance cost increases that complete rescission could create by introducing uncertainty regarding the application of best execution obligations, as discussed above.

Moreover, a threshold-based approach would also be consistent with a recommendation made by the U.S. Department of the Treasury following its comprehensive review of U.S. capital markets in 2017. Treasury recommended that the SEC “consider amending the Order Protection Rule to withdraw protected quote status for orders on any exchange that do[es] not meet a minimum liquidity threshold.”⁶⁹ The SEC’s inclusion of a similar alternative in the Proposal, together with Treasury’s prior recommendation, provides a strong basis for evaluating whether a threshold could address concerns regarding low-volume exchanges without eliminating trade-through protection across the market.

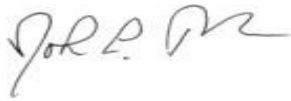
The Committee does not recommend a particular threshold or implementation methodology. Rather, we believe the SEC should more fully evaluate whether a threshold-based approach, or other targeted alternatives identified in the Proposal, could substantially advance its objectives while avoiding many of the potential unintended consequences and implementation issues discussed above.

⁶⁹ U.S. DEPARTMENT OF THE TREASURY, *A Financial System That Creates Economic Opportunities – Capital Markets* (Oct. 2017), <https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

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Thank you for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Professor Hal S. Scott (hscott@capmksreg.org) or its Executive Director, John Gulliver (jgulliver@capmksreg.org) at your convenience.

Respectfully submitted,



John L. Thornton
CO-CHAIR



Hal S. Scott
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