

August 17, 2026

Ms. Vanessa A. Countryman
Secretary
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 No. S7-2026-20)

We appreciate the opportunity to provide comments to the Commission on its proposal to dramatically change how the U.S. equity market operates by permitting market participants to bypass the best prices publicly displayed on an exchange (the “Proposal”).¹

The U.S. equity market is the most liquid and competitive in the world, and has helped to foster groundbreaking companies and technology that have been vital ingredients to our global economic strength. While targeted refinements to market structure merit consideration, a dramatic overhaul is certainly not warranted. And yet, this Proposal contemplates such an overhaul, with the Commission removing a fundamental element of Regulation NMS and risking unintended consequences that it has failed to adequately consider, including a reduction in displayed liquidity, a significant increase in off-exchange trading, and a loss of investor confidence in the fundamental fairness of our markets.

Market structure policy must be carefully designed to facilitate the allocation of capital, support price discovery, and enable companies to raise money efficiently. Instead, this Proposal subjects the world’s preeminent equities market to a poorly considered experiment, with no ability to unwind the changes if negative consequences result. In general, the Commission appears uncertain regarding the broader economic consequences of the Proposal. The claimed financial benefits of approximately \$250,000 per trading day in compliance-related savings are miniscule compared to the more than \$1 trillion average daily notional traded in the U.S. equity market, and the Commission admits that the market-wide adverse consequences may be profound and cannot be reliably measured. Meanwhile, purported justifications are vague and do not withstand scrutiny—for example, eliminating the Order Protection Rule does *not* address the root financial incentives driving exchange proliferation—while the myriad conflicts created with other Commission rules are simply ignored.

Notably, there is little consideration of the impact to retail investors specifically. The re-emergence of significant trade-throughs—an experience the Order Protection Rule ended over two decades ago—will create dissatisfaction and distrust regarding the fairness of our markets, while a less reliable market-wide benchmark price will make it far more difficult for investors to assess execution quality and hold their broker-dealers accountable.

¹ 91 FR 36656 (June 17, 2026), available at: <https://www.govinfo.gov/content/pkg/FR-2026-06-17/pdf/2026-12163.pdf> (the “Proposal”).

Ultimately, less-transparent and less-regulated equities trading venues stand to be the main beneficiaries, at the expense of our lit, public markets. For example, alternative trading systems (“ATSS”) will be able to further exploit their light-touch regulatory framework to capture more market-share from exchanges. In turn, even less-regulated platforms seeking to offer tokenized equities to U.S. investors will be able to divert volume away from the core U.S. market without being required to match the prices available on-exchange. These outcomes are not positive for investors, issuers, or our financial system. We urge the Commission to reconsider this Proposal, including the far less risky alternative of imposing a minimum volume threshold for exchanges to receive protected quote status that was specifically endorsed by the U.S. Treasury Department as recently as 2017.²

² See Capital Market Report, U.S. Department of the Treasury (October 2017) at 65 and 208, available at: <https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

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I. Eliminating OPR Will Harm Investors and Damage U.S. Equities Markets

Over twenty years ago, the Commission adopted the Order Protection Rule as a central component of the Regulation NMS framework that governs our equity markets.³ In doing so, the Commission carefully evaluated empirical data and feedback from market participants, ultimately concluding that the Order Protection Rule “will promote deep and stable markets that minimize investor transaction costs” and “will give investors, particularly retail investors, greater confidence that they will be treated fairly when they participate in the equity markets.”⁴ These reasoned conclusions have proven to be remarkably accurate—in the years following adoption, trade-through rates decreased by more than 95%, saving investors hundreds of millions in the process, and market health improved across all metrics, including displayed liquidity and overall trading volume.⁵ And retail investors, with “greater confidence that they will be treated fairly,” have particularly benefited as the fiercely competitive market structure has resulted in zero trading commissions and superior execution quality.

The Commission now points to that very success as a reason to scrap the rule entirely, asserting that “technologies” and “increases in automation and interconnectivity” “obviate any continued need” for the rule.⁶ That reasoning is backwards. It is like pointing to a healthy orchard as proof that the irrigation system can be shut off, without asking whether the orchard is healthy *because* the irrigation system remains in place. The relevant question is not whether the equity markets have improved since 2005; it is whether they would remain as liquid, competitive, and resilient if the Commission removed a key protection designed to promote displayed trading, liquidity, price discovery, and investor confidence.

The Proposal never answers that question. It offers no persuasive evidence that technology and automation will replace the guardrails created by the Order Protection Rule, or that public markets will continue to function as effectively after market participants are permitted to execute transactions at prices worse than those publicly displayed on an exchange. An agency that reverses a longstanding policy must supply a reasoned explanation for disregarding the facts and circumstances that underlay its prior position; the Proposal supplies none.⁷ Instead, it assumes that the rule’s success has made the rule unnecessary. Below, we set forth key harms to investors and our public markets that will result from eliminating the Order Protection Rule.

³ 70 FR 37496 (June 29, 2005) (“Regulation NMS”).

⁴ *Id.* at 37498.

⁵ See, e.g., Staff Report on Rule 611 of Regulation NMS (April 30, 2015), available at: <https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf>; Angel, James J., Lawrence E. Harris and Chester S. Spatt, “Equity Trading in the 21st Century: An Update,” (June 21, 2013) at 5-10, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1584026.

⁶ Proposal at 36657.

⁷ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (an agency must provide “a more detailed justification” when its “new policy rests upon factual findings that contradict those which underlay its prior policy”).

A. Off-Exchange Trading Will Significantly Increase

To the extent the Commission permits equity transactions to be executed at prices that are *worse* than those publicly displayed on exchanges, it should be no surprise that off-exchange trading is likely to increase.

Customer orders—both retail and institutional—are at particular risk of moving almost entirely off-exchange. While significant internalization (and routing to affiliated ATSs) already occurs today for customer orders, the Order Protection Rule serves as an important backstop that fosters market-wide interaction with customer order flow—anyone can post the most competitive price on an exchange and it cannot be ignored. As a result, retail and institutional orders continue to account for a material portion of on-exchange trading activity.

Without the Order Protection Rule, that will no longer be the case. To illustrate the implications, consider the following example:

- Best offer posted on-exchange at \$10.03 for 100 shares.
- Next best offer posted on-exchange at \$10.05 for 200 shares.
- Customer order to buy received for 200 shares.
- Customer order internalized at \$10.04.

With the Order Protection Rule in place, that example would not be possible, as the order was internalized at a nominal price (\$10.04) that was worse than the best price posted on-exchange. Instead, the customer order would have to be routed to access the \$10.03 quote for 100 shares, leaving 100 shares to then be executed at \$10.05, resulting in an “all-in” price of \$10.04.

Importantly, note that the “all-in” price received by the customer would be exactly the same (\$10.04) in both scenarios—with or without the Order Protection Rule. The key difference is that, without the Order Protection Rule, those providing the best quotes on-exchange are no longer rewarded by receiving an execution and overall on-exchange trading decreases. This underscores that best execution requirements do not, and cannot, serve as a substitute for the Order Protection Rule. In the example above, the customer is not negatively impacted *at all* by the choice to internalize; the negative impacts are solely felt by the on-exchange liquidity provider.

The dramatically increased flexibility to bypass on-exchange quotes is reinforced by the economic incentives broker-dealers have to avoid paying exchange transaction fees when executing customer orders. These considerations will be particularly impactful for institutional orders given their larger average size. In addition, any initiative to revise best execution requirements to provide more flexibility for those executing institutional orders, such as by permitting factors other than price to be prioritized, will only further increase the preferencing of off-exchange venues.⁸

⁸ See Section VI(C) below for a discussion of the Commission’s problematic insistence on considering changes to best execution requirements separately from this Proposal, even though the two are interconnected.

The Commission has failed to meaningfully evaluate the potential likelihood and magnitude of these risks, and how a significant growth in off-exchange trading compared to the current baseline would impact overall market liquidity and efficiency. The reliance on conclusory statements without empirical evidence represents a fundamental omission in the Proposal's economic analysis that must be addressed. That failure is not merely a policy misjudgment—it is a legal defect.⁹

B. Retail Investors Will Be Harmed

The Commission focused particular attention on retail investors when promulgating the Order Protection Rule, stating that it will give them “greater confidence that they will be treated fairly when they participate in the equity markets” and will promote the use of non-marketable limit orders.¹⁰ Now, it simply waves those considerations away, asserting without evidence that the elimination of the Order Protection Rule “may not significantly affect the execution rates of retail non-marketable limit orders.”¹¹

In reality, these smaller-sized displayed quotes resulting from retail non-marketable limit orders are at significant risk of being bypassed, not only when market participants route more orders off-exchange as detailed above, but even when participants elect to trade on-exchange but prioritize size over price. As the Proposal acknowledges, without the Order Protection Rule, exchanges are likely to, for the first time, allow market participants to bypass and trade-through the top-of-book price, thus overriding price-time priority in favor of size priority, as nothing will “force institutional orders to interact with small, dispersed displayed sizes.”¹²

Witnessing displayed limit orders constantly being traded-through—both by on-exchange and off-exchange executions—will cause significant investor confusion and spark concerns about the fundamental fairness of the U.S. equity market. This loss of investor confidence could lead to material negative consequences, including less retail participation in the U.S. equity market, higher spreads as “inside-the-quote” non-marketable limit orders significantly decrease, and increased retail interest in other novel, less-regulated products that do not have the same investor protections as the Commission has mandated for U.S. equities.

C. On-Exchange Liquidity Providers Will Be Harmed

As more customer orders are executed in off-exchange venues, it becomes more challenging for on-exchange market makers to maintain tight displayed quotes, as trading revenues decline and adverse selection increases. That will make it less profitable—and more risky—for market makers

⁹ See *Business Roundtable v. SEC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011); see also *Chamber of Commerce v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005) (the Commission has a “statutory obligation to determine as best it can the economic implications” of its rules).

¹⁰ *Supra* note 4.

¹¹ Proposal at 36688.

¹² Proposal at 36664 and 36686.

to post competitive prices on exchanges. As a result, on-exchange spreads are likely to widen in symbols that are not “tick-constrained,” increasing transaction costs for those trading on-exchange.

It should be of no surprise to the Commission that proposing to eliminate the Order Protection Rule raises serious concerns about negative impacts to on-exchange liquidity providers. Indeed, incentivizing displayed liquidity was a key motivation for implementing the Order Protection Rule over two decades ago, with the Commission concluding that “limit orders are the building blocks of public price discovery and efficient markets” and “[t]he best way to promote market depth and liquidity is to encourage vigorous competition among orders.”¹³ Now, without reasoned explanation, the Commission is reversing course and declaring the Order Protection Rule expendable in its entirety.

Once again, the Commission fails to meaningfully evaluate the impact of the Proposal to on-exchange liquidity providers, including the vicious cycle that could develop—as spreads increase on-exchange, it becomes far more compelling to execute customer order flow off-exchange, increasing adverse selection on-exchange, and further widening spreads.

D. The Proposal Will Erode the Reliability of the NBBO

The Order Protection Rule enables investors to measure execution quality and hold their broker-dealers accountable by setting forth minimum standards, including “immediate and automatic” execution, that displayed quotations constituting the national best bid and offer (“NBBO”) currently satisfy.¹⁴ The elimination of the Order Protection Rule (and the corresponding definition of an “automated quotation”) will remove these accessibility requirements, meaning that a far broader range of displayed quotes could become part of the market-wide NBBO, including:

- (i) exchange quotes that are subject to even more pernicious access delays,¹⁵ minimum resting periods, or other mechanisms designed to favor certain types of market participants over others (including mechanisms heretofore only approved for non-displayed liquidity); and
- (ii) ATS quotes displayed on the FINRA Alternative Display Facility (“ADF”), even if they are subject to pernicious access delays or are otherwise inaccessible to certain market participants.¹⁶

¹³ Regulation NMS at 37501.

¹⁴ Regulation NMS at 37622.

¹⁵ Intentional access delays would no longer have to be considered “de minimis.” Interpretation Regarding Automated Quotations Under Regulation NMS, 81 FR 40785 (June 23, 2016), available at: <https://www.govinfo.gov/content/pkg/FR-2016-06-23/pdf/2016-14876.pdf>.

¹⁶ FINRA Rule 6250 governs display on the ADF and cross-references the definition of an “automated quotation” to establish minimum accessibility standards. However, the Proposal deletes the “automated quotation” definition and FINRA Rule 6250 is expected to be conformed to remove these requirements. See “Alignment of NASD Rules with Regulation NMS,” (November 2006), available at: <https://www.finra.org/sites/default/files/NoticeDocument/p017989.pdf> (“Consistent with the goals articulated by the

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The Proposal does not acknowledge these fundamental changes. Unless the Commission inserts minimum requirements in order for a quote to be part of the NBBO, displayed quotes that are not actually “immediately and automatically” accessible by all market participants will be included. This will create profound implications for a host of rules that use the NBBO as the key benchmark (*see Section IV(B) below for more detail*).

E. Other Asset Classes and Jurisdictions Provide A Cautionary Tale

Other asset classes in the U.S., such as foreign exchange, do not have the concept of a protected quote to drive trading activity onto lit trading venues. Some common market structure features can be observed as a result—customer orders are almost entirely executed off-exchange¹⁷ and lit trading venues have been consistently losing market share.¹⁸ Similar observations can be made about equity markets in other jurisdictions where lit exchanges can be bypassed, leading to concerns about “the overall health and competitiveness” of their capital markets.¹⁹

The Commission must ensure that the U.S. equity market does not proceed down a similar path. Our lit exchanges are crucial in providing the efficient and transparent price discovery that investors and issuers rely upon. Increasing fragmentation and undermining price discovery in our public markets runs counter to the Commission’s regulatory objectives of promoting capital formation and encouraging more companies to go public.²⁰ We respectfully urge the Commission to reconsider before declaring that the Order Protection Rule is no longer a valuable and necessary component of U.S. equity market structure.

Commission in adopting SEC Rule 611, NASD is amending Rule 4300A(e) to specify that an ADF Trading Center must submit automated quotations, as defined in SEC Rule 600(b)(3)”). To make matters worse, the vast majority of ATSs are not subject to fair access requirements either. *See* our longstanding concerns with IntelligentCross’s attempts to display quotes on the ADF at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032.htm>.

¹⁷ *See, e.g.*, The Brilliant World of FX – A Primer, Deutsche Bank Research Institute (March 3, 2026) (“For the largest dealers, internalization now accounts for an estimated 80% or more of major currency pair trades.”).

¹⁸ *See, e.g.*, FX futures momentum challenges primary venues’ pricing role, Risk.net (May 24, 2024), available at: <https://www.risk.net/markets/7959472/fx-futures-momentum-challenges-primary-venues-pricing-role> (“ADV for over-the-counter spot FX traded on the primary venues of EBS Markets and Refinitiv Matching have fallen significantly over the years.”).

¹⁹ *See* <https://www.lseg.com/en/insights/safeguarding-market-integrity-getting-the-uks-equities-consolidated-tape-right> (“We have a classic prisoner’s dilemma, with each market participant relentlessly focused on optimising their own individual outcomes and lobbying regulators for maximum flexibility in how trading occurs (for example, by avoiding lit exchanges). However, when everyone does this, it undermines transparent price formation and weakens the overall health and competitiveness of UK capital markets - leaving everyone worse off in the long run.”). *See also* <https://www.bloomberg.com/opinion/articles/2026-07-03/dark-stock-market-trading-is-doing-a-lot-of-damage-in-europe>.

²⁰ *See, e.g.*, <https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250>.

II. The Proposal Will Not Actually Address Exchange Proliferation

In addition to asserting that the Order Protection Rule is no longer necessary, the Commission suggests that its repeal will reduce exchange proliferation, as “market participants will no longer effectively be required to connect, directly or indirectly, to every exchange, which should reduce the connectivity, market data, routing, and compliance costs associated with such connections.”²¹ However, this justification does not withstand scrutiny.

First, the Commission fails to make a compelling case that enabling firms to disconnect from smaller venues would deliver significant benefits that clearly outweigh the various market-wide risks detailed above. Instead, the Proposal is only able to identify potential market-wide savings of approximately \$250,000 per trading day²² in a market with over \$1 trillion in traded notional per day on average.

Second, the Commission subsequently retreats from this rationale altogether, acknowledging that “we do not anticipate that many disconnections will occur.”²³ This is because simply eliminating the Order Protection Rule does not address the root causes of exchange proliferation nor does it fundamentally reshape how market participants view exchange connectivity. A rationale that the Commission itself disclaims cannot supply the reasoned basis the law requires.²⁴

In order to credibly address these important issues, the Commission should focus on eliminating economic moats that shield uncompetitive trading venues from market forces. The following merit particular mention:²⁵

- **Securities Information Processors (“SIP”) Revenue Allocation.** At the moment, the equities exchanges and the TRFs share in more than \$400 million of SIP revenue per year, which is allocated based on both trade executions and displayed quotations at the NBBO. This has had the effect of subsidizing, and encouraging the entry of, smaller exchanges with little to no market share, as they can immediately earn significant revenue

²¹ Proposal at 36666.

²² The Proposal identified potential annual savings of \$54 million to \$77 million, over ~250 trading days per year. Proposal at 36726.

²³ Proposal at 36724.

²⁴ See *Business Roundtable*, 647 F.3d at 1148-49 (finding it arbitrary and capricious for the Commission to have “inconsistently and opportunistically framed the costs and benefits” of its rule).

²⁵ In addition to the economic subsidies provided to smaller exchanges, best execution plays a role for firms handling customer orders. Without substantive modifications to current FINRA requirements, firms handling customer orders are unlikely to be able to disconnect from specific exchanges. While FINRA has solicited feedback on whether to implement revisions to its best execution requirements, the substance of any such revisions remains unclear. See Section VI(C) below for a discussion of the Commission’s problematic insistence on considering changes to best execution requirements separately from this Proposal, even though the two are interconnected.

Similarly, we note that the Vendor Display Rule will still require firms to purchase market data from each exchange.

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simply by finding a firm to copy displayed quotes on other exchanges (and may offer a revenue share to such firm for doing so).²⁶

Leaving aside the question as to whether it is appropriate for the exchanges to generate a windfall in the hundreds of millions from operating the SIP, the current construct of subsidizing exchanges with little to no trading activity must be addressed. The Commission has the ability to offer amendments to the NMS Plan governing the revenue allocation formula, but has yet to act. Enhancements include (i) increasing the proportion of revenue allocated to executed trades and (ii) only allocating revenue to displayed quotes that result in an execution or that improve the NBBO. The Proposal fails to explain how exchange proliferation can be meaningfully addressed without meaningfully addressing underlying economic incentives.

- **The FINRA ADF.** The Proposal also ignores that removing minimum accessibility standards for displayed quotes constituting the NBBO will incentivize ATs to display quotes on the FINRA ADF, which has not been used for over a decade, since those standards will no longer apply for purposes of the ADF either.²⁷ In doing so, ATs will be able to more directly compete with exchanges for investor orders and will capture a portion of the allocated SIP revenue, all without needing to display quotes that are “immediately and automatically” accessible. Ironically, the Proposal is thus likely to expand the subsidization of smaller venues, resulting in *more* venues that market participants may feel compelled to connect to, rather than fewer.
- **Market Data Costs.** Market data is a key revenue source for exchanges, and thus a key factor in the exchange proliferation witnessed in recent years. The Proposal makes no effort to halt the subsidization of smaller exchanges via market data revenue. For example, we have previously suggested that, until a new equities exchange eclipses a minimum volume threshold (e.g. 2% market share), it should be subject to hard caps regarding the fees charged for quote feeds, cross connects, and sessions.²⁸

Ultimately, the Commission cannot credibly assert that eliminating the Order Protection Rule addresses the root causes of exchange proliferation. Without addressing the incentives detailed above, it is far more likely that venue proliferation actually increases as a result of this Proposal.

²⁶ See Proposal at 36694, FN 480 (“For example, SIP revenue accounted for close to 60% of LTSE’s total revenue in 2024.”).

²⁷ *Supra* note 16.

²⁸ See Citadel Securities, Enhancing Competition and Innovation in U.S. Financial Markets (Apr. 30, 2025) at 10, available at: <https://www.citadelsecurities.com/news-and-insights/enhancing-competition-and-innovation-in-u-s-financial-markets/> (“2025 White Paper”).

III. The Proposal's Economic Analysis Is Fatally Flawed

The Proposal represents a dramatic change to equity market structure that is simply not supported by the economic analysis conducted by the Commission. In particular, even with serious methodological flaws, the empirical analysis contained in the Proposal finds that trade-throughs still persist in today's equity markets when quotes are unprotected, at rates that exceed those in 2005 when the Order Protection Rule was first adopted. In turn, the qualitative assessment of costs and benefits is highly speculative and incomplete, and fails to justify the Commission's decision to remove a key regulatory requirement that has directly contributed to the success of U.S. equity markets. Finally, the economic analysis studiously ignores that this Proposal will facilitate platforms offering tokenized equities to U.S. investors without core investor protections, and the market-wide implications of such a development.

A. The Trade-Through Analysis Significantly Understates the Impact of Eliminating OPR

The central reason cited by the Commission for implementing the Order Protection Rule was to dramatically reduce the number of equity transactions executed at prices *worse* than those publicly displayed on exchanges (a "trade-through"). Prior to its implementation, the Commission found that "[f]or many active Nasdaq stocks, approximately 1 of every 11 shares traded is a significant trade-through,"²⁹ and concluded that this was "inconsistent with basic notions of fairness and orderliness, particularly for investors, both large and small, who post limit orders."³⁰ It is undisputed that the Order Protection Rule has been incredibly successful at achieving this regulatory objective of preventing trade-throughs of protected quotations.

However, the Commission attempts to construct a narrative that the removal of the Order Protection Rule will not result in significantly more trade-throughs in today's equity markets. This claim is not supported by data. The Commission first notes that trade-through rates are only slightly higher during the pre-market and after-hours sessions—even though the Order Protection Rule technically does not apply—as evidence that a strict regulatory requirement is not necessary.³¹ As market participants informed the Commission, though, this is because firms typically have operated as though the Order Protection Rule remains in effect during those sessions.³² This would not be the case if the Order Protection Rule was eliminated.

Next, the Commission points to an analysis it conducted of trade-through rates for odd-lot quotes in high priced symbols, given that the Order Protection Rule does not apply to odd-lots. Unsurprisingly, the Commission finds that off-exchange activity frequently traded-through these odd-lot quotes, with trade-through rates varying from 11.5% to 35.6% depending on order size.³³ These trade-through rates are in fact *higher* than those that deeply troubled the Commission back in 2005 and led to the promulgation of the Order Protection Rule. Accordingly, the analysis

²⁹ Regulation NMS at 37502.

³⁰ *Id.*

³¹ Proposal at 36688.

³² Proposal at 36688, FN 408.

³³ Proposal at 36711, Table 5.

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underscores the importance of retaining the requirement.³⁴ The Commission's analysis also confirms that trade-through rates of protected quotes are essentially zero.³⁵

Perhaps due to realizing that its empirical analysis actually undermines the Proposal, the Commission confusingly attempts to minimize its own findings by suggesting that "odd-lot trade-through rates decreased as the size of the transaction increased, suggesting that trade-through rates of unprotected round lots would be lower than the estimates in the analysis."³⁶ But this assertion appears to be an artifact of several critical flaws in the Commission's methodology that result in trade-through rates being significantly understated. The Commission's observation therefore exposes flaws in its analysis rather than supporting repeal.

Assume, for example, that a retail investor posts an odd-lot quote to sell 20 shares at \$10 which is the best displayed offer on-exchange. From the retail investor's perspective, this odd-lot quote is traded-through if an execution occurs in the same symbol at a higher price without the displayed quote being lifted. But this is not what the Commission's empirical analysis considers; instead, the Commission's methodology imposes several flawed conditions:

- First, the Commission's methodology requires that "the trade quantity must be no larger than the size of the better-priced quote."³⁷ Therefore, if a 30-share order trades-through the 20 share odd-lot quote (i.e. it is executed at a higher "all-in" price without lifting the 20 share odd-lot quote), it would not be included in the Commission's calculation of trade-through rates, even though this is precisely the type of order routing change that will result from the Proposal.³⁸
- Second, the Commission's methodology only looks at trades of specific sizes—"1, 5, 10, 20, 40, and 100"³⁹—thus excluding the vast majority of trades from the analysis altogether, including larger orders greater than 100 shares that are much more likely to trade-through odd-lot quotes (since they are more likely to be executed at an "all-in" price that is worse than the best available odd-lots).

³⁴ It is worth highlighting that the occurrence of a trade-through does not at all suggest that the customer order being filled did not receive best execution. In contrast, the "all-in" price provided to the customer order being filled can reflect and incorporate all available quotes in the market—including odd-lots—without needing to lift any or all of those quotes. Therefore, the investor negatively impacted by a trade-through is the investor who posted the displayed quote, rather than the investor whose order is being filled. *See also* Section I(A) above.

³⁵ Proposal at 36711.

³⁶ Proposal at 36689.

³⁷ Proposal at 36708.

³⁸ By only considering an odd-lot quote to be traded-through if the size of that single quote was sufficient to fill the entire incoming order, the Commission ignores how the Order Protection Rule protects displayed quotes. Namely, the Order Protection Rule ensures that, for example, before a party can buy 5000 shares at \$10.01, they must first take out any protected quote *of any size* at a better price, including a customer order to sell 100 shares at \$10.00. The Order Protection Rule does not limit the protection of the 100 share quote to only orders of 100 shares or less, but that is precisely what the Commission's analysis assumes.

³⁹ Proposal at 36709.

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- Third, the Commission's methodology further depresses trade-through rates by using as the reference price, for a given order size, the lowest (highest) price at which a market sell (buy) order of that size would execute "assuming the order walks the book."⁴⁰ This means that, in our example, if another odd-lot quote to sell 20 shares is displayed at \$10.01, the Proposal would assess whether a 40 share order "traded through" the \$10.01 price. However, this ignores that, even if the 40 share order executes at \$10.01 without lifting either odd-lot quote, this still represents a trade-through of the better odd-lot quote of \$10 for 20 shares. But this wouldn't be counted as a trade-through by the Commission.

As a result of the material methodological flaws above, the empirical analysis must be redone. The current methodology does not accurately measure the trade-through rates for odd-lot quotes, and thus cannot be used to assess the potential impact of eliminating the Order Protection Rule. We note this is the only empirical analysis that the Commission has provided in the Proposal to justify making sweeping changes to the entire U.S. equity market—the Commission did not include any accompanying analyses of market-quality metrics, such as quoted spreads, effective spreads, and transaction costs, which have been commonly included in the Commission's economic analyses for decades.

In any event, even with these methodological flaws, the Commission finds that trade-throughs not only persist in today's equity markets when quotes are unprotected, but do so at rates that exceed those in 2005 when the Order Protection Rule was first adopted. Despite what the Proposal claims, nothing has "obviated" the need for the Order Protection Rule to protect market participants who post limit orders and to promote "basic notions of fairness and orderliness."⁴¹

B. The Proposal Ignores Relevant Data

Apart from the limited empirical analysis addressed above, the Proposal relies almost exclusively on qualitative predictions rather than actual data or academic research. For example, the Commission fails to consider:

- Key market trends since the Order Protection Rule was adopted, including with respect to (i) spreads, (ii) transaction costs, and (iii) retail participation rates;
- How frequently non-marketable limit orders are used by retail investors and the potential impact of permitting these to be regularly traded-through;⁴²
- The percentage of on-exchange trading activity that is at high risk of moving off-exchange as a result of eliminating the Order Protection Rule;
- The impact on toxicity and spreads on-exchange if a significant amount of trading

⁴⁰ Proposal at 36709.

⁴¹ Regulation NMS at 37502.

⁴² In 2023, the Commission found that over 33% of retail orders were non-marketable limit orders. See 88 FR 128 (Jan. 3, 2023) at 184, available at: <https://www.govinfo.gov/content/pkg/FR-2023-01-03/pdf/2022-27617.pdf>.

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activity migrates off-exchange as a result of the Proposal;

- Data regarding off-exchange trading rates in asset classes without the concept of a protected quote, including FX, corporate bonds, and cash Treasuries; and
- Academic research on the effect of the Order Protection Rule. For example, one study found that the Order Protection Rule “is beneficial to the overall market liquidity and [a] more efficient price discovery process” and “tends to increase trading volume in the lit exchanges [and] lower quote and effective spreads.”⁴³ Other studies have championed the importance of the Order Protection Rule and have called for it to be expanded to less-transparent asset classes.⁴⁴

C. The Cost-Benefit Analysis Is Highly Speculative and Does Not Support a Full Repeal

With its only empirical analysis actually undermining the rationale for the Proposal, and other relevant data ignored, the Commission attempts to cobble together a cost-benefit analysis that would support eliminating the Order Protection Rule. It is unable to do so.

With respect to potential costs of a full repeal of the Order Protection Rule, the Proposal simply waves them away. With regard to concerns about on-exchange trading activity moving off-exchange, the Commission says “this effect is likely to be limited.”⁴⁵ As for concerns about retail non-marketable limit orders being traded-through far more often, the Commission asserts that they “may be limited and may not significantly affect the execution rates.”⁴⁶ Other potential costs are simply ignored. For example, there is no mention of the prospect of ATSS increasing costs and complexity for market participants by displaying quotes on the FINRA ADF that may not be fairly accessible and yet may have to be factored into the NBBO. There is also no mention of how exchanges are likely to respond to being stripped of one of the key benefits of being an exchange (i.e. a protected quote) while facing increased competition from ATSS. Indeed, market complexity is likely to significantly increase as exchanges respond via new speedbump, periodic auction, and segmentation initiatives.⁴⁷

On the benefit side, the Proposal is vague regarding any benefits of eliminating the Order Protection Rule. While the Commission specifically acknowledges that the Order Protection Rule “strengthened the primacy of displayed prices and incentivized liquidity suppliers to post displayed

⁴³ Lin, Ji & Yu, The Impact of Order Protection Rule on Market Liquidity and Price Discovery (Nov. 8, 2018), available at: <https://ssrn.com/abstract=3222090>.

⁴⁴ See, e.g., Harris, Larry, Transaction Costs, Trade Throughs, and Riskless Principal Trading in Corporate Bond Markets (Oct. 22, 2015), available at: <https://www.icmagroup.org/assets/documents/Regulatory/Secondary-markets/Bond-Market-Liquidity-Library/Harris-L---2015---Transaction-Costs-Trade-Throughs-and-Riskless-Principal-Trading-in-Corporate-Bond-Markets-290118.pdf> (finding a 43% trade-through rate in corporate bonds).

⁴⁵ Proposal at 36704.

⁴⁶ Proposal at 36688.

⁴⁷ Proposal at 36664 and 36686.

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orders”⁴⁸ and “may be beneficial to the execution quality of retail orders,”⁴⁹ the Proposal struggles to make the case for eliminating the rule. For example, the Commission suggests that removing the Order Protection Rule may address exchange proliferation and reduce costs and complexity by allowing market participants to disconnect from smaller venues, but then quickly reverses course and concludes that in fact “we do not anticipate that many disconnections will occur”⁵⁰ and “[w]e do not expect that any exchanges would exit the market or that new exchanges would not be able to enter.”⁵¹ Next, the Commission theorizes that institutional investors may benefit from increased flexibility when executing large orders but, then, admits it is “unable to estimate” any “improvements in institutional execution quality”⁵² or demonstrate any harm under the current market structure. This leaves the Commission to make vague assertions about “innovation in trading protocols and venue design”⁵³—which, as discussed above, may actually dramatically increase cost and complexity—and to focus on speculative operational and compliance-related cost reductions when estimating market-wide savings of approximately \$250,000 per trading day⁵⁴ in a market where over \$1 trillion in notional is traded each day on average.

Our equity markets work extremely well and, as the Commission specifically acknowledges in the Proposal, “[c]hanges to a single rule could have profound effects, both expected and unexpected, on a multitude of other rules and aspects of market structure.”⁵⁵ The economic analysis makes clear that the Commission has failed to demonstrate that any purported benefits are worth the risks associated with removing a key element of U.S. equity market structure.

D. Investors Trading Tokenized Equities Will Be Exposed To Worse Prices and Weaker Protections

Exchanges, ATSS, broker-dealers, and “decentralized” trading protocols (“DeFi”) are all actively considering offering tokenized equities to U.S. investors. While there are various permutations of what these offerings might look like,⁵⁶ the key bedrock market structure principles and investor protections applicable to the secondary trading of U.S. equities should equally apply when trading these new types of equity securities, particularly if transferring a digital “token”

⁴⁸ Proposal at 36699.

⁴⁹ Proposal at 36664.

⁵⁰ Proposal at 36724.

⁵¹ Proposal at 36725.

⁵² Proposal at 36704.

⁵³ Proposal at 36665.

⁵⁴ Proposal at 36726.

⁵⁵ Proposal at 36661.

⁵⁶ See, e.g., <https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities> and “Tokenized U.S. Equities, DeFi Trading, and the SEC’s Exemptive Authority: An Economic Analysis,” James A. Overdahl (January 22, 2026) at 18-24, available at: <https://www.sec.gov/files/ctf-written-james-overdahl-tokenized-us-equities-01-22-2026.pdf>

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automatically results in the transfer of the underlying U.S. equity.⁵⁷ An investor should not lose basic price protections merely because the security is represented by a token.

The Proposal would produce exactly that result. Digital asset firms have made eliminating the Order Protection Rule a key priority because repeal would allow tokenized-equity platforms to execute transactions without matching better prices publicly displayed elsewhere.⁵⁸ The adverse consequences are material: prices for the same security will diverge across traditional and tokenized markets; liquidity will further fragment; and investors trading tokenized equities are more likely to face higher and less transparent transaction costs, as platforms gain greater freedom to charge excessive fees or execute at prices inferior to those available in the lit, public market.

These investor protection concerns are heightened by reports that the Commission is considering exempting certain tokenized equity trading platforms from registration as an exchange or broker-dealer, meaning that other key investor protections will also be disappplied, such as best execution requirements and the prohibition on frontrunning investor orders.⁵⁹ The Commission does not acknowledge this consequence, much less analyze it. We urge the Commission to carefully assess the implications of enabling tokenized equities to be offered to U.S. investors without key investor protections being in place.

⁵⁷ See Citadel Securities comment letter on “Tokenized U.S. Equity Securities & DeFi Trading Protocols” (December 2, 2025), available at: <https://www.sec.gov/files/citadel-securities-120225.pdf>.

⁵⁸ See, e.g., Solana Policy Institute letter (Aug. 13, 2026), available at: <https://www.sec.gov/comments/S7-2026-20/s7202620-1001999-3168607.pdf> and Coinbase letter (Mar. 19, 2025) at 19, available at: <https://www.sec.gov/files/ctf-input-grewal-2025-3-19.pdf> (“Exempt order protection/trade-through rule. Chief among the rules that should be reevaluated is Rule 611.”). We note that certain digital asset firms have also argued that the Order Protection Rule does not apply to tokenized equity transactions anyway on the basis that they are not “regular way” transactions. However, the Commission has provided several examples of non-regular way transactions, including trades reported after normal trading hours, bunched trades, next-day trades, previous reference price trades, and late trades, and these do not include an otherwise “regular way” transaction that simply settles on a blockchain. See, e.g., Letter from Orca Creative (June 17, 2025) at 11, available at: <https://www.sec.gov/files/orca-creative-061725.pdf>.

⁵⁹ See <https://www.bloomberg.com/news/articles/2026-05-18/sec-is-said-to-ready-plan-for-trading-crypto-versions-of-stocks>.

IV. The Commission Fails to Consider the Impact on Other Rules

The Proposal acknowledges that eliminating the Order Protection Rule “could impact related aspects of equity market structure”⁶⁰ but fails to adequately consider exactly what those impacts are and their implications for market liquidity, transparency, and efficiency. Instead, the Commission elects to simply remove the prohibition on locked and crossed markets without much consideration and to request that market participants submit comments “[t]o the extent other changes may be warranted to Commission rules.”⁶¹ This is not reasoned decisionmaking.

A. The Commission Underestimates the Future Prevalence of Locked Markets

Faced with a dilemma as to what to do with the prohibition on locked and crossed markets after repealing the Order Protection Rule—since this is a prohibition on locking and crossing protected quotes—the Commission simply elects to get rid of it as well. To justify this hasty decision, the Proposal attempts to minimize the impact, asserting that “[e]ven without a rule prohibiting locked and crossed markets, locked and crossed markets should be rare because they create temporary profit opportunities that will be acted upon very quickly.”⁶² This represents a fundamental misunderstanding as to the fee and rebate incentives that can drive locked markets.

Assume, for example, that (i) one party has posted a bid of \$10 on a venue with a 30 mil rebate and a 30 mil take fee and (ii) another party has posted an offer of \$10 on a venue with the same fee structure. These quotes will not naturally cross, and there is no temporary profit opportunity to be acted upon. That is because displayed prices must take into account associated exchange transaction fees and rebates to determine the net price.

In order to estimate the future prevalence of locked markets,⁶³ the Commission must consider how market participant behavior may change as a result of fee and rebate incentives under the current 30 mil exchange access fee cap. Without the Commission implementing comprehensive tick size and access fee cap reform first, market makers may be commercially incentivized to regularly quote locked markets in low-priced “tick-constrained” symbols as a way to narrow the quoted spread but still capture the sizable rebate. In addition, exchanges have every incentive to encourage participants to lock away markets in order to drive more trading activity to their venue (thus generating transaction fees). As a result, we expect that many low-priced “tick-constrained” symbols, including many ETFs, will have locked markets for almost the entirety of the trading day. However, overshooting the appropriate reduction in quoted spread for these “tick-constrained” symbols is likely to result in less liquidity at the NBBO compared to a more efficient market structure for these symbols that includes a half-penny tick size, a 15 mil access fee cap, and a prohibition on locked markets. The Proposal also does not consider the implications for

⁶⁰ Proposal at 36661.

⁶¹ Proposal at 36661.

⁶² Proposal at 36690.

⁶³ The Commission should also look at how many quotes would have locked on-exchange today, but were price slid as a result of the current prohibition. See Proposal at 36680 discussing “Price-to-Comply” and “Price-to-Display” order types.

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investor confidence of witnessing trade-throughs frequently occurring at the same time the market is locked in a given symbol, a scenario that would appear similar in practice to a crossed market and difficult to explain. The Commission must redo its assessment of removing the prohibition on locked markets to take these implications into account.

The future prevalence of locked markets in specific symbols will have another impact that harms exchanges. Today, exchanges are a significant source of midpoint liquidity.⁶⁴ However, if a market is locked, instead of trading at midpoint in the dark, firms will have to interact with one of the displayed quotes on either side of the market. Doing so results in information leakage that is not present when trading at midpoint today, and therefore many investors may refrain from trading on-exchange during locked market conditions. This could have significant ramifications for exchange volumes, particularly if many highly liquid and actively traded symbols are locked for most of the trading day.

In addition to the impacts on exchanges, the Proposal does not adequately consider the implications locked markets will have for a number of other Commission rules, such as Rule 201 of Regulation SHO and Rule 605 execution quality reports. We detail those considerations immediately below. The Proposal also fails to consider how the emergence of trading platforms for tokenized equities may impact the prevalence of locked and crossed markets in specific symbols. Given that these transactions are likely to involve much higher fees, such as network fees,⁶⁵ it will be even more difficult to resolve locked and crossed markets between (a) a traditional exchange and a tokenized equities platform or (b) two different tokenized equities platforms.

B. The Commission Ignores the Implications for Other Related Rules

In contrast to its approach with respect to locked and crossed markets, the Commission simply ignores the Proposal's implications for many other SEC rules. For example, the Proposal does not address:

- **Tick Sizes and Access Fees.** The Commission recently finalized, but has yet to implement, rules that reduce the minimum quoting increment on-exchange for “tick-constrained” symbols and that reduce the exchange access fee cap to 10 mils for all symbols. The access fee cap change appears particularly inconsistent with this Proposal, as the cap was only implemented “to support the integrity of the price protection requirement established by the adopted Order Protection Rule.”⁶⁶ The Commission does not explain why the access fee cap should be more stringent while the Order Protection Rule is eliminated.

More generally, implementing both (i) this Proposal and (ii) significant changes to tick

⁶⁴ See https://www.sec.gov/marketstructure/datavis/ma_overview.html.

⁶⁵ See, e.g., “Tokenized U.S. Equities, DeFi Trading, and the SEC’s Exemptive Authority: An Economic Analysis,” James A. Overdahl (January 22, 2026) at 18-24, available at: <https://www.sec.gov/files/ctf-written-james-overdahl-tokenized-us-equities-01-22-2026.pdf>.

⁶⁶ Regulation NMS at 37503. See also Proposal at 36673, FN 231.

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sizes and access fees would represent a poorly considered, risky experiment with very tangible risks of material adverse consequences for both our capital markets and our broader economy. Both this Proposal and the reduction in the access fee cap could disincentivize posting displayed liquidity on exchange. Further, the finalized tick sizes rule reduces the minimum quoting increment for thousands of stocks that do not have sufficient liquidity at the NBBO to benefit from this change, which will further reduce displayed size and market depth.⁶⁷ In aggregate, these changes may be extremely harmful to our public markets. While the Commission has stayed the effectiveness of the tick size and access fee changes until November 2027, there is insufficient consideration in the Proposal of the interactions between these two sets of rules and no explanation as to how the Commission intends to proceed, including how it could possibly implement all of these changes to the world's preeminent equities market in a coherent manner in such a short period of time.

- **Market Data Oversight.** The Commission plays a critical role in reviewing exchange market data fee filings for consistency with the Exchange Act, including whether the proposed fees are reasonable. Typically, this reasonableness assessment includes “whether the SRO making the proposal was subject to significant competitive forces” and, if not, heightened scrutiny will apply.⁶⁸ The Commission has pointed to the Order Protection Rule in concluding that competitive forces are not present, which raises the question as to whether eliminating the Order Protection Rule will make it more challenging for the Commission to exercise appropriate oversight over market data fee filings going forward. As the Proposal recognizes, “exchanges, especially large ones, possess some market power over their data and connectivity products”⁶⁹ and it is critical that the Commission confirm that it retains the ability to subject these fee filings to a heightened standard of review.

The stakes are underscored by more than a decade of litigation over exchange market data fees. Each exchange is the sole source of its own market data, and the D.C. Circuit has recognized that “the risk that [an exchange] could exercise market power appears to be elevated in the pricing of its proprietary non-core data.”⁷⁰ In *NetCoalition I*, the court accordingly vacated the Commission’s approval of depth-of-book data fees, holding that the Commission “failed to disclose a reasoned basis” for concluding that the exchange was “subject to significant competitive forces” in pricing its data, where the record did

⁶⁷ See, e.g., Letter from Citadel Securities (April 19, 2026), available at: <https://www.sec.gov/comments/s7-2026-10/s7202610-757147-2327654.pdf>.

⁶⁸ See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at: <https://www.sec.gov/about/staff-guidance-sro-rule-filings-fees>.

⁶⁹ Proposal at 36694.

⁷⁰ *NetCoalition v. SEC*, 615 F.3d 525, 538 (D.C. Cir. 2010) (“*NetCoalition I*”); see also *id.* (quoting the Commission’s own acknowledgment that if an “exchange could, in fact, exert monopoly power over its pricing of non-core data, it obviously would be inappropriate for the Commission to rely on non-existent competitive forces as a basis for approving an exchange proposal”).

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not show that competition for order flow “constrains market data prices.”⁷¹ And as noted above, the Commission has pointed to the mandatory connectivity required by the Order Protection Rule in explaining why such competitive forces are absent.

Eliminating the Order Protection Rule would thus invite exchanges to argue in every future fee filing that market participants are now free to disconnect and redirect order flow—and that “significant competitive forces” therefore constrain their pricing—effectively insulating monopolistic data fees from meaningful review. That argument should fail: disconnection will remain illusory in practice (*see* Section II above), market participants will still require data from the largest exchanges, and “the existence of a substitute does not necessarily preclude market power.”⁷² But the danger is acute, because the Commission’s review of fee filings is the only check that remains: fee filings take effect immediately upon filing, insulated from direct judicial review,⁷³ and the D.C. Circuit has held that “Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.”⁷⁴ The Proposal nowhere acknowledges this consequence, much less analyzes it. The Commission “entirely fail[s] to consider an important aspect of the problem”⁷⁵—its continued ability to police market data fees.

- **Odd-Lot Quotes on the SIP.** The Commission has recently implemented a rule to require that the best-priced odd-lot quotes be displayed in the SIP data feeds, and will soon require that all odd-lot quotes be disseminated.⁷⁶ This was done specifically in an attempt to ensure that investors “will be able to see, and more readily access, better-priced quotations.”⁷⁷ Proposing a rule to explicitly allow investors to more readily *bypass* all quotations—both odd-lot and round-lot—seems directly inconsistent with this prior rule. The Commission fails to acknowledge, much less explain, this inconsistency. In particular, without the Order Protection Rule, the difference between a round-lot quote and an odd-lot quote is simply a matter of size—as a 100-share offer would be no more protected than a 99-share offer. The purpose of including odd-lot quotes alongside protected round-lot quotes becomes all but meaningless when there is no protection at any size.

As detailed in Section I(D) above, the Order Protection Rule results in displayed quotations meeting minimum standards when constituting the NBBO, including being subject to “immediate

⁷¹ *Id.* at 541, 544.

⁷² *Id.* at 542.

⁷³ *NetCoalition v. SEC*, 715 F.3d 342, 353-54 (D.C. Cir. 2013) (“*NetCoalition II*”) (holding that the court lacked jurisdiction to review the Commission’s decision not to suspend immediately effective fee filings).

⁷⁴ *Nasdaq Stock Mkt., LLC v. SEC*, 961 F.3d 421, 424 (D.C. Cir. 2020).

⁷⁵ *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁷⁶ Proposal at 36682, FN 330.

⁷⁷ 86 FR 18596 (April 9, 2021) at 18601, available at: <https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2020-28370.pdf>.

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and automatic” execution.⁷⁸ The elimination of the Order Protection Rule will remove these accessibility requirements, meaning that a far broader range of displayed quotes could become part of the market-wide NBBO, including quotes subject to even more pernicious access delays,⁷⁹ minimum resting periods, or other mechanisms designed to favor certain types of market participants over others (including mechanisms heretofore only approved for non-displayed liquidity). Unless the Commission inserts minimum requirements in order for a quote to be part of the NBBO, this will have implications for a number of other rules, such as:

- **Execution Quality Reports.** We strongly supported the Commission’s recent updates to Rule 605 to increase the scope and improve the reliability of data included in the execution quality reports.⁸⁰ However, these efforts will be severely undermined if the market-wide NBBO that is used as a benchmark (and is the mathematical reference for most of the 605 data execution-quality metrics) becomes more subjective or includes inaccessible quotes. Benchmarking execution quality against quotes that are illusory and not actually accessible distorts the metrics and makes it extremely challenging for investors to hold their broker-dealers accountable.

In addition, Rule 605 must take into account the future prevalence of locked markets in specific symbols. For example, the reports do not adequately consider the impact of fees and rebates—in a locked market, the spread is the take fee and an off-exchange execution without a take fee represents price improvement. The Commission must address how to preserve the accuracy and utility of Rule 605 reports in a market without the Order Protection Rule.

- **Regulation SHO Circuit Breaker.** Rule 201 of Regulation SHO prohibits the execution or display of a short sale order at a price that is less than or equal to the NBB in circumstances where the price of the relevant security has decreased by 10% or more from the prior day’s closing price. In a market without the Order Protection Rule, this means that a small exchange that firms may not be connected to, or a venue with inaccessible quotes or a discriminatory speedbump, may restrict trading across the entire market if it happens to set the NBB. This market power possessed by a single venue is inconsistent with the Commission’s stated objectives for eliminating the Order Protection Rule, and must be addressed.

The removal of prohibitions on locked markets dramatically exacerbates this problem. Today, Rule 201 prevents a market center from displaying a short-sale order or executing a short-sale order at a price that is equal to the current best bid. Rule 201 does not

⁷⁸ Regulation NMS at 37622.

⁷⁹ *Supra* note 15.

⁸⁰ See, e.g., Citadel Securities White Paper, “Enhancing Competition, Transparency, and Resiliency in U.S. Financial Markets,” (May 2021) at 7, available at: <https://www.citadelsecurities.com/wp-content/uploads/sites/2/2021/05/EnhancingCompetitionTransparencyandResiliencyinUSFinancialMarkets.pdf> and Citadel Securities Letter, “Disclosure of Order Execution Information,” (Mar. 31, 2023), available at: <https://www.sec.gov/comments/s7-29-22/s72922-20164213-334052.pdf>. See also 90 FR 47552 (Oct. 2, 2025), available at: <https://www.govinfo.gov/content/pkg/FR-2025-10-02/pdf/2025-19316.pdf>.

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prohibit the display or executions of such orders at the current best offer. As explained above, we expect that many low priced “tick-constrained” stocks will very likely be locked the majority of the day. If any of those symbols should trigger Rule 201, trading would be significantly impacted as short-sell orders could no longer be displayed or executed at the current best offer (since the price of the best offer equals the price of the best bid during a locked market). As there are no exceptions for Rule 201 for market-making, and as the current order marking rules often require market makers to mark sell orders short despite having a long position, the Commission should reassess Regulation SHO in a world without the Order Protection Rule to ensure markets will still be able to function when Rule 201 is triggered.

- **Best Execution.** The NBBO is central to assessing whether firms satisfy best execution requirements, and the Commission does not explain how these assessments will change if the NBBO becomes more subjective or includes inaccessible quotes. Particularly since the Proposal suggests—incorrectly—that best execution requirements can provide a substitute for the Order Protection Rule, explaining how best execution will be assessed if this Proposal were to be finalized is a key aspect of the problem that must be addressed.
- **Customer Limit Order Display.** The limit order display rule in Regulation NMS is directly connected to the Order Protection Rule, as the Commission made the determination that customer limit orders that match or improve the NBBO deserve to be protected, and therefore should be displayed on-exchange.⁸¹ However, if the NBBO becomes more subjective or includes inaccessible quotes, then that will impact the determination as to whether a specific limit order must be displayed.

The issue is further exacerbated by removing the prohibition on locked markets, which creates ambiguity as to whether an order is marketable, and hence whether rules for marketable or non-marketable order handling should apply. For example, consider a likely common scenario where five exchanges show a collective BBO as \$10.00 x \$10.01 but a sixth exchange has a sell offer at \$10.00 creating a cross-market lock. If a broker-dealer that is connected to only the five exchanges showing \$10.00 x \$10.01 receives a customer order to buy 100 shares at \$10.00, is that order marketable or non-marketable? On the one hand it can be considered marketable in respect of the \$10.00 offer on the sixth exchange, but if the broker-dealer is not connected to that exchange and is not expected to access that quote, the order can just as reasonably be considered non-marketable.

Ultimately, with the Order Protection Rule eliminated, it is not clear what is achieved by requiring customer limit orders to be displayed on-exchange if they can just be traded-through.

⁸¹ §242.604.

Section V. The Commission’s Proposal to Favor Dark Trading Over Our Lit, Public Markets is Inconsistent with the Exchange Act

V. The Commission’s Proposal to Favor Dark Trading Over Our Lit, Public Markets is Inconsistent with the Exchange Act

The Commission’s Proposal would dismantle the foundation of its framework for the national market system for securities, inconsistent with the Exchange Act. Through Section 11A of the Exchange Act, Congress directed the Commission to facilitate the establishment of a national market system for securities.⁸² In discharging that mandate, the Commission adopted Regulation NMS. One of the key provisions to Regulation NMS, as the Commission itself has explained, is the Order Protection Rule. Without it, the regulatory framework for the national market system will lose a fundamental aspect of how it protects investors and maintains fair and orderly markets, as the Exchange Act demands. That is in large part because the Proposal will effectively place a foot on the scale in favor of ATSS over exchanges. Gutting the Order Protection Rule will also help platforms trade tokenized equities without core investor protections, which is inconsistent with the Exchange Act’s directive to protect investors. The tension between the Commission’s Proposal and the Exchange Act’s directives is untenable.⁸³

A. The Order Protection Rule is Fundamental to the Current National Market System

Congress did not leave the design of the national market system to the Commission’s unguided policy preferences. Section 11A of the Exchange Act directs the Commission, with due regard for investor protection and the maintenance of fair and orderly markets, to facilitate a national market system that assures economically efficient execution, fair competition among exchange and non-exchange markets, broad access to quotation and transaction information, and the practicability of brokers executing investors’ orders in the best market. Congress further found that linking securities markets would foster efficiency, enhance competition, improve the information available to investors, and contribute to best execution.

Regulation NMS was the Commission’s principal means of carrying out that statutory mandate. When the Commission adopted Regulation NMS in 2005, it explained that its provisions were “designed to achieve the objectives of efficient, competitive, fair, and orderly markets that are in the public interest and protect investors,” and that it was adopting these provisions “in furtherance of its statutory responsibilities.”⁸⁴ Arguably the most important of Regulation NMS’s provisions was the Order Protection Rule, which the Commission explained would “strengthen[] protection of displayed limit orders,” and would “help reward market participants for displaying their trading interest and thereby promote fairer and more vigorous competition among orders seeking to supply liquidity.”⁸⁵ The Rule was designed to alleviate market fragmentation by “assur[ing] that public investors are able to obtain the best price for securities.”⁸⁶ And the Rule

⁸² 15 U.S.C. § 78k-1(a).

⁸³ *Business Roundtable*, 647 F.3d at 1148 (vacating a rule where the Commission “neglected its statutory responsibility”).

⁸⁴ Regulation NMS at 37497.

⁸⁵ *Id.* at 37501.

⁸⁶ *Id.* at 37499 FN 13.

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would benefit investors by “backstop[ping] a broker’s duty of best execution on an order-by order basis by prohibiting the practice of executing orders at inferior prices, absent an applicable exception.”⁸⁷ The Commission emphasized that by protecting intermarket prices, the Rule would “strengthen the [national market system] in both exchange-listed and Nasdaq stocks,” “contribute to the maintenance of fair and orderly markets and, thereby, promote investor confidence in the markets.”⁸⁸

The Commission cannot now excise the Order Protection Rule from Regulation NMS without contravening its statutory responsibilities. That is because, as the Commission still recognizes, the Order Protection Rule is “the core of the rules adopted by the Commission in Regulation NMS.”⁸⁹ Given “the complex and interconnected nature of our equity market structure,” as the Commission acknowledges, “[c]hanges to a single rule could have profound effects.”⁹⁰ Eliminating “the centerpiece of Regulation NMS” will indeed “impact many different areas of equity market structure,” such that the structure will no longer promote fair competition.⁹¹ By cutting off the “head of [the] octopus” that is Regulation NMS, its regulatory framework will no longer fulfill the directives of the Exchange Act.⁹²

B. The Proposal Inappropriately Favors Alternative Trading Systems Over Exchanges

The Proposal also favors ATSS over exchanges, in contravention of the Exchange Act. Unlike exchanges, which are registered and regulated under the Exchange Act, ATSS are permitted under Regulation ATS, which was propounded under the Commission’s exemptive authority.⁹³ Despite the lower legal pedigree of Regulation ATS, the Proposal would tilt markets in favor of ATSS by eliminating the protected-quote status that benefits exchanges. That is, rescinding the Order Protection Rule would eliminate a key benefit that exchanges receive in return for the regulatory obligations imposed on them. Meanwhile, ATSS can display quotes on the FINRA ADF and collect revenue from the SIPs without having to comply with requirements for exchanges, such as access fee caps and fair access obligations.⁹⁴ Therefore, without the Order Protection Rule, trading will tend to migrate toward ATSS.

It is improper for the Commission to favor ATSS. First, the Exchange Act expressly contemplates exchanges—but not ATSS—as integral to the national market system for securities. And second, the Exchange Act commands that in “facilitat[ing] the establishment of a national market system for securities,” the Commission assure “fair competition ... between exchange

⁸⁷ *Id.* at 37516.

⁸⁸ *Id.* at 37502.

⁸⁹ Proposal at 36658.

⁹⁰ *Id.* at 36661.

⁹¹ *Id.* at 36662.

⁹² *Id.* (citation omitted).

⁹³ 15 U.S.C. §§ 78f, 78s; 63 FR 70844 (Dec. 22, 1998) (“Regulation ATS”).

⁹⁴ See 17 C.F.R. §§ 242.610(c) (fair-access rule), 242.610(c) (access-fee cap).

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markets and markets other than exchange markets” and “equal regulation of all markets for qualified securities.”⁹⁵ The Commission’s Proposal flouts those statutory obligations.

C. The Underlying Motivation to Facilitate Platforms Trading Tokenized Equities Is Inconsistent with the Investor Protection Requirements in the Exchange Act

When reading between the lines, it becomes apparent that the Commission is trying to assist platforms trading tokenized equities by removing the Order Protection Rule. In describing the “dramatic[]” “evol[ution]” of equity markets that purportedly eliminates the necessity of the Order Protection Rule, the Proposal discusses “distributed ledger technology (‘DLT’) [that] allows issuers to tokenize a security by issuing it in the format of a crypto asset and facilitate trading among market participants.”⁹⁶ It notes that “[s]uch innovative technology” raises “questions relating to current equities market structure and the application of current regulatory requirements.”⁹⁷

In other words, eliminating the Order Protection Rule clears the way for platforms trading tokenized equities to gain more traction in securities markets without providing core investor protections because it removes a regulatory hurdle they typically cannot meet: the requirement that trades occur at prices no worse than the best displayed quotations on-exchange.⁹⁸ Permitting trades at worse prices will ultimately hurt investors. In contrast, the Exchange Act mandates that the Commission protect investors and maintain fair and orderly markets.

⁹⁵ 15 U.S.C. § 78k-1(a)(1)(C)(ii), (c)(1)(F).

⁹⁶ Proposal at 36657, 36659–60.

⁹⁷ *Id.* at 36660.

⁹⁸ We note that Commission staff has issued guidance that purports to allow firms to engage in customer order handling for tokenized equities without being subject to best execution requirements. *See* <https://www.sec.gov/newsroom/speeches-statements/staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized-prepare-staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized>. In addition, the Commission may be considering further exemptions from investor protection requirements for firms offering tokenized equities to U.S. investors. *See* <https://www.bloomberg.com/news/articles/2026-05-18/sec-is-said-to-ready-plan-for-trading-crypto-versions-of-stocks>.

VI. The Proposal Suffers From Multiple Procedural Flaws

A. The Commission Must Adequately Consider Reasonable, Less Burdensome Alternatives

The most obvious alternative to the complete elimination of the Order Protection Rule is to proceed more deliberately and impose a volume threshold for protected quotes. This approach surgically removes a benefit for smaller exchanges—the Proposal notes there are 10 exchanges with a market share of less than 1%⁹⁹—while avoiding all of the complications and negative impacts of completely removing the concept of a protected quote altogether. Importantly, this more measured approach was specifically endorsed by the U.S. Department of the Treasury in 2017 after conducting a comprehensive review of equity market structure: “Treasury recommends that the SEC consider amending the Order Protection Rule to withdraw protected quote status for orders on any exchange that do not meet a minimum liquidity threshold.”¹⁰⁰ In addition, Canada’s closely linked equities market has successfully implemented a minimum volume threshold for its analogue to the Order Protection Rule, after concluding that “OPR is a valuable part of the regulatory framework.”¹⁰¹

The Commission nevertheless dismisses this alternative in less than a page, without acknowledging either the Treasury recommendation or the Canadian experience. That is not meaningful consideration of a reasonable alternative. The Commission cannot leap from concerns about a handful of low-volume exchanges to repeal of a foundational market-wide protection without first explaining why a targeted solution would not work. Before proceeding with full repeal, it must analyze the volume-threshold alternative, expose that analysis to public comment, and demonstrate why its objectives cannot be achieved through a less disruptive course.¹⁰²

B. The Commission Should Pursue More Beneficial Market Structure Initiatives

Instead of preferencing ATSS and tokenized equities platforms over our public on-exchange markets, the Commission should pursue more beneficial market structure initiatives. These include:

- **Addressing Exchange Proliferation.** The Commission should address the economic moats that shield uncompetitive trading venues from market forces, in particular the inefficient allocation of SIP revenue and the market power of small exchanges in the pricing of market data and connectivity services. With respect to the SIP revenue allocation, the Commission should (i) increase the proportion of revenue allocated to executed trades and (ii) only allocate revenue to displayed quotes that result in an execution or that improve the NBBO. With respect to market data fees, the Commission

⁹⁹ Proposal at 36691.

¹⁰⁰ See Capital Market Report, U.S. Department of the Treasury (October 2017) at 65 and 208, available at: <https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

¹⁰¹ See https://www.osc.ca/sites/default/files/pdfs/irps/csa_20160407_23-101_noa-amendments-trading-rules.pdf.

¹⁰² See *Chamber of Commerce*, 412 F.3d at 144 (failure to give adequate consideration to alternatives to a rule violated the Administrative Procedure Act).

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should consider how to prevent smaller venues from extorting broker-dealers via exorbitant market data and connectivity fees. We have suggested that, until a new equities exchange eclipses a minimum volume threshold (e.g. 2% market share), it should be subject to hard caps regarding the fees charged for quote feeds, cross connects, and sessions.¹⁰³

- **Fixing Tick Sizes and Access Fees.** There is near universal industry consensus that the amendments to Regulation NMS finalized in 2024 under the prior Commission will negatively impact market quality, including with respect to displayed size and market depth. While the Commission has stayed the effectiveness of these amendments until November 2027, we recommend that resources be dedicated to reproposing and fixing them. We have recommended a two-year pilot program that would help identify the appropriate set of “tick-constrained” symbols where it would be beneficial to (i) reduce the minimum quoting increment to a half-penny and (ii) proportionally reduce the access fee cap to 15 mils.¹⁰⁴ Getting tick size reform right will create a better market structure for “tick-constrained” symbols compared to allowing locked markets with the current access fee cap.
- **Eliminating Intentional Delay Mechanisms.** Intentional delays—typically combined with embedded logic in the matching engine that enables displayed quotations to be adjusted or cancelled during the intentional delay—have the practical effect of making displayed quotes “conditional” and inaccessible. Further, recent proposals have sought to implement asymmetric intentional delays that are applied only when a market participant seeks to access liquidity, which are particularly nefarious, as they provide sophisticated market participants with a “last look” option to cancel resting orders before execution, thus reducing fill rates and increasing transaction costs for investors. We recommend that the Commission reverse its decision to impermissibly reinterpret the term “immediate” in Regulation NMS and cease granting protected quote status to displayed quotations that are not immediately accessible in practice.
- **Revisiting Regulation ATS.** In the more than twenty years since Regulation ATS was adopted, ATSs have increased in significance and have become an integral part of U.S. equity markets, accounting for more than 10% of total market volume. It is, therefore, appropriate for the Commission to re-examine Regulation ATS to ensure that the regulatory framework remains fit for purpose. In particular, we recommend that the Commission apply fair access rules to all ATSs by eliminating the current volume-based threshold.¹⁰⁵

¹⁰³ See 2025 White Paper at 10.

¹⁰⁴ See, e.g., Letter from Citadel Securities (April 19, 2026), available at: <https://www.sec.gov/comments/s7-2026-10/s7202610-757147-2327654.pdf>.

¹⁰⁵ See 2025 White Paper at 5-6.

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C. The Commission Must Re-Propose At A Minimum

Given the number of unaddressed considerations related to the Proposal, the Commission must, at a minimum, repropose the rule. The reasons for doing so include:

- Insufficient economic analysis, including severe flaws in the empirical analysis and an incomplete and highly speculative cost-benefit analysis (*see Section III above*);
- Insufficient consideration of the implications for other SEC rules (*see Section IV above*)—simply requesting that market participants submit comments “[t]o the extent other changes may be warranted to Commission rules”¹⁰⁶ is not adequate;
- Insufficient consideration of reasonable, less burdensome alternatives, in particular establishing a minimum volume threshold for protected quotes (*see Section VI(A) above*);
- Failing to specify precisely how best execution will be assessed if the Order Protection Rule is eliminated. FINRA has issued a Regulatory Notice requesting comment on numerous ways this Proposal may result in material changes to best execution requirements,¹⁰⁷ but has yet to publish a concrete proposal with specific revisions, and has not provided a timeframe for doing so. It is not possible to consider the implications of eliminating the Order Protection Rule without understanding the future contours of best execution, and therefore these initiatives cannot proceed on separate tracks;
- Refusing to take into account the SEC’s anticipated issuance of an “innovation exemption” for platforms trading tokenized equities, which may exempt qualifying platforms from registration as an exchange or broker-dealer, meaning that other key investor protections are also disappplied, such as best execution and the prohibition on frontrunning investor orders. The Commission must consider the investor protection implications of permitting unregistered platforms to offer tokenized equities to U.S. investors at worse prices than those on-exchange for the same symbol.

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¹⁰⁶ Proposal at 36661.

¹⁰⁷ See Regulatory Notice 26-15 (July 24, 2026), available at: <https://www.finra.org/rules-guidance/notices/26-15>.

Section VI. The Proposal Suffers From Multiple Procedural Flaws

We thank the Commission for considering our comments on the Proposal.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy