**SEC Proposal to Rescind Regulation NMS Rules 611 and 610(e)**

August 17, 2026

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

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

Dear Ms. Countryman:

The Investment Company Institute (ICI)[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC) proposal to rescind Regulation NMS Rule 611, the trade-through rule, and Rule 610(e), the locked and crossed markets provision.[2] ICI supports reassessing whether mandatory intermarket price-protection requirements continue to advance execution quality in light of changes in trading technology, venue competition, and institutional execution practices. The proposal could give institutional trading desks greater

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $48.0 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional $10.8 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and separately managed accounts (SMAs) for individual investors. ICI associate members include service providers to funds, including financial communications firms, custodians and transfer agents, and CIT Trust companies. ICI has offices in Washington, DC, Brussels, and London.

[2] The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, Exchange Act Release No. 34-105655, File No. S7-2026-20, 91 Fed. Reg. 36656 (June 17, 2026).

flexibility to pursue execution strategies that reflect price, liquidity, market impact, timing, information leakage, and other relevant factors.

Before moving to adoption, however, the Commission should address several issues: NBBO reliability, execution quality for smaller orders, the interaction with best execution obligations, the consequences of eliminating the prohibition on crossed markets, and implications for access-fee regulation. ICI recommends that the Commission resolve these issues, engage with industry and market participants after the comment period closes, and consider whether additional analysis, targeted modifications, or further consultation are warranted.

## I. Executive Summary

ICI supports the Commission's reassessment of Rule 611 in light of significant changes in market structure and trading technology since Regulation NMS was adopted. The proposal would advance ICI's goal of giving large institutional traders greater flexibility to make routing and execution decisions based on trading strategy rather than rigid top-of-book price protection. Competition among exchanges, ATSs, and other market centers has produced meaningful benefits, including innovation and expanded execution choices. Nevertheless, Rule 611's protected-quote framework can impose routing and connectivity costs when it requires market participants to treat all protected quotations alike, regardless of a venue's liquidity, accessibility, or contribution to price discovery.

Several effects that may result from outright repeal of Rules 611 and 610(e) remain unresolved, however. Before proceeding, the Commission should use the comment record and further industry engagement to assess whether additional guidance, targeted modifications, or alternative approaches are necessary.

For that reason, ICI respectfully recommends that the Commission:

- Evaluate the proposal in light of the full comment record, including effects on NBBO integrity, displayed liquidity, Rule 10b-18[3] safe-harbor compliance, locked- and crossed-market behavior, best execution obligations, and future trading models, and engage with industry and market participants after the comment period closes.
- Consult with industry participants before considering any changes to access-fee or tick-size regulation and provide additional guidance on how rescinding Rule 611 would

[3] Rule 10b-18 under the Securities Exchange Act of 1934.

interact with exchange fee-and-rebate structures, access-fee caps, routing incentives, and broker-dealer best execution analysis.

- Confirm that best execution obligations will remain flexible and context-specific and collaborate with FINRA so that FINRA can provide appropriate guidance on how broker-dealers should evaluate best execution when they do not route to the best displayed price.
- Further study the effects of eliminating the prohibition on crossed markets and consult with ICI members and other market participants before making any final determination on that issue.
- If adopted, provide a reasonable transition period and conduct post-implementation review of execution quality, market quality, and compliance burdens.

## II. ICI Supports the Commission's Reassessment of Rules 611 and 610(e)

The Commission's proposal is a timely and appropriate reassessment of two foundational components of Regulation NMS. Rule 611 currently prohibits trade-throughs of protected quotations in NMS stocks, while Rule 610(e) addresses locked and crossed quotations. The proposal would rescind both provisions, remove related defined terms, and make conforming changes across the regulatory framework.

ICI agrees that the Commission should periodically revisit whether equity market structure rules continue to serve their intended purposes. Regulation NMS was adopted in a market environment that differs significantly from today's faster, more automated, and more data-intensive markets. Asset managers now evaluate execution holistically, considering as relevant, price, liquidity, market impact, information leakage, order completion, opportunity cost, speed, venue characteristics, and other relevant factors.

Rule 611's focus on protecting the NBBO may be appropriate for some orders, but it does not always reflect the dynamics of institutional trading. As technology has progressed, the rule has created practical challenges for large traders, including the need to break sizable orders into "child orders" that can be worked across markets over time. Funds do so to limit information leakage that may occur when orders are routed across exchanges to access top-of-book quotations. The concern is not the existence of multiple competing venues, which can benefit investors, but rather the way Rule 611 can require institutional orders to interact mechanically with protected quotations even when doing so may increase latency, signaling risk, or market impact.

Greater flexibility to direct trades to particular venues or access depth of book outside the NBBO may better reflect current execution tools and market data. A rigid obligation to route to small, inaccessible, or fleeting protected quotations may expose large orders to information leakage, delay completion, or produce inferior aggregate results. Removing Rule 611 requirements for large trades could allow brokers and institutional trading desks to consider market-impact algorithms, internalization where appropriate, and opportunistic routing across venues. The Commission also could reassess protected-quote status, such as by considering whether a market should meet a volume threshold before its quotations receive protection.

## III. Before Adoption, the Commission Should Address Several Material Issues Raised

The Commission should evaluate the full comment record, and in particular any and all highlighted concerns regarding the significant market implications of rescission, before deciding whether to adopt the proposal as proposed, adopt targeted modifications, or consider alternative approaches. That record should help determine whether rescinding Rules 611 and 610(e) would improve execution flexibility and reduce unnecessary complexity without undermining market quality, displayed liquidity, price discovery, or investor protection.

If commenters identify circumstances in which some form of intermarket price protection remains useful, the Commission should consider targeted changes that address those concerns without preserving the full rigidity of Rule 611. For example, the Commission could evaluate whether any protection should be limited to quotations or trading centers that meaningfully contribute to price discovery and executable liquidity (*i.e.*, the Canadian model), without discouraging competition or steering order flow toward particular categories of venues.

The Commission also should consider whether any final approach should include phased implementation, interpretive guidance, or post-implementation monitoring of market quality, execution outcomes, liquidity, locked and crossed markets, and investor experience.

Several material considerations warrant further analysis before final adoption, supported by accompanying economic analysis.

- **NBBO integrity.** The removal of trade-through protection may reduce the extent to which the NBBO reflects executable prices across the market, raising questions about its continued utility as a benchmark for execution quality, including best execution analysis. Investors and their fiduciaries also rely on the NBBO to evaluate trade mark-outs, peg non-displayed orders, and incentivize displayed liquidity, all of which are critical to price discovery.

- **Rule 10b-18 safe harbor.** The Rule 10b-18 safe harbor depends on a reliable consolidated reference price, because issuer repurchases generally must be made at or below the higher of the highest independent bid or last independent transaction price. Rule 611 supports that framework by preventing trades from occurring through a compliant displayed bid. If Rule 611 is rescinded, trades could print away at lower prices while an issuer's bid remains posted, potentially complicating reliance on the safe harbor. The Commission should assess this risk and provide appropriate guidance.
- **Displayed liquidity and market quality.** The removal of protected-quote status may reduce incentives for market participants to post competitive displayed orders, potentially affecting quoting behavior, displayed depth, and price discovery.
- **Behavioral changes in locked and crossed markets.** The proposal may alter incentives and trading behavior in locked- and crossed-market conditions. ICI members have concerns about eliminating the prohibition on crossed markets, including potential effects on price discovery, displayed liquidity, execution quality, and investor confusion and confidence. The Commission should further study those effects and consult with the industry before deciding whether and how to eliminate the crossed-market prohibition.
- **Access fee caps, exchange pricing incentives and tick size.** The Commission should explain how rescinding Rule 611 would interact with Rule 610(c)'s access fee caps and exchange fee-and-rebate structures. Before considering any access-fee changes, the Commission should consult with industry participants to understand how access fees, rebates, routing incentives, and displayed prices affect order routing, execution quality, and competition. The Commission also should address whether eliminating trade-through protection would affect the policy rationale for access fee caps, the treatment of fees associated with quotations that no longer receive protected status, and broker-dealer best execution analysis when pricing incentives and displayed prices point in different directions. The Commission should also analyze any changes to tick size requirements.
- **Future trading models.** The Commission should consider whether the proposal could have implications for future trading models, including tokenized securities or other parallel trading environments with different pricing dynamics, liquidity profiles, market-data practices, or investor protections.

ICI believes the proposed amendments cannot be fairly evaluated in isolation from other pending market-structure changes, including delayed access-fee and tick-size amendments (as mentioned above) and any potential innovation exemption for tokenized NMS stocks. The Commission should sequence these initiatives so that any decision on Rule 611 is informed by other SEC rulemaking that may interact with Rule 611 or its rescission.

## IV. The SEC Should Coordinate with FINRA on Best Execution Guidance

If the Commission rescinds Rules 611 and 610(e), the SEC should coordinate with FINRA to clarify how broker-dealers should evaluate best execution when the best displayed price is no longer protected and locked or crossed markets may occur more frequently.[4] That guidance should, among other things, confirm that best execution remains a flexible, facts-and-circumstances obligation and that an execution away from a displayed quotation is not, by itself, evidence of a violation.

## V. Conclusion

ICI supports the Commission's goals of simplifying equity market structure, reducing unnecessary complexity, and promoting execution quality for investors. Rescinding Rules 611 and 610(e) could better align the regulatory framework with today's markets and broker-dealer best execution obligations. Before adoption, however, the Commission should address the issues discussed above and consider whether targeted modifications or alternative approaches would better achieve the proposal's objectives.

In particular, the Commission should provide additional clarity on three related sets of issues: first, NBBO integrity and price discovery, including the NBBO's role in trade mark-outs, pegged non-displayed orders, displayed-liquidity incentives, and Rule 10b-18 safe-harbor compliance; second, market quality and investor protection issues, including displayed liquidity, locked- and crossed-market behavior, access-fee regulation, and the potential impact on smaller investors; and third, future trading models, including tokenized securities or other parallel trading environments. The Commission also should engage with industry participants after the comment period closes, coordinate with FINRA on best execution guidance, consult the industry before considering access-fee changes, and further study the effects of eliminating the prohibition on crossed markets.

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[4] We note that FINRA has issued Regulatory Notice 26-15 (requesting comment on FINRA's Best Execution Guidance) (https://www.finra.org/rules-guidance/notices/26-15).

ICI appreciates the opportunity to comment on the proposal. If you have any questions or would like additional information, please contact Timothy White, Jr. at Tim.White@ici.org or 202-923-8099.

Sincerely,

/s/ Timothy J. White, Jr.
Associate General Counsel
Investment Company Institute

cc: The Honorable Paul S. Atkins, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Mark T. Uyeda, Commissioner
Jamie Selway, Director, Division of Trading & Markets
Brian Daly, Director, Division of Investment Management