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Statement of

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To the

SEC Equity Market Structure Advisory Committee

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Introduction

Good afternoon Chair White, Commissioners, and Division Staff, and thank you for the opportunity to participate in today's panel discussion regarding Rule 611 of Reg NMS. My name is Jamie Selway and I am Managing Director and Head of Electronic Brokerage at ITG. ITG is a global execution broker that provides market-leading trading technology and analytics to clients that include the world's largest institutional investors.

At ITG, Electronic Brokerage includes algorithmic trading, routing to exchanges and other trading venues, and POSIT—one of the largest, most established "dark pools" in the world. We execute roughly 3% of daily volume in US equities, 3.5% of daily notional in Europe, and almost 0.50% of daily activity in Asia-Pacific. We trade electronically in 40 countries and operate POSIT in 35 of those.

As an agency-focused broker, our interests are aligned with our clients, and our clients benefit materially from sound market structure. Whether developing block crossing capabilities in Brazil and India, or reducing intermediation in the FX and corporate bond markets, or continually improving our order routing acumen in US equities, ITG commits significant resources to understand, utilize, and—through POSIT—create sound market structure for the benefit of our customers.

We are active in the continuous dialogue between market participants and policy makers to improve our market structure for investors. While much has changed since the approval of Reg NMS ten years ago, the US markets remain the envy of the world. By our measurements, the average all-in US trading costs borne by institutional investors—which include both implicit costs, such as market impact, and explicit commission costs—fell nearly 40% between mid-2004 and mid-2014. This important achievement directly benefits the investing public.

While we recognize our industry's success in improving the marketplace over the past decade, we firmly believe that additional progress can be made. It is in this spirit that the SEC Equity Market Structure Advisory Committee will review Rule 611 today, and we look forward to contributing to the discussion. We believe it is important to regularly review the outcomes of major policy changes, and we commend the Chair for creating the Committee and the Division for organizing today's event.

Reg NMS Rule 611

Rule 611, the "Order Protection Rule," is known colloquially as the "Trade-Through Rule." At its core is a very sensible idea: best price wins. Under Rule 611, one market center cannot execute at a price that is inferior to the publicly-displayed price of a second "protected" market, subject to limited exemptions. Before Rule 611, NYSE- and Amex-listed securities were subject to a flawed version of "trade-through," implemented via the sclerotic Intermarket Trading System Plan. Rule 611 modernized this approach and incentivized markets to automate by affording no "trade-through" protection to non-automated markets. Nasdaq-listed securities were not subject to a "trade-through" rule until Rule 611 was implemented.

While "best price wins" is a sensible idea, it comes with some practical difficulties. Because prices exclude access fees charged by trading venues, the SEC needed to cap such fees via Reg NMS Rule 610. And as Rule 611 illustrates, implementing "best price wins" required the SEC to be fairly prescriptive in terms of order routing, as opposed to the flexibility traditionally afforded to broker-dealers under the common law fiduciary duty of "best execution." Under "best execution," factors other than price—such as size or speed, for example—can determine routing decisions. Moreover, "best price wins" works best in a frictionless market, which existed neither in 2005 nor 2015. Order routing is fast, but not instantaneous; our market data collection and delivery mechanisms—foremost among them the exclusive Securities Information Processors—are imperfect. Although Rule 611 tries to accommodate these factors, it cannot always do so.

Because Rule 611 is a prescriptive approach to routing and executing in a market that is highly competitive and complex, it has difficulty accommodating innovations in the marketplace. In the minds of some, the lack of innovation has led to a "sameness" across US exchanges, where a group of price-time priority venues with high-performance technology compete on substantially similar rate cards. While the role of Rule 611 in connection with this condition is debatable, it is certainly the case that its inflexibility hinders new market structure ideas. For example, as IEX progresses from ATS to exchange, its latency-injecting "magic shoebox" will require SEC intervention with respect to Rule 611's standards for "automated quotations." Additionally, NYSE's recent proposal for an intra-day auction attracted as much attention for its merits as for the way in which it might be exempted from Rule 611. More fundamentally, Rule 611 is a *de facto* requirement that all competing markets use the same minimum tick size, so that experimentation here can only occur via joint action by all venues, as opposed to competition amongst them.

So we have a rule that is based on an appealing notion—investors should get the best price—that is prescriptive in implementation and—possibly—challenging to marketplace innovation. Two paths are open to the SEC: the Commission can improve or remove Rule 611.

Alternative 1: Improve Rule 611

A number of suggestions have been made to make Reg NMS more flexible and efficient—and also to address some of its perceived unintended consequences. Among these enhancements, we suggest consideration of the following:

- Create a "*de minimis"* exemption to Rule 611, under which market centers with volume below a certain threshold level, such as 1% of the consolidated tape, do not enjoy price protection for displayed quotations. Such an exemption would constrain market complexity, reduce fragmentation, and lower connectivity costs.

- Create a block exemption to Rule 611, under which large trades above a certain size, such as 10,000 shares or $200,000 in value, could execute without triggering an obligation to protect quotations at superior prices. Such an exemption would make block trading more seamless at limited costs to protected quotations.

- Repeal the prohibition of locked markets under Rule 610(d) and lower the access fee cap under Rule 610(c) from $.003 per share to $.001 per share or less. As described above, Rule 610 is necessitated by Rule 611, and its prohibition on locked markets creates complexity in terms of order types and matching engine logic. The access fee cap facilitates a wide spread between fees for consuming liquidity and rebates for providing liquidity that creates a potential conflict of interest for brokers. While conflicts can be managed, and rebates for liquidity have an economic rationale, the wide spread has concerned institutional investors for some time.

Alternative 2: Remove Rule 611

As an alternative to these improvements, the Commission could remove Rule 611. In considering a market without Rule 611 – not unlike Nasdaq before Reg NMS – a number of factors warrant consideration:

- Best execution would become critical. In some respects, Rule 611 is a proxy for best execution, despite its irrelevance for institutionally-sized orders and the fact that retail-sized orders typically receive better execution than the best displayed prices. In the absence of Rule 611, the industry would benefit from improved standards for best execution, as well as increased disclosure relating to institutional order handling.

- The importance of protection to limit order execution would be tested. In adopting Rule 611, the Commission theorized that protection would lead to more limit orders. Has it? Counterfactuals defy analysis. In 2007, BATS was able to grow its market ahead of Reg NMS, and IEX recently launched a displayed market without protection. The first example is dated, however, and the second is early and likely limited.

- The message to retail investors would be important. As stated earlier, retail investors generally enjoy execution quality better than that afforded by Rule 611. That said, SEC repeal of a "best price wins" rule could strike many as counter-intuitive. The justification for the change must be explained so that retail investors remain confident in our market structure. Other facilities, such as wholesale market makers, alternative trading systems, and exchange retail liquidity programs would enable retail investors to continue receiving price improvement when trading on- and off-exchange.

"Trade-At:" A Brief Cameo

Any discussion of Rule 611's future would be incomplete without briefly addressing the Commission's approval of the proposed tick size pilot last week. Under the approved plan, 400 less liquid securities will be subject to a "trade-at" rule, which essentially requires an executing market center to display the best price before the trade. If "trade-through" means "best price wins," then "trade-at" means "best price, first, wins." If Rule 611 is prescriptive and inflexible, leading to complexity and foregone innovation, "trade-at" is all the more so.

Complicating matters, the pilot program implements its changes—including "trade-at"—as an NMS Plan organized and operated by the exchanges and FINRA. Given the manifest challenges of NMS Plan governance, and the fact that "trade-at" is essentially an amplification of Rule 611, we are concerned by this approach. We hope that today's deliberations will affect not only the future of Rule 611, but of "trade-at" as well, and that both notions will be addressed conclusively by a single SEC rulemaking, as opposed to an NMS Plan outsourced to the exchanges and FINRA.

Conclusion

In summary, the Commission has an opportunity to enhance US equity market structure by either improving or removing Reg NMS Rule 611, and ITG welcomes the opportunity to engage with the SEC Equity Market Structure Advisory Committee on this important question. Thank you for the opportunity to share our views. I look forward to addressing your questions at the appropriate time.

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