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December 17, 2025

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission 100 F. Street N.E.
Washington, D.C. 20549-1090

RE: SEC Roundtable on Trade Through Prohibitions (File Number 4-862)

Dear Ms. Countryman:

Themis Trading appreciates the opportunity to comment on the potential changes to Regulation NMS Rule 611, also known as the Trade-Through Prohibition Rule. These comments supplement our comments that were presented in-person as a participant at the SEC Roundtable on September 18th.

Over the past decade, the SEC has tackled some market structure issues including the addition of a large trader id, the formation and implementation of the Consolidated Audit Trail (CAT) and the adoption of the Market Data Infrastructure Rules. While these have been constructive, larger market structure issues continue to be overlooked. These issues include:

- the fragmentation of execution venues (exchanges, alternative trading systems and single dealer platforms)
- the increasing percentage of trades executed off-exchange
- segmentation of liquidity within ATS's
- stock exchange rebates
- information leakage from exchange proprietary data feeds

Most of these issues began after the SEC implemented Reg NMS in 2007. In testimony before the SEC's Investor Advisory Committee in 2021, current SEC Chairman Paul Atkins blamed Reg NMS for many of these issues:

> "Reg NMS is unnecessarily complex, invites gamesmanship, induces widespread market fragmentation, disperses liquidity, and diminishes transparency. Indeed, we have seen Reg NMS drive order flow away from exchanges, fuel unhealthy trading volatility, and

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> expose the markets to flash crashes because its rules have led to atomization of orders and liquidity among a dizzying array of trading venues. None of these outcomes is a hallmark of the worthy goals of a fair, orderly and efficient market."

At the first Rule 611 Roundtable on September 18th, Chairman Atkins further critiqued Reg NMS:

> "Ironically, a rule intended to strengthen liquidity has instead splintered it among an unprecedented number of venues. The result is a marketplace with more trading platforms than ever, but fewer broker-dealers and traditional market makers to knit it together. Those intermediaries have succumbed to a combination of increasing technology costs, exploding regulatory costs, more competition for a shrinking active trading clientele as passive investment vehicles have become more popular and flexible, among others. Much of this is great for investors, at least in the short term, but what does it mean for marketplace health in the long term? We are 20 years out from the troubled promulgation and implementation of Reg NMS; what will things look like in another 20 years if the status quo remains?"

At the second Rule 611 Roundtable on December 16th, Chairman Atkins again criticized Reg NMS and Rule 611:

> "Two decades have given us the benefit of perspective, and the verdict is clear: **Reg NMS, built on flawed foundations, has invited gamesmanship and contributed to the fragmentation of our markets, the dispersal of liquidity, and diminished transparency.** The very outcomes that we feared have come to pass. Our warnings are now lessons. And Reg NMS—Rule 611's trade-through prohibitions in particular—command a fresh look so that we can continue to strengthen our securities markets. Indeed, we must summon the courage to acknowledge when well-intended policies have produced unintended consequences."

We agree with Chairman Atkins and applaud the Commission for seeking ways to improve equity market structure. However, by hosting a second Rule 611 roundtable, it appears that the Commission has already concluded that Rule 611 is the main cause of the problems that Chairman Atkins has identified.

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We agree that Rule 611 is flawed. For example, the rule only protects top of book visible quotes at each exchange. This leaves all other quotes at exchanges, including visible non-top of book quotes and hidden quotes, unprotected. All orders on non-exchange venues are also unprotected and can be traded through.

However, **we believe that simply eliminating Rule 611 will not fix any of the issues that Chairman Atkins has identified**. Fragmentation of execution venues will continue. Off-exchange volume will not decrease. Segmentation of liquidity within ATSs will not change. Stock exchanges will continue to pay rebates which distort the order routing process. And exchange proprietary data will continue to leak valuable order information.

Themis Trading Suggestions

Rather than the elimination of Rule 611, we suggest the following reforms that would increase fairness and transparency for all market participants while eliminating some embedded conflicts of interest.

1. **Eliminate order-by-order exchange proprietary data feeds** – In order to encourage more displayed liquidity, market participants need to feel secure that their trading intentions are not being distributed to those willing to pay for the information. All the major stock exchanges currently sell proprietary data feeds which contain order-by-order details on every displayed order, including order entry time and a unique order id. This order id will reveal the historical details of an order such as the time of cancellation or revision. Sophisticated consumers of these data feeds can decipher patterns that emerge from certain market participants algorithms and reengineer them to their advantage.

   We recommend that stock exchanges only be allowed to distribute aggregated data feeds. Investors will still be informed of price and volumes at each level but information on individual orders will no longer be leaked.

2. **Eliminate stock exchange rebates** –The DC Circuit Court of Appeals has ruled that the Reg NMS amendments are justified and access fees should be capped at 10 mils per share, but the Reg NMS amendments did not address the issue of rebates. We concede that rebates will likely be lowered once the access fee cap drops to 10 mils/share in

November 2026, but rebates will continue to exist and will continue to be a source of order routing conflicts.

We recommend changing the current maker/taker pricing model to a flat take/take fee of 10 mils/share which reduces the order routing conflict. Exchanges will still be compensated for the matching services they provide while the order routing conflicts of interests will be significantly reduced.

3. **Add a Market Center Code for each non-exchange market center** - Off-exchange volume has continued to grow and now represents approximately 50% of all US equity volume. Currently, any trade that occurs on an off-exchange market center prints to the tape with only a generic trade-reporting facility acronym. In 2009, the SEC proposed adding a market center identifier for each off-exchange market center, but this was never adopted.

   We recommend the SEC reconsiders this proposal and require a new code to identify the market center that printed the off-exchange trade. Identifying the market center with this code will help market participants locate where hidden liquidity has been trading which could then help them source better prices and more volume.

Conclusion

The US equity market appears to be deep and liquid but has many underlying conflicts which compromise price/liquidity discovery and could result in a rapid deterioration of liquidity like we experienced during the Flash Crash of 2010. The goal of market structure reform should be to encourage more displayed liquidity which would level the playing field for all participants, dampen volatility and increase investor confidence.

Unfortunately, recent equity market structure developments have continued to weaken displayed liquidity while off-exchange volume and hidden volume on exchanges continue to increase. Ironically, as investors try to solve their liquidity problems with more sophisticated algorithms, they have looked to new off-exchange venues which has resulted in even more fragmented, segmented and inaccessible liquidity.

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We hope the SEC considers our recommendations rather than just proposing to remove Rule 611. While this rule has some serious flaws, removing it will not increase investor confidence and it will not fix the major structural issues that exist today in the US equity market.

Respectfully,

Joseph Saluzzi

Partner, Themis Trading LLC