U.S. SECURITIES AND EXCHANGE COMMISSION

ROUNDTABLE ON RULE 611

Tuesday, December 16th, 2025

9:05 a.m.

U.S. Securities and Exchange Commission

100 F Street, N.E., Washington, D.C.

APPEARANCES:

Paul Atkins, SEC Commissioner, Chairman
Hester Peirce, SEC Commissioner
Caroline Crenshaw, SEC Commissioner
Mark Uyeda, SEC Commissioner

Moderators
David Dimitrious, Senior Special Counsel, SEC's Division of Trading and Markets
Jon Kroeper, Deputy Director
Kelly Riley, Senior Special Counsel, SEC's Division of Trading and Market
Jamie Selway, SEC Division of Trading and Markets
Peggy Sullivan, Senior Policy Advisor, SEC's Division of Trading and Markets

Panelists
Valerie Bogard, Rosenblatt Securities
David Brooks, The London Company
Jeff Brown, Texas Stock Exchange
Dmitry Bulkin, Bernstein
Bill Harts, Long-Term Stock Exchange
Calvin Hayes, Jane Street

APPEARANCES (Cont.):

Panelists (Cont.)
Mehmet Kinak, T. Rowe Price
Anna Kurzrok, Jefferies
Jaime Llano, Teacher Retirement System of Texas
Chuck Mack, NASDAQ
Chris Nagy, Healthy Markets
John Ramsay, Investors Exchange
Brett Redfearn, Panorama Financial Markets Advisory
Racquel Russell, FINRA
Jamie Schriber, Goldman
Jeff Starr, Charles Schwab
Oliver Sung, Cboe Global Markets
Kevin Tyrrell, New York Stock Exchange

C O N T E N T S

P R O C E E D I N G S

MR. SELWAY: All right. Good morning. Welcome to our second roundtable on trade-through prohibitions. My name is Jamie Selway. I'm the Director of the SEC's Division of Trading and Markets. We're going to kick off shortly with a full day of discussion and debate. Let's start with our chairman, Chairman Atkins. Come up and -- remarks.

OPENING REMARKS

CHAIRMAN ATKINS: Well, good morning everybody. And -- is this working? Maybe not. But -- anyway -- but thank you, Jamie, for hosting this event and getting us started here. So I'm pleased to join everyone today and in welcoming you to today's roundtable. I should also like to acknowledge and thank the University of Austin. This is my first time here at the new university. I've heard lots about it -- and welcoming you to today's roundtable. And also to -- you know, obviously for their set up here, and accommodating us for our roundtable. And also really thank our esteemed panelists for contributing their perspectives and, of course, to our audience, whether here on campus or by live stream, for taking part in this very important discussion. Finally, before I share a few reflections, I must add that the views I express this morning are my own as Chairman and do not necessarily reflect those of the SEC as an institution, or my fellow commissioners.

As I noted in our September roundtable, the SEC adopted Regulation NMS at a time of profound transformation. Electronic trading systems were continuing to unsettle old assumptions about how markets could function as handling and routing practices became more transparent, competition drove commissions lower, and penny pricing reshaped the mechanics of trading. Rather than meet these disruptions with a measured approach, in 2005, the Commission decided to impose prescriptive rules and dictate very specific processes to address what it perceived as ills, even though these new trends and technologies were still evolving. Worse, the staff came out with repeated rounds of FAQs to try to ameliorate the challenges that their problematic rules engendered.

While I fully supported then, as I do now, the worthy goal of enhancing market efficiency, then Commissioner Cynthia Glassman and I objected to Reg NMS's adoption because we believe that the rigidity of its regime, especially Rule 611, would hinder rather than enhance the long-term growth of our markets. 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, to the dispersal of liquidity, and diminished transparency. The very outcomes that Cindy and I 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.

So, to this end, our first roundtable engaged an array of industry participants, academics, and regulators back in Washington for a very fruitful initial discussion. Their perspectives, along with the thoughtful comment letters that we have since received, underscore a broad consensus. Revisiting Rule 611 is a worthwhile and overdue endeavor. While views may vary on the scope of potential changes, a significant number of panelists and commentators believed that the rule should be modified or rescinded entirely. In September, we also heard several potential paths forward, including volume thresholds for protected quotes, block exceptions, rescinding the

locked and crossed market prohibition, adjustments to access fee caps, and revisions to the market data revenue allocation formula.

Each of these proposals merits serious consideration. As I cautioned two decades ago, we must take a careful, deliberative approach to any changes, lest we make the mistakes that brought us here.

So today, we take a necessary step in that process. Of course, we will continue our discussion of trade-through prohibitions, but we will also delve more deeply into how Rule 611 intersects with other parts of Reg NMS rules and our market structure more broadly. Specifically, our first panel will focus on Rule 610, and its requirements relating to fair access, access fees, and locked and crossed markets. Our second group of panelists will then discuss Rule 600, including the defined terms intertwined with the trade-through rule, the effects on the NBBO, as well as the incentives associated with the market data formula revenue allocation from the consolidated market data plans. And then finally, our third panel will examine potential enhanced best execution guidance if the Commission modifies or rescinds the trade-through prohibitions of Rule 611.

So today's roundtable will help ensure that

we do not saddle a future Commission, or the next generation of investors and market participants, with the same set of challenges that we left for ourselves two decades ago. We owe it to them to be thoughtful, to be rigorous, and to be reflective. So I want to thank our panelists and moderators once more for being here. I should also like to encourage members of the public to continue sharing your perspectives through our online comment file. As we undertake this reassessment of Reg NMS, your insights are indispensable. So I look forward to today's discussions and to the takeaways that surely will emerge from them. Thank you all for being here and for your continued engagement with the critical work before us. Thank you very much.

MR. SELWAY: Thank you very much, Mr. Chairman. Commissioner Pierce?

COMMISSIONER PIERCE: Morning, and thank you, Jamie. It's wonderful to be here today. I have to say my views are my own as a Commissioner, not necessarily those of the SEC or my fellow commissioners. I want to begin by expressing my sincere thanks to all the panelists and to the University of Austin for hosting us in this beautiful venue, and to the Commission staff, especially from the Division of Trading Markets and the Office of Public Affairs, who pulled together this roundtable in a very short amount of time. I also want to welcome any students in attendance. Your presence adds a valuable perspective to our conversation, and may even inspire some of you to dip your toes into the enticing waters of equity market structure.

One important regulatory determinant of market structure in the United States is the order protection rule, also known as a trade-through rule, also known as Rule 611. And if we were ranking whether or not to revisit Rule 611 on a scale of 1 to 10, with 10 being “definitely revisit the rule”, my gut gives me the middle schoolers’ go to answer: “6, 7” but a 6 or 7 on redoing 611 really misses some context. The necessary context consists of several factors. First, the U.S. equity markets are unmatched in depth and liquidity, which raises the stakes of any reform. Second, as many of the September 18 roundtable panelists voted, the distinctiveness of our market structure means that lessons from other jurisdictions may not always be instructive for us, particularly in areas like best execution and volume thresholds. Third, Rule 611 is intertwined with many other rules, and it's a complex

nest in which equity markets live, so revisiting Rule 611 requires rethinking those other rules too.

That message came through loud and clear at the September roundtable. While that roundtable featured robust debate over whether Rule 611 should be repealed, retained, or revised, it also reflected broad agreement that any changes to Rule 611 must be considered alongside related NMS rules, NMS plans, and FINRA regulations. Today, we'll talk about potential changes to access VCAPS, the prohibition on locked and crossed markets, the fair access rule, the SIP revenue allocation model, FINRA's best execution rule, and more. Fourth, how we implement any changes, including how we sequence those changes will matter. Given the expertise our panelists bring, I anticipate that this roundtable will provide the context necessary to boost my interest in reconsidering Rule 611 all the way up from a 6 or 7 to a 10.

I've been a skeptic of Rule 611 since its inception 20 years ago. Dictating how market participants execute trades has never seemed like an exercise for which the SEC is particularly well suited. People operating in free and transparent markets are very good at figuring out how and where to execute trades or finding professionals to help them

do so. Rule 611 wrests for authority on Section 11A, a 1975 addition to the Securities Exchange Act, which directed the SEC to facilitate the establishment of a national market system, a function I don't think that the SEC, again, is particularly well suited to perform. That mandate really is a relic of a time of active government interference in, and distrust of, markets. Rather than adopting Rule 611 30 years after Congress gave us the authority, the SEC could have deferred to the technology that was eating away at market monopolies and facilitating cross-market arbitrage.

Even those of you who disagree with me on this point may agree with me that Rule 611 has by now completed its work, and may be causing more mischief than good. As emphasized in the previous roundtable, this moment presents a rare opportunity to strengthen our markets. While opinions differ on how well our current market structure serves investors, one trend is undeniable. Off-exchange trading volumes are rising, yet new exchanges, many of which replicate existing ones, continue to proliferate. This dynamic points to misaligned incentives and suggests the need for reform. I’m anticipating an organic conversation that requires little prompting, but I have a few

prompts just in case.

Given that some people view Rule 611 as a best execution backstop, if we eliminate it, how can we craft best execution amendments or guidance to offer clarity without being overly prescriptive? Are there any best execution clarifications that are needed now, independent of any changes to Rule 611? What is the optimal SIP revenue allocation between quoting and trading activity that will curb unnecessary exchange proliferation without foreclosing innovative new entrance in the exchange space? Is readjusting this allocation an interim step on the way to repealing Rule 611? What SEC and FINRA rules would need to be amended if Rule 611 were to be repealed?

In the event that we propose changes to Rule 611, how should changes to these other NMS rules plans and FINRA rules be sequenced? Which changes must occur concurrently, which can follow, and which should proceed any changes to Rule 611? As the SEC works with market participants experimenting with tokenization, can we draw any lessons that might be relevant to revisiting Rule 611? Thank you, and I look forward to the discussion.

MR. SELWAY: Commissioner Peirce --
Commissioner Crenshaw will provide remarks by video.

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COMMISSIONER CRENSHAW: Good morning, everyone. Thank you for attending the second round table related to Rule 611, or the order protection rule. As I understand from the agenda, today's round table will examine the potential impact of modifying or rescinding the mainstay of the order protection rule, its trade through prohibitions on other associated rules, and regulatory requirements. As a starting point, let's not assume that doing away with the order protection rule is a magic bullet that will solve increasing complexity and fragmentation in the markets. As we all know, market structure is complicated, and reaching appropriate policy decisions in such a complex area requires understanding the relevant facts and the intricate ways in which the markets work, as well as balancing competing policy objectives. In some, it's important to establish what is causing a problem in order to address it effectively.

The order protection rule is not a new source of controversy. When the suite of rules constituting Regulation NMS was adopted in 2005, the order protection rule was the most controversial and attracted the most public comment and attention. Nevertheless, there was broad support in the record

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for the rule, and support for an intermarket price protection rule began long before, with the adoption by Congress in 1975 of the National Market System itself. Both the House and the Senate Committees responsible for drafting Section 11A of the Exchange Act specifically considered and endorsed the Commission's authority to adopt a price protection rule to achieve the statutory objectives of the National Market System.

The order protection rule and its emphasis on the principle of best price drew its support from commenters based on two fundamental rationales. First, maintaining investor confidence is essential to well-functioning equity markets, and increasing assurance that orders will be filled at the best prices will give investors, particularly retail investors, greater confidence that they will be treated fairly when they participate in the equity markets. Second, protection of the best displayed and accessible prices will promote deep and stable markets that minimize investor transaction costs, and minimizing these costs improve the long-term financial well-being of millions of investors and reduces the cost of capital for listed companies.

I think it's important that we keep sight of

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these investor protection principles as we consider potential modifications to Rule 611 and related regulatory requirements. For example, how would such modifications impact execution quality for investors, and which investors might be disproportionately impacted? As I've said before, without investor confidence, the markets cannot serve their purpose as a place for investors to grow their savings. I hope that today's roundtable will yield thoughtful remarks and a productive conversation. Thank you again for your willingness to participate, and for sharing your expertise.

COMMISSIONER UYEDA: Well, thank you, Jamie, and thank you to the Division of Trading and Markers for organizing this round table on equity market structure, more specifically Rule 611 of Regulation NMS. I’ve been at the SEC now for almost 20 years, and one of my observations during that time is that people are often much more open with us when we're meeting outside of the confines of Washington, D.C. So thank you very much for being here. But I also recognize that when we do one of these events outside of Washington, it takes a lot more effort. And I particularly want to express my gratitude towards the University of Austin for making this roundtable

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possible.

Regulation NMS may have been well intentioned, but its implementation has coincided with shrinking displayed size, a significant increase in the number of execution venues, and complex routing behavior that is often difficult to explain to investors. Thus, I commend Chairman Atkins for initiating this review of Rule 611, and inviting participants to help the SEC evaluate whether the Regulation NMS framework is truly serving investors and our markets. By revisiting the trade through regime, we have the opportunity to move to a less costly, more resilient, and more transparent market structure, which will make our financial markets even stronger.

This is not an easy task. My predecessor, Commissioner Elad Roisman, likened our equity structure rules to the threads of a sweater -- hopefully not an ugly Christmas sweater. But in any event, pull one thread, you inevitably stress others, and sometimes in unexpected ways. I hope that these roundtable sessions, and the public comments that we receive in connection with them, help identify many of these other threads in Regulation NMS that interconnect with Rule 611, so that we can assess the consequences that might result from potential regulatory changes.

One discussion that I look forward to hearing today is on the topic of best execution. A broker's obligation to seek best execution of customer orders is one of the cornerstones of market integrity. As I noted when the Commission proposed new rules in this area two years ago, best execution is a concept that has been developed by court holdings and specific rules from self-regulatory organizations. But to what extent does our current best execution regime presuppose a -- entities' fulfillment of Rule 611? Are there other considerations that should be required if this rule is altered?

The Commission should have compelling evidence of need before adding layers on top of the best execution regime already imposed by FINRA. Do panelists think that such a need would arise if 611 were to change, and if so, why? Relatedly, are there further ways that the Commission could increase transparency so that investors, counterparties, and regulators can observe execution quality at cost venues and enhance private ordering in this area? Last year, in 2024, the Commission adopted rule changes to modernize the reports required by Rule 605

to reflect how trading occurs in microseconds across multiple venues. In what other areas would transparency be needed for market participants to have the tools to assess execution quality on their own?

Once again, I appreciate the thoughtful approach taken by the Commission's staff to consider the entire regulatory framework holistically. This undertaking presents an opportunity for a serious retrospective review of Regulation NMS and Rule 611. With the public's input, I hope that the Commission can tackle these hard problems with evidence-based proposals, which was so lacking in the last several years, so that our market structure regulations can most effectively serve investors, intermediaries, and issuers. So, thank you very much.

MR. SELWAY: Thank you, Commissioner Uyeda. Thank you, Chairman Atkins, for your remarks, and for your leadership on a policy issue that is central to equity market structure. Thank you, Commissioner Peirce, Commissioner Crenshaw, Commissioner Uyeda, for your remarks. Commissioner Peirce, given those prompts, I think we can get you up to 11. Thank you to my dedicated division colleagues, including Ted Venuti, Arisa Kettig, David Liu, and Kevin Brennan, for gathering us here today. And to Jon Kroeper,

Kelly Riley, Peggy Sullivan, and David Demetris, who will join me as moderators. Thank you to the University of Austin, a new institution successfully bringing two of our favorite forces, innovation and competition, to bear to disrupt the market for undergraduate education, for giving us access to your facilities for the event today.

And most importantly, thank you to our panelists. Today's participants represent a wide variety of expert perspectives and equity markets shaped by nearly 20 years of operational experience with Regulation NMS. We are confident that your contributions will meaningfully inform the Commission's next steps. Before proceeding further, please note that my remarks today are provided in my official capacity as the Commission's Director of the Division of Trading and Markets, and do not necessarily reflect the views or the vision of the Commission, the Commissioners, or the members of the staff. This disclaimer also extends to any comments of my division colleagues who will join me to moderate today's panels.

On November the 4th, the citizens of the great state of Texas approved a ballot initiative to make certain security transaction taxes

unconstitutional. Now, to anyone whose professional life or private enthusiasms involves trading or markets, this was a welcome development. Our nation's laboratories of democracy are a potent force for progress. The free air of Texas inspires and invigorates and reminds us that markets work. Today's event continues a journey that the Division began earlier this year. In July, we invited public comment on the trade-through prohibitions applicable to the equities and option markets. And in September, we hosted a roundtable to discuss the issues associated with such prohibitions. We heard informed points of view, and received thoughtful feedback. Many participants voiced concern with the status quo and suggested a reexamination of the trade-through prohibitions applicable to NMS stocks contained in Rule 611 of Regulation NMS, commonly known as the trade-through rule.

As many noted, the trade-through rule is intertwined with other rules and regulations that must be carefully considered, should the Commission decide to rescind or modify the trade-through rule. At the time the trade-through rule was adopted, many, including Chairman Atkins, warned that its complexity would lead to negative unintended consequences. 20

years later, we acknowledge this complexity, and we pay keen attention to such warnings. Accordingly, today's roundtable aims to eliminate the trade-through rule's entanglements and other requirements, so if the rule is removed or altered, our market structure is improved and not damaged.

We expect another lively, thought-provoking discussion today. We've designed these panels to more deeply consider the ramifications of rescinding or modifying the trade-through rule. When the trade-through rule was proposed as part of Reg NMS, commenters emphasized the futility of protecting the best displayed prices against trade-through rules if these prices were not fairly and efficiently accessible. Rule 610 promotes fair and non-discriminatory access to quotations displayed in the national market system. As adopted, Rule 610 sets forth standards governing access to the quotations to NMS stocks with a stated goal of promoting access in three ways: enabling private linkages, limiting access fees, and restricting locking or crossing quotations.

During the September roundtable -- and comments received, contributors urged consideration of a contrapositive. Are all of the requirements

included in 610 necessary if the trade-through rule is to be rescinded or modified? Our first panel will tackle this question. Much of Reg NM's substance is contained in its defined terms. Our second panel will drill down on the necessary changes, if any, that may be needed -- that may need to be made to definitions contained in Rule 600 of the trade-through rule. Of particular importance is any effect on the national best bid -- the national best offer, or NBBO. A robust, transparent, reliable NBBO is essential in promoting fair, efficient, and liquid markets, and the U.S. capital markets are rightly known as the most liquid in the world.

For this reason, decades of Commission oversight of consolidated market data have centered on ensuring that the NBBO remains ground zero for price discovery and a consistent baseline for best execution. The second panel will also consider the incentives associated with the current formula for market data revenue share allocation and how these incentives affect the marketplace. Finally, our third panel will consider potential enhancements to the best execution requirements, including whether additional guidance is necessary if changes to the trade-through rule and associated rules are made.

During the September roundtable, and through comments received, many highlighted the relationship between the trade-through rule and best execution, suggesting that the trade-through rule changes could raise questions about how a broker-dealer should handle and execute customer orders. The duty of best execution predates federal securities laws. It's origin lies in the common law agency obligations of undivided loyalty and reasonable care that an agent owes to its principal. These duties are not merely historical. They remain essential today, because executing orders is a core function of broker-dealers. Upholding best execution is not an empty tradition. Best execution is an evergreen obligation at the core of a broker-duty's (sic) relationship with its customer.

Over the years, a number of considerations have been identified by the courts, the Commission, and FINRA as relevant to best execution. These include not only price, but also speed of execution, clearing costs, size of the order, and the cost of difficulty of executing in a particular market, among others. As then-Commissioner Atkins and Commissioner Cynthia Glassman pointed out at the time of Reg NMS's adoption, the trade-through rule seemed to elevate

price as a sole criteria for determining how and where orders will be executed, and believed that the trade-through rule restricted investor choice and ability to obtain best execution.

Of course, FINRA's role in this area is also critical. A best execution rule was first introduced in 1960 by its predecessor, the NESD, laying the groundwork for what would become FINRA's current rule approved in 2011. Built on decades of experience with the predecessor rule and guidance, this framework has helped shape how market participants fulfill their obligations. As we consider the evolving market structure and the potential for changes to the trade-through rule, we welcome a thorough examination of FINRA's best execution rule, its accompanying guidance, and any enhancements that could strengthen its ability to serve investors effectively.

So, again, many thanks to all participating in today's roundtable. We have our boots on, and we're ready to ride. First panel panelists, please join me up on the podium. All right, is everybody situated? We have these mics on? Excellent.

So, joining me as moderators today are Deputy Director Jon Kroeper and Senior Special Counsel Kelly Riley. We're going to kick off with each panelist introducing themselves -- you know, their name, their firm, and a sentence or two on their role, and then we'll get into the questions. Dmitry.

PANEL ONE: POTENTIAL CHANGES TO RULE 610 OF REGULATION NMS

MR. BULKIN: Good morning. My name is Dmitry Bulkin. I'm a managing director and Head of Electronic & Portfolio Trading at Bernstein Institutional Services. Bernstein is a joint venture between -- Group AND Alliance Bernstein. My firm provides equity research and cash equity execution services to institutional clients globally. Having spent more than 20 years in electronic and equity space, and the market structure space, I also had a distinct privilege of serving as a senior policy advisor to -- Markets, the division of the Securities and Exchange Commission. First under Director Redfern, and then under Director Zhu. I appreciate the opportunity to speak on the panel, and I look forward to the discussion.

MEHMET KINAK: Good morning, everyone. First of all, thank you to Jamie, Chair Atkins, and the commissioners for hosting another roundtable. I think I've expressed before how important these are. And so congratulations for doing another one.

Appreciate the opportunity to speak again. I am Mehmet Kinak. I am the Global Head of Equity Trading at T. Rowe Price. T. Rowe Price is a mutual fund company, essentially. And this is our standard disclaimer when I speak on these things. We generate no revenue -- zero revenue from trading. I want to make sure everyone knows that. We -- I'm not up here trying to protect a book of business, because I have zero book of business when I trade. So the intent here is to make sure that markets are performing efficiently, and that the outcomes that we receive, hopefully, are good outcomes, because they directly go back to our individual investors. And those are retail individual investors.

And so, again, my other disclaimer is that we represent retail, even though we are a large institutional company. But it is for their benefit that we're up here trying to improve market quality.

MR. RAMSAY: Hi, I'm John Ramsey, Chief Market Policy Officer of IEX, the Investors Exchange, and proudly served on the staff of the Trading and Markets in two different SEC administrations over time. IEX is a national securities exchange that uses technology and innovation to create superior execution performance and maximize transparency and efficiency

in operating our markets. We have long promoted regulatory reform seeking to achieve the same objectives for all participants. And so I'm very appreciative of the opportunity to be here, and look forward to the discussion.

MR. REDFEARN: Good morning. I'm Brett Redfearn. I'm the founder and CEO of Panorama Financial Markets. First of all, thank you very much to Chair Atkins, Commissioner Pierce, Commissioner Uyeda, Commissioner Crenshaw, and -- for having us here today. Again, I think round tables are a fantastic way to solicit industry input. So it's great to see these discussions happening again. This is fantastic. Panorama Financial Markets represents a number of companies in traditional financial markets and digital assets. So broker dealers, asset managers, you know, and some firms who are working on the tokenization space, and strategic regulatory operational advice. And here I'm also proud to be represented -- not representing any of my clients today, but I am working with the Texas Stock Exchange, among others.

MR. SUNG: My name is Oliver Sung. I'm a Senior Vice President, head of North American cash equity markets for Cboe Global Markets. Cboe is a

multi-asset global exchange company, operating in the U.S., Canada, Europe, Australia -- thank you.

MR. TYRRELL: I'm Kevin Tyrrell, Head of Markets, at NYC Group. NYC operates five equities exchanges, including the New York Stock Exchange and the newly launched NYC Texas. So we're very happy to be here in Austin. We also operate options exchanges, a trade reporting facility, and an ATS for over-the-counter securities. I think it's also, you know, just relevant to mention that we're owned by Intercontinental Exchange Group. And ever since ICE proposed acquiring NYC back in 2012, ICE management has been very interested in developments in U.S. equity market structure, and really looking to keep advancing U.S. equity market structure forward. So, you know, with that, I'd like to thank Jamie and the staff and the Commission for having me here today.

MS. RILEY: Well, thanks, everyone. Thanks for joining us today. I'm Kelly Riley. And so for this panel, we're going to be talking about what the focus will be on Rule 610 and whether it should be changed, to the extent that Rule 611 is rescinded or modified. So as adopted in 2005, 610 addresses three subjects. It addresses the means of access to quotations, the fees for access to protected quotes, and the best bids and offers in the national market system, and lock -- across markets. So let's start our discussion on the access fee caps. Rule 610C prohibits trading centers from charging fees for access that exceed 30 mils to access protected quotes and other best bids and offers. The Commission just amended the access fee caps to reduce them to 10 mils, and that change will be implemented in November of 2026.

But for purposes of this discussion today, let's think about two potential scenarios: one where the 611 is modified, and one where 611 is rescinded. So maybe if we can start the conversation with the scenario of where 611 is rescinded. So if 611 is rescinded and we have no protected quotes, do we still need to have the access fee caps for purposes of the best bids and offers? I don’t know if maybe -- Brett, would you like to kind of start us off with the conversation today?

MR. REDFEARN: Sure. Thank you very much. And I will also say, I don't make any money from transactions from anybody. Just to set that straight. So look, at this point, it's very clear that if you rescind 611 or the protection rule, it's going to have an impact across a number of other rules. And the

more rules that it touches, the bigger these changes are going to be, and the more implications there are, and the more intense the economic analysis, and all the effects across the industry are going to be -- going to have to be dealt with. I believe that as we look at this, we should not actually eliminate the access fee cap. And I'm going to tell you a few of the reasons why I think we should not, even though I do believe that we can remove Rule 611.

The reasons are, number one, we have a best execution rule. And even though that's going to be reviewed and reevaluated, best execution is going to mean that in many cases people are still going to try to access that best price in the marketplace. So institutions -- in addition to the rule, institutions are going to be asking individuals, like, are you getting the best prices? And if you're not getting the best prices, why are you not getting the best prices? So in my view, the underlying reasons for the access fee cap still exist. It is still in place -- between best execution and between institutional demands, there still is almost a de facto protection that is going to exist there.

One of the examples of that would be, we don't protect depth of book, unlike the Canadian

market, and effectively, routers protect depth of book, and that -- for the purposes of best execution. So I think that's the first one. The second one, without fee caps, I believe that the NBBO will be degraded. So when you look at the reasons behind the access fee cap at the beginning, one of the reasons that was presented was because there will be price distortions in the NBBO. If you don't have a cap, we saw before Reg NMS, there were access fee caps that were coming in very high -- attain, Market XT. There were a few examples where some of the venues came, and they put them in very, very, very high caps to try to capture all of those limit orders in the marketplace.

That degrades the NBBO. And if you degrade the NBBO, it creates a whole set of other issues. How do you -- you know, what is the NBBO that you use for best execution for Rule 605? How do we think about the NBBO? Do we need to do net pricing, which is a complexity? So there’s a lot of other things that come with that. I think the third thing is complexity. It adds a substantial amount of complexity. We will talk about whether or not there should be net pricing. Net pricing is complex. Now you're going to have -- you're going to be looking at

all these other prices that are mixed into the market. It might be, for very sophisticated participants, easy to put into their routers and into their systems. But I think for a lot of people, it's going to be very complex. And I'm afraid that if you're not getting the BBO orders that you see on the tape, I think that there is an issue in terms of investor confidence.

And the last one is, I think that there are going to be more venues, not less. So if you think about it, one of the reasons why we're doing 611 is to try to create fewer venues in the marketplace. If you take away access fee caps -- if you think about the way venues are shaking out, right -- when we have -- when inverted venues were really popular, every exchange group had to have one. Right? It was like, we need an inverted venue, we need an inverted venue, we need an inverted venue, and that led to more markets. Now, if we do this, we could have a situation where -- well, we need a 50 mil rebate market too, because somebody else has a 50 mil rebate market. If you think about it, when the access fee caps go up, all of the markets, all of the biggest liquidity centers will gravitate to that highest rebate.

That is the case today. If you look at the 30 mil cap and the three biggest books from -- the biggest books from each of the exchange groups, they're all right there at 30 mils. They all gravitated to it, because that's how they capture sort of the limit orders that help to drive the liquidity book. So I think we can deal with 611 and all of the issues with that. But I think if we add access fee caps, we're going to open up so many other issues that it's going to be harder to get this done. It's going to result in more issues in terms of the quote, less investor confidence. And so I think it's problematic.

Just one last point, I do believe that the access fee caps went too far under the amendments that were put through under Gary Gensler. So I don't think that the 30 mil cap should be applied to the securities that do not go to the half cent tick. I think we should leave that alone and leave that where it is. And there might even be some space for illiquid stocks where the cap could be higher, or even removed on really illiquid names. But I think at the top of the book, I think we need to keep it. So thank you very much.

MR. TYRRELL: I'm happy to take the other

side of almost all of that, to start. I think if you eliminate the trade through protection, you know, the justification for a fee cap goes away. When you read the original adopting release, the cap is very closely tied to trade through protection and being able to access a quote because it's protected. I think all those things are valid concerns that you're raising, like best axe and the NBBO. But I don't think that's -- I'm not a lawyer, I guess, would be the caveat I'll offer. But that does not seem nearly sufficient to impose, you know, a government set price that's going to be with us for years or decades based on those items, without the OPR protection attached to it.

You mentioned net pricing and complexity. I'll agree there is complexity to that. But I think that also solves a lot of these issues that you raised. I think you can do -- you call it net pricing, I would say, I'd maybe call it retrade fee transparency. But if an exchange is publishing a quote, I think it's very logical to say that exchange should tell you how much it costs to access that quote. We really don't do that today. We offer the quote, and then we send you a bill at the end of the month for whatever the access fee was. I think we're

very capable of putting on a fee in the data feed, so the world has transparency to how much it costs to access that quote.

And that, I think, addresses some of the risks of people raising access fees dramatically. I absolutely agree that as a risk, someone will certainly put in a penny access fee and a 99 mil rebate if there's no other governor on that. But I think the best governor would be transparency and then let the market evolve to where it needs to go. I agree. We're definitely at -- 30 mils is sort of the -- the volume-weighted access fee is right around 30 mils right now from exchanges. And it's not really clear if that's, like, a market-based reason, or it's because that's where this rule has been for so long. I think if you had something that was a little more dynamic, you'd let the market decide where those fees evolve to. And if they have to evolve higher but it results in better prices, that could be good.

And I think you would want to ultimately include -- do net pricing as you call it, where you include the exchange fees in the ultimate settlement price. And I think that helps resolve a lot of issues around order routing concerns. But I think, generally, if you lose the OPR rule, I don't really

see how you can justify the fee cap as it stands today.

MR. SUNG: So, one point that I'd like to sort of add to what Kevin -- you know, Brett makes the point that we don't want to go into a situation where we have a penny access fee with a 99 mil rebate. Today, the Commission has the power to review any exchange fee filing and really sort of rescind any sort of approval that's effective upon filing. We've seen that recently. IEX put out a fee filing with a step up tier, without an expiration date. They had to go back to -- the Commission went back to them and made them put an expiration date on there.

Step up tiers were ubiquitous throughout the equity markets, and, you know, with very long baited expirations -- look-back periods. And the Commission basically, through that authority, has eliminated any sort of step up tier without an expiration date. And so it is our feeling that if an exchange came in and said, hey, we're going to do a penny access fee cap, that the staff would push back very hard without sufficient justification of what is the need for this access fee cap that's so egregious to what the market is currently at, that I think we would rarely see the extreme example that Brett pointed out.

MR. RAMSAY: Well, I am sort of itching to get in here. Brett -- I'm going to side with Brett on this one. He stole a fair amount of my thunder, but just to put a finer point on some of the points that he made, it's important to remember that even at the time that NMS was adopted, and more recently when the NMS amendments were adopted, that the Commission's rationale for having the access fee cap depended pretty heavily on this concern about not distorting display prices, and in particular, the best prices that go into forming the NBBO. And even during the legal challenge to those rules that was advanced by some exchanges, which were -- the SEC's action was sustained in court, the -- it seemed everybody acknowledged the point that you did not want to have an access fee in an amount that is larger than half of the spread size, because -- or, minimum spread -- because at that point, you necessarily have really discordant prices, confused prices, and that was something that you needed to avoid.

The court itself, in its decision, kind of endorsed that reasoning, to point out that the existence of the cap helps to ensure a securities displayed price does not stray too far from its true price. That was the language that the court used. So

all of that rationale, it seems to me, fully applies, regardless of what other regulatory reforms the Commission might undertake. And, in particular, as Brett said, in terms of maintaining the integrity of the NBBO that market participants so heavily rely upon, it's critical that there is some limit. Now, where the cap should be set is a different question. And, you know, that's something that could be reexamined. Perhaps experience with the NMS amendments could be gained in sort of determining whether that should be -- whether the -- where the cap should be set should be reexamined. But it -- the rule continues to perform an important public service that I think should be retained.

MEHMET KINAK: So I'll jump in real quick. It's going to pain me to say this, but I agree with Brett and John on this one.

(Laughter).

MEHMET KINAK: Well, I think if you look at the removal of 611, and kind of look back 20 years ago, access fee caps were placed, obviously, because 611 was being introduced. And so if you remove 611, the easy answer would be to say, well, we can remove access fee caps. But I think that the real reason we can't is because of best execution. And by that, I

mean, I can go to -- if you remove OPR, I can go to a principles-based approach to best execution as an institution, and I can ignore certain prices in the marketplace at certain exchanges, but others can't. So if you look at what self-directed individuals do, they're still going to be driven by best price. And if best price is at a venue, that now is, you know, not limited or restricted for what they can charge to access that quote, it becomes challenging for those that are directing that self-directed flow.

Now, if you use a net pricing model, potentially -- again, it's complex, but if someone were to charge a full penny to access that quote, and you showed that then obviously being a penny worse, because of the full cost of access, maybe you could do that. And someone could ignore that price and say, that's not best price technically, I have a better price somewhere else. But it gets very, very complex, very quickly. And this is a slippery slope. So now you're looking at inverted markets and saying, that inverted market may have the best price, but is it the best price necessarily when it comes to what happens to the quote right after you access that inverted quote? How much information leakage is there for that urgency of getting that? And are you doing it because

you're trying to jump the queue, which is what we do now when we go to inverted markets? Or are you doing that because technically it's the best price now within that pricing model?

So it leads to a lot more conflicts, potentially, that could exist in our marketplace from a routing perspective. And it's not clean, unfortunately. And again, from an institutional perspective, we can handle it, we can manage it. And we have a lot of resources that can kind of measure where we should be and shouldn't be going. I worry that a lot of other market participants can't do that. And so it leads to a lot more, I guess, investor concern than there should be. That's the first thing.

Second thing, as far as caps go -- so, we have long argued that there is a one size fits all approach to a lot of regulation. For the last 15 years, we've been trying to get access fees down, because 30 was a price that was set long ago. Everything else in our industry has compressed, not access fees. But again, I don't believe that it should be lower for all securities. It should be lower for very liquid securities that don't need intermediation and don't need that rebate in order to drive volume. But for less traded instruments, Brett might be right. Maybe we do increase it. Maybe the cap should be higher so that we can promote displayed liquidity.

So I'm not in favor necessarily of a 10 mil across the board cut. I certainly don't want to keep caps at 30, because we've argued a long time that they should be down and lower. I think we should look at it more holistically, and especially with tick size changes that are upcoming. So if you're going to narrow the tick increment, then obviously you should commensurately reduce the access fee as well. But I think we need to look at that more closely, because I think the number of securities whose ticks were going to be narrowed was too broad, in my opinion. I think we should look at that, identify securities where there is ample liquidity and there's competition at the quote, figure out those securities in particular, narrow the quote, narrow the access fee, and see where that takes us.

MR. SUNG: So, one of the things that I -- you know, when you talk about that access fees are necessary, but maybe for some securities that, you know, maybe we should adjust them, it sounds like we're adding additional complexity, which we get rid

of if we just eliminate the access fee cap. To Kevin's point, you know, if we were to add the access fee to the data feed, the Commission has sort of moved in that direction with fee transparency at the time of execution, which goes in this February. So in a case where everybody knows their fee of time of execution, access fees are included in the price feed, why would we add additional complexity to it, where if there's no access fee cap, the market will settle where the market settles, and if somebody wants to put in a penny access fee cap, and that is always -- that quote will always be sort of at the bottom of any sort of queue. And any best ex sort of measures can come into play in terms of determination of if a broker feels that it's their -- in their best -- clients' best interest to access that quote.

But it does feel like that -- if you add the access fee to the quote with fee transparency at the time of execution, that you get rid of a lot of the added complexity that, you know, this panel is sort of adding when you think about illiquid securities or other types of security outside of the top, you know, 50 names that trade most of the volume.

MR. TYRRELL: I was just -- also on John's point on spread, I thought it was a good point that

fees and spread are obviously connected -- Met made a similar point. You know, I also think -- yeah, what I think we want to drive to would be a more dynamic situation where we're not having this debate every few years of like -- yeah, it should be 10 bucks to cap for some stocks and 50 for others, and 30 for -- that's a really challenging debate to be in. And I think finding a more market-based solution is something we should be striving for. And I think, you know, yes, there are going to be some complexity trade-offs.

I think, you know, to Met's point, obviously every market has different impact -- or every single venue has a different resulting market impact when you route an order there. I think if you're routing a large complex order, that's, you know, something a broker needs to optimize for. But again, I think it's something that the people deal with today -- we'd be dealing with in a different way with this -- with a different model like this, but I think it's manageable.

MR. REDFEARN: Well, on the later panels, they're going to have some real challenges with how we look at the NBBO, and how it affects 605, and limit up limit down, and short sell rule 201, et cetera. If you don't have a fee cap, it really does

have a distortive effect on the quote. That adds a lot of complexity. And it's going to mean we're going to have a lot more -- in my view, a lot more locked and crossed markets as well, because then what does the BBO -- if you have super high things, it gives you a rationale with no 611. I'm not going to hit that quote, because that guy is charging, like, way too much, or it might be, you know, now I have to link to a market just to try to deal with that particular quote, because it's very high and a lot of liquidity providers have gravitated there. So if we have a maker taker world, then -- and we have a best execution standard, the fundamental reason behind the access fee cap is still there. It hasn't changed.

Well, PR might not be there, but the fundamental reason we did it in the first place, all of those forces sort of still exist. And if we take that away, we really are going to -- you know, it's going to make this rulemaking -- like, you're going to open up so many other --

MR. KROEPER: Sorry, I would just add, I don't want to exhaust the topic before -- let Kelly move on, but I would say that having a cap, I think by itself, does not necessarily add new complexity. I think in some sense, it avoids the complexity that you would then -- that could incur by having the market distortions that you worry about. Again, I think the question of where you set the cap is -- is a different question. I think it can be set at a level where there is still plenty of opportunity for exchanges to compete, and set, you know, in terms of both fees and rebates in a way that involves healthy competition. But I don't think having a cap is going to create any complexity that people won't be prepared for.

MR. BULKIN: I was going to start by saying that I agree with Brett, not because I always agree with Brett. (Laughter). I tend to agree with him very often, but I started my career as a software developer, as a quant. And there's a concept in software development known as test driven development. The idea is that you first write a test before you start either creating a new system or significantly modifying a complex existing system. And I think this concept is very relevant to what we're trying to do. I think before we go into the details of exact level at which fee cap should be set or fully removed, we need to establish the criteria of success and failure. I think we need to establish the metrics by which we can evaluate them.

And to me, the ideal outcome of NMS reform,

if I may, is the following. I think as Commissioner Pierce said, and as is often mentioned in all panels, U.S. markets are the envy of the world. We need to make sure that the experience for retail investors is not degraded. We need to make sure that the experience for institutional investors -- at least or hopefully better than there is today, meaning their ability to move large blocks of stock. We want to foster innovation, and we want to make sure that all the ills or issues associated with Rule 611 are mitigated or resolved, such as high cost of connectivity, proliferation of exchanges, and overall market complexity.

So to that end, I would say that philosophically, I think -- I kind of see Kevin's point that the reason we have cap in the market today is because of the OPR, and markets in theory should figure it out, but I think a big elephant in the room is best ex. If we're moving towards -- and I know it's going to be covered by a third panel, but if we're moving to principal-based best ex, it's unclear to me to what extent brokers will be held liable to giving the best available price to a client, no matter what the execution fee is. Without knowing that, it's very hard to figure out a direction for fee cap,

because we know, as all previous panels -- panelists said, there will be market distortions. There will be market senders that will come up with exorbitant access fees.

And I think, again, to agree with what John and Matt and Brett said, I think in order to mitigate that risk, we need to keep the cap in place. There are a couple of direction in which the Commission may go with the level at which the cap should be set. Number one -- option number one is status quo. Keep it at 30, minimize the variables that are being changed, measure the results, evaluate the effect of just abolishing 611, and potentially, you know, implement the change later. Option number two, proceed with the decrease of a fee cap to 10 mils across the board. Option number three, as suggested by Matt and Brett, is make it more nuanced. Meaning lower it for some names, keep it at 30 for some other names, and potentially increasing them for the rest of the universe.

There is another option. You can say, let's effectively remove the fee cap, but let's create a guardrail at, for example, half a tick. So if a tick is a penny, make it 50 mils. If a tick is half a penny, make it 25 mils. That would effectively

preclude a synthetic cross of the quote -- and we'll talk about -- cross later on. Bu this is one of the potential options that I think should be reviewed.

MS. RILEY: John, you had a question?

MR. KROEPER: No.

MS. RILEY: Okay. Thank you -- good start. Maybe we should throw a little more complexity in. You know, what if one of the scenarios was to modify 611, like putting in a market share percentage, and so then you would have some markets that are protected, and some markets that would not be protected? Does that change anyone's analysis on what we do with the access fee caps? Do you keep them? Do you only keep them for those markets that are protected, but not the ones that are not? Anyone have any thoughts on that?

MR. KROEPER: I'll start by saying, it doesn't change my analysis, because I think that the access to the best prices at each market are still -- you still have the concern about price distortions and -- to put it this way, I think all of those quotes that go into forming the NBBO need to have some kind of access cap related to them. So it may -- you know, it raises the question of how it is the Commission preserves the integrity of the NBBO. So you know exactly which quotes are forming that price measure. But because that price measure is so critical for bunches of purposes, some of which have been touched down on, and others that haven't, I think it's really important to, regardless of the form of the reform takes.

MR. REDFEARN: I would second that. I generally agree with what John just said. I think the key issue is, I don't think these things are as linked as people think they are anymore. Right? It's not just, oh, we have an order of protection rule, and therefore you have to have an access fee cap again. With best execution, with institutional demands, with the expectations of retail investors, the forces are still in place to be wanting to take out the top of book. So I don't really think that's -- that was a reason why they put it in; it was not the reason or the sole reason. The price distortion issue was also very much the case. But I do believe, as I mentioned before, that we did go a little bit too far in the last proposal, and I don't see why we had to bring them down for the stocks when they went to half a cent.

MR. TYRRELL: I think if you do -- I don't disagree that if you have, you know, two sets of rules

there for both protected and unprotected -- like, I think you're adding more complexity. And I really liked Dmitry’s point before on, you know, keying the access -- any sort of cap or anything off of the tick size. And, you know, I think that's a really good idea in concept. It's also going to add a lot of complexity. So I think, you know, one way or another, I think we're going to have to figure out how to deal with some of this complexity. And if you want a more nuanced approach, like a volume-based threshold with slightly different rules for, you know, exchanges above and below a threshold, I think you're going to very quickly get into a world where you have to have some sort of more, you know. data sharing or transparency, or something. Like, I think we're going to have to deal -- figure out how to approach this complexity, because it sounds like a lot of these ideas, one or another, do introduce more complexity to the market.

MEHMET KINAK: I mean, if I can real quick, I've never been a big fan of modification Rule 611. I think, you know, if we're going to amend 611 to make it work properly, I think we should just repeal it. It's a cleaner way of approaching it. And it, you know kind of gets to the point of what we're trying to

accomplish, and obviously there'll be amendments to other rules that need to be made, but creating a market where there's a threshold or a block exemption or, you know, lifting the prohibition on locked and crossed, just to make something work because it's not working the way it was intended, doesn't make sense to me, because I think we're going to be in that continuous amendment type of engagement there, where we're constantly making exemptions to a rule to try and make it fit what we're trying to fit.

So, the way I look at it, my comments are for repeal. My comments wouldn't change much for reform, but I think reform is a bad way of approaching this. And I think the folks that want to reform look at it as a good first step into trying to repeal, and seeing what that might lead to, but I think it'll lead to a lot of unintended consequences when we reform something, and the market may change, not necessarily for the better. It'll certainly make things a lot more complicated. But I think we'll be in, in my opinion, a worse state than we're in currently. So either leave it the way it is or repeal it.

MR. BULKIN: I have to say that I totally agree with Met. There is an argument that the Canada-like solution of only protecting markets that exceed a

certain threshold would solve one of the perceived ills of 611, which is the uncontrolled proliferation of exchanges. I think there are easier ways to do it, such as the reform the -- formula -- revenue sharing formula. I think the solution that would require exchanges to have certain threshold is fraught with a lot of complexity and issues. I think it's going to create a two-tiered market. I think it's not going to solve the issue of brokers that already connected to those exchanges, because the volumes can fluctuate, right? So it -- it doesn't make sense for a broker to disconnect from an exchange if it falls below the threshold, only to have to connect to them again in a few months. I think it's going to add more complexity, and not going to solve any issues.

MR. REDFEARN: I hate to say it, but I also agree with Met on this one. But the -- the only other thing I would say is that I’m not sure, though, my views no 611 if it comes with an excess fee cap, because I feel like those issues are substantial enough. So if they're separated, I think it makes complete sense to do it wholly.

MR. SUNG: You know, sort of our feelings -- if there’s a threshold model that -- again, there’s no need for an access fee cap. I think one of the things that we feel is that simplicity and straightforwardness should rule the day. I don't think anyone wants us to get to a state where we make changes, and then we have NMS-like FAQs that are coming up. I remember when Brett and I were at Bear Stearns during the start of NMS, Brett was working furiously with SIFMA to try and get as many exemptions to NMS as possible so the institutional desk could do what it wanted to do. So we don't want to be in a state where we make changes and then all we just do is sort of work around it through very complex FAQs.

MR. REDFEARN: Nice clarification. (Laughter). And there were some areas, honestly, where the rule needed to have exceptions, and we had to negotiate those.

MR. KROEPER: I would just add --

MS. RILEY: Well, I hope the next conversation is just as lively and informative. This has been really great. So, the other provision we wanted to talk about in 610 is block cross market prohibition. So the Commission adopted these prohibitions to address the technology that was, you know, occurring -- kind of building up at that time, but also to address potential investor confusion -- if the investor was going to see -- you know, bid an

offer, either matching or, you know, crossed. And so, in the 20 years since we've had Reg NMS operating, and the technology that is, you know, built up, and is so much -- different, do we still need lock cross prohibitions? And I guess I'd also add, as you guys are thinking about your responses, do we need locked prohibitions or not? Or do we need crossed prohibitions or not? Should we think of them separately or think of them together? So who wants to jump in and start us off?

MR. REDFEARN: I'm happy to just say -- so, I think that it makes sense to -- like, if you think about, what is the basis for the rule -- and if the basis for the rule is to maybe make it so it's less expensive, you don't have to connect to all the venues. Maybe there's some very, very small venues that aren't adding a lot of value. You don't want to connect. If the locked and crossed market prohibition is still there, then argumentatively you would remove that benefit from the rule. So generally speaking, I think, with the elimination of 611, it does make sense to eliminate the locked and crossed market provisions. But again, if we link in the access fee cap to that, my view is, if you take away the access fee cap, honestly, you'll have so many locked and crossed

markets that I don't think if you do that, I would support the elimination of locked and crossed, because I think that that would further contribute to the degradation of the NBBO.

So it's sort of -- these things, again, they're all linked, right? It's a -- very, very much of a multivariate analysis. I think even with the locked and crossed market elimination, as we talk about the SIP revenue discussion -- and I hope they get to this later, my view, though, is, when we work at that new formula, any market that's actively locking or crossing a market for however we're doing this formula should not be receiving any SIP revenue during that. There needs to be some economic disincentive for being -- participating in active locks and active crosses in the market. And I think that's one way of getting at that.

MEHMET KINAK: Yeah, I mean, I still -- I guess, from a market practitioner perspective, I still don't really understand why the locked markets aren't allowed. You know, if the bid is $10 and the offer is $10, and I can trade at $10, whether I'm a buyer or seller, why wouldn't I want to do that? I mean, we complain all the time that people aren't getting as much of the spread as they would like. In that case,

there is no spread. The prevailing price of something is $10. Let's trade. And so, I've never understood, frankly -- you know, I know ATSs can't operate currently, or a lot of them won't cross during a locked market type of scenario. But again, you know, it's 10 by 10, cross me at 10. I'm okay with that. I'm very happy with that price.

And guess what? There's no adverse selection post that. There's no information leakage. There's a lot of benefits that come with crossing when the market is, you know, basically as true price discovery, so to speak. So, you know, when I separate them, I think you can remove the locked prohibition. The crossed prohibition is a little bit different. One, I don't know anybody that wants to cross the market intentionally right now. I think if you did, there's a significant arbitrage opportunity that's available. And there's an efficient market that will probably, you know, interact with that quote. I do worry about, if we go to a model where there's no access fee caps, and no net pricing, because then you distort what the true market is. You know, behind the scenes, it could look like 10 by 10, or, you know, inverted, obviously, 10 by 9.

But really, it could be the other way

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around, because clearly there are rebates in play or something else that's -- you know, that allows someone, or makes someone interested in crossing the market. Because, like I said, right now, I don't know anyone that intentionally would want to cross the market. You're probably just going to lose money that way. So, if we had to remove the restriction on crossed markets, I think you'd then you'd have to, you know, apply a net pricing type model, which would, again, make it so that people weren't crossing the market intentionally. But again, that leads to a lot of complexity. But locked markets, yeah. I mean, that should go away. Regardless of what happens with 611, we should get rid of the prohibition on locked markets altogether.

MR. SUNG: I agree with what Met said. I think also, in terms of a locked market, even, you know, the true, like, all-in cost of that locked market -- the market's not really locked, right? If you have bids and offers at 10 cents -- and we actually see this sometimes -- you know, I think a lot of locks that we see in the market are sort of transitory, and maybe only on the SIP, and not really in direct feeds. But, you know, we see some fixed income ETFs and products like that will be locked for

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significant periods of the day. But in reality, you know, an offer of 10 cents does not mean I can buy for 10 cents. It means I can buy for 10.3 cents, whatever the access fee is. So I think that's something important to remember, even if it's locked, on an all-in cost basis, it's really not locked.

But I agree, I think in terms of removing 611, it seems logical to remove the locked and crossed prohibition to really get the full benefit of the 611 removal. Yeah, I agree with Matt and Kevin that the elimination of locked markets would make sense. And I also agree that, you know, in very liquid names -- sort of -- there were -- cross market arbitrage traders would clear out those crosses very quickly. The only concern we would have is, there are a number of very illiquid symbols that could potentially be crossed that no one is paying attention to. And they remain in a crossed state for the whole day, because, you know, those names really don't trade that much, if at all. So, you know, definitely supportive of elimination of locked markets.

And to the -- in terms of the reduction of complexity, as an exchange operator, we have to create a number of order types. And we have a lot of mechanisms that we have in place with our various

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order types where we will price slide orders. We will hide an order if it's going to lock the market. And it would just make life a lot easier for, you know, sort of, our operation as well as sort of price transparency.

MR. TYRRELL: And I think functionality transparency has -- to jump on that quickly -- you know, I think we would be able to get rid of a lot of the order types lead to a lot of, you know, investor confusion, or concerns -- like, oh, there's all these really crazy ins and outs. I don't understand what's going on in the market. A good bit of that, I think, would go away if the locked/crossed provision was gone.

MR. BULKIN: I want to touch briefly on complexity and order types. I think if 611 is eliminated, I think everyone would probably agree that there is no need for ISIS. However, I can pretty much guarantee that there will be another slew of order types that we can't even think about today that will be specifically designed for a new structure, whether locked and crossed is allowed or partially allowed. So I'm very skeptical on the reduction of complexity. I also want to say that I think we have something close to a consensus on locked. I think the only

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caveat for locked is, we need to think whether a single market can lock its own quote. Because in theory, to add only orders can lock a single book.

And I can argue both sides, whether this should or should not be allowed. But the end result of it is going to be that, in many securities, markets are going to be locked pretty often. And again, going back to my point about the criteria of success, we need to understand, what are the implications for the market quality, how we're going to view 605 in case of cross markets, and see whether there's any way for us to keep prohibition on the cross markets.

MS. RILEY: Thank you.

MR. RAMSAY: I have a little bit of a tangential -- I mean, I have a strong view about sort of locked versus crossed prohibitions. But I just didn't want to make the point that I think all of the aspects of Rule 610, in some sense, are restrictions that are intended to make sure that quotations are useful, that they perform a general public benefit. And I think what some of us are saying is that, you know, some of those restrictions need to stay in place. That doesn't mean that we -- the Commission shouldn't do other things to incentivize more displayed liquidity. And that's a really important thing to keep in mind, that it is -- people have talked about the decline in exchange trading. But the decline in percentage of lit trading that actually is a portion of the total has been even more dramatic. I think the -- according to our figures, 2017, the lit proportion of total trading that resulted from lit trading was about 46%, down to 27% so far in 2025, and continues to be. So other jurisdictions seem to be moving in a direction of trying to do more to support display trading. It feels like in recent years we've been moving in the opposite direction, which creates real perils for our markets.

MR. BULKIN: So, John, do you think that the repeal of 611 would lead to the further degradation of --

MR. RAMSAY: I don't know. I mean, there certainly is an argument that it isn't. I just -- my only point is that I think that the Commission needs to carefully evaluate whether the full package of reforms, like, taken together -- because people said, there's all these interactions -- you know, to have a reasonable basis for concluding that it will not further erode displayed liquidity and will support it. And then there are probably various ways to get there.

MR. KROEPER: Just a quick final point on locked and crossed. So, the way the rule operates is that the Commission requires exchanges to have rules that prohibit locked a crossed markets. So if the Commission eliminates that provision, the exchanges would still have those rules. Should the Commission take the further step of requiring a uniform position across the exchanges, or leave the exchanges to have their own rules with respect to that?

MR. TYRRELL: If there were Commission level changes, I think we would adjust our rule book in turn. I can't foresee a world where we'd want our own displayed quote on a venue to be locked, just as a policy matter internally. I mean, I would probably say leave it, let each exchange decide how they want to handle it. If an exchange wants to maintain the policy of not locking in a way quote that's -- that's fine.

MR. REDFEARN: It gives the exchanges a greater ability to be more competitive for lit quotes at the inside market. And everybody wouldn't have to use day limit isos all the time to post at the inside, were they have to have all these data sources. So, more -- there's a lot of people who can't use that order type, and it makes it harder for them to

aggressively quote at the inside, like quant funds who aren't broker-dealers that need the broker-dealers that manage the obligation -- so I think it makes for more competitive quoting at the inside market, and it helps with exchange lit competition.

MEHMET KINAK: Yeah. I mean, we would want -- we would prefer sort of to amend our own rules.

MS. RILEY: Thank you. I mean -- I think I have one last question just on locked crossed -- because it was -- the Commission was considered about investor confusion -- if we go back to retail investors, someone who's going to be looking at a screen, is anyone up here concerned about investor confusion if the price matches or if it's crossed?

MR. BULKIN: My firm doesn't serve retail investors and I think it's very hard to measure confusion. However, I would say that I can easily imagine a rising number of calls for retail brokers asking questions. So it's going to take time -- take some effort on behalf of retail brokers to educate their clients. The main thing that matters here, I think, is the quality of execution for retail. Right? If the quality is crossed, how do we measure quality of execution for retail? How do we measure price

improvement if -- in the case of crossed quotes? In the case of a locked, that's very easy. Right? It's clear. We need to think very hard about 605 in the context of crossed quotes.

MS. RILEY: Okay. Thank you.

MEHMET KINAK: Yeah, I would echo that. I don't think self-directed or retail investors would be confused by a locked market. Again, it's just -- you know, it's bid at 10, offered at 10, sounds good. If I'm a buyer or seller, it's 10. I do think crossed markets could obviously lead to some investor confusion as to why someone would want to do that intentionally, or why that market's crossed in that specific case. But again -- and from what Dmitry is mentioning, from a best execution perspective, the EQ stats on a locked market are zero, so it's good. The EQ stats on a crossed market would be confusing for people to kind of measure.

MR. REDFEARN: Totally agree with that. And I think there is an outlier scenario where you could see more crossed markets, which is if, for example, you know, we have a lot of exchanges, we have a lot that have come to the table. If you had a very small exchange that showed up that had, let's say, reasonably high connectivity fees and also had a very,

very high -- if there were no access fee caps and at very, very high rebate and take rate in the market, some people might just say, well, I'm not connecting to them and I'm not taking them out. And it might be one of those scenarios where you do have a greater proliferation. I think that scenario is problematic and we would want to avoid.

MS. RILEY: Thank you. Why don't we move on? I think we only have a few minutes left, and -- you know, we kind of went in an order where we skipped the main two parts of the rule, where is the -- provisions A and B, which provide that there should be fair access within the national market system -- and maybe in the 611 world, a world where the Commission is considering changes to the national market system, do those provisions remain relevant? Do we need those provisions to ensure that there is fair access in the national market system? John, do you want to start us off?

MR. KROEPER: Yes, easy question for me. I think they absolutely remain relevant. I think the purpose of 610A is independent of, in some sense, of all the others -- for one thing, it applies not just to protective quotes, but each one including -- each display quote, including reserve size. And really the point is to be able to say that

exchanges can't, for example, give preference to orders that are submitted by their own members over other orders. You can imagine all kinds of practices that could result from that that would be problematic. And so it's important that the Commission supports the reasonable fair access to quotations, regardless of what happens to any of the other reform.

And I would just say, I think the existence of that provision has also allowed the use of private linkages, rather than a mandated kind of linkage like the old ITS, for example, and has allowed both direct and indirect access to exchange quotes, which has been a system that has worked fairly well.

MEHMET KINAK: Yeah, I would just add from -- again, from an investor perspective, I think displayed quotes need to be accessible. So having unfair access to quotes, displayed quotes, would be problematic. Because again, when we're going into the market to interact with a display quote, my intention is to interact with that display quote. It is not to be told later that, you know, there was segmentation there, there was preferential treatment for one quote over another, and therefore you couldn't access that quote. Now, again, I'm not a fan of thresholds, but if you said that you were going to use a threshold

model so that venues above a certain threshold would contribute to the SIP and the NBBO, and those were accessible quotes, and they couldn't -- they still had to abide by fair access, whereas venues below a certain threshold weren't part of the NBBO, weren't part of the SIP, and therefore didn't have to have fair access provisions to them, that I could understand. Because again, then those quotes aren't displayed and need to be accessed necessarily. They can be potentially displayed, but you can ignore them. And my intent when I go to interact with it would be different.

MR. REDFEARN: I think it's important to note that there has been really great and extensive innovation in the off exchange landscape in ATSs. And we have all sorts of counter party selection in place. We have private rooms, we have a lot of activities, and now we have -- over 50% of the market share is off exchange. And so I do believe that in -- eliminating Rule 611, potentially, is sort of taking away from some of the power of the protected quote or power of the lit display quote at stock exchanges. And so I think it’s -- there's a really important question here, which is, how can exchanges continue to compete with all of the innovation that’s happening in the off

exchange marketplace?

I don't know exactly what the solution is. I feel like there should be more flexibility for them to compete against these other trends. The value of a retail quote is different than the value of an institutional quote, is different than the value of a stat arb quote. And the market has recognized this in the off exchange landscape. And again, I think this may be, like, a request for information or some sort of request to really get people to dig into this issue because it's complicated, but it's an important one and there needs to be some leveling, I think, for these --that things can happen.

MR. SUNG: Yea, I sort of agree -- sort of -- all displayed quotes should always be subject to fair access. Anything that is driving the NBBO should be accessible to anybody and everybody. The area that I think that exchanges would like a little bit more flexibility, or at least Cebo would, is around the non-displayed area. Let us innovate in certain products where we might be able to create ATS like functionality due to either segmentation or different type of market models where, you know, we are allowed to create bespoke outcomes like ATSs can, only in the non-displayed space. We already have retail price improvement programs across many exchanges, which is some form of that type of segmentation to benefit retail specifically, but that is excluding sort of a broad institutional based customers that we are not able to compete with, and have pretty much ceded all of that landscape to ATSs.

MR. BULKIN: I would agree with Oliver with one caveat. If exchanges are given flexibility to segment subscribers in the dark, those subscribers should not be given preferential access to displayed quote.

MR. SUNG: Agreed.

MR. KROEPER: Yeah, I was -- I want to be able to say I agree with Oliver on something. So I did agree with you on that. I would just add that I think -- I think the Commission should provide more flexibility in various ways for exchanges to innovate in both displayed and non-displayed trading. And I think there are various ways that that can happen.

MS. RILEY: I think we're almost at time.

MR. KROEPER: We have a minute or two. So just to round up, in terms of the implementation of any changes, any thoughts on whether it should be a big bang, slow rollout, sequencing of rule changes -- some general thoughts on that as we close out?

MR. BULKIN: I think in terms of whether changes are made, whether they should be gradually applied to some segment of the market first, or to the entire market, my preference would be for big bang. I think it's going to be very hard for the market to kind of comply with two regimes simultaneously. In terms of the sequence of changes, again, as I think I said before, my preference would be for some sort of a cap to be preserved for the locked market prohibition to be rescinded with some -- on the single book, and for crossed markets to be still prohibited.

The effect of the change needs to be measured over time. And potentially, who knows, maybe a couple years down the road, we'll go to the full free market solution. But I think that would be very reasonable and relatively safe and potential improvement over what we have today.

MR. TYRRELL: I think we should also -- just following up -- like, I think a segmented rollout would be helpful. I think we also just need to factor in the other changes that are currently scheduled, for example, in November. There's a lot of moving pieces right now. And I think thinking about all of it and kind of doing it in a way that makes sense even if something gets passed second, goes in first, because

it makes more sense in terms of moving up to this new world, I think, would be helpful.

MR. REDFEARN: Well, while these things are all linked, they're not necessarily linked in the implementation, right? So right now, it's very hard to answer the question, because we've talked about five or six different things, and we don't actually know what the final package is going to be. And that final package will be very instrumental in terms of how we think about this. In my view, eliminating 611 is going to take some time to get through a common process and potentially work through that. There's other things that can happen in the interim, right? So, the access fee cap changes that are coming, I don't think there's any reason to further delay that rollout, but I do believe that in this process, it is possible to tweak and change that, right? So you may decide upon further review that you don't need to, as I mentioned earlier, at a minimum, you don't need to take the 30 mil fee cap down for the stocks that didn't go to a half a mil.

The SIP revenue allocation formula, this is very important and this is connected to all this, but they should be doing this already. In my view, this should have been done, you know, two years ago right?

So the SIP revenue allocation formula is broken. It needs to be updated, and there's nothing that's stopping that moving ahead right now. Fair access is a bigger issue, and I think it's going to require some more debate, and we'll see to what extent that actually links into all of this. That'll be great to watch. And again, I know another issue you guys are talking about is the vendor display rule. And I think that's another one that you need to look at. How that fits in ultimately, though, in terms of sequencing, will depend on what these final rules turn out to be.

MS. RILEY: This has been a great conversation. I thank you all for coming down to Texas and joining us today. And please, you know, comment file's open. So if you guys have more you'd like to tell us, we would always accept comment letters.

MR. SELWAY: So we're going to take a short break until 10:45. So please join us in thanking the panelists.

(Whereupon, at 10:45 a.m. an recess was taken.)

PANEL TWO: POTENTIAL CHANGES TO RULE 600 OF REGULATION NMS AND MARKET DATA

MR. SELWAY: With intros from our five -- six panelists to -- on what your organization does, please.

VALERIE BOGARD: Yeah, thank you to the SEC for the opportunity to participate. I'm Valerie Bogard, a market structure analyst at Rosenblatt Securities, a boutique and institutional broker and investment bank. As a broker, Rosenblatt represents its clients on an agency basis. We do not own or operate any trading venues or trade for our own accounts, but aim make sense of our complex equity market structure on behalf of our clients to better serve them in their trading objectives.

MR. BROWN: Hi. Welcome to Texas, everyone. I'm Jeff Brown. I'm with the Texas Stock Exchange. It is a yet to be launched exchange, but we have SEC approval to be an exchange. So that's a big first step. I'm general counsel. Having -- I guess I was, like, the third employee to join the Texas Stock Exchange. And we intend to be a competitor in the listing of American companies. And we think that, as Chairman Atkins spoke just a few days ago -- maybe 10 days ago -- we talked about the importance of IPOs. We are -- we agree wholeheartedly with them and intend to drive that -- that -- make IPOs great again. So

thank you.

MR. HARTS: Hi, I'm Bill Hart. So I'm the CEO of the Long Term Stock Exchange. And thank you for having me, Jamie, and Commissioner Pierce, and Chairman Atkins. I think I'd like to maybe try and look at the order of protection rule and the things we're talking about through the lens of issuers, which sort of brings a different -- a slightly different perspective to some of the things we're talking about, especially in one of the most important functions of a stock exchange to issuers being price discovery, price formation, all which go back to limit orders and their role, and the market data behind it, and so on. So I'm looking forward to a good discussion on that.

MR. LLANO: My name is Jaime Llano. I'm the head trader for Teacher Retirement System of Texas. Thank you, Jamie, for the invitation. We represent 2.1 million members. That's a lot of Texans. I'm looking forward to the discussion about, you know. the definitions, NBBO, the SIP, all of that.

MR. MACK: Hi, thank you, Jamie and the Commissioners, and the University of Austin, which was new to me, for having this. I think it's really, really important to have this type of public discourse when we're talking about big, heady issues like this

one and, how to change 611. I'm Chuck Mack. I'm Senior Vice President in the NASDAQ's North American Markets Division. NASDAQ is a global financial technology company. We provide solutions and services to institutions, broker-dealers, markets, regulators, investors around the world. In the United States, I think everybody knows we're -- we have a large listings franchise where we serve public companies and exchange trade products. And I look forward to this conversation. Thank you.

MR. STARR: Hi, everyone. I'll echo Jeff Brown's comments and say, welcome to Texas, as a resident here since the summer. So, glad to see everyone in town. I'm Jeff Starr. I lead operational services for Charles Schwab. That encompasses our order routing and execution businesses, and for the purpose of this discussion, our market data operations as well. We are one of the largest retail broker dealers in the world, if not the largest. And our motto is through client size, which means we see ourselves as the champion of the individual investor and trader. Should also say we are proud founding members of several exchanges, one of which is the Texas Stock Exchange.

MR. SELWAY: Peggy, take us away.

MS. SULLIVAN: Okay, great. All right, thank you everyone. I'm Peggy Sullivan. I'm from the Office of Analytics and Research in the Division of Trading and Markets. Today's panel, we're going to discuss the future of 611 and its implications for the national market system. We'll examine how changes to Rule 611 might impact key rule definitions in Rule 600, like the protected quote and bids. The quality of the NBBO will be discussed. Order execution disclosures and Rule 605 applicability. Additionally, we'll explore potential effects on equity market data, the revenue allocation formulas, and the fairness of market data access under Rule 603C, which is better known as the vendor display rule, in an evolving market structure.

To kick us off, we are going to begin with Rule 600 and define terms. A lot of Reg NMS substances really sit in the defined terms. And the questions for the panel are as follows. If the Commission were to modify or rescind Rule 611, which definitions in Rule 611, if any, would need to be amended or removed? How would changes to Rule 600 definitions affect market data more broadly? And if a definition should be revised rather than deleted, how should the revision be approached? We'd like to begin with Valerie, since Valerie writes a lot on this topic, so I'll turn it over to Valerie.

VALERIE BOGARD: Thanks again for having me. First, I think, when thinking about making changes to Rule 611, the obvious terms that would be impacted are those that involve protection: protected bid and offer, trade through, and intermarket sweep order. If Rule 611 is completely rescinded, I think the SEC can eliminate some of those definitions. But if there's a new concept of protected versus unprotected venues, then some of those terms obviously would still apply, and there need to be further definitions about how protection is determined. However, I also think that there are some terms and concepts that are currently related to protection, but require further thought about how they may relate to the NBBO if protection changes or it's completely rescinded. Take, for instance, the terms automated quotation and automated trading center. Would the SEC want quotes that aren't immediately accessible forming the NBBO?

And we also might want to think about marketplaces that don't exist today, but might launch in the absence of quote protection and feature long time delays or other features that make them not immediately accessible. On the one hand, without 611,

firms may choose to disregard a quote on the NBBO, but this universal benchmark is still used today in execution quality reports, and as a reference price for certain order types. I know that we're diving deeper into the specific topic of the NBBO later on, but I think it's worth highlighting early, because once protection is gone, it opens up questions about which venues form the NBBO and if there's certain standards that we'd like them to meet.

VALERIE BOGARD: Oh, sorry. I apologize, Jeff.

MR. BROWN: Okay. Thank you. Well, Valerie, you know, you raise a good point, and -- you think -- you look at some of the definitions and you think, well, this is obvious. You know, in a world without a trade through world, do you really need a definition of automated quotes? I mean, if it's a manual quote, I can just trade through it. I don't need to go there. The -- and so, you think, well, that's pretty simple. But then -- you know, okay, you raise the point about execution quality analysis. What do we do about having manual quotes in our analysis? Doesn't that bog down -- doesn't that skew our analysis? And you think, well, then maybe we need to keep automated quotes, but it’s a matter -- is it a

matter of latency between the -- certain quotes that are automated and certain quotes that are manual?

And then you get to -- you know, call me crazy -- the free air of Texas. And, as Jamie said, the -- what if an exchange starts in Texas, and, lo and behold, puts its matching engine in Dallas? And now suddenly, you're 11 milliseconds away from New York and New Jersey. Do you have to change the definition of automated quote to say, oh, it could only be matching engines in New Jersey, or exchanges could only have their matching engines in New Jersey? That seems absurd. And so you're going to face these types -- in a new environment, you're going to face these new types of considerations. And so we have to think about what the definitions should be. And definitions shouldn't drive our market structure. Market structure should drive our definitions.

MR. MACK: I think the challenge here is trying to future proof things. You know, I think that perhaps that was what was done with this rule originally. But I think what everyone's talking about is how it was no longer fit for purpose as perfectly as they thought it was when it was originally adopted. Maybe not everyone thought it was perfect at the time, but -- but some people did. And so I think --

maybe Chair Atkins said this morning, we need to be very deliberate and thoughtful as we make these changes. And I think that's very true. And it applies to kind of every piece, including these definitions.

And I like kind of the discussion around automated quotation or automated trading center, and what that means. And I think as we shift from -- if we shift to a world without 611, you have to think very hard about what actually really matters. Is it that it's automated? Or is it that it's fair and immediately accessible? What are the types of things that we think are necessary for it to make up the NBBO, which the previous panel did a very good job pretty much, in a unified way, of establishing that the NBBO is just super, super important. And we would agree with that. So we need to be really, really thoughtful about how, and why, and if these definitions should change.

MR. HARTS: Yeah, I would say that this is going to be a work in progress. We're not going to get all the answers on day one, or even day 365. So we don't really see the need to change anything right now at this point. It could evolve. We could learn some things along the way that would require a change in things.

MR. LLANO: Yeah, as you know, the definitions of -- in the Rule 600 is the backbone for 611. So this is assuming that we will get rid of 611. There are many things that will go away. But the definition of the NBBO needs to stay. It doesn't have to be the same definition, but some sort of NBBO. And then later on, we're going to talk about why and the quality of the NBBO.

MS. SULLIVAN: Okay, perhaps we should actually just move in that direction and go directly to the quality and usefulness of the NBBO. So, while the NBBO definition itself may not change if Rule 611 is modified, how should the Commission evaluate the broader impact of any amendments such as removing the access fee cap, which was just previously discussed, on the quality and the usefulness of the NBBO? If effects on the NBBO raise concerns for consolidated market data plans, what considerations should guide the Commission and the SRO's response to those issues under the plans? The questions proposed apply to everyone who is on the panel. And I think we will begin with Chuck.

MR. STARR: I think that there's a value to having --

MS. SULLIVAN: That's fine --

MR. STARR: Oh -- I think there's a value to having a standard which we can evaluate against. The question in my mind is the cost and the complexity of putting the NBBO together, versus some of the prop feeds that are out in the market that can get us essentially there at a much cheaper cost.

MR. MACK: Yeah, I think we've said a lot in the past -- the value of liquid and transparent markets -- others on the previous panel also mentioned it. I think most of the time when you think about that, the way it manifests in my mind as the NBBO is, it adds this transparency, it gives people confidence in the prices they're getting, it is clearly a benchmark for a great many things tied to best execution -- which I know they're going to talk about on the next panel. It's related to the SIP revenue allocation. I mean, it is entwined very deeply within our markets, and that just underlines the fact of how important -- if you're not going to say NBBO -- a relevant price benchmark is when you're trying to implement a trading decision.

So when you think about -- to me, that's where you start. It's very, very important that people understand that. I think everyone kind of

appreciates that having transparency and relevant pricing information's really driven a lot of success in the market, and breeds confidence with -- with individuals, whether they're through a mutual fund company like Met, or, you know, individual do it yourselfers. It's valid in the same way either way. When you think about potential elimination or reform of 611, and some of the other changes that would likely go with it -- and again, thinking about the previous panel and how deeply they went on some of these topics -- and you could go 10 times deeper -- there's a lot of interrelated pieces that will need to be thought through.

And I'm going to repeat what I said already, the deliberate and thoughtful nature, that's really important as we move forward in this area. But you can imagine a world in which the NBBO that we know it today is very clear what it is, because of the definitions we were just talking about. You have to be an automated trading center, you have to be immediately available. It has to have fair access, and so on and so forth. So if some of those things start to change, which I expect they would in a non 611 world, you have to think about, okay, what are the things that should make up the NBBO?

There is no doubt in my mind that there are many creative and innovative people out in the world. And if 611 goes away and some of these other things change, you're going to see new things that we've never thought about, and you're going to see new things we've never thought about providing displayed markets out to the world. But they may be different in such a way that they're not -- no longer as deterministic as what we have come to frankly take for granted today. And so you have to really be forward thinking of like, okay, what do we want, then, in our NBBO? And I think it does tie back to things that are immediately accessible, so that they are truly benchmark prices that anyone can access, and therefore are a relevant and consistent benchmark for which the -- and reference price for which the market can base all our decisions on.

MR. LLANO: Yeah, I think it's crucial to make sure that we maintain the NBBO and the SIP and therefore the NBBO. Otherwise, it's going to complicate our analysis when we do -- against benchmarks. When you think about what we do, we have 2.1 million members, there are teachers, cafeteria workers, bus drivers -- all they're looking for is for a fair and transparent market. And I will argue that

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the NBBO -- a reliable SIP and a reliable NBBO will do that. It will keep a fair market, a transparent market. And then, moving forward with a little bit of the best execution part. It's not only about price, it's -- there are other factors like speed, order size, and market conditions. But the NBBO is the first part of that analysis.

MR. HARTS: I would say -- first of all, I think that there's -- we're -- if you think about removing the order of protection rule -- and by the way, we don't think it should be modified. It should be either here or gone for all exchanges. When you think about that, it's sort of a "let the market decide" kind of decision, right? Let the market decide where the best execution can be obtained. And I don't see why we wouldn't also extend that to the access fee caps. If a particular venue is charging too much for a particular stock, then brokers can go elsewhere, investors can go elsewhere. Let the market decide. So I think maybe we're a little bit different than other commenters in that we think that access fee caps should be determined by competition.

And, by the way, LTSE has prices now. We have take fees now. They're less than the access fee cap. So we shouldn't just assume that, because

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there's no cap, that everyone would just rise to that. That's not going to happen. Also, I don't think that there's a lot of -- I remember when we were first talking about Rule 611, that people were concerned that a 30 mill cap would distort the NBBO. And it really hasn't. I think where we've arrived at today is a good robust, market structure that incorporates those fees.

So in general, I don't think that access fee caps have a particular -- would have a negative effect if you let them float. Also, I would agree with Jaime that the NBBO is the bedrock of everything we do. We've got -- coming up soon, brokers will begin to disclose execution quality statistics on 605 reports that are all based on the NBBO. If we start making changes now, I think it will lead to incredible confusion amongst investors and users of that data. And so I would urge the Commission to hold off on those kinds of changes. Maybe one thing I might do is add odd lots to definition of NBBO.

And along those lines, I'll just say one more thing. In about six months' time, we're actually going to have a pretty good pilot, without being a pilot, of what might happen when we have unprotected quotes. And that is that odd lots will begin to be

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displayed in the SIP. And they will not be protected. And so it's going to be interesting to see exactly what happens. What happens to -- you know, will brokers still reach out to take those quotes, even though they're not protected? What will happen to price improvement statistics, and so on? There's so many permutations of this. So --

MR. MACK: Yeah, I could add on to that. Because I agree with you on the -- on the point on access fees in a very broad sense. I took a look at 610 because I had to refresh myself. It's been a while since I read all the FAQs, which by the way, I pretty much memorized when Reg NMS rolled out, but that's kind of left my brain at this point. But when I was taking a look at this rule, I was like, why -- I don't think any of these things really would apply anymore if 611 is removed. I mean, they're all there in support of 611. I agree that if you're going to have a -- you know, a freer market, which I think is the aim of removing 611, it should also be free in these other ways as well.

However, having said that, I do think folks on the previous panel did raise some very interesting things that you have to be conscious of, which to me -- instead of getting you to the point that means

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you can't take away these other things, I think much more, it tells me that you have to be very methodical in how you roll out this change, which was touched on briefly on the previous panel, but I do think it's important, as the Commission considers what to change and how to change it, I think they also have to really think through and get lots of public comment and thought on how to actually implement it and roll it out. I think there's ways to do this where you do it in a -- you know, a sequenced manner that's well thought out, and not kind of big bang, and you can even do tranches of symbols, and maybe even do a pilot.

I'm sorry to say that, Jamie, but, you know, it's something to consider, where you can measure the effects and course correct as you go -- which is, I understand is very tough in this type of situation, but I think it's at least worth strongly considering that implementation plan and how you can do it where you have ways to change or pull back or readjust as time goes.

MR. BROWN: You know, I agree with Bill and Chuck that allowing the market to determine the access fees is the right way to go. However, the points that were raised in the previous panel do ring true to me that. when access fees -- if -- and I'm sure we'll see access fees at very large levels, and they will begin to dwarf the bid ask, and that becomes a problem, because you really need to then show them -- you know, the idea that we heard that, you know, showing pre-trade fee transparency makes sense to me. How else are you going to make a judgment about where you're going to trade, if you stumble into a quote that has very high access fees?

So I'm a believer that you should free it up, but then if you at the Commission will have to make a judgment about what is -- should there be a cap at much higher levels in order to prevent the locked and crossed quoting that would ultimately resolve?

VALERIE BOGARD: Yeah, I mean, I think it just goes back to this important question about which venues -- and these could be potentially exchanges and ATSs that are forming the NBBO and those standards, like the previous panel mentioned, if there's an outlier venue with an extremely high access fee, and that's feeding into the NBBO, yes, you can ignore it, but ultimately you're using it to evaluate your best ex.

MR. LLANO: One comment on -- if we want to make sure that we save the NBBO -- it seems like

everybody agrees. The access fees are a big problem, right? I mean, a quote that looks great on paper might not be the best quote of the fees and rebates. I heard from professor on James Angel from Georgetown, he had the idea of the IBBO on the indicative, or EBBO defective. This is where we need to start being creative and say, okay, what are the solutions? Because at the end of the day, regardless of any change that we make, from the asset owner, we need to have an NBBO that we can rely on.

MR. KROEPER: Just to tie this back into the definitions, I mean, I think one piece of it is that the definitions that currently exist sort of allow for the market data plans to distinguish between automated and non-automated quotes. Would you think that we should be able to preserve that in some fashion, whether it's through retaining definitions or some other means -- the plans themselves directly?

VALERIE BOGARD: Yeah, I mean, I think the definition of automated is important when you think about going back to the NBBO and which venues form it.

MR. MACK: I mean, I think when you think about the plans -- and I know we're going to get way into the revenue formula in a minute -- but I do think

the definitions are important, and it -- whether it's automated or some other definition, I think you do need to have some clarity with respect to what is relevant. I mean, I think it matters what is a relevant, consistent, dependable price that you can use for all the reasons that folks have mentioned, like Jaime mentioned using it for benchmarks for analysis, for the investor when they actually want to implement a trade. That's important, I think, to have some sort of definition in there when you're thinking about how this is going to work with, and in concert -- the data plans.

MS. SULLIVAN: Okay. We will just touch upon very quickly, order execution disclosures, the 605 application. The question for the panel would be, if changes to the NBBO affect order execution disclosures required under Rule 605, how would the Commission address these implications? So, Jeff from Schwab, would you like to take that?

MR. STARR: Yeah, I think -- we're big proponents of market-wide execution quality statistics that will let evaluations occur between brokers, and I think it's as simple as just pointing to what you want that measurement to be against. I think the other thing that we have to acknowledge, though, is, you

know, while we publish them, researchers often look at 605 statistics -- we've all gone above and beyond in the community to publish additional statistics to try and explain execution quality to retail investors. We don't just turn on our website and point you to a 605 report. We give you a detailed explanation of what is price improvement, how do we route orders, how should you think about execution quality? And so I wouldn't anchor on 605 as the only way that retail investors and market participants evaluate execution quality.

MR. HARTS: I mean, that's absolutely right. And when the Commission passed -- I think it was 11AC1-5, which is now 605, there was language saying that they expected that that data would be sort of a base for brokers to explain more about best execution to their customers, and many brokers like Schwab have done so. But it is important to have uniform measures for that base level of data.

MR. BROWN: I think one of the problems with the way 605 is constructed, and way firms have to deal with it, is that it doesn't really standardize your measurement of execution quality. The different order flow that brokers receive distorts the way their executions will show up in a 605 report. And so for years Schwab has argued -- and I betray myself -- I worked at Schwab for 21 years, so I'm familiar with what they did. Okay -- but the way -- you have to understand that these are not going to be like, oh, this report is the be-all end-all of execution quality. As Jeff said, you have to do much more to demonstrate what you're doing for your client in order to demonstrate your high quality execution.

VALERIE BOGARD: Yes, I mean, I think 605 isn't perfect because of the differences in order flow characteristics. But -- and I also think that there's additional disclosures that are useful to help kind of make sense of them and provide context. But I think overall having this standardized report that's based on this universal benchmark, the NBBO, is helpful to kind of compare and contrast across brokers and across the industry. It's also worth noting that 605 report enhancements are coming next year, along with the additions of odd lots to the NBBO. So these reports are becoming more comprehensive and more useful.

MR. LLANO: Yeah -- no, 605 reports are super important, but at the end of the day, as -- we have TCA providers that will help us improve execution. And this is how we have the communication with the different brokers, and we determine different venues as well. But it's important to remember -- and

I keep saying the same thing -- that NBBO is very important for 605. Let's just be careful not to -- not to -- with the quality of the NBBO.

MS. SULLIVAN: Okay. And now let's move on to a favorite topic, equity market data, revenue allocation. The quality of the consolidated data, including the NBBO, is critical to the health of our markets. When the Commission adopted Rule 611, it also implemented a new market data revenue formula among relevant SROs. It essentially allocates half of the revenues to quoting and half the revenues to trading, although I do want to apologize to T Williams for the oversimplification, because it is a difficult formula to understand. But some commenters have suggested that the current market data formula for revenue allocation encourages the creation of new exchanges, and subsidizes exchanges that quote but rarely trade, providing minimal value to market participants.

So, the questions are how well is the market data revenue allocation formula working? Have you seen any unintended consequences from the RAS formula, for example, encouraging new exchanges or many exchanges under the same family? I have two more questions as well. If the Commission were to modify

or rescind Rule 611, should the revenue allocation be updated at the same time? And if yes, what changes would you recommend? For example, some have stated that there might be less weight for quoting and more weight on the actual executions, with perhaps a small allocation for the listing markets. I think we should begin with Chuck from NASDAQ, and we'll kick it off.

MR. MACK: Yeah, I mean, this is a really important issue. And I think what we're talking about more broadly -- and the SIP revenue allocation formula is part of this -- is incentives in the market. I think maybe Commissioner Pierce this morning mentioned we have a situation where there's some misaligned incentives, and we agree with that. And, in the broader context when we're thinking about this, I think we should also be thinking of -- we've all well established that we think the NBBO is really important, right? Well -- we'll call that the hallmark of the displayed market.

At the same time, over the last several years, we have watched the market become darker and darker and more bilateral. And I think that is something we should be paying more attention to. I think that will have, in time, if not already, have significant impact on the NBBO, which -- we all just

well-established how important that is. And so we need to look at incentives across the board, and really think through, what is the market we need to have for the next 50 years that's going to support the growth of our capital markets, which are, by the way, the envy of the world.

When it comes to the SIP formula specifically, like you said, it's 50/50 half quoting, half trading, and it's not a bad formula. I think it's not perfect. And so there's room for pretty significant improvement. And that's though based on years of watching and learning, it's not as if whoever came up with that formula made a really bad mistake. It was not quite future proofed, and that became more obvious over time. And so if you think of the purpose of it, though, the purpose is to drive transparency that supports our market. It's really to drive information in the market for investors, and for traders, and anyone who's participating in the market in a very transparent way.

And so you've got sort of two pieces of the transparency that matter. You've got the pre-trade transparency -- I'll call that the quote -- and you've got the post-trade transparency, which is the trade information itself, which is price and size. And I

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think for us, what we think about is, how -- what pieces of the market drive transparency most? And, from our seat, what we think about it -- as -- when you've got the pre-trade transparency combined with the post-trade transparency, that's about as transparent and information rich as you can get. So we've often said things like quotes that lead to trades. But really what we're talking about is a transaction that was tied to a quote at the time of that transaction.

And so for us, the way we think about that is, we would weight that most heavily. And then I think you've got two other categories that you think about. And that's the quote by itself. And you could argue that, because of the issues we've seen, where you've seen quote-to-trade ratios really through the roof on certain venues that oftentimes add noise to the NBBO rather than adding value, you say, okay, well, we should just take away that incentive for the quote. But actually, that's not right either, because there are securities that do not trade that often, where the quote is tremendously valuable.

And the most obvious example I think of there is with ETFs and exchange-traded products. And a lot of times, when they first start, it is very

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clear what the price should be, and the market makers do a great job providing that price, but there's just not traction yet in that product. But that provides tremendous value to the market in knowing that there is a price, and having confidence in that price. That is really, really valuable. And I think things like that are easy to take for granted, because we've had it for 10, 20 years. I think, on the other side, you've got just the trade by itself. And without sort of quoting activity, I want to be clear here, that could apply to an exchange trade as well. That does not necessarily just mean off exchange. But I would -- we would argue that that also has a little bit less value than if you've got a quote and a trade happening together. So, if it were us, we'd design it such that those are the three categories. We weight the middle category, that is, a quote and a trade tied together, much more heavily than the other two.

The other thing that we've been wondering about and thinking about more recently, with the tremendous growth in, I'll call it dark trading, whether on or off exchange, but off exchange in particular -- you have a lot less information in those trades when they go to the tape. If you have -- we have -- we operate our smaller market -- NASDAQ PSX is

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one of our two smaller markets -- has less than 1% market share. And there are dark pools that are much larger than PSX. But when PSX does a trade, you see the exchange on the tape, very clear where the trade came from. When it's off exchange, you never know. And so, as a routing broker, you have to map to all these places. You build heat maps. We do it too with our exchange router, so you kind of know where the liquidity is.

So, I think as -- as this gets considered, I think one of the things that the Commission should think about is, do we have the right level of transparency everywhere if the incentive that we want to create is information for the market? And so those are the things I would consider if I were the one kind of highlighting, or driving the boat, for figuring out what the next generation of the SIP formula should look like.

MR. BROWN: All right. My view -- first, the SIP governing committee is powerless to solve its own problems. You know, because of the unanimity requirement, they've known that there's excessive quoting to trading in certain markets, and they can't change it. And they've asked the SEC through a petition for rulemaking to make that change. And so

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we're coming back to the SEC having to make these kind of changes. And that's necessary. And it ultimately -- and we'll get into it with the vendor display rule. You know, it's a system that may have seen its better days. But, far as the allocation formula itself, I agree with Chuck that trades that occur on quotes should get the most credit, because that is true price discovery.

Trades that occur off exchange, or hidden orders on exchange that are executed, you know, they're parasitic off of the quote, and not necessarily adding to price discovery, except post trade, which has some value. So they'll get half credit. I think it was Brett this morning who was talking about locked and crossed market -- you know, trades that occur in a locked market, you know, it may deserve zero credit. I'm not sure. But, you know, and trades that occur on a crossed market, you know, may have a negative credit. You know, these are things that at least build support for the NBBO itself. And I think that's a fundamental feature.

Now, some people argue -- and we've heard it this morning -- you know, the uncontrolled proliferation of exchanges. Well, the real proliferation of trading is off exchange. And that's a real threat to the lit markets. We have to start thinking about how we're going to -- you know, it's been talked about for years and years, but it just continues to grow. And less exchanges are given the flexibility to compete, and to provide traders with the reasons that they're trading off exchange, to provide them with the type of tools that are necessary -- you're not going to change that dynamic. It's going to continue to grow.

And so I'm a firm believer that exchanges need to be given some, you know, reinterpretation of fair access. You know, you think about what the statute -- the statute, section 65 says that -- you know, explicitly, that exchanges cannot have rules that unfairly discriminate among customers, brokers, and dealers. But Congress put a word in there, “unfairly”. They didn't say you can't discriminate. And -- they said you can't unfairly discriminate.

So what's fair discrimination? We have some examples. We've got the RLP programs that were approved in the past years. And they, you know, discriminate, ostensibly, to retail customers, even though it's almost impossible to get retail flow back to the exchanges. And yet I think that that has to be expanded at the SEC. And in essence, fair access

needs to be fair to exchanges. And so I'll leave it at that.

MR. HARTS: I want to talk to something that people have sort of mentioned, that somehow the market data formula is broken. We don't think it's particularly broken. There's always room for improvement around the edges. But, in fact, the market data formula does a pretty good job of weighting different things that happen in our marketplace. And I don't know how many people have actually really taken the time to sit down and look at it. It's very complicated. But, in fact, when a quote is at the NBBO for a large, notional amount, that receives more credit. Isn't that what we want? We want price discovery. We want more price formation. The market data formula was designed to do that. And it does.

So I don't think applying some arbitrary cap to the amount of quotes, or quoting that a market can do -- I don't think that's useful. And I think as Chuck started to go down this path, I agree with this, which is that you can't always tie a trade to a quote. If LTSE sets the NBBO in a stock, and then NASDAQ does a trade, well, then should NASDAQ not get credit for that? I mean, I think that you're trying to draw

too fine a distinction there. So we're not convinced that the market data formula needs adjusting at this point. And, by the way, if exchanges are making too much money from that, then what they should be doing is sharing it back with their member firms as LTSE does. We have several price programs that are designed to do exactly that. I don't think it's necessary for the SEC to somehow legislate a change in order to accomplish that.

MR. MACK: You know, one thing that occurs to me -- somebody mentioned earlier about how it's important to have the issuer perspective. And we certainly agree with that. And we've done pretty extensive research on liquidity in the market, and what it means to issuers. And because we know it's important for issuers, we do know that they're -- you know, liquidity in their stock lowers their cost of capital, essentially becomes currency for them. It's really valuable from that perspective. And we have to keep that in mind as well. But what we've always wanted to focus on is ensuring that our issuers, and issuers in general, have really robust and liquid markets.

I think we've been pretty effective at using market quality programs that are driven by rebates and

other incentives to provide really high quality markets for our listed issuers. And I will say, it's not directly, but it is certainly part of it -- the SIP formula does drive that to some degree as well. So I do think it is really important to look at this deeply. And I would say, kind of going back to the sequencing point, that a couple of folks have made, I don't think you need to wait for 611 to be changed or repealed, in order to make changes to the SIP revenue formula.

I would agree with Bill. I don't think it's, like, this horrendous mess. But there is a significant opportunity to improve it in a way that is going to benefit the markets, the issuers, the investors that are involved. So it's a very worthwhile undertaking.

MS. SULLIVAN: Okay, thank you. I think that that was a very wholesome conversation. We’ve got many different viewpoints. The last point that we have for this particular panel is on the vendor display rule and market functionality. Under today's rules, protected quotes must be honored. And, in theory, that requirement should encourage competitive quoting, which in turn supports the NBBO and the SIP's usefulness. Since Rule 611 was adopted, the number of exchanges has grown from 7 in 2005 to 21 voting members, with 18 active exchanges, plus two inactive exchanges, plus FINRA, across four groups or families, which is NYSE, NASDAQ, CBOE and Memex. And this is just in the current CTA UTP plans, which were just discussed.

This growth reflects the shift from the member-owned exchanges to for-profit shareholder entities able to raise capital and expand services such as connectivity and from proprietary market data. So we move into the vendor display rule, which is Rule 603C. Given the current requirement for protected quotes to be honored, how effectively do you believe this rule supports competitive quoting and the NBBO's utility in today's market? And how has the shift from member-owned exchanges to for-profit shareholder entities impacted the number of exchanges and their services?

And then I have a second part about the retail customer access. Do retail customers who receive either the SIP or the proprietary top of book feed at the point of sale see the best displayed price available in the market? And what changes, if any, would you recommend to the vendor display rule to ensure that it reflects the current functioning of the

market, particularly if the definition of a protected quote is updated? I will begin with Bill Harts.

MR. HARTS: Thank you. So, what's most important is that investors have access to as much information as possible at a reasonable price. And I think that we're doing a pretty good job today. You know, brokers like Schwab provide their investors with great market data tools. And I think we'll continue to see that. I'm not sure that OPR would necessarily affect that. And I'd like to hear what Jeff thinks about it. But --

MR. STARR: Yeah, I think -- I think the issue here, when we get into the vendor display rule, is cost. We obviously want to provide as much data to our clients as possible to let them make the most informed decisions. But the issue that I'm pretty passionate about here is the cost associated with that, because driving the cost down lets us turn around and pass those savings back to our clients. And it gets complicated. But the easiest way that I think about this is a bike. I provide a public utility, the pieces for a bike. They assemble the bike and sell it back to me at a price that they set. There's no competitive market forces associated with that price. And I sit there and look at a lot of

really nice bikes going around that say, NASDAQ Basic, Cebo One, and these prop feeds that do a lot of things that are very, very similar to the bike that I just overpaid for.

And so I think that we've got to look at the cost associated with the vendor display rule, because, you know, you look at these proprietary products that are out in the marketplace -- I mean, most of them are very, very effective. They will even advertise that 98, 99% of the time they're almost right at the NBBO. And so the point in my mind is, how do we drive down that cost to get that -- because it's really, really -- the benefits of having that data versus the cost just is not aligned at the moment.

MR. BROWN: You know, Jeff, you raise a great point that at the moment of a trade, the vendor display rule requires you to provide the consolidated data feed in order to -- for a client to effect that trade. At Schwab, retail clients are going to trade between the spread 95 plus percent of the time. They know their execution is not going to be on that spread that they see. Those are irrelevant numbers to them. Because their broker-dealer is going to take care of them. And therefore, the idea that you have to buy the SIP feed, as well as you have to buy the prop

feeds in order to have the fastest information you need in order to serve your clients becomes just a redundant system.

And so Chuck said that the system isn't, you know, a mess. I think it is a mess. I mean, the SEC felt so much so that in 2020, they adopted rules that said, we've got to change this, so we’re going to change the government structure and we’re going to change the infrastructure of the data system. And what happened naturally? They got sued by the exchanges, and sure enough, the governance piece was thrown out, because, you know, it -- you weren't allowed to have non-SROs on the SIP governing committee. But the infrastructure piece was adopted -- approved by the court. And so, lo and behold, six years later, we're going to get new round lots and we're going to get odd lots in the quote -- boy, they work fast. Let me tell you.

And the -- but depth of book in the quote? I mean, depth of book is in the depth of the ocean. It just doesn't happen. And the SEC hasn't said, hey, wait a minute, we adopted these rules. How come they're not being implemented? This is travesty. So I do think what we really have is something that's broken and needs to be wholly rethought.

MR. MACK: I don't think I'm going to say anything similar to that. But -- (laughter). Just kind of going back to first principles for a second, and then kind of tying it to the changes we're contemplating, I think the idea behind, hey, an investor should have the relevant information that they need to make a -- implement a trading decision is a very good principle. I think what some people are raising here, and -- maybe not directly -- is, you know, what is the relevant information? And the reason I raise it that way is because if you think about 611 going away -- and I have every reason to believe that that'll change what displayed quotes look like, because like I said earlier, I think people are very creative and innovative. I think we'll see new things come to light. What is relevant for an investor to make a decision on is -- may become less clear than it is today. And so a lot of thought will have to go into that as well.

And I think this -- the vendor display rule is not something I think about that often, but I think it's very interesting to talk about in this context, because it raises another point, where you think about like, wait, you know, we haven't thought about that in a little bit. How is this going to also -- you know,

611 going away, how will that also impact this rule, which is maybe, you know, a little bit -- it's on the second panel. So I'll say it's a little bit further down the list of things you think about, but it's really significant and relevant when you start to try and think through how to feature proof any change where there's going to be, you know, an NBBO that potentially has things in it that are a lot different than what we see in it today.

MR. HARTS: And one more thing, as I said earlier, I think, as long as order protection applies or doesn't apply to all exchanges across the board, rather than individual exchanges, I think that all the quotes from all the exchanges will be visible through the SIP, which is what investors should have access to.

MS. SULLIVAN: All right. Thank you, everyone. Just to be clear at the end, the SEC only acts through the plans when it's dealing with the specific national market system. It's not necessarily oversight. It's directly through the plans. So I just wanted to make that clear. I appreciate everyone coming. Thank you. I don't have any additional questions. Do you, Director Selway?

MR. SELWAY: No, I think we're good. Mr.

Kroeper?

MR. KROEPER: I'm good. Thank you.

MR. SELWAY: Thank you, Peggy. Thank you, panelists. Please join us in --

(Whereupon, at 11:42 a recess was taken.)

MR. SELWAY: All right, so we saved the best for last. Panel three is on best execution. So John and I are joined by David Dimitrious, Senior Special Counsel on the Division. We'll kick off as we have for the first two panels by each panelist going down the line -- introduce yourself, your name, your affiliation, and a couple of sentences about what you do. So, Mr. Brooks.

PANEL THREE: IMPACTS ON BEST EXECUTION

MR. BROOKS: Thank you, Jamie. Chair Atkins, commissioners, staff for hosting this round table and facilitating an important discussion, which hopefully will result in better markets going forward. Jamie, I know you guided us to a quick intro and a couple sentences, but given the prompts from Chair Atkins and commissioners earlier leading towards best ex, I do want to share a quick introductory comment. I'm head of trading at the London Company, Richmond, Virginia based asset manager. I've traded exclusively on the buy side from one 30 years, both pre and post

the implementation of Reg NMS.

I agree with many of the panelists on these round tables who have commented on how markets have evolved significantly since the implementation of Reg NMS. And not to torture Jim Angel's analogy, again -- the necessary scaffolding that Rule 611 represented to manage the massive changes associated with Reg NMS is no longer necessary, as markets have become fully connected. Broker market venue and buy side trading technology have evolved and become more robust. Equity execution has become more electronic and data accessibility and integrity have improved dramatically. And with respect to best ex, the tools available to the buy side, in particular, cost models that estimate the perspective cost of execution for a given order, and software, standard benchmarks, and peer data for the post trade evaluation of execution quality are more readily accessible, easy to understand, and cheaper.

It's now more straightforward to assess an execution outcome as good or bad than ever relative to the priorities and expectations of a given investor. That said, it's not free and one size does not fit all. The London Company is a mid-size investment manager with $33 billion in assets, and our clients run the gamut from small retail investors and wrap programs to large institutional investors and multi-billion dollar mutual funds. We're able to spend on vendor transaction cost analysis tools that help us assess execution outcomes against standard benchmarks, and those that are relevant to each of our clients.

When Met speaks of T. Rowe’s ability to achieve good outcomes on his clients' trades through a principles based best ex approach, I envy the resources that his team can bring to bear internally to evaluate execution quality down to very granular process perspectives. Assessing execution quality in a manner that can point to process changes that can lead to improved outcomes is a heavy lift. For many smaller advisors who either don't have discretion on broker selection, or don't have the resources to do this work internally, or the budget to work with outside vendors, they need to be able to access standard reports from brokers and market venues that help convey good and bad execution in a clear manner.

MR. HAYES: My names is Calvin Hayes. I’m responsible for U.S. equities trading at Jane Street. That includes our on exchange market making, single -- platform, retail wholesaling platform.

Jane Street is a global quantitative trading firm. We trade a broad range of asset classes on more than 200 venues in 45 countries, and we're very thankful for the Commission inviting us here to talk about these important topics. If you're going to make a change to an important core market set of rules, it's great to have the industry together to talk about what the potential unintended consequences are.

MS. KURZROK: Good afternoon. My name is Anna Kurzrok, and I’m Managing Director and Head of Market Structure at Jeffries. Jeffries is a subsidiary of Jeffries Financial Group, an independent global full service investment bank focused on servicing our clients for over 60 years. We are a U.S. registered broker-dealer and equity trading firm dedicated to providing the highest quality execution to our institutional clients. We are a strong advocate for markets that are fair, transparent, and efficient, and as such, pertaining to today's discussion, no single rule we believe can be held responsible for creating or eliminating the efficiencies of a market, particularly those in the U.S. We look forward to today's discussion and believe that it will be insightful and thought-provoking, and that we will be able to come to some

solution to make things better. We thank the commission, Jamie, and the Division of Trading and Markets, and look forward to today's discussion.

MR. NAGY: Hi there. I'm Chris Nagy. I'm with the Healthy Markets Association, and I'm thrilled to be here in Austin today. And I'd like to thank the Chair, Jamie, and the T&M team, Commissioner Pierce, Commissioner Uyeda, Commissioner Crenshaw, who is on the phone. It's a really exciting time. I submitted a comment letter. It's not my first on Rule 611. In fact, before I was old enough to sign comment letters, I'm included in the chair’s dissent on Reg NMS. I've since submitted a lot. You can read about my latest comments, file number 4-862, in the comment submission link with the SEC. I submitted that on Friday.

But I'm really excited to be on this panel because this panel is the first panel to talk about what Rule 611 is, which is a best execution rule. It's really the only best execution rule that the SEC really has. So I'm thrilled to be part of the discussion today, and thank you.

MS. RUSSELL: Good afternoon. I'm Racquel Russell, the Head of Capital Markets Policy at FINRA. FINRA is a national securities association and does not operate a market. FINRA has rule 5310, which is

our best execution rule. We believe it's been a very effective tool in investor protection over the years. Thank you very much for having me here today. I look forward to engaging with my fellow panelists about how best ex can continue to be an effective tool in the event of significant market structure changes on the Reg NMS level.

MR. SCHRIBER: I am Jamie Schriber. I work at Goldman Sachs, where I oversee our U.S. cash equity businesses. Thank you very much, Jamie. To use your terminology, I greatly appreciate the opportunity to discuss the evergreen obligation that is best execution. It is core to any market structure discussion, and I look forward to a robust debate with my fellow panelists.

MR. DIMITRIOUS: Great. Thank you. Thank you all for joining us. My name is David Demetrius. I work in the Division's Office of Market Supervision. And, yes, the goal of this panel is to talk about the implications on best execution for changes to, or revision of, Rule 611. Today we heard about a bunch of other rules that are implicated if Rule 611 were to be rescinded or modified. This included things like access fee caps, the 605 reports, the impact on the NBBO, customer disclosures, and these are all topics that we intend to cover today. Our panel consists of participants and experts on both the institutional and retail markets. And the challenge and the goal of today will be to discuss implications for best execution in the context of each market, because each market's order handling can vary, and so we want to kind of try and hone in on implications for best execution in the retail market separately from implications for best execution in the institutional market.

And so I think we'll focus on a couple of assumptions to begin with. First, if we were to rescind 611, and secondly, let's talk about the retail market first. And I think Commissioners Pierce and Uyeda had a great suggestion for how to begin this panel, which is a very basic question. Do you think there needs to be best ex guidance concerning retail order handling if Rule 611 were to be rescinded? And if so, what do you think that guidance should be, and should it be provided by FINRA or the Commission? And as a layer on that, does the guidance need to be principles based or more prescriptive? Jamie, Calvin, Chris, I know you all have perspectives and participate in the retail market. So maybe we can begin with you all. And Jamie, maybe we'll start with

you.

MR. SCHRIBER: Sure. I mean, stepping back, I think it's fair to say we support a full repeal of 611. We think, as Chair Atkins highlighted, and as we had highlighted 20 years ago, the implementation had the -- would potentially create market fragmentation, and that has come to pass. We've seen a great deal of proliferation of venues and market centers. So we think that at this point, it's doing more harm than good. We think it's important to pair that with a principles based approach to best ex, like we currently have, with FINRA's rule. We think that it's a key differentiator of execution services to allow brokers really to deploy their full set of capabilities, expertise, and strategies to deliver best ex to clients, and that any more prescriptive ruling or guidance may actually harm investor choice as it pertains to retail.

As I think we kind of heard in one of the other panels, I mean, for the most part, retail execution is very close to midpoint. And so I think that, you know, to the extent we need to update price benchmarks -- we should absolutely have fair and transparent and easy to understand price benchmarks. That's a relevant discussion, but I would not think

that there would be additional guidance or disclosures more to -- for retail execution specifically.

MR. NAGY: I'd be happy to jump in. So I disagree with that a little bit from the standpoint of, FINRA Rule 611 is essentially an order by order best ex rule. Every time it goes into the marketplace, there's some assurance that you're going to get the NBBO in the marketplace. If you rescind that, if you want to take it away, great, but then you need to throw that responsibility back onto the broker-dealer. Now, FINRA, the rules around best ex, they're really dated. I mean, if you go back and read, like, O1-22 -- so that was released in 2001 -- 22nd Notice to Members, it's kind of the same as rule 5310, except the difference is there were some caveats added in there. One, ironically, was FINRA said, hey, technology exists to be able to do order by order analysis today.

Well, yeah, it does. Actually, we see it all over the news today. AI is sweeping everything. The possibility to do that and put that in the broker's hands is there. So I would suggest -- and my recommendation to the Commission would be that, on a retail perspective -- I'm not talking institutional -- if I get asked that question, then I'll chime in --

but on a retail perspective, price is kind of the elevating factor there. And it should be on an order-by-order basis, but even going further than that, you know, when I do a trade through my retail channels, I get my price improvement on the trade confirmation. Well, if I'm going to get disapproved on a trade, why can't I get that on a confirmation? It's pretty simple to do, right? Like, not very hard. I think there will be questions about the NBBO that -- when we were talking about the vendor display rule on the earlier panel, that would be very, very important in that caveat. So that's kind of my two cents worth right out of the gate on that topic.

MR. HAYES: Yeah, I guess from our perspective, we're generally supportive of considering changes to or the revision of 611. We think modern markets have evolved to electronic trading, fragmented markets, et cetera. But very interconnected, to the point where the rule is mostly superfluous. But I agree with the notion of 611 as kind of an extremely weak order-by-order best execution obligation, in addition to its, you know, role in connecting the markets and the national market system. And so what further guidance is needed if you rescind 611? I mean, I think a little of it depends on what you're going to do with 610. The first panel had an excellent discussion on locked and crossed markets, and on access fees. And, you know, the most maximalist set of repeal, I think, could lead to a situation where the prevailing -- you know, trying to decide what the prevailing NBBO is, you know, frequently crossed, et cetera, you know -- some horror stories, possibly. And it makes it -- yeah, it would make it very tough. And we would need guidance on how to deal with this situation and provide execution quality back to retail investors that they can understand and respect as being best execution.

I mean, I think we generally think of 611 -- referenced this earlier -- 611 and best execution is pretty separate obligations. In some sense, compliance with 611 is kind of neither necessary nor sufficient to be delivering best execution. You say, well, I've complied with 611. And the very reasonable response is, but then, you know, there's lots of midpoint and other hidden liquidity out there. Did you find that? There are lots out there. Did you find that? And so, yeah, the standard is, in some ways, a lot higher. You could imagine, for an institutional block order, you could provide best execution without, you know, the -- going through the

sweeping of the layer of the top order book or whatever. So -- sometimes we think of it as different things.

And, yeah, I guess also, even just beyond potential changes to 611, I think the reference that it's possible we could, you know, do better on guidance in 5310 for market participants, you know, aside from potential changes, 611 is, I think, worth thinking about. You know, we talk about prescriptive or principles-based -- you know, I think the existing rule and what we would hope would be more principles-based, let the professionals use their knowledge and context of the marketplace and knowledge of their customers' needs to come up with a means of displaying that they're providing the fiduciary duty that they owe their clients. But the one thing that I think we would mostly encourage a shift in the direction of is, you know, outcomes-based analysis of best execution as opposed to process-based. So, you know, can you demonstrate that the outcomes that you're delivering are what your clients are looking for? And so, yeah, that's the biggest change that I think we would support.

MR. DIMITRIOUS: Thank you. Racquel, you know, FINRA's Rule 5310 and its predecessor from the

NASD have been around for a long time, as Jamie was noting earlier in his remarks. And the rule obviously has a lot of considerations that broker dealers should be thinking about when they're executing customer orders. You know, obviously your organization provides regulations for broker-dealers. Y'all interact with broker-dealers on a regular basis. Based on your feedback, from your membership, what are FINRA's thoughts, or your thoughts, about the current FINRA rule, and any kind of updates, clarifications, considerations in a world where we didn't have Rule 611?

MS. RUSSELL: Thank you. I think that additional guidance will be necessary. Without a 611, you have less of a regulatory obligation that tells broker dealers where it's less prescriptive in terms of exactly where you need to send your customer orders. The earlier panels raised a lot of really important factors. Right now, we have quite a few equity exchanges, for example, and we talk about no longer needing an ISO. So you then have a broker-dealer that's looking to see where to send their orders. We think it's important that -- given the Commission's role in establishing and enforcing best ex standards, we think it's important that additional

guidance be worked on collaboratively, and we look forward to doing that.

We also think that additional guidance should really be looked at carefully, and in collaboration with getting additional information from members, because there are many different models. And one of the encouraging things that we've heard from many people, especially over the past few years, is that the principles-based approach to the rule has been helpful and it's been working in dealing with quickly evolving marketplaces. And when we look at what the factors are, and whether or not we would want to, in addition to guidance, possibly look at additional factors, you look at things like what is part of the rule text right now for members in using reasonable diligence. It's things like the accessibility of the quote. We've talked about that at lunch today. That could be -- it would be different depending on whether they're 610, or what changes with access fee caps, whether they're there or not. But that principle can continue to be relevant in many different future market structures. But we can dig in, into what guidance might look like, in -- you know, in our current time, if we got rid of 611.

Another factor that currently exists is the number of markets checked. That principle will continue to be relevant. So that's just to say that a lot of the principles that are in the rule text now continue to be absolutely relevant and can be dug into. And the case that we looked at, changes to 610, 611 -- and I think it would be important to work carefully with members, maybe using some illustrative examples and digging into what makes sense and what effective practices might look like in some key scenarios, because the goal is investor protection and members are the ones that customers place their trust in when they send the orders. And members are the ones with the expertise, the data, and the ability to use their -- you know, their reasonable diligence at the time of making these decisions.

So, in all, I think additional guidance would be important. I think that the principles based general framework is effective. That doesn't mean that any additional rule text -- it's precluded, but the principles based approach is working. And we absolutely should dig in to make sure that any additional guidance is carefully crafted in consideration of the different business models and priorities that our members have.

And, David, you asked about feedback that

we're hearing from members. Right now members, you know, always raise -- there are always so many new scenarios, and members raise different questions around what could be effective under different circumstances. And then especially as people think about what a future might look like, we do think that members are interested in order by order, when it's required, and what it looks like. And we are also aware that members talk a lot about the execution of small orders. If we're talking about retail right now, small orders and considerations around that. And of course, we know that new changes are coming in terms of creating a consolidated quote for odd lots. So those are some of the issues that we hear from our members and that we're happy to dig into.

MR. DIMITRIOUS: Thank you. So maybe we can pivot to the institutional market. Same question. We're assuming that Rule 611 is rescinded. Would best ex guidance be helpful concerning institutional order handling? And if so, what guidance should be provided? Obviously, as we were saying, there are lots of factors in the FINRA rule. But, is there something about revision of 611 that would merit additional guidance regarding best execution and order handling for institutional orders? Anna, Jamie -- maybe Jamie,

putting your kind of institutional cowboy hat on. And David, if y'all could speak to this -- maybe Anna, we could start with you.

MS. KURZROK: Sure. I do think, in short, that there will be additional guidance necessary to supplement FINRA's best execution rule. However, I think some of that will need to be determined and will be driven by what the definitions will become, whether it's what the NBBO looks like, what protection looks like, not protected -- but going on the assumption that it is rescinded, I think the key to remember from an institutional standpoint is that brokers handle orders differently than other brokers. So, for example, if you have an institution that sends the same exact order, same price, at the same exact time to do two different brokers, 99.99% of the time, both of those brokers will execute that order in different manners and also access different venues to achieve those same goals, even if the client has the same instructions. Some brokers decide to use certain ATSs over others.

So, I think the key to any kind of guidance is, while it is going to be necessary, in light of what comes down the road, I think something too prescriptive is going to be -- I would say it would be

discouraged, simply because if -- you know, we recall as -- you know, obviously in preparation -- all of us -- preparing -- but I actually went back and I read a lot of the comment letters and the best execution rule that was proposed by the Commission in December of 2022. And that was probably the underlying common theme that most of us were in agreement with, so that if you -- if it becomes too prescriptive, it doesn't allow the broker to exercise their -- their expertise and thoughtful decision making in achieving the goals that are best for their -- you know, that are best for their clients.

MR. SCHRIBER: I would agree with Anna, and echo her sentiments around the importance of broker flexibility. I mean, that’s something we highlighted in our comment letters in ’23 and ’24. I also think it’s important to acknowledge, in addition to the diversity of broker strategies for execution, there’s a tremendous diversity of how clients -- and David hit on this a little bit around the tools and, you know, techniques, and incredible sophistication that the buy side now has to evaluate broker execution quality. But just how we are utilized by clients, right? So you may have a client that is evaluating our performance on smart order fills and a -- you know, a very short time scale. And at the same time, you may have another equally sophisticated, extremely large client that is evaluating our performance at a grandparent order level on a portfolio rebalancing that might have taken place over several days.

And so to try to come up with guidance that solves for all of these different use cases, I think will be extremely challenging. I like Racquel's points around, you know, kind of a scenario or case study type approach. I do think FINRA's rule has evolved, as she highlighted, right, and stood the test of time over several decades. And I think that that kind of, you know, view where we have some core principles, will continue to serve the U.S. market well.

MR. BROOKS: I agree with both Anna and Jamie that overly prescriptive guidance is definitely not needed and could be very problematic. And I would point to the uptake of 606 broker routing reports by the buy side in general as evidence of that. I polled a few brokers, including one who commercially offers a service that aggregates 606 reports across their brokers and visualizes the results to see how many of their clients are currently asking for these reports. And in every case, it can be counted on less than --

less than one hand.

So -- and those reports -- you know, to Calvin's earlier point about best ex should be more outcome based and less process based -- the 606 reports were very well intentioned, but they have a lens that is very specifically focused on process. They're not helpful in determining whether outcomes are good or bad. And so I think, while maybe some additional principles-based guidance could be helpful, overly prescriptive guidance could be really troublesome in actually continuing to evolve to more of an outcome-based model than a process -- versus a process based model.

MR. NAGY: David, would you mind if I jumped in here real quick? I just have one point that I'd like to make on it. You know, we kind of talked about retail and institutional. And there's kind of this gray area -- like we've heard at the top of institutional in the first panel today. And we've got a very large institutional person here in Dave Brooks. But, you know, there are a lot of advisors out there, and that's the vast majority of AUM and a lot of these advisors actually channel through retail brokers. And so I think that presents a little bit of not -- only a dilemma, but something that needs to be thought about

is, how do you address that advisor that's going through the retail channel in achieving best execution? And I think there needs to be a little bit of a delineation there, and perhaps some guidance with respect to broker dealer custody.

MR. HAYES: I was going to mention also one thing that Jamie was talking about earlier that I think we deeply agree with -- and it's not just relevant on the institutional side -- is, you know, as written, 5310 is -- contemplates, you know, the best available market for a given order. And, you know, we reinterpret this to mean the best outcome for that order because, in some cases, the outcome and, you know, a single child order isn't the end result for a -- you know, you talk about a portfolio rebalance or something, a large parent order intended for -- intended for execution via institutional algos, you know, it needs a different set of metrics, a different set of understanding. And so, yeah, I think the idea that further guidance would be aware of the fact that different order handling has different client needs, I think would be super helpful and, you know, maybe a reasonable update.

MR. DIMITRIOUS: Thank you. Racquel, I mean, kind of the same thing, but on the institutional

side. Anything different from what you said earlier with respect to the FINRA rule, the existing guidance, you know, world where there isn't 611 with respect to institutional order handling?

MS. RUSSELL: Sure. Our best ex rule does not explicitly differentiate between retail and institutions, but of course, those orders look very different and the customers are very different. So you have issues around size and levels of sophistication even within the range of, you know, what are considered institutional investors and customer expectations. And when we think about what I hear the most from members around their concerns with institutional best execution, it often has to do with the expectations of the customers, and the priorities of the customer, and the different concerns that institutions would have that go beyond price in a way that causes firms some consternation when thinking about what the expectations are. And so -- their information leakage concerns, their issues around having to execute very large sizes.

And so I think guidance in that area from the institutional perspective would be something that seems to be helpful in helping members with their compliance processes. And of course, right now there is guidance that exists about checking venues and needing to check available venues. And in the absence of 611, that would likely be an area that would warrant additional discussion. It's not uniquely relevant for institutions, but that would be another area. But I think that the institutional space does include some additional factors that have to do with customer expectations that may not be as relevant in the retail space, and that firms would be looking or interested in getting additional guidance and scenarios on.

MR. NAGY: I'm sorry, can I make one more point? So I -- you know, we're talking a lot about guidance. Guidance is great, but if there's no enforcement associated with it, then what's the point of the guidance? So I think it's really important that, when you're crafting this new regime, that you think about, how is FINRA, how is the Commission going to enforce these rules? Right? So I think that's a very important point.

MR. DIMITRIOUS: Thank you. Well, maybe we can pivot to something that came up quite a bit on the earlier panels, which was access fee caps. This isn't an easy topic, I'll just begin with that. But, you know, there was discussion about potentially, if you

were to repeal 611, what would you want to do with access fee caps? Obviously those came in when Reg NMS was adopted. And let's assume that we also undid the access fee caps, and we no longer have a market structure where there are access fee caps applicable to exchange and protected quotes. How do we think about best ex then? Do we need additional guidance? And, if so, what guidance do we need if there weren't access fee caps applicable to displayed quotes? I think this is an issue for both retail and for institutional, potentially. And so maybe we can just go down the line and get your views on that.

MR. BROOKS: Access fees are important in that they're part of the overall cost of trading. They are currently, and they would be, you know, presuming the elimination of access fee caps. We've done a lot of work at a process level, particularly at my previous firm, in trying to look at conflicts of interest with respect to broker routing, and determining whether or not succumbing to those conflicts actually resulted in bad outcomes. We were never able to determine conclusively whether or not that was the case. Now, that -- for us and other mid to large size investment advisors, execution quality analysis has evolved into something more outcome

driven, and less process driven.

I don't want to say I'm less interested in the effects of routing decisions that are informed by access fees, but the outcome that we can see at the parent order level susses that out. And if we have brokers that are consistently making routing decisions that are primarily determined by or informed by access fee considerations, I would expect them to perform, relatively speaking, worse in our, you know, broker rankings in terms of execution outcomes than those who are not -- you know, not trading off -- not routing off of those conflicts as much. So, from an institutional perspective, I don't necessarily think additional guidance, particularly on the prescriptive side, would be necessary to improve the process.

MR. HAYES: Yeah, before I jump into access fees, I want to underscore a thing that Mr. Brooks here just said, which I think is super important, which is, the biggest driver for both institutional and retail execution quality is competitive forces among broker dealers, like, who is actually providing them the service they want? When we talk about our policies and procedures around best execution, like, mostly we're thinking about the kind of bespoke corner cases where, for whatever reason, the commercial

standards alone aren't doing the job. And so this is rare compared to this common case of, if you're providing your client with an execution that they deem high quality, then they'll come back to you. And that's the thing that's most important.

Yeah, on access fees -- I guess even before any changes to 611, 610, or an access fee cap, like, it's kind of already the case that the fee rebate environment for accessing publicly available quotes, it leads to open questions for us about what our best execution obligations are. 5310 -- you know, one of the factors under consideration is transaction costs. But unfortunately for us in our industry, the standard is not to pass transaction costs all the way back to the end client. In some sense, the intermediaries take them one way or the other. And, you know, this leads to an unnecessary conflict of interest in some sense.

Like -- and so, you know, we try and do our best. We try and consider -- you know, we consider the guidance to mean we can, you know, in some sense -- like, do you need to pay a cost of $100 to save your client a dollar or something? Is that a reasonable thing to be expected to do? But if we could pay a dollar to save our client $100, you know,

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we would definitely do that. And so I guess -- that's one phase in which we think some -- more guidance would be helpful. And yeah, eliminating the access fee caps. Yeah, I think, you know, our friends on the exchanges this morning made very reasonable arguments about, you know, we could have net price, we could describe on the quote what it's going to cost to access.

But it's still kind of the case that, like, this conflict of interest for any agent of an order that's going to absorb transaction costs is accentuated if you've got situations where you've got a -- you know, 2 cent a share, you know, this obviously maybe won't come to pass for 2 cent of share access fee and rebate. And now you're got markets that are crossed by a cent all day long. Yeah, how do you manage that? So it's a little bit tricky for us, I guess.

MS. KURZROK: So, I think -- and by the way, the first thing I want to say is the two panels before us that spoke about access fees and, you know, this issue, they did -- they really did a great job, certainly gave me a lot more to think about. But I think the real challenge when it comes to access fees is how we're, how we're looking to solve the problem.

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I think what we can't do is -- you know, I mean, look, I'd love to say that, yeah, you know, I -- and we are in favor of rescinding 611. At the same time, I also am in favor of -- I'd love to say, yeah, get rid of the access fee, let competitive forces sort of play out. But we put them in there, unfortunately. And -- well, unfortunately, today, we can say -- and they need to -- they need to be addressed.

I think the key here is that every stock's trading profile is different from another. And just recently, for the first time, with the round lot and the -- and the odd lot changes, the new regime, for the first time, we've actually inserted price into the Reg NMS structure, which has never been done before. The entire Reg NMS structure is designed intentionally to ignore stock price, you know, which is unlike other markets, right? So I think that's where the challenge is, because whether or not a broker dealer would go, or -- everyone's going to take into account the cost of trade. That's certainly a fundamental part of 5310, and it's part of every broker's overall view of how they view the market and execution.

But it's -- that access fee is going to be different for a $1,200 stock that trades with a 10 share round lot versus a $30 stock that trades with a

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penny -- under a penny tick size. So that's where I don't think a solution or -- however, guidance must be taken into account, I think it needs -- it will be driven by how that -- what that definition looks like and, you know, how we -- how we incorporate it. How do we change the access fee definition? And then, because of that, how do we -- you know, how will brokers ultimately look at the market when they're trading stocks that are much more expensive, versus others -- and the ones with smaller round lot size that have less liquidity at the touch will also be a big factor in terms of which markets they access and how they incorporate the access fee and transaction costs for their clients.

MR. NAGY: So, I'll just say, I get it, the Commission doesn't want to be in the rate setting game, and I can understand it from that standpoint. But access fee caps and Rule 610E, that the cross -- the locked rule, it's really not about rate setting. It's about setting a threshold in the marketplace. And I'll tell you, in my previous life -- and it was funny, you know, I heard, well, locked markets are ideal markets, that's exactly what you want. Well, I remember that day, and none of my -- none of my market makers would execute my orders in a locked or crossed

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market -- locked markets and crossed markets.

So you have to, you know, think back, okay, so if we're going to take this rule out, right, and all of a sudden we're going to have an exchange that's charging an access fee of a dollar, that occurs in the options marketplace today, but that's a quoted market, not a traded market like our equities markets. And you heard it right here from Kelvin, if it's -- if we're going to spend a dollar to save $!00, we'll take that execution, but if we're going to spend $100 to give $100 back, and it's going to cost us $100, we're not going to do that. And that's a very real scenario, and that will happen, markets will gravitate towards the lowest possible level.

So I'll say, you know, having the discussion about 610 is great, but -- or 611 rather, is a good discussion to have, and I think there's a lot of, you know -- a path forward, but if you're looking at repealing access fee caps, and repealing the locked crossed rule, I think you're walking down a very slippery slope of unintended consequences that we don't know what the outcome will be.

MS. RUSSELL: I would just say that the best ex guidance would definitely need to be different if there were no access fee caps, simply because that

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amplifies that element for consideration as members are looking to make decisions.

MR. SCHRIBER: Yeah, I would agree very much with David's point around, you know, aggregate execution quality really mitigating part of the broker dealer conflict of interest there, but I would welcome from FINRA for some additional guidance if we move to a net trading or net price type construct. I guess, stepping back, though, wherever we end up with access fees, I mean, hopefully we can get to a place where we are once again, you know, encouraging innovation and discouraging market center proliferation.

MS. KURZROK: Can I add one more thing, if you don't mind, sorry -- on the topic of access fees. One of the items in our comment letter for the Reg NMS tick sizes was that the Commission does have authority to provide exemptive relief in conjunction -- you know, in the context of 612. And so I think, because now -- or, initially when the access fees came about, stock price and -- you know, was not -- and tick size was not necessarily the -- you know, underlying factors in determining the access fee. Now it is, right?

So I think because we don't have data in terms of, you know, what the appropriate access -- is,

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and what stock it should or should not apply to, that could be something that may be considered -- at least in the interim -- is the exemptive authority, which, you know, I must say, was originally provided by another -- by another exchange prior to the proposals that came out in December of 22 saying, okay, here we can provide, you know, tick size, exemptive relief so that you can quote and trade in smaller increments provided that it's on condition of an access fee change, which were two things that I think many were in favor of, but that could be a way at least to, you know, look or think about how, you know, what that approach is, even though right now we know the access fees are -- you know, were approved and went through court at 10 mills across the board, but something along the lines -- since, you know, no change can be completely, you know, a one size fits all, the change isn't going to necessarily apply to retail, to, you know, the RIA's and, you know, and institutions. It's just something else to think about.

MR. DIMITRIOUS: Thank you. Well, we could probably spend quite a bit more time on access fee caps but maybe we can move on to another issue that came up before, Rule 605 reports, you know, the one of the main intentions of these reports is to help folks

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compare execution quality across broker dealers, understanding that there are other reasons why execution quality may differ across broker dealers. 605 reports were required before the introduction of access fee caps and Reg NMS. They were based on, I believe, the consolidated best bid and offers reflected in the SIPs at a time. Jamie, Calvin, Chris, maybe we can focus this question to you all. Is eliminating the access fee caps -- does that hinder the utility of 605 reports? Does the approach to 605 reports prior to NMS and Rule 611 -- would that be suitable? I can start with anyone --

MR. HAYES: I can start. Yeah, I guess the utility of 605 reports, I think we need to remember who they're currently being used for, and for what purposes, and what their utility actually is. I mean, I think maybe this is a contentious view that I have, but, you know, while I think the 605 reports are very useful for driving public confidence in, especially retail -- retail investor outcomes -- I think they're, you know, useful as a policymaking tool, useful for the public. You know, I don't really think they make for a useful way to disambiguate among market centers or broker dealers. Most of the -- you know, outcomes-based 605, you know, is driven by what selection of

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inbound order flow the venue is winning, and under what environment.

And so, yeah, I mean, I think 605s are useful and they're not that expensive to produce for us. And most of my concerns around, you know, new 605 rules around notional values, et cetera, that seem like, you know, net improvements -- so, no objections there. But, yeah, I think it's kind of the same theme on, we're going to need to -- elimination of 611 means we're going to need to come up with an industry-wide definition of the NBBO that works. And once you have that, you can have 605s. And, yeah, hopefully that industry definition of NBBO isn't, like, crossed all the time, but that's mostly about access fee caps. And, yeah, we can go from there. I mean, I think -- I think that we can -- we can make it work, probably. So --

MR. NAGY: I will say that I agree with Calvin. It's funny. For about 15 years, I beat my chest very hard on reforming 605, reforming 605, talked to a lot of former trading of market staff who's here about it. And it was revised and it's out. I think I was noted, like, 80 times or something in it. It's great. It's a great tool to check order flow on a post basis for destinations, as Racquel said, that you're not routing to, that you might want to route to, to kind of gauge how one place might be faring against another place. But it's probably the bottom of what firms should kind of be looking at. And I would think if you start repealing some of these things, that firms would take it to the next level on a competitive basis.

And I heard Chuck Mack earlier say, you know, well, at NASDAQ, we're using liquidity heat maps. It's like, okay, that's on a real-time basis. That's pretty cool. That's kind of what should be happening for retail and institutional orders. And I'm sure some institutions are doing that today versus their -- their various routing algorithms. So I think 605 is important. It's an important utility to have out there. It's finally at a point where, you know, as we heard that it can be displayed to retail investors to make some sense. But it doesn't really tell you about your execution or how you've done in the marketplace. It's just kind of a guide.

MR. SCHRIBER: Yeah, I would very much agree with Calvin. I think in an institutional setting, the utility of the reports is somewhat limited. And we should of course update them, you know, for any new pricing benchmarks, but just given the complexity of

execution in the current marketplace, I think it's just one input into determining best ex.

MR. DIMITRIOUS: So -- so obviously, you know, the NBBO is relevant for 605. The 605 is a component of kind of looking at execution quality and how broker-dealers handling and executing customer orders, you know, in a couple of minutes -- again, Jamie, Calvin, anyone, but Jamie, Calvin, maybe we can start with you -- do you have a view on what the -- you know, no access fees, no access fee caps, no Rule 611, what -- do you have a view of what the NBBO should look like?

MR. HAYES: Yeah, it's tricky. You know, I do think that there'll be economic incentive if there's no access fee caps to have large, large fee rebate setups. Maybe if we put aside access fee caps for a moment. I mean, I've heard some ideas floated about what should be -- you know, I don't love market share minimums for protection, but maybe it's a reasonable thing to have market share minimums for SIP inclusion. I heard that floated earlier. It seemed like a reasonable idea to me. I think the key thing for me is, I've also heard some idea that, oh, maybe we'll have, like, you know, competing ideas of what the NBBO is. I think it's a thing that, for the end

users, but -- whether that's buy-side institutional, or retail investors, or whoever, having a single industry standard for what the NBBO is with which to compare executions to is just highly valuable for a lot of them. And so, you know, I hope that we come out with something that kind of looks like that, as opposed to a mishmash of different metrics that one might use. Yeah.

MR. SCHRIBER: I think as we kind of heard in some of the earlier panels, and in some of our letters from 20 years ago, I think whatever goes into the NBBO just has to be accessible, right? It has to be something that all investors can access, and that is fair. Beyond that, I think, again, we want to -- what are we solving for? We're solving for fostering innovation in a very strong U.S. equity market while discouraging kind of harmful fragmentation.

MR. NAGY: If I could jump -- were you going to jump in? If I could jump in just for a moment on that -- you know, the vendor display role and the NBBO is the cornerstone of trust and integrity and fairness in the marketplace. And if you start eroding that, then you really start eroding the marketplace in general. So I think there should be a lot of thought about that. You know, the SIP is not the greatest in

the world, at all. It doesn't include odd lots. You know, it took all of four months to put odd lot trades to the tape. And now here we are nearly a decade later, and we still don't have odd lot quotations to the tape. And look at how much that has kind of fictionalized Rule 605 reports, right? So that NBBO needs to be thought of as the cornerstone of anything you do.

MR. HAYES: And yeah, I guess one more thing is, the NBBO -- it’s kind of like, well, what -- post 611, what is the NBBO? What's it used for? I mean, I guess you have some -- some guidance on what should be displayed on the SIP is one this. But I think also, like, the sort of soft signaling of what is in a 605 report probably will filter its way through the industry as well. I mean, you see a lot of examples of places where brokers that are doing best execution analysis kind of use the definitions of 605, even though they're not obligated to, in some sense, to display best executions. That -- 605 changed notionally -- you see a lot of -- lot of retail brokers starting to change their categorization of the orders they receive, et cetera. And so, you know, I think there are ways, I guess, to encourage an industry definition of -- of NBBO that are helpful, that, you know, aren't -- isn't necessarily obvious in a post 611 world.

MS. KURZROK: I think something else to consider, too, is -- particularly in the context of best execution, is how we define and what we define as the national best bid, and what makes that up, and the national best offer in the context of, say, you know, looking six months ahead, in May of 2026, when we're going to have -- the best odd lot order. From a retail perspective, you would know better than I would, Chris, but, you know, certainly, I would think if that's going to be displayed, what is a retail investor going to look like if the execution quality -- yes, even if BOLO is included, or odd lots are included in 605, how is a broker going to answer what execution is with, well, this is really the protected -- well, the NBBO, because this is how we define it -- but off lots, well, they're kind of in there, but they're not really -- without a uniform definition.

I don't know what should be -- which is partly the reason why we are encouraged -- we're sending 611 because we're already kind of fragmenting the NBBO as it is with orders that are protected and then not protected, and then you have changing round

lot sizes and odd lot sizes -- you know, yes, also six months down the road, but that does have an impact on execution quality. So, you know, as an institution, if you have a trader on an institutional trading desk that is crossing a block of stock, even if it's within the NBBO, that midpoint can look very different if you're looking at the NBBO versus the midpoint of those two odd lot orders that are the best odd lot orders being displayed in the market, and how does that get resolved?

MR. DIMITRIOUS: Very helpful. Thank you. We are -- we have about ten minutes left, and a couple of topics that I really want to cover. Maybe this one we can do as briefly as possibly. But another idea for Rule 611 is to maybe modify rather than rescind, to include blocks in there. Institutional order handlers, any quick thoughts about whether or not we need more guidance, if we were to make that kind of revision with respect to block thresholds? David and Jamie, maybe we could start with you all.

MR. BROOKS: I would suggest we don't need additional guidance on a potential -- regarding a potential block exception. I think blocks, when you see them these days -- and they're not as frequent as they were, you know, five, ten years ago -- they are a

very important part of price discovery. You know very quickly if you've negotiated the right price or the wrong price on a block. That becomes clear. And most blocks are negotiated in some way, shape, or form. You know, additional guidance, whether it's principles based or prescriptive, if anything, I think, would further reduce the incidence of block trades in the market, and we don't need that, you know, to happen any less than we're seeing now.

MR. SCHRIBER: Yeah, I would very much agree. I would hope that David and Met, you know, both view the market for institutional block facilitation as being very robust and healthy and competitive. And I think that, you know, any additional guidance there could be potentially hurtful.

MR. DIMITRIOUS: Anna, do you have any thoughts on this?

MS. KURZROK: I would echo that. I think brokers are very good at figuring out how to execute blocks and, you know, where they -- their place in the market. I think we'll be able to figure it out and see what the appropriate -- what the appropriate measure is.

MR. NAGY: I would just add that you guys

have cap data and you could utilize the cap data to determine thresholds if you're looking at doing a block exemption.

MR. DIMITRIOUS: Thank you. At the last round table, there were some commenters who suggested that maybe if Rule 611 were to be rescinded or modified that it may merit some additional customer disclosures -- disclosures directly to customers. One suggestion was that -- and Chris, I think you've spoken to this earlier on this panel, maybe a disclosure regarding trade-through, however, that's defined, should be included on a customer confirm. I think another commenter thought that maybe at a point of sale, or at the -- at the moment of a transaction, a disclosure to a customer of a, quote, "effective bid or offer," would be helpful to a customer. In the last few minutes here, maybe Chris, Jamie, Anna, we could focus on y'all to begin with. What do you think about the utility of customer disclosures? What types of customer disclosures might be helpful? Should 611 be repealed? And Chris, maybe we can start with you.

MR. NAGY: Yeah. So I think the easiest way is, you know, like I said earlier, you put -- you put price improvement on a confirm, put trade-through on a confirm. That's very simple to do. I think that's a great solution to kind of start putting those rules back on to the broker-dealer where kind of best ex belongs. But disclosure is great. I'm going to tell a real quick story here, because I know we're short on time. So, there was an organization -- I think it was a financial information forum -- that came out with this voluntary disclosure program around best ex, that was supposed to make it uniform. Kind of a -- kind of a cool program. So I took great interest in it back in, I think, 2014, when a couple of brokers started doing this.

And what was really interesting is, in the first month that they did it -- and they actually included odd lot of orders on that -- there was no price improvement. So I wrote something about it. A couple of other people took notice. The very next report, there was a lot of price improvement associated with it. So, disclosures can be an effective kind of prodding tool to push the competitiveness of the industry. And I think that things like that would be important. I think that, you know, of course, the easiest thing is the trade-through piece. I'll stop there.

MR. DIMITRIOUS: Thank you. Jamie, Anna, a couple of minutes.

MR. SCHRIBER: Sure. I mean, I think, certainly from a parent order or a grandparent order perspective, you know, trade-throughs, I think are probably a little less relevant. You know, I think in the context of disclosures and how clients evaluate best ex, I don't think a disclosure will ever be a replacement for customized TCA reporting or customized engagement. But I think a lot of the, you know, buy side expects at this point. So I think we just need to balance the, like, cost of having standardized disclosure versus the market solving for kind of bespoke reporting that I think already takes place.

MS. KURZROK: I agree with that. I think currently, when engaging with our clients, there's a lot of information that we disclose and offer and share with them for every aspect of their execution from beginning to end, like TCA reports. And I also think that a lot of brokers today, you know, do disclose -- have some sort of standard order routing and trading policy practices on their website. And if that needs to be changed, then, you know, perhaps -- you know, with, you know, the help of FINRA or other guidance, okay, maybe we want to start including this. But anything more detailed publicly could start to get into intellectual property and, you know, letting

information out there about, you know, client routing practices, et cetera.

MR. NAGY: Can I add just one more point? I want to circle back to those advisors that custody through broker-dealers. They would need something. They can't afford to go out and pay one of the TCA providers who's here in the room today what it costs to do that. It's not very cheap. They would need, I would think, something like a report card that showed them what kind of execution they're getting in terms of a specific disclosure.

MR. DIMITRIOUS: Thank you. Well, we have a couple of last questions here. Policies and procedures, obviously order handling, routing, you know, can be bespoke for institutional clients, and retail clients is handled in a quite different way. Any quick thoughts, especially from our broker dealers, about policies and procedures that you have with respect to best ex, and whether or not any kind of public disclosure about those policies and procedures would be useful and/or harmful?

MR. HAYES: Sure, I can try. I think, you know, it could potentially be useful to kind of harmonize the industry expectations around best execution. Obviously, it's a little scary to disclose

publicly your internal policies and procedures. So I hope it would come for very good use or else -- yeah -- but I think it's an idea.

MR. SCHRIBER: I mean, I think just going back to kind of the Gensler market structure reforms that almost came to pass -- I mean, one of our primary concerns was that, by locking broker-dealers into two prescriptive policies and procedures, you're kind of removing their ability to deploy their expertise to solve for best ex. And so anything that should be contemplated there, really -- we should feel like it is advancing, you know, execution quality, and not otherwise restricting choice.

MR. DIMITRIOUS: And finally, obviously the U.S. market has its own market structure, but Jamie, do you have any thoughts about, like, best ex in international markets and how that -- you know, is there -- are there any lessons learned about how other jurisdictions approach best ex that we could consider?

MR. SCHRIBER: Yeah, I think you said it well. I mean, the U.S. market is very strong. I think we've been hardened by seeing the EC kind of adopt more of a principles-based approach to best ex of late. And I would hope that that would be kind of the model that proliferates.

MS. KURZROK: I would say probably the one thing that was also raised by the prior panels was what we do with locked markets. I mean, not locked markets, crossed markets, excuse me. You know, European markets, they don't have an order protection rule. They will allow locked markets to occur and execution of those orders, but they do require procedures being placed to prevent the unusual crossed markets and how we handle that. Obviously, the U.S. is different. It's certainly not going to be the same. But in a different context, they too -- and it's principle-based, but the -- you know, but the venues and brokers must have policies in place to how they handle that. So whatever we decide -- would probably be helpful to figure that out.

MR. HAYES: I guess in the U.S., compared to some other -- other venues that I, you know, currently have in mind, I think the obligations are a little stronger, currently. Like, you know, more obligations under best execution. And I think the U.S. market for equities -- is people keep saying the envy of the world, but I know it's real.

And I do think the best execution standards that U.S. broker-dealers have is a contributing factor to, you know, seeing investor confidence and

sort of the other people feeling good about the fact that they can be comfortable investing in U.S. assets.

CLOSING REMARKS

MR. SELWAY: Thank you, David. Thank you, panelists. Please join me in congratulating these folks, and thanking them. Thank you audience, both here and virtually.

Be like Chris Nagy. Get us a comment letter by way of the website.

We want to hear from you. Thanks, University of Austin. Thanks to the Big Texas Welcoming Chair.

This concludes the roundtable.

(Whereupon, at 1:06 p.m., the roundtable was concluded.)

PROOFREADER'S CERTIFICATE

In The Matter of: ROUNDTABLE ON RULE 611
File Number: OS-0001
Date: Tuesday, December 16th, 2025
Location: Austin, TX

This is to certify that I, Kyleigh McGinnis, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

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I, Kevin E. Carr, reporter, hereby certify that the foregoing transcript is a complete, true, and accurate transcript of the testimony indicated.

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