

Petition for Rulemaking

Abolition of Rule 611 of Regulation NMS and Adoption of a Market-Based Real Execution Reporting Framework

NADX Securities, Inc.
June 9, 2026

Via email: Secretarys-Office@sec.gov

Secretary

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

Copies to:

The Honorable Paul S. Atkins, Chairman
The Honorable Mark T. Uyeda, Commissioner

Re: Petition for Rulemaking - Abolition of Rule 611 of Regulation NMS and Adoption of a Market-Based Real Execution Reporting Framework

Dear Secretary:

NADX Securities, Inc. ("NADX") respectfully submits this petition for rulemaking pursuant to Rule 192 of the Commission's Rules of Practice.¹ NADX is developing a next-generation institutional securities trading platform designed to deliver genuine execution quality improvement, T-instant settlement, and market structure reform for the benefit of the buy-side and the investing public. We submit this petition in that capacity.

We petition the Commission to repeal Rule 611 of Regulation NMS - the Order Protection Rule - and replace it with a market-based framework that achieves what Rule 611 promised but never delivered: true competition among trading venues on the basis of actual execution quality. We refer to this framework as a Real Execution system, or Real-Ex, though it might equally be called a Post-Execution system, or Post-Ex - reflecting that its benchmark is derived from actual post-trade prices rather than pre-trade displayed quotes.

¹ 17 C.F.R. § 201.192 (providing that any person may petition the Commission to issue, amend, or repeal a rule of general applicability).

I. Rule 611 Has Failed Its Purpose

Rule 611 was adopted in 2005 with a stated purpose: to protect investors by ensuring their orders receive the best available price across all trading venues. That goal has broad support. The question before the Commission is whether Rule 611, as written and as it has operated over twenty years, is the right instrument to achieve it.

Chairman Atkins, who dissented from Rule 611's original adoption, has spoken to this question directly and repeatedly. At the Commission's December 2025 roundtable on Rule 611, he stated: "Two decades have given us the benefit of perspective, and the verdict is clear: Reg NMS, built on flawed foundations, has invited gamesmanship and contributed to the fragmentation of our markets, the dispersal of liquidity, and diminished transparency. The very outcomes that we feared have come to pass. Our warnings are now lessons. And Reg NMS - Rule 611's trade-through prohibitions in particular - command a fresh look so that we can continue to strengthen our securities markets. Indeed, we must summon the courage to acknowledge when well-intended policies have produced unintended consequences."² At the earlier September 2025 roundtable on trade-through prohibitions, he had described Rule 611 as "by far the most problematic provision" of Regulation NMS, a rule that has "splintered" liquidity "among an unprecedented number of venues," producing "a marketplace with more trading platforms than ever, but fewer broker-dealers and traditional market makers to knit it together."³

Commissioner Uyeda, at the December 2025 roundtable, described an implementation that 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

² Chairman Paul S. Atkins, Remarks at the Roundtable on Rule 611 of Regulation NMS, U.S. Securities and Exchange Commission (Dec. 16, 2025), as cited in Testimony of Joe Saluzzi, Themis Trading LLC, before the House Financial Services Subcommittee on Capital Markets (May 20, 2026).

³ Chairman Paul S. Atkins, Remarks at the Roundtable on Trade-Through Prohibitions, U.S. Securities and Exchange Commission (Sept. 18, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-091825-remarks-roundtable-trade-through-prohibitions>.

investors,"⁴ and called the proceedings an "opportunity to move to a less costly, more resilient, and more transparent market structure."⁵

The Commission's own staff reached similar conclusions as early as 2015, acknowledging that Rule 611 had "contributed to excessive fragmentation among trading venues, thereby increasing market complexity and connectivity costs of market participants."⁶ The staff was equally direct about the rule's failure to achieve its core objective for limit orders: "The substantial increase in trading by dark venues means that displayed limit orders interact with a much smaller percentage of volume today than they did prior to Rule 611. This development may suggest that Rule 611 has not achieved the objective of rewarding the display of limit orders by increasing their likelihood of execution."⁷ The data behind that assessment is stark. NYSE-listed stocks went from 13% dark trading volume in 2005 - the year Rule 611 was adopted - to 34.6% dark in 2014, a 165% increase. NASDAQ-listed stocks rose from 29.4% to 38.6% over the same period.⁸ Rule 611 did not prevent the migration to dark venues and appears to have coincided with its acceleration. The fragmentation the staff identified has only deepened in the decade since.⁹ The complexity Rule 611 has generated is perhaps best illustrated by a single data point: the SEC's Division of Trading and Markets has published sixty-one frequently asked questions specifically addressing how to comply with Rules 610 and 611 - a small book of instructions simply to explain how to follow a single rule.¹⁰

The market that Rule 611 was designed to protect has itself been substantially displaced. As Nasdaq's representative testified at the May 20, 2026 hearing of the House Financial Services Subcommittee on Capital Markets, entitled *From Order to Execution: Ensuring*

⁴ Commissioner Mark T. Uyeda, Statement at the Roundtable on Rule 611 of Regulation NMS, U.S. Securities and Exchange Commission (Dec. 16, 2025).

⁵ *Id.*

⁶ SEC Division of Trading and Markets, Memorandum re: Rule 611 of Regulation NMS (Apr. 30, 2015), <https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf>.

⁷ 2015 Staff Memo, *supra* note 6, at 12.

⁸ 2015 Staff Memo, *supra* note 6, at tbl.3 (reporting dark trading as a percentage of total volume in NYSE- and NASDAQ-listed stocks from 2005 through 2014).

⁹ Ihor Voloshyn, Yuriy Voloshyn & Robert Korajczyk, *Fragmentation and Inefficiencies in US Equity Markets: Evidence from the Dow 30*, PLOS ONE (Jan. 21, 2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6975550/> (documenting that fragmentation among Dow 30 stocks generated approximately \$160 million in opportunity costs in 2016, with trading distributed across thirteen exchanges and more than thirty-five ATSs).

¹⁰ SEC Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS (last modified Apr. 4, 2008), <https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>.

Efficient and Transparent Equity Markets, off-exchange venues - ATs, dark pools, and broker-dealer internalization desks - have "gained in popularity to capture, on average, roughly half of all trading volume in U.S. equities on any given trading day."¹¹ A rule that protects only the displayed quotes of registered exchanges is, by that measure, increasingly disconnected from approximately half the market it was meant to govern.

The structural failure of Rule 611 - as described by the Chairman, the Commissioner, the Commission's own staff, and the witnesses at the May 2026 hearing - has four distinct dimensions that together explain why marginal reform is insufficient and why replacement with a market-based framework is the appropriate response. PTG Markets, whose member firms are among the most active principal trading participants in U.S. equity markets, framed the central policy question precisely: "Do today's rules reward the type of liquidity and competition that improve execution quality for investors, or do they also reward behavior and infrastructure that exist primarily to navigate the rules themselves?"¹² This petition's answer is that they do both - and that the current framework cannot be fixed by adjusting its parameters.

I.A. Four Dimensions of Rule 611's Structural Failure

1. Competition for Protected Status Rather Than Execution Quality

Rule 611 locked in and amplified a competitive dynamic that rewards exchanges for attracting liquidity providers whose posting behavior satisfies the rule's protection standard - regardless of whether that posting behavior produces genuine executions. Exchanges do not post bids and offers. Broker-dealers, market makers and proprietary trading firms do. An exchange's role is to provide the venue and the ruleset within which those liquidity providers operate. Under Rule 611, the prize for attracting a liquidity provider to post the best displayed quote is a guaranteed stream of routed order flow - delivered by legal mandate to any registered exchange whose displayed quote sets the

¹¹ Testimony of Kevin Kennedy, Executive Vice President, Nasdaq, before the House Financial Services Subcommittee on Capital Markets at the hearing *From Order to Execution: Ensuring Efficient and Transparent Equity Markets* (May 20, 2026). Kennedy acknowledged that off-exchange markets "leverage displayed quotes as a reference for their own non-displayed prices, but dark markets do not contribute to displayed pricing" — conceding that approximately half of all trading volume free-rides on the NBBO formation process that Rule 611 mandates while contributing nothing to it.

¹² Written Statement of Matt MacKenzie, Optiver / PTG Markets, before the House Financial Services Subcommittee on Capital Markets (May 20, 2026).

NBBO. Every trading center - including ATSS, dark pools, and broker-dealer internalization desks - is simultaneously prohibited from executing orders at prices inferior to that protected quotation. The routing obligation flows from the exchange quote outward to the entire market.

PTG Markets identified this dynamic directly: Rule 611 has produced "two different kinds of competition. The first is the competition policymakers generally want: competition to provide deeper liquidity, better prices, faster and more reliable executions, useful innovation, and lower all-in costs. The second is competition that arises from regulatory status itself: once a venue has protected quotations, market participants must account for that venue in routing, compliance, connectivity, and data systems whether or not the venue regularly provides meaningful executed liquidity."¹³ That second form of competition - for protected status rather than execution quality - has, by PTG Markets' account, produced an exchange industry in which twelve of seventeen registered exchanges are operated by only three exchange groups.¹⁴

The resulting dynamic rewards displayed quotes over genuine price improvement. Liquidity providers who post at the NBBO and execute collect maker rebates - but the rebate is earned on the transaction, not on the quality of the execution produced. Rule 611 creates no mechanism to distinguish between a fill at the exact NBBO and a fill at a price inside the spread - that is, between a purchase executed at the National Best Offer and one executed at a price meaningfully closer to the midpoint, representing genuine price improvement for the investor. Both satisfy the routing obligation. Both earn the rebate. The rule is indifferent to execution quality - it measures only whether the best displayed price was matched, not whether the investor received a better price than that benchmark.

As Chairman Atkins observed at the September 2015 roundtable, the Trade-through Rule "reduced every consideration to a single characteristic: price" - displacing the judgment that market participants would otherwise exercise across speed, likelihood of execution, and order type quality.¹⁵ The Commission's own staff acknowledged in 2015 that maker-taker fee structures "may cause broker-dealers to face a conflict of interest"

¹³ MacKenzie, *supra* note 12.

¹⁴ *Id.*

¹⁵ Atkins, *supra* note 2.

between their duty of best execution and the financial incentive to route orders to venues offering the highest rebates.¹⁶ The Commission proposed a Transaction Fee Pilot in 2018 specifically to study whether these fee structures distort routing behavior - a formal acknowledgment that the incentive problem was real enough to warrant regulatory investigation.¹⁷ Joseph Saluzzi, testifying at the May 2026 hearing, cited the Commission's own rulemaking record finding that rebates "distort liquidity supply and demand by artificially increasing the cost of taking liquidity and the revenue to providing liquidity" - creating "an environment with too much liquidity supply relative to liquidity demand."¹⁸ The same record found that lower rebates could "allow non-high frequency traders more opportunities to fill orders using liquidity-providing instead of liquidity-demanding transactions."¹⁹

The competition for liquidity providers does not stop at rebates. Exchanges enable increasingly complex order types - many developed at the explicit request of the liquidity providers they are competing to attract - that provide structural advantages to the poster at the expense of other market participants, including both incoming orders seeking execution and existing resting orders whose established queue priority those order types were designed to circumvent. An exchange that declines to enable an order type a major liquidity provider demands risks losing that provider to a competing venue that will accommodate it. PTG Markets testified that "firms have built complex architecture to comply with rules whose policy justification has become less clear as markets have evolved" and that this architecture "consumes engineering, compliance, testing, and surveillance resources that could otherwise be directed toward execution quality, risk management, and liquidity provision."²⁰ The SEC and FINRA documented this dynamic explicitly in 2015, when BATS and Direct Edge settled charges that certain order types had been developed for and with specific market participants and were not fully

¹⁶ SEC Division of Trading and Markets, Memorandum re: Maker-Taker Fees on Equities Exchanges (Oct. 20, 2015), <https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf>.

¹⁷ Securities Exchange Act Release No. 82873 (Mar. 14, 2018) (proposing Rule 610T, Transaction Fee Pilot for NMS Stocks).

¹⁸ Joe Saluzzi, Testimony before the House Financial Services Subcommittee on Capital Markets (May 20, 2026) (quoting SEC Reg NMS Amendments rulemaking record).

¹⁹ *Id.*

²⁰ MacKenzie, *supra* note 12.

disclosed in exchange rule filings.²¹ The obligation to disclose order type mechanics has since been tightened - but the underlying incentive structure that produced those order types has not changed.

The dynamic is compounded by a structural circularity that Rule 611 did nothing to address. The small number of wholesale internalization firms that capture the majority of retail marketable orders off-exchange - where those orders never interact with a lit exchange at all - are frequently among the largest liquidity providers on the very lit exchanges whose quotes Rule 611's trade-through prohibition requires trading centers to protect. They internalize the retail order flow, retaining the informational and economic value of that flow, and simultaneously post at the NBBO on lit venues, earning maker rebates. Their position on both sides of the market generates information advantages that compound with each role. Rule 611 mandates routing to the best displayed quote while remaining entirely indifferent to the identity, incentives, and dual roles of the firms posting those quotes. The protection it provides is procedural. The structural conflict it permits goes unaddressed.

It has been argued at the May 2026 hearing that retail investors "have never had it better" - that execution quality as measured by spread width, price improvement on marketable orders, and the elimination of commissions has improved dramatically since decimalization.²² That evidence is real and should be acknowledged. But it describes a specific and narrow population: the retail investor placing a marketable order through a retail brokerage account, whose order is internalized by a wholesaler in microseconds at or within the NBBO. For that investor, for that transaction, the data supports the claim.

The record at the May hearing contained no analysis of the 165 million Americans whose retirement savings are invested through institutional managers - pension funds, mutual funds, endowments, and insurance companies - that must work large orders across

²¹ In the Matter of BATS Exchange, Inc., et al., SEC Release No. 34-74923 (May 1, 2015); In the Matter of Direct Edge ECNs, LLC, SEC Release No. 34-74922 (May 1, 2015).

²² Robert Battalio, Testimony before the House Financial Services Subcommittee on Capital Markets (May 20, 2026). *See also* Robert Battalio, Shane Corwin & Robert Jennings, *Can Brokers Have It All? On the Relation Between Make-Take Fees and Limit Order Execution Quality*, 71 J. Finance 2193 (2016) (finding that brokers routing limit orders to venues offering the highest make-take rebates produced significantly inferior execution quality for customers, suggesting that the PFOF/rebate structure creates systematic conflicts between broker financial interests and customer outcomes — the same conflict the Commission acknowledged in proposing the Transaction Fee Pilot).

multiple sequential transactions in fragmented, latency-sensitive markets. For those investors, the execution cost is not the spread on a single 100-share trade. A retail investor buying 100 shares in a single internalized transaction may pay little or nothing above the NBBO. But a buy-side manager working a 5,000-share order across fifty sequential transactions faces a fundamentally different problem: each trade generates a signal. In the market structure Rule 611 produced, latency-sensitive participants can detect directional order flow from early fills and reprice their quotes before subsequent trades arrive - trading in front of a known buyer before the order is complete. The mechanism by which that signal is generated - and why Rule 611's structure makes extracting it costless - is described in Dimension Two below. The cost is not static - it is cumulative and accelerating. By the time the institutional buyer executes its final tranche, the price has moved against it, not because the market moved on new information, but because the structure of the market allowed other participants to identify and trade in front of a known buyer (or seller, as the case may be). The harm is the spread on fifty trades, plus the market impact of each successive fill, plus the information leakage premium extracted by participants who identified the order flow and repriced accordingly. That cost is invisible in any metric that measures only the spread on a single retail transaction - and it was not represented at the May hearing. The fragmentation Rule 611 produced has made this problem structurally worse over time. Average trade size on NYSE-listed securities fell from 777 shares in 2005 to 195 shares in 2014 - a decline of 75%. NASDAQ-listed securities fell from 434 to 204 shares over the same period.²³ The institutional manager who might once have worked a large order in meaningful block-sized increments must today slice it into far smaller pieces, generating proportionally more executions, more signal, and more market impact per unit of order worked.

2. Phantom Liquidity and the Protection of Non-Executable Quotes

The quotes Rule 611 protects are frequently not genuine offers to trade. The National Best Bid and Offer - the benchmark around which Rule 611 is organized - includes a significant proportion of displayed quotes that do not represent genuine willingness to trade. This unreliability has three distinct sources that compound each other. The Commission's 2024 amendments to Rule 605 acknowledged the problem indirectly,

²³ 2015 Staff Memo, *supra* note 6, at tbl.6 (reporting average trade size in shares for NYSE- and NASDAQ-listed securities from 2005 through 2014).

finding in the rulemaking record that fill rates increase and approach 100% specifically as cancelled orders are excluded from the calculation - confirming that a material share of routed orders fail because the quote they were routed to has been withdrawn by the time the order arrives.²⁴ A separate empirical study found that 57 percent of orders subject to Rule 611 routing requirements refuse that routing entirely - driven not by price, but by the fee structures Rule 611 amplified entrenched.²⁵

The first source is structural. Displayed post-only order types are designed to execute only as the passive, liquidity-providing side of a transaction - that is, to collect the maker rebate while never being required to pay the taker fee. If such an order would otherwise execute immediately as an aggressor, it will instead cancel or reprice automatically to a non-crossing price, sliding into the queue without taking liquidity. The result is an order that contributes to the NBBO while its poster retains the structural assurance that it will never be compelled to fill an incoming order as the aggressor. A further variant - the post-only Intermarket Sweep Order - combines this mechanic with the ISO exception to Rule 611's routing requirements, allowing a sophisticated participant to sweep directional information across venues while remaining structurally shielded from execution as a liquidity taker. In each variant, the protection Rule 611 builds around such quotes is procedural: routing to the best displayed price is satisfied even when the order behind that price is structurally incapable of filling - or specifically designed to avoid filling - the incoming order.

The second source is informational. When an aggressive order is routed to a post-only quote and is rejected, the liquidity provider who posted that quote has obtained information about directional order flow - without any obligation to provide a fill in exchange for that information. Rule 611 mandates the interaction that generates the signal. It imposes no cost on the party who extracts it.²⁶ The liquidity provider, now

²⁴ Securities Exchange Act Release No. 99679 (Apr. 9, 2024) (adopting amendments to Rule 605), 89 Fed. Reg. 26,878 (Apr. 15, 2024).

²⁵ Sida Li, Mao Ye & Miles Zheng, *Refusing the Best Price?*, 147 J. Fin. Econ. 317 (2023) (finding that 57 percent of orders subject to Rule 611 routing requirements refuse that routing, with the incentive to refuse driven not by price but by the fee structures Rule 611 entrenched), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3763455.

²⁶ See 17 C.F.R. § 242.611(a) (prohibiting trading centers from executing orders at prices inferior to the protected quotation of another trading center, but imposing no obligation on the posting trading center to execute against routed orders); see also Regulation NMS Adopting Release, Securities Exchange Act Release No. 34-51808 (June 9, 2005), 70 Fed. Reg. 37,496, 37,534–

informed of directional pressure, can reprice on other venues before the re-routed order arrives - executing at adjusted prices against an order whose direction it identified at no cost. This is the mechanism underlying the compounding execution cost described above: each rejected route on a multi-tranche institutional order generates a fresh signal, allowing latency-sensitive participants to reprice progressively against a buyer they have identified but are not required to fill. The rule does not cause this behavior. It creates and sustains the conditions that make it rational.

The third source is behavioral. Quote layering, spoofing, and sub-millisecond cancellations allow market participants to post quotes at the best displayed price - and withdraw them before any order can execute against them. The routing obligation falls on the executing trading center, not the poster's: a trading center may not execute an order at a price inferior to the best displayed quote as a matter of law, regardless of how briefly that quote exists. A flickering quote that disappears on arrival has cost the poster nothing, forced the incoming order to consume routing latency on a dead quote, and generated tape revenue for the exchange that hosted it - all while leaving the trading center's compliance obligation formally satisfied and the investor's order unfilled. As PTG Markets testified, a quote that does not produce an execution still contributes to NBBO formation, still satisfies Rule 611's protection standard, and still generates tape revenue for the venue that hosted it.²⁷

Intermarket Sweep Orders illustrate the rule's uneven application. Used aggressively - to sweep displayed liquidity across multiple venues simultaneously - an ISO is a legitimate and efficient tool: a trader willing to take liquidity at the NBBO can execute across the full displayed book without sequential routing delays. That use case is unobjectionable. The problem is selective: the ISO exception is also available as a mechanism to avoid the routing obligation without consuming the protected quotes it bypasses - particularly in post-only ISO form, as described above. As PTG Markets observed, ISOs "are not simply a trading preference; they are a mechanism for demonstrating that protected quotations have been addressed" - an exception that has become, for institutional participants, standard practice.²⁸ The rule binds the investors it was designed to protect in cases

37,538 (June 29, 2005) (discussing the routing obligation as a one-directional duty on executing trading centers, with no corresponding fill guarantee imposed on quoting trading centers).

²⁷ MacKenzie, *supra* note 12.

²⁸ MacKenzie, *supra* note 12.

where the ISO exception does not apply, while the most active participants navigate around it routinely.

3. Locked and Crossed Markets as a Product of the Rule

Rule 611 produces locked and crossed markets - the very dysfunction it was meant to prevent. Locked markets, where the bid on one exchange equals the ask on another, are substantially a product of the rebate structure that Rule 611 amplified and entrenched. Post-only orders sit at prices participants will not trade through because crossing the spread would forfeit the maker rebate. PTG Markets testified that the locked-and-crossed-market prohibition "still requires systems that reprice, display, route, or cancel orders to avoid a regulatory condition, even where the underlying trading interest may be legitimate and economically useful" - and that "in today's trading environment, locked and crossed markets would likely be resolved quickly" without the prohibition, because "automated markets, sophisticated routing, and real-time surveillance have changed the risk profile."²⁹ The rule that was supposed to prevent market dysfunction is one of its persistent causes - and the systems built to comply with the prohibition consume resources that could otherwise serve execution quality.

4. Monitoring Burdens, Barriers to Entry, and Subsidized Venues

Rule 611 imposed a monitoring burden that has raised barriers to market participation, accelerated the consolidation of the broker-dealer industry, and subsidized venues that contribute nothing to price discovery.

Rule 611 does not mandate universal exchange connectivity by its terms. It mandates something with the same practical effect. Every registered national securities exchange's best displayed quotation is a protected quotation by operation of the rule - not because the exchange earns that status by contributing to price discovery, but because it exists as a registered exchange. A broker-dealer maintaining its own order routing infrastructure must, at the moment of any execution, verify that it is not trading through the best displayed price on any of the sixteen registered exchanges. That monitoring obligation is universal and unconditional. The operational consequence is indistinguishable from a connectivity mandate.

²⁹ MacKenzie, *supra* note 12.

Matt Billings testified at the May 2026 hearing that six exchanges account for approximately 80% of all exchange volume, while ten exchanges each hold less than a 2% market share - and that these smaller exchanges "do not offer meaningful liquidity or contribute substantively to price discovery" and "exist not because of true market competition, but because market participants are beholden to paying connectivity and market data fees to every exchange in order to comply with Rule 611."³⁰ PTG Markets provided empirical data from full year 2025 confirming the subsidy this structure creates: two venues with a combined market share of approximately 0.04% received approximately 1.25% of total tape revenue - with nearly 98% of that revenue derived from the quoting component rather than the trading component.³¹ A venue can be economically viable without ever contributing to price discovery, while every firm maintaining direct market access pays a continuing toll to confirm that fact.

The registered broker-dealer population fell from approximately 5,000 firms in 2005 - the year Regulation NMS was adopted - to approximately 3,300 by 2025,³² a decline of more than one-third. Chairman Atkins noted this directly: the rule has produced "a marketplace with more trading platforms than ever, but fewer broker-dealers and traditional market makers to knit it together."³³ A regulatory framework nominally designed to increase competition produced, at the broker level, the opposite result: higher barriers to entry, accelerating consolidation, and a smaller universe of firms capable of developing independent routing and execution capabilities.

Rules 610 and 612 were designed around Rule 611's mandatory routing architecture and cannot be assessed in isolation from it. The access fee cap in Rule 610 exists because Rule 611 creates a routing obligation - if venues must receive routed orders, there must be a cap on what they can charge for that access.³⁴ The sub-penny prohibition in Rule 612 exists because, without it, liquidity providers could step ahead of protected quotes by

³⁰ Matt Billings, Testimony before the House Financial Services Subcommittee on Capital Markets (May 20, 2026).

³¹ MacKenzie, *supra* note 12.

³² FINRA, 2024 Industry Snapshot, Firm Data (July 2024), <https://www.finra.org/media-center/reports-studies/2024-industry-snapshot/firm-data> (reporting 3,249 FINRA-registered broker-dealer firms as of year-end 2023, continuing a decline from 4,068 firms in 2010); see also FINRA, 2018 Industry Snapshot (Aug. 2018) (reporting approximately 3,726 firms in 2017 and noting a "steady decline" from approximately 5,000 firms in 2005).

³³ Atkins, *supra* note 2.

³⁴ 17 C.F.R. § 242.610 (establishing the access fee cap for protected quotations of national securities exchanges and certain ATSs).

fractions of a cent and capture the routing mandate without providing meaningful price improvement.³⁵ Both rules are rational responses to the incentive structure Rule 611 created. As Billings testified, repealing Rule 611 without addressing Rules 610 and 612 could have significant unintended consequences, and "any modernization effort by the SEC or Congress should be comprehensive."³⁶ PTG Markets similarly recommended that "Rule 611 should not be re-evaluated in isolation" and that the Commission "evaluate these rules together, with attention to transition periods, implementation sequencing, and the interaction with amended Rule 605 reporting."³⁷ This petition addresses Rules 610 and 612 in Title III as part of the replacement framework.

I.B. The Post Only ISO: A Case Study in Deliberate Exploitation

The structural analysis above identifies four dimensions of Rule 611's failure. The first and third - the perverse competitive dynamic it amplified and entrenched, and the locked and crossed markets it generates - operate at the level of rule architecture. The fourth identifies the monitoring burden that has consolidated the broker-dealer industry and subsidized venues that contribute nothing to price discovery. The second dimension - the phantom liquidity problem - operates at the order level. But the second dimension has a depth that the brief description above does not capture, and that depth warrants separate treatment before the Commission proceeds to the proposed replacement framework.

Rule 611 fails not only because its architecture is flawed, but because it is routinely and deliberately exploited - with the active complicity of the exchanges that are supposed to enforce it. The mechanism of exploitation is a class of proprietary order types, engineered by for-profit exchanges and sold as premium features to their highest-volume clients: the high-frequency trading firms and principal trading firms that depend on information and execution advantages to generate returns. These order types do not merely work around Rule 611. They weaponize it - converting its protected quotation framework into an instrument for extracting value from the investors the rule was designed to protect.

³⁵ 17 C.F.R. § 242.612 (prohibiting any person from displaying, ranking, or accepting a bid or offer, order, or indication of interest in any NMS stock priced in an increment smaller than \$0.01, unless the bid or offer is priced at less than \$1.00 per share).

³⁶ Billings, *supra* note 30.

³⁷ MacKenzie, *supra* note 12.

The most well-known example from this class is Hide Not Slide - an order type that allowed submitting firms to display a quote at the NBBO while internally instructing the exchange to hide the order and slide its price in ways that defeated time priority and prevented genuine execution. Hide Not Slide was the subject of SEC enforcement action and resulted in significant fines against multiple exchanges.³⁸ It is not an isolated case. The Slide order type, used at various venues, embeds similar price-sliding mechanics that allow submitting firms to appear to provide liquidity while structurally avoiding the execution obligation that liquidity provision implies. These order types share a common architecture: they are designed to be present in the book - to be counted as protected displayed liquidity - while being internally configured to refuse, defer, or redirect execution against incoming marketable orders.

Among the most structurally egregious of this class - and the one with the most thoroughly documented record of regulatory non-disclosure - is the Post Only Intermarket Sweep Order, or Post Only ISO. The balance of this section examines it in detail, because the Post Only ISO illustrates, with precision, both the mechanism of the problem and the institutional failure that allowed it to persist across every major U.S. equity exchange for nearly a decade without meaningful regulatory response.

1. The Architecture of a Self-Contradictory Order Type

The Post Only ISO is, at its core, two instructions fused into a single order type that Haim Bodek - the industry whistleblower whose disclosures to the SEC initiated the order type investigation that ran from approximately 2012 through 2015 - has described as "a super-charged order type that is self-contradictory at best."³⁹ The contradiction is structural - and, as the record makes clear, entirely intentional.

The first instruction is the post-only property. A post-only order cannot be executed in circumstances where it would act as a liquidity taker. If such execution would otherwise occur, the order is either price-slid to a permissible price or rejected altogether. The

³⁸ *In the Matter of New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT LLC*, Exchange Act Release No. 34-72065 (May 1, 2014) (settled order imposing \$4.5 million penalty for failure to operate in accordance with Commission-approved exchange rules, including order type mechanics). *See also* SEC Press Release No. 2014-87 (May 1, 2014).

³⁹ Haim Bodek, "Case Study in Regulatory Arbitrage," in *Global Algorithmic Capital Markets* (Oxford University Press), at 39 ("The Post Only ISO is a super-charged order type that is self-contradictory at best."). Bodek is the market structure whistleblower whose disclosures to the SEC initiated the order type investigation that ran from approximately 2012 through 2015.

purpose of this property is to protect the submitting firm from paying taker fees. The effect, however, is that the order contributes to the displayed quotation on a venue's order book - it becomes part of the NBBO - while being internally configured to refuse execution against incoming marketable orders.

The second instruction is the ISO designation. Under Rule 611, an intermarket sweep order is the mechanism by which a firm asserts that it has already routed to all protected quotes at prices equal to or better than the price of its order. The ISO designation exempts the order from Rule 611's routing obligation: receiving venues may execute immediately without checking the NBBO. Regulation NMS stipulates that this exemption is conditioned on a concurrent obligation - the routing firm must simultaneously send additional orders to execute against the full displayed size of any protected bid or offer at the relevant price.⁴⁰

The Post Only ISO claims both properties simultaneously. It posts to the book as protected displayed liquidity, triggering Rule 611's routing obligation for all other market participants. It carries the ISO designation, which is designed to satisfy - or appear to satisfy - Rule 611's sweep requirement. And it embeds the post-only instruction, which prevents it from actually executing when that sweep arrives. The result is an order type that participates in the construction of the NBBO without any genuine willingness to trade at the displayed price.

As Bodek documents: "Given that the post-only property of the Post Only ISO prevents that order from meeting its obligation to 'execute against the full displayed size of any protected bid [or] protected offer,' this feature is clearly a distortion of the purpose and intent of Rule 611."⁴¹

2. A Decade of Regulatory Non-Disclosure

The depth of the problem is not merely conceptual. It is institutional. The Post Only ISO was deployed across nearly every major U.S. equity exchange - NYSE Arca, NASDAQ, BATS, Direct Edge - without regulatory approval, without market participant

⁴⁰ See Bodek, *supra* note 39, at 39 (quoting the Reg NMS ISO execution requirement in full).

⁴¹ Bodek, *supra* note 39, at 38 (emphasis in original).

notification, and in most cases without any public regulatory filing whatsoever. The timeline documented by Bodek is striking:

- NYSE Arca introduced a version of the Post Only ISO as early as 2010 under the name "PNP ISO ALO," with no circular or regulatory filing to support the release. NYSE Arca remained deficient in its regulatory filings with respect to this order type for approximately five years, only achieving sufficient disclosure in 2015.⁴²
- Direct Edge appears to have introduced the Post Only ISO in 2009 "with very limited detail on its operation." It was not until 2014 that Direct Edge clarified its Post Only ISO functionality through a regulatory filing. Bodek notes that the entirety of Direct Edge's documentation on its Post Only ISO prior to that 2014 filing was contained in a single footnote in an exchange notice - and that footnote described the order's behavior only by cross-reference to a simpler version at a smaller exchange.⁴³
- NASDAQ and BATS provided misleading information about whether they even supported the Post Only ISO during the period of SEC order type investigations, only disclosing support for the order type in 2013 when order type statistics reports, apparently produced in response to SEC inquiry, reflected its use.⁴⁴
- CHX, in 2013 - at the height of SEC order type scrutiny - moved to mark its Post Only ISO as "simply a limit order modifier" and thus "redundant and unnecessary," withdrawing documentation through the official rulemaking process. This withdrawal was accomplished not by eliminating the functionality but by specifically seeking approval not to document it. Bodek describes this as among the most concerning regulatory episodes in the order type controversy.⁴⁵

⁴² *Id.* at 44–45 (describing NYSE Arca's introduction of the "PNP ISO ALO" order type circa early 2010, the absence of any regulatory filing supporting the release, and NYSE Arca's deficient regulatory filings for approximately five years thereafter).

⁴³ *Id.* at 46 (describing Direct Edge's 2009 introduction of the Post Only ISO "with very limited detail on its operation" and the 2014 clarification filing).

⁴⁴ *Id.* at 40–41 (describing NASDAQ and BATS providing misleading information and only disclosing Post Only ISO support through 2013 order type statistics reports).

⁴⁵ *Id.* at 43 (describing CHX's 2013 withdrawal of documentation, marking the Post Only ISO as "redundant and unnecessary," and CHX's effort to gain approval "not to document the functionality by withdrawing prior documentation through the official rulemaking process").

The SEC did not comprehensively address this landscape. Instead, it normalized the Post Only ISO by approving rule filings introduced by the exchanges themselves, beginning with NYSE's rule filing. Bodek's assessment is unsparing: these actions "retroactively provided undeserved legitimacy to what I consider to be the most secretive and powerful order type provided to high-frequency traders ("HFTs") over the period in question."⁴⁶

3. The Mechanism of Harm: Queue-Jumping and Price-Time Priority Abuse

The practical harm from Post Only ISOs is not abstract. Bodek specifically identifies the interaction between aggressive pricing and Post Only ISO mechanics as a source of "queue-jumping/price-time priority abuses" - an issue he describes as needing specific regulatory attention and one that was addressed, inconsistently, by BATS and NASDAQ during the height of SEC investigations in 2012.⁴⁷

The mechanism works as follows. A firm submits a Post Only ISO at an aggressive price - locking or crossing the NBBO. Under normal price-time priority, such an order would either execute immediately or be rejected. The Post Only ISO instead re-prices (price-slides) to the permissible non-crossing price, and in doing so jumps to the front of the queue at that price, ahead of orders that arrived earlier and established legitimate time priority. The firm has used an order type unavailable to ordinary participants to obtain queue position it could not have earned through honest time-priority competition.

The result, at scale, is a systematic distortion of price-time priority - the foundational fairness principle of displayed limit order markets. Orders that appear to have queue priority at the NBBO are displaced by Post Only ISOs that arrived later but re-priced into favorable queue position. The NBBO reflects a price that obscures this queue distortion entirely.

4. Implications for the Phantom Liquidity Problem

The May 20, 2026 subcommittee hearing repeatedly addressed concerns about displayed quotes that do not represent genuine willingness to trade - the phenomenon sometimes described informally as "phantom liquidity." The Post Only ISO provides a precise

⁴⁶ *Id.* at 42.

⁴⁷ *Id.* at 45 ("the issue of interaction of aggressive prices in such scenarios can lead to queue-jumping/price-time priority abuses in connection with the Post Only ISO, an issue that needs to be specifically addressed, as this was done by BATS and NASDAQ during the height of SEC's investigations into order type practices in 2012").

structural account of how that phenomenon is engineered - by deliberate order type design, deployed at scale across every major exchange, and hidden from regulators and market participants for nearly a decade.

A Post Only ISO is, by definition, displayed liquidity with a non-execution instruction embedded at the order level. It is not a quote that disappears before arrival due to latency. It is a quote that cannot be executed against, by design, regardless of arrival time. At the volumes at which this order type operated across major exchanges - NYSE Arca alone reported approximately 4 percent of matched volume attributable to the Post Only Day ISO Limit order type in December 2017⁴⁸ - the contribution to NBBO distortion is material, not marginal.

Rule 611's routing obligation directs order flow toward protected quotes. If a meaningful proportion of protected quotes carry embedded non-execution instructions, Rule 611 is not routing orders to liquidity. It is routing orders toward the display of liquidity - a categorically different outcome, and one that generates the very market impact and information leakage costs that passive investors bear and that none of the hearing's metrics capture.

5. The Minimum Threshold: If Rule 611 Is Not Repealed

The foregoing is offered not as a prescription for how to repair Rule 611, but as evidence of why it cannot be repaired at the margins. The Post Only ISO problem is not a drafting oversight - it is a decade-long institutional failure involving every major exchange, regulatory non-disclosure on a systemic scale, and an order type that was purpose-built to exploit the rule's architecture. That history counsels repeal and replacement, not amendment.

If, however, the Commission determines that outright repeal is not warranted, the record documented above establishes a floor below which no reform proposal should fall. At an absolute minimum, any revision to Rule 611 must address the following:

1. **The ISO exemption must be conditioned on genuine executability.** An order that claims ISO status but carries a post-only instruction that prevents execution against protected quotes should not satisfy Rule 611's sweep

⁴⁸ *Id.* at 44 (citing NYSE Arca, Order Type Usage, 2018).

requirement. The current framework creates a procedural loophole that allows the sweep obligation to be satisfied on paper while the underlying execution obligation is defeated by order-level instruction.

2. **Exchange order type disclosure must be a precondition for deployment, not an afterthought.** The decade-long pattern of Post Only ISO deployment without regulatory filing - documented across NYSE Arca, NASDAQ, BATS, and Direct Edge - reflects a systemic failure of the SRO framework. Any replacement rule must include an affirmative pre-deployment disclosure requirement with specific technical specifications, not merely a post-hoc approval process that retroactively legitimizes years of non-disclosure.
3. **Price-time priority distortions from re-pricing mechanics must be addressed.** The queue-jumping dynamic enabled by Post Only ISO price-sliding represents a structural violation of price-time priority that cannot be corrected through post-trade reporting alone. The replacement framework must either prohibit re-pricing into queue advantage or require that re-priced orders surrender time priority.
4. **Post-trade reporting of non-execution instructions must be mandatory.** Under the post-trade transparency model described in Title III, every executed trade would carry a transaction identifier. That framework should be extended to require disclosure of embedded non-execution instructions at the order level, so that displayed quotes that cannot execute are flagged as such in real time - not discovered years later through whistleblower disclosures.

II. The Invisible Retail Investor

Before describing the proposed framework, the Commission's attention is respectfully directed to a foundational issue of scope that bears on how every element of this proposal should be evaluated: the definition of "retail investor" and who, in practice, bears the costs of the market structure Rule 611 created.

The Commission's retail protection framework has historically focused, implicitly and sometimes explicitly, on the active retail trader; that is the individual investor placing orders through a brokerage account, experiencing execution quality directly and in real time. This is a coherent focus as far as it goes. It does not go far enough. At the May 20, 2026 hearing of the House Financial Services Subcommittee on Capital Markets, the

discussion of retail execution quality focused on active, direct-account retail trading.⁴⁹ No witness addressed the execution costs borne by the 165 million Americans whose savings are invested through institutional managers.⁵⁰

As you know, there are approximately 165 million Americans who own equities directly, through mutual funds, ETFs, or defined contribution retirement plans.⁵¹ Approximately 34 percent of the all household financial assets in the United States are held in retirement accounts of one kind or another.⁵² The active retail trading population comprising individuals placing frequent, discretionary equity orders, numbers in the hundreds of thousands, a fraction of one percent of the total investing public.⁵³ The overwhelming majority of American equity investors are passive, long-term participants who experience the equity market largely, if not entirely through the compounded returns generated by funds trading on their behalf. The Boxes and Lines podcast, produced by IEX and widely recognized as one of the market structure community's most credible analytical voices, addressed this directly in its April 2026 episode "Retail Nation," by observing that the "'retail investor' used to mean one thing: long-term and passive. Not anymore"⁵⁴ and documenting the full spectrum from hands-off 401(k) participants to app-driven active traders that the term now encompasses.

⁴⁹ See Testimony of Robert Battalio before the House Financial Services Subcommittee on Capital Markets (May 20, 2026); Testimony of Joe Saluzzi before the House Financial Services Subcommittee on Capital Markets (May 20, 2026); Testimony of Kevin Kennedy before the House Financial Services Subcommittee on Capital Markets (May 20, 2026) (collectively discussing retail execution quality in terms of marketable retail orders, price improvement, spreads, commissions, and order routing for brokerage-account customers).

⁵⁰ No witness at the May 20, 2026 hearing presented analysis of the execution costs borne by long-horizon retail investors whose assets are invested through pension funds, mutual funds, ETFs, endowments, or other institutional managers; nor did any witness address execution quality from the perspective of fund investors bearing those costs indirectly through portfolio trading.

⁵¹ See Board of Governors of the Federal Reserve System, *Survey of Consumer Finances* (2022), available at federalreserve.gov/econres/scfindex.htm (finding that a majority of U.S. families own equities directly or through retirement accounts); Investment Company Institute, "Profile of Mutual Fund Shareholders, 2024" (Oct. 2024), available at [ici.org/news-release/24-news-mfowners](https://www.ici.org/news-release/24-news-mfowners) (finding that 53.7 percent of U.S. households owned mutual funds in 2024, with saving for retirement the primary financial goal for 80 percent of those households).

⁵² See Investment Company Institute, "The US Retirement Market, Fourth Quarter 2025" (Mar. 26, 2026), available at [ici.org/statistical-report/ret_25_q4](https://www.ici.org/statistical-report/ret_25_q4) (reporting total U.S. retirement assets of \$49.1 trillion as of December 31, 2025, representing 34 percent of all household financial assets).

⁵³ See FINRA, 2023 National Financial Capability Study — Investor Survey (finding that 0.7% of U.S. households self-reported as active day traders). See also 17 C.F.R. § 240.15g-1 (pattern day trader rules apply to customers who execute four or more day trades within five business days, reflecting the regulatory recognition that active day trading is a narrow subset of retail participation).

⁵⁴ *Boxes and Lines*, "Retail Nation — Boxes and Lines Lite," IEX (Apr. 16, 2026), available at <https://podcast.show/boxeslines/retail-nation-boxes-and-lines-lite/> (Ronan Ryan and John Ramsay discussing how the definition of "retail investor" has expanded to encompass long-term passive investors whose interests are not represented in conventional execution quality metrics).

These investors, the 401(k) participant, the pension beneficiary, the index fund holder are retail investors. They are not day traders. They are not watching screens. They experience execution quality not through individual confirmations but through the 30-year accumulation of transaction costs embedded in every fund trade executed on their behalf. A one-basis-point improvement in average execution quality, compounded across a 30-year investment horizon, can be worth thousands of dollars in cumulative value to an individual account holder. The aggregate impact of these costs across 165 million investors is measured in billions of dollars annually. They are simply not labeled as such. For those investors, the relevant metric is not execution quality in the narrow Rule 605 sense, whether a single transaction was filled at or near the quoted spread benchmark. Rather, it is execution cost in the broader and economically more important sense: what it costs to complete a large order over time. An institutional order typically must be broken into many smaller trades and worked sequentially across multiple venues. As those trades occur, they can reveal the presence and direction of the larger order to other market participants, who can adjust prices before the order is complete. The investor's true cost therefore includes not only the spread on each individual execution, but also the cumulative price impact and information leakage that build as the order is worked to completion.

The current market structure, in which the majority of retail marketable orders are internalized off-exchange by a small number of wholesalers, where two firms alone account for 60 to 70 percent of retail order flow,⁵⁵ is largely invisible to these investors. Academic research documents that fewer than five percent of retail trades interact directly with institutional liquidity on a lit exchange.⁵⁶ The overwhelming majority of retail orders are filled in the dark; off-exchange, by wholesalers, with price improvement calculated relative to the NBBO at the moment of execution. This arrangement is not inherently improper. Wholesalers commonly provide price improvement over the NBBO, and retail execution quality is typically measured against that benchmark. The problem, rather, is one of transparency and benchmarking: the retail investor whose order is filled by a wholesaler receives a confirmation indicating the fill price and, if their broker reports it, a price improvement figure relative to the NBBO. What they do not receive under the current framework is any means of evaluating whether that price improvement was genuine relative to where the market was actually trading across all venues at the moment of their execution. They cannot know whether they received \$0.002 per share of improvement over a displayed quote, or whether that improvement was better or worse

⁵⁵ See SEC Division of Economic and Risk Analysis, "How Does Payment for Order Flow Influence Markets?" Working Paper (January 2025) (documenting that Citadel Securities and Virtu Financial together accounted for approximately 60–70 percent of retail PFOF order flow between 2017 and 2021, with three wholesalers collectively handling 70–82 percent).

⁵⁶ Ekkehart Boehmer, Charles M. Jones, Xiaoyan Zhang & Xinran Zhang, *Tracking Retail Investor Activity*, 76 J. Fin. 2249 (2021), <https://doi.org/10.1111/jofi.13033> (providing the methodology for identifying retail marketable order flow and documenting the overwhelming concentration of retail execution in off-exchange internalization channels).

than the trade-weighted average of every other execution in that security at that moment across every venue in the market.

Real-Ex changes this. The universal post-trade reporting requirement and the execution quality disclosure on confirmations - described in Title III - create, for the first time, a framework in which active retail investors and institutional clients with direct brokerage relationships can see, on every confirmation, what execution quality they received and how it compared to the market at the time of their trade.

For the broader universe of long-horizon investors whose savings are managed on their behalf, the benefit is indirect but economically significant. Buy-side firms would gain access to unified, cross-venue execution data covering every print on every venue, including the wholesale internalization desks currently outside the reporting perimeter. That data would support more rigorous best-execution analysis, more informed routing decisions, and a stronger basis for holding venues accountable for the quality of the executions they produce. Better execution at the buy-side level flows directly into fund performance.

That benefit is less visible than a line on an individual trade confirmation, but it is more important. A retail investor may notice a fractional improvement on a single trade only if it is disclosed to them directly. But when execution quality improves across the trading activity of mutual funds, pension funds, ETFs, and retirement accounts, the effect is transmitted across millions of accounts and compounded over years or decades. The investor may never see a single confirmation reflecting that improvement. They see it instead in higher long-term returns, lower embedded trading costs, and a larger retirement balance.

The Commission's attention is respectfully directed to evaluate every element of the Real-Ex framework against this standard: does it serve the 165 million Americans whose retirement security depends on markets that work, or does it serve the intermediaries between them and those markets? The Commission's mandate under the Exchange Act is unambiguous. Section 3(f) requires the Commission to consider investor protection alongside efficiency, competition, and capital formation in every rulemaking determination.⁵⁷ Exchange rules must, under Section 6(b)(5), be designed to protect investors and the public interest and must not permit unfair discrimination among market participants. A market structure that systematically routes the majority of retail order flow away from transparent, regulated venues, and into internalization engines that operate largely outside the post-trade reporting framework, raises serious questions under both provisions. Real-Ex addresses those questions directly.

⁵⁷ 15 U.S.C. § 78c(f); 15 U.S.C. § 78f(b)(5).

III. The Proposed Framework

We propose that the Commission repeal Rule 611 and replace it with five interconnected elements that together constitute a Real Execution framework.

1. Abolish mandatory routing.

Trading centers - as defined under Rule 600(b)(78) of Regulation NMS, encompassing national securities exchanges, alternative trading systems, OTC market makers, and broker-dealers that execute orders internally - would no longer be subject to the trade-through prohibition that Rule 611 imposes.⁵⁸ The downstream effect on order routing would be immediate and structural: without a legal obligation to prevent trade-throughs, the routing pressure that Rule 611 currently places on the executing trading centers, and the routing pressure that flows upstream to introducing brokers and their customers is eliminated at its source.

Price discovery continues on every exchange's Central Limit Order Book. Nothing in the pre-trade environment changes except the routing obligation - and with it, the mechanism by which rebate-driven routing is systematically exploitable.

2. Universal post-trade reporting.

Every venue that executes a trade in an NMS security: national securities exchanges, alternative trading systems, dark pools, broker-dealer internalization desks, wholesale internalization engines, hosted rooms, and internal matches, shall report every execution to a single unified post-trade reporting system within five seconds of execution, with venue identification on every print. Existing FINRA Trade Reporting Facility rules already require FINRA member firms to report transactions as soon as practicable but no later than 10 seconds after execution, so the proposal builds on an existing reporting architecture rather than inventing one from scratch.⁵⁹

What Real-Ex adds is venue identification on the public tape and a unique transaction identifier that cross-references the venue report against the buyer and seller confirmations. The SEC's 2009 dark-pool transparency proposals and testimony recognized both the value of real-time venue identification and the risk of information leakage for large trades, including a block-size exception to mitigate that problem.

⁵⁸ 17 C.F.R. § 242.600(b)(78) (defining "trading center" to include national securities exchanges, ATSS, OTC market makers, and any broker-dealer that executes orders internally).

⁵⁹ FINRA Rule 6282 (equity transactions on an exchange), FINRA Rule 6380A (transactions reported to the FINRA/NYSE TRF), and FINRA Rule 6380B (transactions reported to the FINRA/Nasdaq TRF) each require members to transmit last sale reports "as soon as practicable" but no later than 10 seconds after execution. See FINRA Equity Trade Reporting, Trade Reporting Frequently Asked Questions, available at <https://www.finra.org/rules-guidance/key-topics/trade-reporting/faq> (last visited June 2026); see also FINRA Regulatory Notice 14-21 (May 2014) (summarizing equity trade reporting obligations and the 10-second outer limit).

The primary objection ATSS and dark pools will raise is that venue identification could enable predatory algorithms to infer remaining institutional interest from partial fills. The proposal answers that concern by allowing order flow to concentrate in fewer, higher-quality venues and by limiting the identifier to the executed portion of a trade, while preserving the option of a brief delay for very large block executions consistent with the SEC's earlier block-trade carveout logic.

For the first time, the retail investor whose order was internalized by a wholesaler would have access to the same post-trade transparency as the institutional investor whose order was executed on a lit exchange.

3. Unique transaction identifier.

Every execution shall be assigned a unique transaction identifier at the moment of the trade, and that identifier shall appear on the venue's report to the unified system, the buyer's trade confirmation, and the seller's trade confirmation. In the case of an auction or multi-party execution, the same transaction identifier shall apply to each participant to that single execution event. FINRA's current reporting rules already require granular time fields, including sub-milliseconds where captured, which supports the feasibility of more precise execution-level matching.⁶⁰

The tape report and the customer confirmation are distinct documents with distinct audiences: the tape report is public and trade-specific, while the customer confirmation is private and account-specific. A single identifier linking those records would allow regulators to cross-reference executions without centralizing customer identity in one public-facing data stream.

4. Execution quality disclosure on customer confirmations.

Every trade confirmation delivered to a customer shall include: (a) the customer's fill price; (b) the trade-weighted average execution price across all venues for that security during the applicable benchmark window surrounding the execution; (c) the difference between the two, expressed in dollars and cents per share; (d) the identity of the trading center that executed the order; and (e) whether the broker-dealer routing the order received payment for order flow in connection with the transaction.

⁶⁰ FINRA Rules 6282(a), 6380A(a), 6380B(a), and 6622(a) require that all time fields in trade reports submitted to a FINRA Facility be reported in the same timestamp granularity used by the member when reporting to the Consolidated Audit Trail — currently up to nanoseconds for firms whose systems capture time in increments finer than milliseconds. *See* FINRA Regulatory Notice 20-41 (Dec. 2020) (describing SEC-approved amendments aligning TRF timestamp granularity with CAT reporting requirements, up to nanoseconds); *see also* FINRA Rule 6380A (requiring Industry Members to "report time fields required by this Rule using the same timestamp granularity that they use to report order execution events to the [CAT]"). That infrastructure — millisecond to nanosecond execution timestamps already embedded in existing trade reports — provides the time-field precision on which the unique transaction identifier matching proposed here would rely.

This goes materially beyond current Rule 606-style routing disclosure because it would give customers automatic, transaction-level information rather than aggregate policy disclosures or data available only on request.⁶¹ The disclosure should appear in plain language, so a retail investor whose order was internalized by a wholesaler can see whether the execution was better or worse than the market at that moment, and this applies with equal force to the retail investor receiving a wholesaler confirmation and the institutional investor receiving an exchange confirmation.

5. Public venue scoring.

The unified post-trade reporting system shall produce publicly available, rolling execution quality scores for every venue - including wholesalers - calculated as each venue's trade-weighted average execution price relative to the contemporaneous market average. Brokers seeking to demonstrate best execution would route to venues with better scores, and wholesale market makers competing for PFOF arrangements would face the same transparency standard as registered exchanges.

The distinction from current execution-quality reporting is not cosmetic. Existing reporting frameworks are periodic and fragmented, while the proposed system would be real-time, standardized across exchange and off-exchange venues, tied to identified executions, and benchmarked against actual prints rather than a quote-based proxy.

IV. The Benchmark - Tiered Liquidity Framework

The five-second trade-weighted average benchmark described in Title III is calibrated for securities with continuous, high-frequency trading activity. In a representative ten-second window for a large-cap equity at market open, thousands of executions are distributed across eight or more venues simultaneously.⁶² The trade-weighted average across that volume is statistically robust and manipulation-resistant: no single actor can move it without leaving a large, visible footprint in the unified reporting system.

⁶¹ See 17 C.F.R. § 242.606(b)(3) (requiring broker-dealers to provide customers, upon request, with specified order routing information for held orders in NMS securities, including the identity of the venue to which the order was routed and any payment for order flow received in connection with that routing). The "on request" nature of Rule 606(b)(3) disclosure — combined with the rule's aggregation of routing data at the policy level rather than the transaction level — means that a retail customer whose order was routed to a wholesaler cannot, under current rules, automatically receive transaction-specific routing or execution quality information on their confirmation. See also 17 C.F.R. § 242.606(a) (requiring quarterly public disclosure of aggregate routing statistics by order type and security, without transaction-level or confirmation-level disclosure).

⁶² NYSE Trade and Quote (TAQ) Database, available through Wharton Research Data Services (WRDS), <https://wrds-www.wharton.upenn.edu>; see also Voloshyn, Voloshyn & Korajczyk, *supra* note 6 (documenting that Dow 30 stocks traded simultaneously across thirteen exchanges and more than thirty-five ATSS in 2016).

For less liquid securities, a fixed five-second window may contain too few prints to produce a meaningful benchmark. A Tier 1 stock like Apple generates thousands of prints in five seconds. A micro-cap trading 8,000 shares per day may generate zero prints in five seconds, or one.⁶³ A single outlier print is not a market - it is an anecdote. The Commission should adopt a tiered liquidity classification system that adjusts the benchmark window to the actual trading characteristics of each security.

The five-second window is not proposed as a point-in-time comparison but as a trade-weighted average - a measure that smooths individual price movements and reflects the center of gravity of actual market activity during the window. In a fast-moving market, that average will reflect the movement. This is a feature, not a defect: it captures the true cost of execution in a moving market rather than anchoring to a single displayed quote that may itself be stale or fictitious by the time the execution occurs. The tiered framework further addresses this concern by calibrating window length to the liquidity profile of the security, ensuring that the benchmark is always derived from a sufficient sample of genuine transactions.

The Tiered Structure

The framework builds on the existing Tier 1 and Tier 2 NMS stock designations established under the LULD Plan, which are formally maintained, semiannually reviewed, and operationalized by every market participant.⁶⁴ Tier 2 is subdivided into three liquidity sub-tiers based on consolidated average daily dollar volume (CADV), evaluated on the same semiannual schedule as the existing LULD review cycle.

Tier	Securities	30-Day CADV	Benchmark Window	Minimum Prints
1	S&P 500, Russell 1000, large ETPs	> \$2M	5 seconds	N/A
2	Active mid-cap, active small-cap	\$200K – \$2M	60 seconds	10 prints
3	Small-cap, thinly traded	\$20K – \$200K	10 minutes	5 prints
4	Micro-cap, illiquid	< \$20K	Last 20 verified prints, no time limit	3 prints

⁶³ FINRA OTC Transparency Data, <https://www.finra.org/filing-reporting/market-transparency-reporting/otc-transparency-data> (reporting daily consolidated volume for OTC equity securities; micro-cap and sub-dollar stocks routinely report single-session consolidated volume below 10,000 shares).

⁶⁴ See FINRA Limit Up-Limit Down (LULD) Plan; semiannual tier review conducted by the Plan Processor.

Where the minimum print threshold is not satisfied within the designated window, the system automatically expands the lookback period until the minimum is reached. Every customer confirmation for an execution in a sub-minimum print security shall include a plain-language disclosure - "thin market execution" - indicating that the benchmark reflects a wider time window than standard and that execution quality comparisons should be interpreted accordingly.

This disclosure does not diminish investor protection; it enhances it by providing honest context rather than a benchmark derived from insufficient data. A three-print benchmark in a micro-cap is more informative than no benchmark, and more honest than a theoretical reference derived from displayed quotes that may themselves reflect no genuine trading interest. For illiquid securities, the NBBO - while always present in some form - may itself reflect stub quotes or stale post-only orders bearing no relationship to where the security is actually trading.⁶⁵ In a declining market, the condition Rule 201 is designed to address, the last verified execution price will generally be at or below the current national best bid, making it a structurally more conservative short-sale floor than the one Rule 201 currently employs.

The Commission should retain authority to adjust tier thresholds and minimum print requirements by rule as the unified reporting infrastructure matures. The thresholds proposed above are calibrated to current market conditions and should be reviewed at reasonable intervals. Real-Ex does not take away the buy-side's ability to execute large orders in the dark - it gives them, for the first time, a systematic real-time tool to find where the liquidity actually is, verify that the venue handling their order is not leaking it to affiliated market makers, and route away from venues that are, with the same speed and precision that predatory algorithms currently use against them.

Manipulation Resistance Across Tiers

The tiered framework is designed with manipulation resistance as a first-order constraint. In Tier 1 securities, trade density makes benchmark manipulation effectively impossible without market-moving capital. In Tier 4 securities - where the benchmark relies on the last twenty verified prints - any attempt to move the benchmark through artificial transactions would itself constitute a reportable execution, with a unique transaction identifier, cross-referenced independently by venue, buyer, and seller. The cost and visibility of manipulation in a low-volume security under Real-Ex is substantially higher than manipulation of the current NBBO, where quotes can be posted and cancelled in microseconds at near-zero cost.

⁶⁵ See *supra* Sections I.A.2, -I.B.4 (discussing phantom liquidity, stub quotes, and post-only order mechanics as sources of NBBO distortion).

V. Why the Framework Works

Price discovery is preserved. Every exchange retains its Central Limit Order Book with fully displayed limit orders. Customers continue to post bids and offers. Price formation continues exactly as it does today - only the obligation to route away from the venue where an order rests is eliminated. Prices remain visible. Markets remain open.

Arbitrage enforces price consistency across venues. Without a routing obligation, a concern arises that prices could diverge across venues, with a bid on one exchange higher than an ask on another - a crossed market. In practice, this cannot persist. The same technology that created the latency arms race will immediately collapse any price dispersion. Dozens of firms sit simultaneously on every major venue, trading on price variances in milliseconds. A crossed market is risk-free profit for an arbitrageur. It will not last long enough to harm any investor. Notably, locked markets - where the bid equals the ask across venues - are themselves largely a product of the rebate structure that Rule 611 entrenched. Remove the routing obligation and the incentive to post at prices no one will trade through is substantially reduced. Locked markets substantially self-correct.

Weaker venues face market consequences, not regulatory protection.

Exchanges that attract inferior liquidity - because they pay rebates that distort participant behavior, permit order types designed to execute only passively, or sell data advantages that tilt the playing field - will produce worse execution scores. Order flow will migrate to venues that perform. This is not a punitive outcome. It is competition working as intended. A venue that survives only because a routing rule forces orders to it is not competing. It is being subsidized. Real-Ex removes the subsidy and lets the market decide which venues add genuine value. The Commission should weigh comment letters received in response to this petition with the recognition that the comment process is structurally vulnerable to what Mancur Olson identified as the concentrated-interest problem: the parties with the most to lose from reform are the most organized and most present, while the 165 million Americans who stand to benefit are neither.⁶⁶

Any buy-side concern about price impact is addressed by redistribution, not elimination. A legitimate concern exists that venue scoring, by revealing where large natural liquidity is currently concentrated, could attract competing buy-side interest that raises prices for the firm that found the liquidity first. This concern deserves a direct answer.

⁶⁶ See Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Harvard University Press, 1965) (demonstrating that small, concentrated groups with homogeneous economic interests will systematically out-organize large diffuse populations in political and regulatory processes, even where the aggregate benefit to the larger population substantially exceeds the aggregate loss to the concentrated group). See also [Your Name], *Regulatory Capture*, NADX Markets (2026), available at <https://nadxmarkets.com/publications/regulatory-capture.html> (applying Olson's framework to the SRO comment process in market structure rulemaking).

First, the information asymmetry that Real-Ex makes public already exists under the current system - it is simply private, held sequentially by the venue operator and affiliated market makers who use it to reprice against the remaining order before the print is visible to anyone else. The price impact that the buy-side fears from public venue scoring is already occurring in the dark, to the exclusive benefit of privileged intermediaries. Real-Ex does not create price impact - it redistributes the information that drives it from a small number of privileged participants to the entire market simultaneously.

Second, liquidity signals are two-sided. A venue demonstrating active, high-quality execution in a given security attracts not only buyers seeking that liquidity but sellers working complementary orders in the same security. VWAP and participation-rate algorithms on the sell side respond to the same signals as buy-side liquidity hunters.⁶⁷ A natural seller working a 500,000-share order sees a venue scoring well in that security and routes there - drawn by the same evidence of genuine market activity. The concentration of natural buyers at a high-score venue draws natural sellers to the same venue, partially offsetting the price impact that concentrated buy-side demand would otherwise produce. Volume attracts volume from both sides; this is the virtuous cycle that genuine price discovery is supposed to generate.

Real-Ex creates structural incentives for more genuine posted liquidity - with direct benefits for institutional execution. Under the current system, liquidity providers compete for order flow primarily through rebates and structural advantages - co-location, proprietary data feeds, and order types that allow quotes to be cancelled before a real order can execute against them. The result is a market populated with a significant proportion of phantom liquidity: quotes that satisfy the technical requirements of Rule 611's protection standard while providing no genuine willingness to trade. Buy-side firms executing large orders encounter this phantom liquidity on every attempt - the order reaches the venue, the quote cancels, the order reroutes, and the pattern of partial fills across multiple venues becomes the primary source of information leakage.

Real-Ex's venue scoring selects against phantom liquidity. A venue populated with quotes that cancel before execution produces poor execution scores. Buy-side flow migrates to high-score venues. Liquidity providers who want that flow post genuine, resting, executable quotes at high-score venues or lose the business. The elimination of the routing mandate removes the economic rationale for phantom quoting entirely:

⁶⁷ Robert Kissell, *The Science of Algorithmic Trading and Portfolio Management* (Academic Press/Elsevier 2013), ISBN 978-0124016897, at Chapters 4–6 (describing how VWAP and participation-rate algorithms detect and respond to directional order flow signals, and the resulting market impact and information leakage dynamics for institutional orders).

without a mandatory routing obligation, a quote that cancels on approach provides no rebate, attracts no flow, and degrades the venue's score. The only quotes worth posting under Real-Ex are quotes the poster is willing to honor.

More genuine posted liquidity means fewer partial fills per order, less pattern leakage from the accumulation of partial fills across multiple venues, and faster, quieter execution of large institutional orders. Buy-side firms that currently rely on VWAP and participation-rate strategies - slicing large orders into small pieces across the trading day not because it produces optimal outcomes but because genuine block liquidity is inaccessible - gain access to deeper, more reliable execution venues - not because they are better informed, but because the framework no longer rewards participants for identifying and trading against large directional order flow.⁶⁸ The defensive fragmentation of large orders, itself a primary source of the information leakage the buy-side fears, becomes less necessary as genuine liquidity becomes more accessible. Real-Ex does not eliminate price impact. What it does is ensure that the price impact a large order generates reflects genuine supply and demand dynamics rather than the sequential information advantages of privileged intermediaries.

Rebates lose their primacy as a routing incentive. Maker-taker rebates and payment for order flow are related but distinct mechanisms that Real-Ex affects differently.

Maker-taker rebates are payments from exchanges to liquidity providers - market makers and dealers who post resting limit orders - compensating them for the adverse selection risk of providing displayed liquidity. This mechanism predates Regulation NMS and has independent economic rationale; it did not require Rule 611 to exist. What Rule 611 did was amplify and entrench it. Before the routing mandate, an exchange offering a larger rebate competed for liquidity providers on market terms - it attracted more posted quotes only if participants believed the venue would generate genuine order flow to trade against those quotes. Rule 611 changed the competitive dynamic by converting routed order flow into a legal guarantee: any trading center posting the best displayed quote was entitled, by rule, to receive routed orders. This guarantee made the prize for attracting liquidity providers to post the best displayed quote substantially more valuable than the underlying economics alone would justify. The resulting arms race - exchanges offering larger rebates, liquidity providers responding by posting at venues with the largest rebates, posted quotes reflecting rebate optimization rather than genuine execution intent - was not a market outcome. It was a regulatory one, created and sustained by the routing mandate. Rule 611 did not create the rebate; it gave the rebate a guaranteed return.

Without the routing mandate, the guaranteed flow disappears. Exchanges that offer genuine execution quality attract order flow through competitive merit. Rebates adjust to

⁶⁸ See Securities Exchange Act Release No. 34-101070 (Sept. 18, 2024).

reflect that competitive value rather than the artificial premium created by mandatory routing.

Payment for order flow is a separate mechanism - payments from wholesale internalization firms to retail brokers for the right to internalize retail marketable orders. Real-Ex does not directly eliminate PFOF. What it does is subject the execution quality of internalized retail orders to the same transparency and scoring framework as exchange executions for the first time. A wholesaler whose internalized fills consistently underperform the contemporaneous market benchmark will carry a poor execution score - visible to brokers with best execution obligations, to regulators, and eventually to retail customers evaluating their broker's routing practices. The economic pressure on PFOF comes not from prohibiting the payment but from making the execution quality of the orders purchased publicly and continuously measurable.

Access fees, whose cap was reduced from \$0.003 to \$0.001 per share under the 2024 amendments to Regulation NMS,⁶⁹ may be further revisited once competitive forces are allowed to operate without the distortions created by mandatory routing.

The NBBO becomes vestigial - and can be replaced. The National Best Bid and Offer exists primarily to support mandatory routing. Without a routing obligation, it loses its legal significance as a mandatory benchmark. The Commission has made meaningful progress in improving the accuracy of the NBBO through the odd-lot and round-lot reforms adopted in recent years, and that work is acknowledged here. Nevertheless, a post-execution price reference - the trade-weighted average of actual prints across all venues - is more accurate and more manipulation-resistant than even a reformed NBBO composed of displayed quotes, however carefully constructed. Actual transaction prices reflect genuine supply and demand at the moment of execution. Real-Ex does not diminish the Commission's round-lot and odd-lot reform work. It builds on it by proposing a benchmark derived entirely from actual transactions rather than displayed quotes - a standard that round-lot reform moves toward but cannot fully achieve within a quote-based framework. The Commission may wish to consider whether the NBBO in its current form serves any remaining purpose once mandatory routing is eliminated, with the exception of discrete uses addressed in Title VI below.

VI. Interoperability - Regulation SHO, Rule 605, and the SIP Revenue Formula

Repeal of Rule 611 does not operate in isolation. Three interconnected areas of existing regulation incorporate the NBBO or the current SIP infrastructure in ways that require companion treatment. Each is addressed in turn.

A. Regulation SHO - The Alternative Uptick Rule

⁶⁹ See Securities Exchange Act Release No. 34-96494 (Dec. 14, 2022).

Rule 201 of Regulation SHO restricts short sales in securities that have declined ten percent or more from the prior day's closing price. Once the circuit breaker is triggered, short sales are permitted only at a price above the current national best bid.⁷⁰ The circuit breaker trigger itself - a ten percent intraday decline measured against the prior closing price - requires no modification under the Real-Ex framework. It references a historical price, not a live quote, and is unaffected by the elimination of the routing mandate or the retirement of the NBBO.

The price test requires a substitute benchmark. Under Real-Ex, the unified post-trade reporting system produces a continuous, real-time stream of verified execution prices across every venue. The Commission should amend Rule 201 to replace the national best bid with the most recent verified execution price in the security, as reported to the unified system, for purposes of the price test. A short sale would be permitted only at a price strictly above the last reported execution price.

This substitution does not weaken Rule 201. It strengthens it. The displayed national best bid is manipulable in both directions. A participant can cancel genuine bids in sub-milliseconds during a market decline, suppressing the NBB and lowering the floor below which short sales are prohibited - allowing continued short selling pressure at prices that genuine market participants would not permit. Conversely, a fictitious bid posted and immediately cancelled can temporarily inflate the NBB, pricing short sellers out of the available market and potentially protecting a long position during a decline. Neither manipulation leaves a trace in the current system.⁷¹ A verified execution price cannot be manufactured without an actual transaction that is independently cross-referenced by venue, buyer, and seller - making both forms of manipulation immediately visible and costly. The academic literature on equity market microstructure consistently documents that actual execution prices trade at or below the NBBO midpoint in the substantial majority of observed transactions - a finding robust across market conditions, security types, and time periods, documented using NYSE TAQ data across multiple decades of study.⁷² The last verified execution price is therefore a more restrictive benchmark than the current displayed national best bid in virtually every market condition - and in precisely the stressed, fast-moving conditions that Rule 201 is designed to address,

⁷⁰ 17 C.F.R. § 242.201 (the "Alternative Uptick Rule," adopted Feb. 24, 2010, restricting short sales in a covered security that has declined ten percent or more from the prior day's closing price to prices above the then-current national best bid, for the remainder of that trading day and the following trading day). See Securities Exchange Act Release No. 34-61595 (Feb. 26, 2010), 75 Fed. Reg. 11,232 (Mar. 10, 2010).

⁷¹ Carole Comerton-Forde & Tālis J. Putniņš, *Stock Price Manipulation: Prevalence and Determinants*, 18 Rev. Fin. 23 (2014), available at <https://ideas.repec.org/a/oup/revfin/v18y2014i1p23-66..html> (empirically analyzing closing price manipulation mechanisms, including sub-millisecond quote posting and cancellation; finding that approximately one percent of closing prices are manipulated, with effects concentrated in stocks with low liquidity and high information asymmetry).

⁷² See, e.g., Bartlett & McCrary, *Dark Trading at the Midpoint*, Review of Financial Studies (2019); Holden & Jacobsen, *Liquidity Measurement Problems in Fast, Competitive Markets*, Journal of Finance (2014); Anand et al., SSRN Working Paper No. 2955297 (2017).

where the divergence between displayed quotes and actual transaction prices is at its widest.

The Commission is invited to verify this relationship using the NYSE Daily TAQ database, which provides tick-by-tick trade and quote data for all NMS securities. A comparison of last-sale prices against contemporaneous NBBO bids for any actively traded Tier 1 security during any representative trading session will confirm that actual execution prices consistently trade below the displayed national best bid across the overwhelming majority of transactions. NADX will publish a detailed empirical analysis of this relationship, using publicly available market data, on its website concurrently with this petition.⁷³

The tiered liquidity framework described in Title IV applies to the Rule 201 benchmark as well. In a Tier 4 security already down ten percent intraday, the displayed national best bid is frequently a stub quote or a stale post-only order bearing no relationship to where the security is actually trading. The last verified execution price - drawn from the unified post-trade reporting system - is a more accurate and more restrictive benchmark in exactly the conditions Rule 201 targets.

B. Rule 605 of Regulation NMS - Order Execution Quality Disclosure

The Commission's amended Rule 605, with compliance dates extending into 2026, requires market centers to report monthly execution quality statistics including effective spread, price improvement rates, fill rates, and realized spread by order size and security type. These statistics are calculated relative to the NBBO midpoint as the reference benchmark.

The Real-Ex framework renders much of Rule 605 redundant - and simultaneously improves upon it. The unified post-trade reporting system captures every execution across every venue, in real time, using actual transaction prices rather than displayed quotes. Dollar volume, effective spread, fill rates, and execution quality relative to the contemporaneous market average are all byproducts of the unified system, calculated continuously rather than aggregated monthly. Critically, the unified system captures wholesaler and dark pool executions on the same basis as lit exchange executions - closing the gap that current Rule 605 reporting leaves for the off-exchange venues handling the majority of retail order flow.

The Commission should consider whether the amended Rule 605 compliance timeline, with its associated infrastructure costs, should be stayed pending the adoption of a Real-Ex framework. The investor protection goals of Rule 605 - transparency into execution quality by venue - are achieved more efficiently, more accurately, and at lower cost by the unified reporting system. One distinction warrants explicit recognition: Rule 605

⁷³The NYSE Daily TAQ (Trade and Quote) database provides tick-by-tick trade and quote data for all NMS securities and is available to institutional researchers through the Wharton Research Data Services platform. See <https://wrds-www.wharton.upenn.edu> (last visited June 2026).

measures order-level execution quality, while the unified system captures trade-level data. Order-level aggregation can be constructed from trade-level data, and the Commission may wish to consider whether a simplified order-level reporting supplement, derived from the unified system, should replace the current Rule 605 filing obligation.

C. The SIP Revenue Formula

The Securities Information Processor distributes revenue to exchanges in two equal parts: fifty percent allocated by trading share and fifty percent allocated by quoting share - each exchange's proportion of time spent posting quotes at the national best bid or offer, weighted by quote size relative to the spread.

The quoting share formula exists to reward the behavior that Rule 611 requires. Remove the routing mandate, and the policy rationale for paying exchanges to post at the NBBO disappears with it. The trading share component requires migration, not elimination: the unified post-trade reporting system captures every execution across every venue in real time, more accurately and with greater cross-venue consistency than the current consolidated tape. The Commission should direct that trading share revenue be recalculated using the unified system as its source, extending distribution participation to off-exchange venues on an equal basis for the first time.

The quoting share component should be eliminated in connection with the repeal of Rule 611. Eliminating the quoting share does not eliminate quoting - exchanges will continue to host limit order books because their customers need price discovery. What it eliminates is the financial reward for quote activity designed to attract SIP revenue rather than to facilitate genuine trading interest. The Commission should also note that exchange proliferation is partly a function of SIP economics: a new exchange whose participants generate even modest quoting and trading activity earns SIP revenue immediately, subsidizing launch costs that would otherwise be uneconomic. Eliminating the quoting share and moving trading share to a unified reporting basis allows exchange entry and exit to be governed by genuine competitive merit.

VII. Elimination of the Consolidated Audit Trail

The Consolidated Audit Trail was built at a cost estimated in excess of one billion dollars to construct, with annual maintenance costs in the hundreds of millions, for the purpose of reconstructing market activity and detecting manipulative trading patterns.⁷⁴ It has been a persistent source of cybersecurity and privacy risk - collecting the names, addresses, dates of birth, and Social Security numbers of millions of retail investors in a

⁷⁴ SEC, *Concept Release on Consolidated Audit Trail and Other Audit Trails and Data Sources*, Exchange Act Release No. 34-101831 (Apr. 16, 2026), 91 Fed. Reg. 17,834 (Apr. 19, 2026) (noting that annual CAT operating costs "have grown well beyond the Commission's 2016 estimate of approximately \$55.8 million"), available at <https://www.federalregister.gov/documents/2026/04/20/2026-07651>.

centralized repository, a practice the SEC ultimately acknowledged was disproportionate to the system's regulatory benefit and moved to eliminate in January 2026.⁷⁵

The unique transaction identifier requirement proposed in Title III renders CAT unnecessary. Every execution generates a unique ID held independently by the venue, the buyer, and the seller - three separate records that must match. Systematic misreporting is detectable through routine cross-referencing. Regulators seeking to reconstruct trading activity have access to a real-time, complete, tamper-resistant record of every execution across every venue, held by multiple independent parties, at near-zero marginal cost.

The Commission should consider whether the Consolidated Audit Trail can be decommissioned in connection with the adoption of this framework, returning hundreds of millions of dollars annually to market participants and eliminating a cybersecurity risk that has no commensurate benefit under the proposed system.

VIII. Regulation SCI

The unified reporting requirement proposed herein may also afford the Commission an opportunity to revisit the scope of Regulation SCI, particularly its surveillance and reporting obligations, which would be substantially duplicated by a real-time execution reporting system. The Commission may wish to consider narrowing Reg SCI to cover system resilience and redundancy standards only, reducing compliance costs significantly for smaller venues and alternative trading systems.⁷⁶

IX. A Note on the Comment Process

NADX anticipates that this petition will generate substantive opposition from participants whose business models depend, in whole or in part, on the market structure

⁷⁵ See SEC, Order Approving Amendment to the CAT NMS Plan to Eliminate Reporting of Certain Personal Identifying Information, Exchange Act Release No. 34-104586 (Jan. 13, 2026), available at <https://www.sec.gov/files/rules/sro/nms/2026/34-104586.pdf> (approving elimination of requirements to report customer names, addresses, dates of birth, Social Security numbers, and EINs to the CAT repository, following sustained concern that centralized collection of PII on millions of retail investors created systemic privacy and security risk disproportionate to CAT's regulatory benefit); see also SEC Concept Release on Consolidated Audit Trail, *supra* note 56.

⁷⁶ See Regulation SCI Adopting Release, Securities Exchange Act Release No. 34-73639 (Nov. 19, 2014), 79 Fed. Reg. 72,252 (Dec. 5, 2014), at 72,348–72,380 (SEC economic analysis estimating initial compliance costs for SCI entities ranging from approximately \$189,000 to \$4.5 million per entity, with ongoing annual costs of \$73,000 to \$1.3 million, reflecting the disproportionate burden on smaller venues and alternative trading systems); see also *id.* at 72,252 (defining the scope of Regulation SCI to encompass systems critical to market operations, including trading, clearance, and market data systems, with surveillance and reporting obligations that would be substantially subsumed by a real-time universal execution reporting system of the kind proposed herein).

that Rule 611 created and entrenched. That opposition is expected, and much of it will raise legitimate technical questions that deserve careful analysis. The Commission and the public are encouraged to engage with those arguments on their merits. The Exchange Act charges the Commission with protecting investors and maintaining fair and orderly markets.⁷⁷ It does not charge the Commission with protecting the profitability of any particular intermediary business model. These objectives sometimes align. They sometimes do not.

The policy choice the Commission faces today is not unprecedented. In 2000, when the Commission rescinded NYSE Rule 390 - the predecessor restriction on off-board trading - it expressly acknowledged the tension between price competition and fair market center competition, noting that "although the objectives of vigorous competition on price and fair market center competition may not always be entirely congruous, they both serve to further the interests of investors and therefore must be reconciled in the structure of the national market system." Rule 611 was the Commission's attempt at that reconciliation. Twenty years of evidence establishes that it did not succeed. This petition proposes a different reconciliation - one grounded in actual execution outcomes rather than procedural routing mandates.⁷⁸

The Commission should apply a consistent analytical standard to every comment received: does the objection identify a harm to investors, or does it identify a harm to a business model? The two are not the same, and they have not always been carefully distinguished in market structure debates. A routing obligation that benefits exchanges at the expense of execution quality is not investor protection. A rebate structure that creates financial incentives for brokers to route on the basis of venue economics rather than execution quality is incompatible with genuine best execution. A transparency regime that covers lit exchanges but exempts the venues handling the majority of retail order flow is not adequate disclosure.

We suggest further that commenters who dispute the Real-Ex framework identify which category of investor they are protecting and how. A comment that argues against post-trade transparency should explain which investors benefit from opacity, and why their interests should prevail over the 165 million Americans whose retirement outcomes are shaped by execution quality they currently cannot see. A comment that argues against eliminating the quoting share should explain why exchanges should be paid for displaying quotes that are not intended to execute as aggressive liquidity providers, and how that payment serves investors rather than venues. A comment that argues that the

⁷⁷ 15 U.S.C. § 78b (congressional findings that the national public interest and the interests of investors require regulation of securities markets to protect investors and maintain fair and orderly markets); *see also* 15 U.S.C. § 78k-1(a)(1)(C) (directing the Commission, in overseeing national market system rules, to ensure that the rules are designed to, among other things, promote fair and orderly markets and protect investors).

⁷⁸ *Concept Release on Market Fragmentation*, Exchange Act Release No. 34-42450, 65 FR 10577, 10580 (Feb. 28, 2000).

current system adequately protects retail investors should grapple with the fact that fewer than five percent of retail trades interact with institutional liquidity on a lit exchange - and that the remaining ninety-five percent are filled by wholesale market makers against a benchmark the investor has no independent means of verifying. These are not rhetorical questions. They are the substantive questions the Commission must answer in any rulemaking on market structure, and NADX welcomes responses to them. PTG Markets, whose member firms are among the most active principal trading participants in U.S. equity markets, has articulated the appropriate standard precisely: 'Removing or substantially revising Rule 611 would not leave investors in a vacuum. It would remove the rigid standard that is layered on top of a broader best execution framework. That broader framework is more adaptable because it asks whether an order received a favorable outcome under prevailing market conditions, not merely whether the routing process satisfied a mechanical protected-quotation hierarchy.'⁷⁹

The Commission's mandate under the Exchange Act is to protect investors and maintain fair, orderly, and efficient markets. That standard - and the statutory obligations of Sections 3(f) and 6(b)(5) - provides the appropriate framework for evaluating every element of this proposal and every objection raised in response to it.

X. Conclusion

Rule 611 was built on a sound instinct - that investors deserve the best available price, and that venues should compete to provide it. The instinct was right. The mechanism was wrong. Mandatory routing did not create competition. It entrenched a routing incentive structure, amplified a rebate model with roots predating Regulation NMS, and generated a latency arms race whose costs are borne by 165 million Americans whose retirement security depends on markets that work.

Real-Ex - a post-execution, market-based framework built on universal reporting, unique transaction identifiers, and transparent public scoring - achieves what Rule 611 promised by letting markets do what markets do best. Venues compete on actual execution quality. Buy-side firms and their brokers route to performers. Every investor - the institutional portfolio manager, the active retail trader, and the 401(k) participant whose savings are managed on their behalf - sees exactly what execution quality they received and how it compared to the market at the time of their trade. Wholesale market makers compete for retail order flow on the basis of verifiable execution outcomes, not opaque price improvement claims measured against fictitious quotes.

No routing mandate required. No billion-dollar audit trail required. No regulatory life support for underperforming venues required. No fictitious NBBO required. No quoting-

⁷⁹ Testimony of Matt MacKenzie, Optiver, on behalf of PTG Markets, before the House Financial Services Subcommittee on Capital Markets (May 20, 2026) (*supra* note 10).

share subsidy required. No dark wholesale fills invisible to the investors whose orders they represent.

The interoperability concerns that have historically attached to proposals for Rule 611 reform are addressed directly herein. The alternative uptick rule under Regulation SHO is strengthened, not weakened, by substituting a verified execution price for a manipulable displayed bid - a substitution supported by decades of academic literature on the relationship between actual execution prices and displayed quotes. The execution quality disclosure goals of Rule 605 are achieved more accurately and at lower cost by the unified reporting system. The SIP revenue formula, whose quoting-share component exists only to subsidize the behavior that Rule 611 incentivizes, is reformed as a natural consequence of the routing mandate's repeal.

NADX respectfully petitions the Commission to initiate rulemaking to repeal Rule 611 of Regulation NMS and adopt a market-based real execution reporting framework along the lines described herein. We welcome the opportunity to discuss this proposal further with Commission staff at the staff's convenience.

Respectfully submitted,

Edward Jacobson

Chief Executive Officer
NADX Securities, Inc.

cc: The Honorable Mark T. Uyeda, Commissioner
cc: Jamie Selway, Director, Division of Trading and Markets