July 21, 2026

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

Re: Comments on the Proposed Rescission of the Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS; File No. S7-2026-20; Release No. 34-105655; RIN 3235-AN50

Dear Ms. Countryman:

We The Investors ("WTI")[1] appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's (the "SEC" or "Commission") proposal to rescind Rule 611 (the Order Protection Rule) and Rule 610(e) of Regulation NMS, along with related conforming amendments to Rule 600 (the "Proposal").[2] We The Investors is organized around five key principles as laid out in our Investors' Bill of Rights, including Transparency, Simplicity and Fairness, Choice and Control, Best Execution and Better Settlement and Clearing.[3] We The Investors requests that the Commission reconsider rescission of Rule 611. At a minimum, the Commission must adopt a quantitative, objective, enforceable best execution standard for non-institutional investors alongside (or before) rescission. This should be an improvement over the previously withdrawn Regulation Best Execution[4], not yet another unenforceable (or unenforced) FINRA standard or Commission guidance. If the Commission insists on changes to Rule 611, a less-bad alternative would be to adopt a narrowly tailored volume-or market-share-based threshold for protected-quote status rather than eliminate trade-through protection across the national market system.

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[1] We The Investors is a grassroots advocacy campaign launched in March 2022 built by, and for, retail investors. Our mission is to advocate for retail investors and to empower them to represent themselves and understand market structure issues. We are supported by industry firms and over a hundred thousand retail investors.

[2] Securities Exchange Act Release No. 34-105655, File No. S7-2026-20, RIN 3235-AN50 (June 11, 2026); published at 91 Fed. Reg. 36,656 (June 17, 2026). This letter cites the release as the "Release" or the "Proposal," with page references given parenthetically in text (e.g., "Release at 22"). [Proposed rule: The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS]

[3] The Investors' Bill of Rights can be accessed at: www.wetheinvestors.org

[4] Withdrawal notice of proposed Regulation Best Execution, SEC.gov | Regulation Best Execution

Investors are being asked to give up a critical protection that has existed for two decades without adequate consideration of the investor-protection concerns raised by the Proposal. The record before the Commission, including the Commission's own economic analysis, fails to support rescission and, in fact, the Commission's own data, much of it conceded in the Release itself, show that eliminating Rule 611 will impose costs on investors that dwarf the compliance savings the Proposal identifies. With costs falling hardest on those least able to bear them: Retail Investors. We submit these comments to give voice to these everyday investors' interests who play an ever-increasingly important and influential role in markets[5], and to build a complete record of the Proposal's analytical mismatch for further administrative and, if necessary, judicial review.

As discussed more fully below, the Commission's own economic analysis and data undercut the Proposal and the stated rationales collapse under scrutiny:

- Rule 611 is the only objective, transaction-level protection guaranteeing every investor order gets the best displayed price; rescinding it removes that guarantee overnight, with **nothing** put in its place.

- The Commission's own Release admits its own proposal will let brokers and wholesalers trade through investor orders and pocket the difference.

- Eliminate Rule 611 and the NBBO (the benchmark wholesalers cite when claiming they give retail investors "price improvement"[6]) loses the floor that makes it meaningful.

- The Commission's own economic analysis concedes weaker protection pushes liquidity into dark, off-exchange venues, degrading price discovery for every investor.

- The numbers don't justify the trade: roughly $31,000 in compliance savings per trading center against a conservative cost to investors of hundreds of millions of dollars a year.

- Every one of the Proposal's central rationales, from exchange proliferation, to "modern connectivity," to information leakage, is contradicted by the Commission's own record and is not resolved by rescinding Rule 611.

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[5] *A Decade in the Market: How Retail Investing Behavior Has Shifted Since 2015* (JP Morgan Chase (Aug. 2025) (finding that from (i) from 2023 to early 2025, retail investing flows rose by about 50 percent, to levels rivaling the pandemic savings surge's peak (ii) lower-income individuals have increased their investing activity somewhat more than higher-income individuals, extending the pandemic-era narrowing in the participation rate gap and (iii) Younger adults are entering the market earlier: the share of 25-year-olds in 2024 that used investment accounts was 37 percent, versus 6 percent for 25-year-olds in in 2015.
https://www.jpmorganchase.com/institute/all-topics/household-financial-health/a-decade-in-the-market-how-retail-investing-behavior-has-shifted-since-2015

[6] It is beyond the scope of this letter to debate whether wholesalers give material price improvement to retail investors - needless to say that they claim to do so (we disagree), and such claims are predicated upon the existence of an NBBO.

- Individual retail investors have all separately urged the Commission ***not to do this, and the record in opposition is growing.***

Once again, we urge the Commission to focus limited regulatory resources on developing and enforcing a quantitative, objective, order-by-order best execution standard for non-institutional investors, rather than rescinding the only backstop to best execution for retail investors.

I. BACKGROUND: THE PROPOSAL WOULD ELIMINATE RULE 611'S CORE INVESTOR PROTECTIONS

On June 11, 2026, the Commission proposed rescinding Rule 611 of Regulation NMS - the rule that, since 2005, has prohibited a trading center from executing an order at a price inferior to a protected quotation displayed by another trading center (a "trade-through") - along with Rule 610(e)'s locked-and-crossed-markets provisions and related defined terms in Rule 600. The Commission itself has described Rule 611 as "the core of the rules adopted by the Commission in Regulation NMS," adopted so that "investors, ***particularly retail investors***, would be assured that orders would be filled at the best prices, thereby giving them greater confidence that they would be treated fairly when they participated in the equity markets." (Release at 8, 21-22.) (emphasis added). The Proposal would eliminate that assurance in its entirety, effective upon adoption, with no order-by-order substitute put in its place.

II. CONGRESS CHARGED THE COMMISSION WITH ASSURING BEST EXECUTION; RULE 611 IS THE MECHANISM THAT DELIVERS ON THAT MANDATE

When Congress amended the Exchange Act in 1975 to create the national market system, it directed the Commission, through enactment of Section 11A, to assure the economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market. The legislative history leaves no doubt what that meant: investors "must be assured that they are participants in a system which maximizes the opportunities for the most willing seller to meet the most willing buyer," and the system must "assure that public investors are able to obtain the best price for securities regardless of the type or physical location of the market upon which his transaction may be executed."[7] Congress specifically contemplated and endorsed Commission rules that would price-protect displayed quotations across markets.

The current enforcement of Best Execution rules is, quite frankly, non-existent. Instead of rigorous, objective, quantitative standards for best execution for non-institutional investors, we have a framework that is "like nailing jello to a wall." In the absence of any meaningful enforcement of best execution, all we have is Rule 611 - an emergency backstop to protect retail investors.

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[7] *See* Reg NMS Adopting Release, at 6 (stating that the Commission adopted Rule 611 "in furtherance of its statutory responsibilities," particularly Congress's direction to the Commission, through enactment of Section 11A of the Exchange Act") [Final Rule: Regulation NMS]; *see also* H.R. Rep. 94-123, 94th Cong., 1st Sess. 50 (1975).

Rule 611 is the only mechanism that ensures ordinary investors have access to the best publicly available price. It prohibits a trading center from executing a trade at a price inferior to a protected quotation displayed on another market center - an order-by-order, mechanically enforced backstop to best execution that exists nowhere else in the current regulatory structure.

That backstop matters because the alternative the Proposal implicitly relies on - FINRA Rule 5310 - cannot do the same job. FINRA's best-execution rule is principles-based, assessed on a facts-and-circumstances and order-flow basis rather than order-by-order and supplies no standardized cross-venue comparison methodology. Rule 5310 has proven, over the past decade, to be completely ineffectual in providing a framework for ensuring best execution. Over the past decade, reviewing the public data that FINRA releases on disciplinary actions brought under FINRA Rule 5310, there have been only a handful of cases reported per year, none that could be found in 2025, and nearly all of them took multiple years from the time the violation occurred to an enforcement action resolution. In addition, these cases were all based on inadequate disclosures - brokers simply failed to inform their customers that they were being ripped off - not on the material harm that retail investors were suffering due to the theft that is a best execution violation.

Rescinding Rule 611 while the Commission's own parallel Regulation Best Execution proposal remains withdrawn[8] does not modernize investor protection - it eliminates the only mechanism that makes best execution enforceable in real time, and replaces it with **nothing**. While Regulation Best Execution fell short of the order-by-order standard we believe should be in place, it was certainly better than nothing.

III. THE PROPOSAL WILL INFLICT IMMEDIATE, QUANTIFIABLE HARM ON INVESTORS, PARTICULARLY RETAIL INVESTORS

A. The price floor disappears on day one, and the Commission's own record says so

The harm here is not speculative, it is conceded repeatedly in the Commission's own Proposal. The Commission expressly recognizes that "[b]roker-dealers may face lower execution quality if they disconnect from exchanges," that a broker-dealer freed from Rule 611 "may decide to trade through" a quote "on an exchange to which it is connected, thus achieving a worse execution quality for customers," and that block orders may receive "worse execution quality because [the routing broker] does not access the liquidity at the exchanges to which it is not connected." (Release at 231-232.) As the Commission acknowledged in adopting Rule 611, "many of the investors that ultimately received the inferior price in these trades may not be aware that their orders did not, in fact, obtain the best price."[9] Investors who cannot see their own order routing cannot protect themselves from it.

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[8] Withdrawal notice of proposed Regulation Best Execution, [SEC.gov | Regulation Best Execution]

[9] Adopting Release at 78, [Final Rule: Regulation NMS]

If FINRA cannot even enforce their own rules, how does anybody expect retail investors to do so?

This is precisely why the Commission adopted Rule 611 in the first place, and the Proposal does not explain why the underlying problem - investors' inability to police the prices they receive - has disappeared in the intervening two decades. To the contrary, the Commission's own words from 2005 remain true today: "price is a critical concern for investors." (Release at 41.)

B. Rescission will degrade the NBBO, the very benchmark wholesalers use to claim they give retail investors "price improvement"

The National Best Bid and Offer is the reference price wholesalers use when they tell retail customers, and the Commission, that they are providing "price improvement." Remove Rule 611, and the protected status of that benchmark disappears with it. Nothing then prevents a wholesaler from executing a retail order at whatever price it chooses, because there is no floor beneath the NBBO for it to violate. In addition, nothing prevents the wholesaler from using any benchmark it chooses, and claiming to achieve best execution or "price improvement."

Moreover, the Commission's own economic analysis confirms that retail order flow will be negatively impacted as trading moves to dark and more fragmented venues: it acknowledges that "liquidity suppliers may be less willing to post aggressively-priced quotes if they expect their quotes to be traded through by uninformed liquidity demanders" (Release at 187), and separately that rescission could cause "more order flow being routed off exchange" and "reduce displayed liquidity on exchanges" while admitting the Commission is "unable to reasonably estimate the magnitude of order flow that could move off exchange." (Release at 166-167.) An agency that cannot estimate the magnitude of a harm it has already identified has not adequately considered that harm. Removing the rule does not fix any problems, it removes the only mechanism that currently keeps it from getting worse.

The practical consequence is that a retail investor saving for retirement, a parent investing for a child's education, or a worker contributing to a 401(k) could receive a worse price than was publicly available at the moment of execution without knowing it and without any practical ability to detect it. Rule 611 was adopted precisely because individual investors cannot monitor every routing decision made on their behalf.

Indeed, the Commission itself concedes that if Rule 611 is rescinded, "wholesalers may begin to trade through displayed round-lot quotes," "resulting in worse prices for these orders," and "[t]his would transfer value from the retail investors to the wholesalers, who would earn higher profits." (Release at 171.) We are aware of no other provision in the Proposal, or in existing FINRA rules, that would prevent that transfer of wealth from retail investors to wholesalers from occurring.

C. The Commission's own natural experiment proves the point

The Commission does not need to speculate about what happens when trade-through protection is removed from a category of quotations, it has already run the experiment and observed it. We saw clearly that without protection, off-exchange trade-throughs were 63x higher than with protection, while on-exchange trade-throughs were 3.2x times higher. The Proposal does not explain why the same result should not be expected on a broader scale.

When the Market Data Infrastructure round-lot change took effect on November 3, 2025, quotations of 40 shares in stocks priced above $250 converted overnight from unprotected odd-lot quotes into protected round-lot quotes. The Commission's own Round-Lot Change Trade-Through Analysis shows what happened next: the off-exchange trade-through rate for those 40-share quotes fell from 12.6% before protection to 0.2% after (a 98.4% decline) and the on-exchange trade-through rate fell from 1.6% to 0.5%, a 69% decline. (Release at 196–202, Table 9.) This is the Commission's own contemporaneous data, generated only months before the Proposal, showing that removing trade-through protection produces an immediate, order-of-magnitude increase in trade-throughs. The Proposal does not grapple with this evidence, let alone explain why the same mechanism will not operate in reverse if Rule 611 is rescinded across the entire market.

That contemporaneous data is consistent with the record the Commission built when it adopted Rule 611 in the first place. In 2003, before Rule 611, trade-throughs occurred in an estimated 2.3% of trades in Nasdaq stocks, at an estimated annual cost to investors of $320 million.[10] By 2014, after Rule 611 had been in effect for roughly a decade, trade-through rates had fallen to as little as 0.1%, a decline of more than 95%.[11] The Proposal offers no data suggesting that decline would hold if Rule 611 disappeared, and the Commission's own round-lot experiment says it would not.

D. Rescission eliminates the only affirmative self-policing duty on trading centers

Rule 611(a)(2) requires every trading center to establish, maintain, and enforce policies reasonably designed to prevent trade-throughs, and to regularly surveil the effectiveness of those policies and promptly remedy any deficiencies. That is the only affirmative obligation in the current regulatory structure requiring a trading center to look for its own trade-throughs and fix them. Rescind Rule 611, and no rule requires a trading center to detect a trade-through, disclose one, or correct one. An investor whose order is executed at an inferior price has no rule to point to and no self-policing mechanism working on her behalf, only an after-the-fact, principles-based FINRA standard that, as described above, is either unenforceable, or simply not enforced.

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[10] *See* Rule 611 of Regulation NMS - memo to SEC Market Structure Advisory Committee, at 6-7.

[11] *Id.* at 14.

E. Reduced incentive to display limit orders will degrade price discovery and market depth

The Commission's own 2005 adopting release explained that "[d]isplayed limit orders benefit all market participants by establishing the best prices, but, when bypassed, do not themselves receive a benefit," creating "an economic externality" and "a disincentive for investors to display limit orders" that "could negatively affect price discovery and market depth and liquidity."[12] The Proposal's own economic analysis concedes that "higher trade-through rates could lower the expected probability of execution for displayed limit orders, reducing the incentive to post and update best-priced displayed orders on exchanges," which "may prompt liquidity providers to quote less aggressively, reduce the displayed size of their order, or even hide their order or move their trading interest off exchange." (Release at 167.) High-frequency proprietary trading firms — which the record recognizes represent a substantial share of daily volume and are a dominant source of displayed liquidity — have every incentive under a rescinded Rule 611 to migrate that liquidity into internalization and dark venues, where it benefits neither the broader market nor the retail investors who rely on visible quotes.

F. The Commission's cost-benefit analysis does not support rescission — it undercuts it

The Proposal estimates that trading centers will save approximately $30,996 in compliance and surveillance costs per trading center as a result of rescission (Release at 115, 159), a figure the Commission itself acknowledges is likely an overestimate, since firms "may still collect this information for other compliance or evaluation purposes." (Release at 161.) That is a small fraction of less than one percent of an exchange's annual revenue. Weighed against that trivial saving is the cost of a degraded NBBO and increased trade-throughs across a market that trades hundreds of billions of dollars of equity securities every day. Even a conservative estimate, one cent of inferior execution across the staggering and growing daily volume, works out to roughly ***hundreds of millions of dollars annually*** before accounting for wider spreads, reduced displayed liquidity, and the higher cost of capital for listed issuers that the Commission's own 2005 release predicted Rule 611 would help avoid. An agency may not weigh a de minimis saving to industry against a cost to investors of this magnitude and call the result a reasoned basis for rescission.

G. Independent market participants and individual retail investors have reached the same conclusion

We The Investors is not alone in these concerns. Haoxiang Zhu, former Director of the Commission's own Division of Trading and Markets, has stated that Rule 611 "remains the least disruptive option to maintain investors' confidence in order execution quality and the U.S. equity

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[12] [Final Rule: Regulation NMS]() at 78.

market overall."[13] Cboe Global Markets has described the NBBO as "the backbone to investor confidence."[14] Treveri Capital LLC has warned that best execution "is a principles-based, facts-and-circumstances standard enforced after the fact" that "does not tie the prices of competing venues together" and "is not a structural price-discovery mechanism," and that rescission "is likely to accelerate the flight to the dark rather than reverse it."[15] Themis Trading LLC has predicted that "[f]ragmentation of execution venues will continue," that "[o]ff-exchange volume will not decrease," and that "[s]egmentation of liquidity within ATSs will not change."[16] Dozens of individual retail investors have already separately submitted comments in this docket describing their own concern that, without Rule 611, they will have no way to confirm they received a fair price and no visibility into how their orders are routed.[17]

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[13] *See* Haoxiang Zhu, former Director of the Division of Trading and Markets at the Commission, dated Dec. 15, 2025 (commenting that the "Order Protection Rule (Rule 611) is the lynchpin of Regulation National Market System" and "the Order Protection backstop of best execution remains the least disruptive option to maintain investors' confidence in order execution quality and the U.S. equity market overall."). 4862-684767-2120075.pdf; *see also* Harold Bradley Former Member, SEC Advisory Committee on Market Information, s7202620-912820-2796914.pdf (commenting that rescinding Rule 611 "creates acute risks of inferior executions, erosion of limit-order incentives, amplified dealer advantages, heightened systemic run risk, and reinforcement of sell-side informational edges.").

[14] Cboe expressed serious concern that eliminating the trade-through prohibition can degrade the NBBO over time. Cboe Letter Dated December 15, 2025 ("Crucially, trade-through protections should be maintained for these venues so that a meaningful, reliable, and accessible national best bid and offer ("NBBO") can be maintained. The NBBO serves as the backbone to investor confidence – and protecting its integrity should remain at the core of any regulatory initiative to alter market structure.") 4862-684647-2119914.pdf; *see also* Cboe Letter Dated September Dated September 15, 2025 Cboe-Global-Markets-Trade-Throughs-Roundtable-September-2025-.pdf

[15] *See* Treveri Capital LLC, Letter dated August 17, 2026, s7202620-840359-2568811.pdf.

[16] *See* Themis Trading LLC, Letter dated December 17, 2025, 4862-685267-2122974_0.pdf

[17] Collection of retail investors in comment file as of July 1, 2026 Comments of Donald Barry Smith Jr ("Retail investors will pay a heavy price if this rule is removed"); Comments of Alex Zislin ("As an active small investor, best price execution of orders is extremely important to maximizing my portfolio"). Comments of Marc Green on Jun. 12, 2026 ("Removing [611] opens the door to inferior execution, wider spreads, and more internalization at the expense of transparency and fairness. This is not modernization — it is a step backward."); Comments of joe lee ("I respectfully urge the Commission to retain Rule 611 . . . or at minimum delay any repeal until the Commission can show with evidence that retail investors will not be harmed."); Comments of John ("Not in favor of this proposal in that it has the potential to harm retail investors."); Comments of Mary ("I believe these rules provide essential safeguards that ensure I receive fair execution quality for my trades. Removing them, without a robust and proven replacement, risks compromising the integrity of the retail investor experience."); Comments of Philip Carrozza on Jun. 11, 2026 ("the proposal to eliminate the trade-through rule is, frankly, insane from the perspective of anyone who actually trades in the real world."); Comments of Bhavith S ("I am deeply concerned that repealing Rule 611 will bring that same lack of strict price protection to the U.S. stock market, exacerbating the problem for everyday traders."); File_Number_4-862_comment (explaining how "[d]ismantling this universal safety net will severely fracture the U.S. equity markets" and "will directly penalize retail investors); R. T. Leuchtkafer, ("I don't know why the SEC wants investors to pay more, but it seems an especially awkward time for the SEC to adopt a Make America Pay Again agenda.") s7202620-908999-2780848.pdf; Harold Bradley Former Member, SEC Advisory Committee on Market Information, s7202620-912820-2796914.pdf (commenting that rescinding Rule 611 would weaken long-standing investor safeguards and "would be a profound mistake"); Comments of Nicholas K. Roberts (commenting that "[t]o consider and potentially rescind Rules 611 and 610(e) is a red flag").

V. RULE 611 CONSTRAINS CONFLICTS OF INTEREST

The Commission has repeatedly recognized that payment for order flow creates an inherent conflict of interest because brokers are compensated by wholesalers for routing retail orders while simultaneously owing a duty to seek the best execution reasonably available for their customers. Ken Griffin himself explained in a 2004 comment letter that "Internalization is one of the greatest threats to price discovery in financial markets."[18]

Rule 611 does not eliminate that conflict, but it serves as one of the few structural constraints that limits its economic consequences. By requiring trading centers to respect superior protected quotations displayed elsewhere in the market, Rule 611 establishes an objective price floor that constrains how much value can be extracted from retail order flow. The Proposal would remove that constraint while leaving the underlying conflict intact. Indeed, the Commission itself acknowledges that wholesalers may trade through displayed quotations and earn higher profits as a result, while retail investors receive worse prices. **Wholesalers have become experts at statistical manipulation to create the appearance of "price improvement" while pocketing record profits as they extract rents from internalizing retail order flow.**

Before eliminating Rule 611, the Commission should carefully consider whether it is removing a longstanding investor protection that has helped ensure some of the benefits of competition accrue to investors rather than intermediaries.

The Proposal also fails to analyze a critical question: who captures the economic value created by rescission? If Rule 611 is eliminated, wholesalers will gain greater flexibility in how they interact with displayed liquidity and may be able to retain a larger share of the spread that is currently competed away through public price discovery. The Commission identifies compliance savings for trading centers and increased flexibility for market participants, yet it does not quantify whether retail investors will share in those benefits or instead bear the costs through inferior executions, reduced price improvement, and diminished displayed liquidity. Because payment for order flow remains pervasive throughout the retail market, rescinding Rule 611 effectively increases reliance on after-the-fact best execution reviews to police conflicts that are currently constrained by an objective, transaction-level rule. At a minimum, the Commission should analyze whether rescission would increase wholesaler profitability at the expense of retail investors before concluding that the Proposal is consistent with investor protection and the public interest.

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[18] Griffin, Kenneth, "Comment Letter–Re: Regulation NMS - File No. S7-10-04", Securities and Exchange Commission, Available at https://www.sec.gov/rules/proposed/s71004/s71004-436.pdf ("Ken Griffin Hates Internalization")

VI. THE COMMISSION'S STATED RATIONALES FOR RESCISSION DO NOT WITHSTAND SCRUTINY OF ITS OWN RECORD

An agency changing a longstanding rule must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made, and it acts arbitrarily and capriciously if it entirely fails to consider an important aspect of the problem, offers an explanation that runs counter to the evidence before it, or reaches a conclusion so implausible that it cannot be ascribed to a difference in view or agency expertise. Where, as here, an agency proposes to change a rule that market participants have relied on for two decades, it must at minimum display awareness that it is changing position and provide a reasoned explanation, and it may be required to provide a more substantial justification where the new policy rests on factual findings that contradict those underlying the prior policy or upsets serious reliance interests. The Proposal does not meet that standard on any of its central rationales.

A. The "proliferation of exchanges" rationale does not justify wholesale rescission

The Proposal's central justification is that Rule 611 has caused a harmful "proliferation of exchanges." (Release at 34.) But the Commission's own data shows that the roughly seventeen registered national securities exchanges reduce, in ownership terms, to three incumbent conglomerates: NYSE, Nasdaq, and Cboe. Together these three control twelve of the roughly sixteen exchange registrations, plus a small number of independent operators, including IEX, MIAX, MEMX, LTSE, Green Impact Exchange, and the Texas Stock Exchange. (Release at 12.) Ten of the seventeen exchanges have a market share below 1%. (Release at 122.) To the extent the proliferation of low-market-share exchange registrations is a problem, it is a problem caused by the fact that a *new exchange* obtains protected-quote status automatically upon registration and at inception, regardless of its contribution to price formation it is a narrow problem the Commission could solve with a narrowly tailored volume or market-share threshold for protected-quote status. The Proposal does not adequately explain why it rejected that less disruptive alternative in favor of eliminating price protection for every trading center in the national market system, including the very incumbent exchanges the "proliferation" rationale was ostensibly aimed at addressing. While we believe that this alternative would be less-bad than outright rescission, we still believe that it leaves the core problem of best execution unenforceability untouched, and potentially exacerbated. The real solution here is an objective, quantitative, enforceable, order-by-order best execution standard for non-institutional investors..

B. The "modern connectivity" rationale is circular and is contradicted by the Commission's own experiment

The Proposal suggests that smart order routers and electronic linkages have made trade-through protection redundant because markets will now route to the best price without being required to. That reasoning is circular: much of the connectivity infrastructure that exists today was built to comply with Rule 611 in the first place. It also conflates the capability to find the best price with any obligation to use it once Rule 611 no longer requires it. And it is directly contradicted by the

Commission's own round-lot natural experiment, discussed above, which shows off-exchange trade-through rates jumping from 0.2% to 12.6% the moment protection was removed from a category of quotations even though every relevant participant already had the "modern connectivity" the Proposal cites as the reason protection is now unnecessary. (Release at 196–202.)

C. The "information leakage" rationale cuts against, not for, rescission

The Proposal's economic analysis suggests that Rule 611's linkage and routing requirements cause information leakage that harms institutional orders. (Release at 102.) That argument is in tension with the Commission's own "connectivity makes the rule unnecessary" rationale: if markets will route to the best displayed price regardless of Rule 611, the same leakage would occur with or without the rule. The record instead traces leakage to the geographically dispersed locations of the exchanges themselves (Release at 124) which is ultimately a latency problem that rescinding Rule 611 does nothing to solve. A volume threshold that reduced the number of protected venues an order must touch would address any genuine leakage concern without eliminating price protection altogether.

D. "Most retail orders are already internalized at or better than NBBO" does not answer the problem

The Proposal notes that most retail marketable orders are already executed off-exchange, often with nominal price improvement over the NBBO, and suggests this diminishes the stakes of rescission. (Release at 171.) That observation ignores that wholesalers benchmark "price improvement" against the NBBO that Rule 611 creates, that the majority of retail non-marketable limit orders are directly or indirectly displayed on an exchange and remain fully exposed to the rule's removal, and, as set out above, that the Commission's own record concedes wholesalers may begin trading through displayed quotes and transferring value from retail investors to themselves once the rule is gone. (Release at 171-172.)

E. Reliance interests reinforce the need for a more substantial justification

Market participants at every level, exchanges, broker-dealers, and investors alike, have built order-routing systems and significant market infrastructure and, critically, trust, around Rule 611 for two decades. The Proposal does not identify the reliance interests built up over that period, nor does it explain how those interests were weighed against the modest compliance savings identified. That omission is itself a basis on which a reviewing court could find rescission arbitrary and capricious if adopted on the present record.[19]

[19] *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (agency decision must have reasoned explanation for Department's change in position and the significant reliance interests involved).

VII. RESCISSION WILL DISPROPORTIONATELY HARM SMALLER AND INDEPENDENT EXCHANGES AND, THROUGH THEM, THE INVESTORS WHO BENEFIT FROM EXCHANGE COMPETITION

The Commission's own record concedes that rescission will "result in a loss of revenue for smaller exchanges and higher barriers to entry for new exchanges" (Release at 217), making it "more difficult for small exchanges, as well as potential new exchanges, to gain market share." (Release at 224.) Because Rule 611 currently guarantees that a displayed best price will be honored regardless of which exchange displays it, independent exchanges can compete for order flow on the merits of their price and market design rather than on size or incumbency alone. As the Commission itself explained in 2005, Rule 611 "will promote competition among markets by assuring new or smaller markets that, if they display the best prices, they will attract order flow, because larger, dominant markets will not be allowed to ignore their quotations."[20] Remove that assurance, and incumbents with the deepest connectivity and the largest existing order flow (i.e., NYSE, Nasdaq, and Cboe) will be positioned to entrench their share, while independent exchanges bear the cost. That is not merely a concern for exchange shareholders; it is a competition concern for investors, who benefit from exchange competition on execution quality, market data pricing, and market design innovation. The concentrated market structure that existed before Regulation NMS, when a single exchange held roughly 80% market share in its own listed stocks (Release at 122), is the kind of market structure Rule 611 was designed to prevent from recurring.

VIII. RULE 611 HAS NOT CONSTRAINED EXCHANGE INNOVATION OR COMPETITIVE FEE-SETTING

The Proposal suggests Rule 611 has stifled exchange innovation and enabled exchanges to charge above-market connectivity and market-data fees. (Release at 127-130.) Nothing in Rule 611 prevents an exchange from adopting new order types, access delays, or fee structures; the only "innovation" the rule forecloses is the ability to execute investor orders at a worse price than is available elsewhere. To the extent the Proposal is concerned about exchange fees, those fees are already subject to Commission review and approval under Section 19(b) of the Exchange Act, and the Commission cannot simultaneously certify exchange fee filings as consistent with the Act and cite the level of those fees as a rationale for rescinding a different rule. Nor does Rule 611 require any broker-dealer to connect directly to every exchange. The Commission's own Trade-Through Roundtable data shows that only a small number of broker-dealers connect to all sixteen exchanges, and that most broker-dealers access exchange liquidity indirectly through other broker-dealers. To the extent connectivity costs are a genuine concern, they are addressed by existing fee-filing review, not by eliminating price protection for investor orders. The Commission should do its job and protect investors.

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[20] Final Rule: Regulation NMS, at 425.

IX. IF THE COMMISSION PROCEEDS, IT SHOULD ADOPT A BEST EXECUTION REGULATION AND A NARROWLY TAILORED ALTERNATIVE, NOT WHOLESALE RESCISSION

For the reasons above, the record does not support rescission, and we urge the Commission to consider a robust best execution standard and a more narrowly-tailored Rule 611 alternative. A non-institutional best execution standard should be quantitative, objective, and enforceable alongside (or before) rescission. As discussed previously, this should be an improvement over the previously withdrawn Regulation Best Execution, not yet another unenforceable (or unenforced) FINRA "rule."

If the Commission believes protected status should be earned rather than automatically granted, there are ways to address that concern without eliminating a protection investors have relied upon for two decades. It could, for instance, adopt a volume-or market-share-based threshold for protected-quote status rather than eliminate trade-through protection altogether. Such a threshold would address the Commission's stated concern about newly registered exchanges obtaining protected status without first demonstrating meaningful participation in price formation, while preserving the price floor that benefits investors trading on the exchanges, large and small, that do contribute meaningfully to price discovery. The Proposal does not explain why a threshold approach such as this is inadequate to address the Commission's stated concerns, and an agency's failure to fully consider a significant and obvious alternative to its chosen course is itself a basis for finding the action arbitrary and capricious.

X. CONCLUSION

The Commission's own record does not support the conclusion that rescinding Rule 611 will benefit investors. The Commission's cost-benefit analysis, its concessions about wholesaler trade-throughs and NBBO degradation, and its own contemporaneous natural experiment on the effect of removing trade-through protection instead support the opposite conclusion: Rescission will transfer value from investors, and retail investors most acutely, to the wholesalers and dealers who execute their orders, while only speculatively saving trading centers a tiny immaterial sum of money by comparison. Investors, people, cannot have confidence in public markets if they believe better publicly displayed prices can simply be ignored. Accordingly, We The Investors respectfully urge the Commission to withdraw the Proposal or, at minimum, to adopt a robust best execution standard and a narrowly tailored volume-threshold alternative Rule 611 in its place. We appreciate the opportunity to comment and would welcome the opportunity to discuss these issues further with the Commission or its staff.

Respectfully submitted,

We The Investors