

## FIA PTG Position Paper - Regulation NMS: A Renewed Call for Reform

September 2025

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### Executive Summary

In this paper,<sup>1</sup> the FIA Principal Traders Group (FIA PTG)<sup>2</sup> advocates for targeted reforms to Regulation NMS (Reg NMS), addressing Reg NMS' impact on costs, best execution, venue proliferation and the generation of complex order types. As feared at the time of adoption, these provisions have led to unimaginable increases in cost and complexity as a result of venue and order type proliferation as well as a narrow interpretation of best execution.

The current rules, driven by an outdated regulatory framework, impose exorbitant and unnecessary costs on market participants, with major firms spending millions annually just on market data and connectivity fees to all U.S. exchanges. These expenditures, which are a direct result of our current market structure, do not meaningfully contribute to better outcomes for investors.

To address these issues, we propose that the Commission:

- (1) repeal Rule 611, which establishes trade-through prohibitions and adopt a disclosure and principles-based approach to FINRA's best execution framework;
- (2) ensure ongoing scrutiny of exchange fees;
- (3) revise the SIP revenue allocation formula to remove quote credits; and
- (4) eliminate the locked and crossed market prohibition in Rule 610.

These reforms would support the SEC's mission to promote fair, orderly, and efficient markets by reducing regulatory distortions, promoting innovation and encouraging competition based on execution quality.

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<sup>1</sup> This paper represents the views of FIA PTG and does not necessarily represent the views of FIA as a whole.

<sup>2</sup> FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

## Background

Adopted in 2005, Reg NMS was intended to promote competition among trading venues and ensure that investors receive the best available prices. Even at the time of adoption, market participants raised concerns about unintended consequences as a result of regulatory constraints on market forces.

Much has changed in the past twenty years. In 2005, there were seven equities exchanges, with the listing exchanges, NYSE and Nasdaq, maintaining dominant market share. Twenty years later, the exchange landscape is quite different as it relates to venue proliferation and market fragmentation:

- There are 20 equities exchanges with approved self-regulatory organization (SRO) licenses, three of which were approved in the last six months.<sup>3</sup>
- During the first half of 2025, no exchange had more than 20% market share based on notional volume and 9 exchanges had market share of less than 1%.<sup>4</sup>
- The primary listing exchanges had a combined market share of less than 30% over the first half of 2025.<sup>5</sup>

In addition to venue proliferation, several aspects of Reg NMS have increased complexity and promoted a reductionist interpretation of execution quality. FIA PTG has long called for reform in this area<sup>6</sup> and welcomes the Commission's focus on this aspect of equity market structure.

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## Key Issues to Address

### Rule 611's Profound Impact on Best Execution

As stated by the Commission in the adopting release of Reg NMS, one of the primary purposes of Rule 611 is to act as a "backstop" for best execution such that it "undergirds the broker-dealer's duty of best execution, by helping ensure that customer orders are not executed at prices inferior to the best protected quotations."<sup>7</sup> At the time of its adoption, concerns were raised that Rule 611 would lead to a "one size fits all" approach to best execution, disregarding an investor's unique

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<sup>3</sup> See Securities & Exchange Commission, Self-Regulatory Organization Rulemaking, *available at* <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking> (last accessed Aug. 10, 2025) (from list of all self-regulatory organizations, only equity exchange self-regulatory organizations included).

<sup>4</sup> See CBOE Exchange Inc, Historical Market Data Volume, *available at* [https://www.cboe.com/us/equities/market\\_statistics/historical\\_market\\_volume/](https://www.cboe.com/us/equities/market_statistics/historical_market_volume/).

<sup>5</sup> Id.

<sup>6</sup> See FIA PTG, Reg NMS: A Retrospective Review & Practical Reforms for Improvement (September 2018), *available at* <https://www.fia.org/sites/default/files/2020-02/FIA-PTG-Reg-NMS-A-Retrospective-Review-Practical-Reforms-for-Improvement.pdf>. See also, FIA PTG, Simplifying U.S. Equity Market Structure (January 28, 2015) <https://live-fia-d8.pantheonsite.io/sites/default/files/2019-05/FIA%20PTG%20Position%20-%20Simplifying%20US%20Equity%20Market%20Structure-0.pdf>.

<sup>7</sup> See 70 FR 37508 and 70 FR 37538.

needs or trading goals and failing to recognize the value of brokers' collective professional experience.<sup>8</sup>

Over the past two decades, Rule 611 has had a profound impact on best execution compliance with FINRA and investors often relying on the rule for determining whether a broker is meeting its best execution obligations. However, Rule 611's focus on displayed price is not guaranteed to result in the best outcome for clients, given the impact of other factors such as order size, liquidity, speed of execution, likelihood of completion, and costs related to membership, connectivity, and execution.

Any reform of Rule 611 must be done in conjunction with best execution to have a meaningful impact on reducing costs and improving execution quality.

### **Rule 611 & Market Data Quote Revenue Fuel Venue Proliferation**

The current U.S. equity market structure incentivizes venue proliferation at relatively little cost to exchange operators, but at disproportionately higher costs to the industry and investors. The incentives take two general forms: first, new venues with protected quote status are guaranteed members that pay membership fees, connectivity fees and market data fees, regardless of the level of market share. Second, new exchanges receive Consolidated Tape Plan revenue as a result of the market data revenue allocation formula.

Rule 611 requires broker-dealers to route orders to the exchange displaying the NBBO, regardless of that venue's actual trading volume or fill rate. This has enabled new and low-volume exchanges to externalize their costs to market participants who must collectively pay tens of millions of dollars in fees annually for membership, proprietary market data, connectivity, and ports. In addition, market participants must pay for complex smart order routing logic and enhancements to compliance infrastructure to navigate to quotes that may have little or no liquidity.

Additionally, the market data revenue formula adopted as part of Reg NMS allocates market data revenue based on a complex formula that includes quote and trade activity. While quotes are only one component of the formula, they are disproportionately influential because they are easier to realize—especially for exchanges with little trading activity. Market data revenue from quotes may subsidize exchanges with low market share; the nine exchanges with less than 1% market share in the first half of 2025 received over 18% of tape revenue from quoting activity but less than 4.5% of tape revenue attributed to trading activity based on Q1 2025 distributions.<sup>9</sup> Sharing of SIP revenue from quotes has led to distortions in the share of SIP revenue and the broader market insofar as it encourages quoting at the inside while avoiding executions.<sup>10</sup> Additionally, low market share venues

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<sup>8</sup> See U.S. Securities and Exchange Commission, "Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins to the Adoption of Regulation NMS," June 9, 2005, <http://www.sec.gov/rules/final/34-51808-dissent.pdf>.

<sup>9</sup> See *supra* note 3 for market share data. See Q1 2025 CTA Quarterly Revenue Disclosure available at [https://www.ctaplan.com/publicdocs/ctaplan/Q1\\_2025\\_CTA\\_Quarterly\\_Revenue\\_Disclosure.pdf](https://www.ctaplan.com/publicdocs/ctaplan/Q1_2025_CTA_Quarterly_Revenue_Disclosure.pdf) and Q1 2025 UTP Quarterly Revenue Disclosure available at [https://www.utpplan.com/DOC/UTP\\_Revenue\\_Disclosure\\_Q12025.pdf](https://www.utpplan.com/DOC/UTP_Revenue_Disclosure_Q12025.pdf)

<sup>10</sup> See FIA PTG comment letter dated October 13, 2016 on CHX Liquidity Taking Access Delay (Release No. 34-78860; File No. SR-CHX-2016-16) available at <https://www.sec.gov/comments/sr-chx-2016-16/chx201616-5.pdf> and FIA PTG comment letter dated January 17, 2017 available at <https://www.sec.gov/comments/sr-chx-2016->

offer negligible benefit in terms of best execution as they primarily increase complexity and ongoing costs for market participants without providing better outcomes for investors.

The combined impact of these factors is venue proliferation not driven by innovation or added value, but by the ability to exploit their protected quote status by charging recurring fees and market data revenue through quote visibility.

### **Rule 611 and Rule 610 Introduced Complex Order Types**

Not only is venue proliferation an issue, Rule 611 and Rule 610 are key contributors to order type proliferation. While Rule 611 requires Intermarket Sweep Orders (ISOs), the prohibition on locked and crossed markets has also introduced unnecessary complexity into the market. While originally intended to preserve quote clarity, it has led to the creation of complex order types such as price-to-comply and other re-pricing orders.<sup>11</sup> These orders automatically adjust to avoid locking or crossing the NBBO, allowing the exchange to display a compliant quote.

This workaround behavior reflects how market participants are forced to engineer around rigid regulatory rules, rather than focusing on best execution. These exotic order types are not designed to enhance execution quality but to comply with display rules while maintaining securities information processor (SIP) visibility.

Additionally, Rule 611 and associated guidance require reasonable policies and procedures to demonstrate compliance with its trade through prohibitions including the use of ISOs.<sup>12</sup> Rule 610 has similar provisions that mandate that exchanges require their members to reasonably avoid displaying locked or crossed quotations. This has introduced significant compliance burdens associated with the capture, storage and retrieval of quote snapshots to satisfy these requirements.

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## **Policy Recommendations**

### **Repeal OPR in Favor of a Disclosure & Principles-Based Approach to Best Execution**

FIA PTG recommends repealing Rule 611 in conjunction with a disclosure and principles-based approach to FINRA's best execution framework. Simply repealing Rule 611 without corresponding updates to FINRA Rule 5310 and associated best execution guidance would perpetuate the current challenges associated with execution quality and venue proliferation.

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[16/chx201616-1502061-130587.pdf](#) for a further discussion of implications associated with market data quote revenue.

<sup>11</sup>See e.g., Nasdaq North American Markets Order Types and Modifiers *available at* <https://www.nasdaqtrader.com/content/productservices/trading/ordertypesg.pdf> and also CBOE U.S. Equities BOE Specification DisplayIndicator tag *available at* [https://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_BOE\\_Specification.pdf](https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf).

<sup>12</sup>See Responses to Frequently Asked Questions Concerning Rule 611 and 610 of Regulation NMS *available at* <https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>

A principles-based approach to best execution should be adopted, requiring broker-dealers to publicly disclose and strictly adhere to reasonable policies and procedures. FINRA would then be responsible for reviewing execution activity based on adherence to these documented policies and procedures. These policies and procedures should specifically address the use of trading centers with limited market share; the use of venues that impose intentional delays; and should include a list of venues where the broker-dealer transacts.

In addition to disclosures of routing policies and procedures, amended Rule 605 reports will be an important tool for investors to gain insight into multiple dimensions of execution quality. New Rule 605 reports will expand the scope of reporting requirements to larger introducing broker dealers and offer data and analysis covering price improvement, size improvement, and effective over quoted spread, with more granularity across order types and time.<sup>13</sup> FINRA should move forward with centralizing availability to these important disclosures.

It is also worth noting that amendments to Rule 610(c) related to access fee caps and Rule 612 related to tick sizes are currently pending litigation. If the amendments are not vacated, FIA PTG recommends reassessing these rule changes when repealing Rule 611.

### **Address Unintended Consequences on Exchange Fees**

As part of any rulemaking, it will be important for the Commission to consider potential unintended consequences associated with the repeal of Rule 611 on market data and related fees at incumbent exchanges. We believe the Staff Guidance on SRO Rule Filings Relating to Fees<sup>14</sup> issued in 2019 has been helpful in providing a framework for assessing these fee filings. As such, we recommend the guidance be updated to ensure that an elevated level of scrutiny will be applied to fee filings in the absence of Rule 611.

In the first half of 2025, the top three exchanges by notional volume (Nasdaq, NYSE, and NYSE Arca) have issued over ten fee filings for immediate effectiveness related to port charges, connectivity and market data fees.<sup>15</sup> Even without Rule 611, market data and related fees charged by the major incumbent exchanges lack significant competitive forces to constrain fees.<sup>16</sup> The repeal of Rule 611 should in no way obviate the requirement for the SROs to demonstrate, and the Commission to validate, that these fee filings comply with the governing provisions of the Exchange Act and Rule 603 in the absence of competitive pressure.

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<sup>13</sup>See Securities Exchange Act Release No. 99679 (March 6, 2024), 89 FR 26428, 26429 (April 15, 2024). In addition to market centers, the reporting requirements apply to broker-dealers that introduce or carry 100,000 or more customer accounts.

<sup>14</sup>See Staff Guidance on SRO Rule Filings Relating to Fees, available at <https://www.sec.gov/about/staff-guidance-sro-rule-filings-fees>.

<sup>15</sup>See Self-Regulatory Rulemaking, National Securities Exchanges - Current, available at <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges>.

<sup>16</sup>Id. See Section III.B. 2. Reasonableness of Proposed Fee (Section 6(b)(4); 15A(b)(5)) for a discussion of the requirement for staff to consider “whether the fee is constrained by significant competitive forces.”

## **Reform Market Data Revenue Allocation**

FIA PTG recommends eliminating quotes from the market data revenue allocation formula, and relying solely on notional value traded as a better proxy for utility. This would help reorient market data revenue based on meaningful market share and remove the perverse incentive for a low-volume exchange to prop up its revenues by attracting and publishing seldom-used quotes. If the Commission believes trades alone do not reward price discovery, quote credits could be based on only those quotes that lead to executions.

## **Eliminate the Locked and Crossed Market Prohibition**

At the time Reg NMS was adopted, lack of automation and interconnectivity raised concerns about the ability of the exchanges to address locked or crossed markets. In 2025, that is no longer the case. A market without these prohibitions would be simpler and more transparent. While we are likely to see more locked markets in the absence of a prohibition, these prices represent the true state of supply and demand, accounting for the cost of access and other potential market frictions. In the case of crossed markets, competitive forces would resolve any crossed conditions absent, stale or otherwise unrepresentative quotes. As it stands today, the prohibition on locked and crossed markets has led to the proliferation of complex order types such as price-to-comply orders. These order types exist solely to navigate regulatory constraints, not to improve execution quality.

Eliminating the locked/crossed rule would reduce routing constraints and simplify order handling, eliminate elaborate systems designed to capture quote snapshots and satisfying intermarket sweep orders solely to demonstrate that a quote was not locked, crossed or traded through.

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## **Conclusion**

In conclusion, the U.S. equity market has outgrown the foundational principles of the portions of Regulation NMS described above. The current regulatory framework, originally designed to prevent trade-throughs, now contributes to market fragmentation and a reliance on complex, costly mechanics rather than genuine competition. These unnecessary expenditures, which amount to millions annually for major firms, do not lead to better outcomes for investors. As technology and market dynamics have evolved, a recalibration is not just beneficial, but essential to fostering a more efficient, transparent, and equitable market structure for all participants.

By taking the measures described above, the SEC can promote a more efficient, competitive, and investor-focused market structure while creating a market that fosters growth and innovation. These reforms aim to restore the original intent of the national market system: a structure where competition is based primarily on execution quality, rather than on navigating complex regulatory mechanics. The imperative for change is clear, and the time to act is now.