

## The SEC is Through with the Trade-Through Rule

June 15, 2026

After a series of industry roundtables and clear messaging from Chairman Paul S. Atkins regarding his ongoing objections following his dissent more than two decades ago, the US Securities and Exchange Commission (the SEC or the Commission) proposed on June 11, 2026 to rescind Rule 611 under Regulation NMS, known formally as the **Order Protection Rule** and informally as the **Trade-Through Rule**.<sup>1</sup> That moniker tracks the rule's requirement that market participants cannot trade "through" (*i.e.*, buy at a price higher than the lowest offer or sell at a price lower than the highest bid) the best-priced quotations of published exchanges without executing against those best-priced quotations. The Commission also proposed to rescind **Rule 610(c) under Regulation NMS**, which currently prohibits market participants from locking or crossing another market center's published quotation. Both rules were adopted in 2005 as part of Regulation NMS. Chairman Atkins, then an SEC Commissioner, and Commissioner Cynthia Glassman, voted against the adoption of the Trade-Through Rule and Regulation NMS in 2005.

### Market Structure Overview

In the two decades since its adoption, Rule 611 has been the cornerstone of equity market structure in the United States, linking together markets that previously had not been well-connected. The rule (along with the Limit Order Display requirement in Rule 604 of Regulation NMS) was designed to encourage public quote formation and a strong NBBO (the national best bid and offer) based on active and disparate quoting activity. The idea was that market participants would be willing to publicly display their buying or selling interest if they could be assured that others would interact with that interest. In other words, their quotations would not be "balkanized" or left unexecuted on one exchange or quotation venue while trading took place at better prices on a different trading venue. The rationale extends further: market participants encouraged to quote publicly will compete on price, resulting in narrower spreads and a stronger NBBO.

The rule, however, has had unintended consequences. As explained in the Proposing Release, the Trade-Through Rule has significantly reduced exchange entry barriers, leading to increased exchange fragmentation. The practical effect of the Trade-Through Rule is that a startup exchange,

otherwise with very little volume, need only publish a protected quotation and market participants will be required to interact with those quotations. Moreover, market participants will be required (directly or indirectly) to connect with the startup exchange, thereby providing the exchange with market data and connectivity revenue. This, in the Commission's view, has resulted in the proliferation of exchanges, with order flow fragmented among these exchanges.

The strong NBBO, coupled with the "trade-through" (rather than "trade at") nature of the rule, has resulted in another market structure anomaly. Over time, the volume of trading has migrated from "lit" exchange venues to off-exchange venues<sup>2</sup>. While there are other market structure reasons for this shift (including the ability OTC market makers to provide price improvement while exchange participants can execute only at posted quotes), the strong NBBO resulting from the Trade-Through rule provides an easy reference price from which to price off-exchange transactions.<sup>3</sup> Ironically, exchange quotations result in off-exchange executions.

## Rescission Rationale

The Commission's rationale for **seeking** to rescind the Trade-Through Rule is multi-fold, as explained below. Although rescission certainly appears to be the Commission's preferred approach, it is not necessarily a foregone conclusion. Along with its proposal to rescind both the Trade-Through Rule and Locked and Crossed Market prohibition, the SEC has requested comment from market participants on thirteen points relating to the Trade-Through Rule and fifteen points relating to the proposed Locked and Crossed Markets rescission. That said, the Commission's rescission rationale is as follows:

- The Trade-Through Rule is **unnecessary as markets have become interconnected**, and a regulatory mandate is no longer needed. Further, technology and electronic trading have evolved such that the market limitations that warranted Regulation NMS no longer prevail.
- The rule adds **unnecessary complexity** to equity market structure, as evidenced by the proliferation of exchange order types and an "arms race" of order-routing technology, all designed to address the rule's requirements.
- The Trade-Through Rule has conferred a premium on **price and speed of execution**, rather than other holistic factors that may be equally important to customers or other market participants.
- **Market forces**, rather than regulation, should shape equity market structure, particularly when regulation is no longer needed and where interconnected markets and new technology can address concerns of execution quality and order interaction. In particular, the Commission expressed concern that the Trade-Through Rule may have encouraged price-time based trading

protocols, rather than allowing competition and innovation among exchanges to develop applicable protocols.

- The Trade-Through Rule is **no longer needed to "backstop" best execution requirements**, as cited in the Regulation NMS adopting release. In the Commission's view, the equity markets are automated and interconnected enough, and access to market data and execution quality information is widespread, such that market participants can evaluate execution quality well. According to the SEC, the existing best execution requirements under common law and FINRA Rule 5310, along with commercial and competitive incentives to win and service customer order flow, are sufficient without additional regulatory mandates.

The Commission's rationale for proposing to rescind the **Locked and Crossed Markets prohibition** is similar, focusing on:

- The **rise in automated trading and order-routing technologies**, all of which make a regulatory mandate unnecessary. Indeed, the Commission posits that technology can manage quoting activity to avoid a locked or crossed market, where a human trader (which was more common when Regulation NMS was adopted) would be much slower to update and could be further swayed by access fee or other considerations.
- Reducing **complexity in the equities markets, particularly from the proliferation of order types** that adjust or re-price orders and that are often displayed at prices that do not reflect participants' true trading interest.
- Finally, the Commission suggests that rescinding Rule 610(e) **could improve price discovery and result in tighter spreads, by allowing competitive quoting**. An important consideration here, the Commission acknowledges, is the role of access fee caps<sup>4</sup> and whether market participants will lock or cross a published quotation to receive a rebate rather than pay the fee associated with accessing the published quotation. It will be interesting to see whether **arbitrage opportunities** clear these locked or crossed markets and/or whether SROs seek to address this concern through its own locked and crossed rulemaking.

## Best Execution Considerations

The most significant consequence of rescinding the Trade-Through Rule may be on the duty of best execution and the manner in which broker-dealers perform both the order-by-order and regular and rigorous reviews of execution quality contemplated by FINRA Rule 5310. Currently, with a Trade Through Rule, executions "outside the inside" market are rare (because such executions would constitute trade-throughs and would quickly be identified and remediated). Further, the interconnected nature of today's markets (supported by the obligation to execute against markets that would be traded through) results in a strong NBBO. This strong NBBO provides a "gold

standard" against which to price the execution of a customer transaction and measure execution quality on an ongoing basis. Will the absence of a Trade-Through Rule result in less quotation competition (because those quoting cannot be assured that their quotations will be accessed) and therefore an NBBO less reliable for both price discovery and evaluating execution quality? Will execution quality analysis result in more subjective determinations, as supervisors, surveillance personnel, or best execution committees, struggle to consider whether not accessing a particular quotation was acceptable in the context of the overall handling of the subject order? The SEC acknowledges these concerns and specifically requests comment on "whether and to what extent best execution requirements and guidance should be updated" if the cited rules are rescinded.<sup>5</sup>

## Conclusion

The Commission's proposed rescission of the Trade-Through Rule and the prohibition on locked and crossed markets represents a fundamental change in equity market structure. It is consistent with the objectives of the Trump administration and Commission to reduce regulation and allow innovation and market forces to govern trading activity. Certainly, the current automated, integrated, and electronic trading environment of today is far different than the less linked and more manual trading systems that predominated two decades ago, but an open question remains as to whether the current interconnectedness is the result of the Trade Through Rule and whether the absence of a Trade-Through Rule will fuel a "reversion to the mean." That is, will market participants connect to fewer markets because they are not required to do so? Will quoting activity, and therefore the integrity of the NBBO, suffer, affecting best execution analyses? Finally, are there less restrictive alternatives – such as potential additional exemptions for less robust markets or for significantly sized institutional orders – that might be considered short of full rescission?

Regardless of the answers to these rhetorical questions, the Commission should be commended for proposing these Regulation NMS amendments with thoughtful analysis that balances notions of regulation and market competition and innovation that was generated after meaningful industry input from robust roundtable discussions.

If you have any questions regarding the proposed rescission of the Trade Through Rule or the Locked and Crossed Market Prohibition, or wish to consider providing comments to the Commission on the topics solicited in the Proposing Release, please contact any of the authors or your usual Katten Financial Markets and Regulation attorneys.

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<sup>1</sup> See [Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS, Exchange Act Release No. 34-105655 \(June 11, 2026\)](#) (the Proposing Release). Separately, the Commission earns both a wry smile and a hat tip for creatively scheduling the proposed rescission of Rule 611 on 6/11.

[2](#) A "lit market" is one that displays its prices to the market in published quotations disseminated such as a national securities exchange.

[3](#) The Commission has expressed similar concerns regarding fragmentation, connectivity burdens, and exchange proliferation in the listed options markets, including at its [April 16, 2026 Options Market Structure Roundtable \(File No. 4-887\)](#), in which Commission staff and market participants discussed the continued growth in options exchanges and increased operational complexity and costs for market participants.

[4](#) Immediately after issuing the Proposing Release, the Commission [extended the temporary exemptive relief](#) delaying the implementation of the Access Fee and Minimum Pricing Increment [amendments previously adopted pursuant to Regulation NMS](#). Further, Chairman Atkins subsequently issued a [Statement](#) directing the SEC staff "to prioritize a review of Rules 610(c) and 612 of Regulation NMS [relating to access fee cap and minimum pricing increments] by the end of the year, including whether potential changes to the access fee caps and minimum pricing increments may be appropriate.

[5](#) Proposing Release at 19-20.

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