

## [Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—SEC committee considers Regulation NMS order protection changes, \(Apr. 5, 2017\)](#)

Securities Regulation Daily Wrap Up

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Potential modification or removal of Rule 611 of Regulation NMS is a thorny issue difficult to address with objective data analysis and will require holistic consideration, according to the SEC's Equity Market Structure Advisory Committee. At a [meeting](#) this morning, EMSAC discussed a subcommittee's proposal to address the future of this rule, which Acting Chairman Michael Piwowar [noted](#) was originally addressed at EMSAC's inaugural meeting in 2015. On the whole, members generally concurred with the subcommittee's view that much of the approach to be taken depends on other pilots and regulatory modifications under Regulation NMS.

According to the [subcommittee](#), critics of the Regulation NMS trade-through and locked market rules note the increased complexity of the markets, particularly fragmentation and proliferation of order types, and resulting burdens of compliance with Regulation NMS. Coupled with limited evidence that the rules have encouraged display of limit orders and technological changes entailing more advanced execution monitoring, the costs of compliance outweigh the benefits, opponents claim. Supporters of Regulation NMS, however, note concern that individual investors would suffer if Rule 611's best execution "back-stop" is removed and would lose trade-through protection of non-marketable orders.

The subcommittee outlined a framework for a potential pilot to gather data regarding the effectiveness of Regulation NMS and suggested broadening the efforts previously proposed by EMSAC's [access fee pilot](#) to consider interrelated components of the regulation. A market-wide pilot to repeal Rule 611 for all NMS stocks (as opposed to the access fee pilot, with regard to which the committee recommended security-specific and control groups) would be designed to facilitate measurement and provide the ability to reinstitute the rule in the case of unintended consequences. According to the subcommittee, alternatives include a Rule 611 pilot without removal of Rule 610's prohibition on locked/crossed markets or a pilot with removal of the prohibition concurrent with, or subsequent to, the access fee pilot. In addition, the subcommittee suggested that rebates and access fees should be addressed to curb motivation to lock or cross the market and that enhanced guidance is necessary for best execution, because, without Rule 611, retail firms would need to enhance their own monitoring procedures. With consideration of these issues, the subcommittee recommended that a Rule 611 pilot follow the tick pilot and any access fee pilot and not be conducted concurrently.

EMSAC members discussed whether the proposed changes would reduce excess operational market complexity and the burdens of trade-through maintenance. Many suggested that Rule 611 has not necessarily resulted in any additional posting of visible liquidity and that removal could foster competition and innovation over the long term. Some members noted, however, that while important to support competition and minimize barriers to entry, the committee must consider the potential for undermining investor confidence. These elusive issues may require a holistic Regulation NMS review in connection with the subcommittee's recommendation, members concluded.

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