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September 15, 2025

The Honorable Paul S. Atkins
Chairman, Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Roundtable on Trade-Through Prohibitions

Dear Chairman Atkins:

Cboe Global Markets ("Cboe") submits these comments in connection with the Roundtable on Trade-Through Prohibitions that the Securities and Exchange Commission ("Commission") is holding on September 18, 2025. The purpose of this letter is to share our preliminary thoughts on areas that should be considered if any trade-through reforms are pursued. We look forward to engaging in a productive discussion at the roundtable and providing additional feedback in the future as this important topic is explored.

Cboe operates four equities exchanges, four options exchanges, and an ATS. As such, we are intimately familiar with how trade-through prohibitions affect the marketplace and the ways reforms could benefit or adversely impact the current market ecosystem.

It is Cboe's sincere belief that competitive forces should drive innovation and push markets forward; in our experience markets function best when innovation and competition are the primary drivers of change, rather than government intervention or price controls. And where existing regulatory requirements unnecessarily impede competitive dynamics with little or no justifiable benefit to investors, those requirements should be reconsidered, but in a manner that does not create new risks or potential harm to investors. When the market has internalized requirements in such a way as to become a core part of the market ecosystem, the Commission should consider the broader effects of change. In our view, any significant structural reforms should be underpinned by a "do no harm" ethos.

With this context in mind, Cboe believes that Rule 611 of Regulation NMS is worthy of review. It spurred considerable debate when adopted and has had far-reaching impacts. In practice, trade-through prohibitions have shaped the U.S. markets in profound and *interconnected* ways and are indeed now a core part of the market ecosystem. As always, changes to one rule can have cascading impacts on other requirements and on the incentives that ultimately shape the marketplace. In this case, any significant change to Rule 611 or its options market linkage plan counterpart will have broad implications. It is important that we consider those implications, irrespective of the stated original intent of trade-through prohibitions.

At the outset, we want to make one point abundantly clear: the options market is fundamentally different than the equities market. As the inventor of listed options and a central steward to the growth of that marketplace, we implore the Commission to view and review these markets separately. Too often equity market structure changes are ported to the options market without adequate analysis and justification. The options market is strong and healthy, and it provides utility to all forms of investors.[1] By every possible metric, the options market continues to improve over time – this has happened primarily through innovation and competition and not through regulatory interventions.

Protect and Fortify the National Best Bid and Offer

In our view, any reforms must be assessed based on their potential impact to the national best bid or offer ("NBBO"). A meaningful, reliable, and accessible NBBO must be maintained. The NBBO is a reference price that permeates every aspect of our national market system and is relied on by the entire market. Investors rely on the NBBO when placing limit orders and stop loss orders or assessing execution quality; automated auction mechanisms rely on the NBBO when facilitating price improvement; and off-exchange platforms rely on the NBBO as a reference price when executing orders. The existence of a reliable NBBO reference price is one of the greatest contributors to the increased retail participation in both U.S. equities and options. The NBBO provides a common language around measuring execution quality and is the backbone for investor confidence. Without a reliable, consensus NBBO, execution quality becomes opaque, reducing trust and participation in the U.S. markets.

Furthermore, the NBBO is a tangible representation of the public price formation that is core to a well-functioning and integrated national market system – public price formation occurs on exchanges; the best bid and offer on exchanges are supplied to the Securities Information Processors (SIPs); and bids/offers are consolidated and disseminated as the NBBO. In many ways, exchanges are best positioned to ensure the integrity of the NBBO as exchanges invest heavily to ensure operational resilience, maintain dedicated backup systems, comply with Regulation SCI, and uphold rigorous market oversight responsibilities. Exchanges provide the foundation of the NBBO, and this helps the NBBO remain a reliable and accessible representation of the pricing and liquidity available in the market.

We are concerned that eliminating the trade-through prohibition may degrade the NBBO over time. Alongside best execution obligations, trade-through prohibitions help ensure that orders setting the public NBBO are rewarded with greater execution certainty, thereby strengthening the incentives to contribute to public price formation. Thus, we believe that protecting the disseminated quotations of exchanges is appropriate and any modifications to trade-through rules should take into account this dynamic. Without this protection, we are concerned there will be a reduction of lit market participation and weakened price formation. Indeed, the direction of travel in other geographies has lately been to introduce or strengthen incentives to participate in lit markets.

To the extent the Commission determines the status quo is untenable, we recommend that the Commission avoid wholesale elimination of the trade-through prohibitions. As an initial step, we would recommend that any new exchange be required to demonstrate market demand for their value proposition before receiving protected status and receiving quote credits from the SIPs. Protecting the quotes of new exchanges without demonstrated market demand and enabling exchange business models based disproportionately on the receipt of SIP quote credits – rather than the generation of

[1] Options Market Structure: A Half Century of Innovation (2024), *available at*, https://cdn.cboe.com/resources/government_relations/FINAL-Options-Market-Structure-Document-v14-2024.pdf.

trading fees – promotes exchange proliferation. This proliferation imposes cost burdens on market participants that are more concerning than the costs of complying with trade-through prohibitions. If protected status and SIP quote credits were not given to new exchanges as a matter of course, but were contingent on proven market demand, this concern could be addressed. In short, if trade-through reforms are forthcoming, to reward positive contribution to the marketplace, we recommend that quotes from exchanges that are meaningfully contributing to price formation should continue to be protected and receive quote credits. Market demand for an exchange's services and meaningful contribution to price formation could be evidenced through a combination of minimum traded volume, quote-to-trade ratios, and additional factors such as a minimum number of direct trading participants.

If current trade-through rules are maintained, we would still recommend revisiting the manner in which quote credits are applied. As it stands, the current model allows new exchange entrants to extract a toll on the marketplace without providing any innovative or distinguishing features, and without facilitating a meaningful volume of trading. New exchanges can effectively increase the number of quotes – without a reasonable ratio of associated executions that would signal the marketplace is additive to the overall market – to receive a higher allocation of SIP quote revenues.

It is important to note that Cboe is in no way recommending that new exchanges not be approved or allowed to operate. We are supportive of competition and new exchange entrants that build new and innovative products and services designed to benefit investors. We simply believe that the marketplace has reached the point where it is reasonable to consider whether new exchanges merit protected status and SIP quoting revenues automatically or after proving themselves additive to the marketplace.

While the trade-through prohibitions spurred debate on the need for regulatory intervention, in practice the interconnected nature of the requirements of Regulation NMS have shaped the U.S. markets. Any reforms to the trade-through framework must take into account the potential significant market changes that could result, including that a complete elimination of protected status would create a massive disincentive to operate exchanges which today compete for an increasingly smaller share of the addressable market.

Best Execution

To the extent that trade-through reforms result in the elimination of protected status, it would be prudent for the Commission to clarify best execution expectations of brokers. Unprotected status would allow exchanges to disregard quotes from unprotected exchanges, and it may be necessary for the Commission to consider whether best execution obligations should treat brokers similarly.

As is the case today, we believe brokers should be able to solely rely on the SIP's NBBO to inform routing decisions.[2] Still, it seems additional guidance regarding unprotected quotations from exchanges and other venues would be embraced by the broker community. As we stated when Regulation Best Execution was proposed, we do not believe an entirely new best execution rule is necessary, but we continue to support increased clarity and consistency with respect to best execution standards, particularly if quotes no longer have protected status.

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[2] Indeed, we believe it would be advisable for the Commission and/or FINRA to clearly state that firms are not obligated to purchase exchange proprietary data for purposes of best execution compliance. Firms should only purchase exchange proprietary data products if they feel it sufficiently improves/supports their business needs and is worth the cost.

Access Fee Caps

As the Commission considers trade-through prohibitions, we recommend the Commission also revisit access fee caps. There may be no greater conflict with the concept of a market-based system than governmental price controls. Proponents of access fee caps have argued that the caps were necessary because of trade-through prohibitions – that without access fee caps an exchange could assess a predatorily high fee for trading against a protected quote. We question whether access fee caps are appropriate in any context and have highlighted the harmful effects of reducing access fee caps further.[3] Setting this aside, if trade-through reforms are pursued, access fee caps should clearly be eliminated. Any effort by an exchange, protected or not, seeking to adopt a predatory access fee could and should have such fee suspended and rescinded by the Commission via the 19b-4 process.

Locked Markets

As we analyze potential trade-through reforms through the lens of increasing market efficiencies, we believe it is also important to address other inefficiencies, especially those that are reinforcing the continued degradation of public price formation and, as a result, the NBBO. Today, over 50% of equity volume comes from off-exchange venues. Off-exchange venues can add value, but as off-exchange trading increases, the quality of public price formation and the NBBO weakens. How can price discovery flourish when over 50% of equity volume relies on the exchange-provided NBBO but is executed off-exchange? This is an unhealthy dynamic that deserves attention.

One step we encourage the Commission to take to strengthen public price formation is to allow locked markets. Locked markets are a natural consequence of competitive quoting, provide optimal pricing for investors, and contribute to fair markets.[4] Allowing locked markets would narrow or, in some cases, eliminate spreads to the benefit of investors and reduce regulatory costs associated with the monitoring necessary to prevent locked markets, while further enhancing price discovery. Disallowing locked markets arbitrarily widens spreads, and this allows off-exchange venues to execute orders between an unnaturally widespread that might not exist but for the locked markets prohibition. Closing this gap is one step toward improving the ability of exchanges to compete for off-exchange order flow and enhancing the price discovery process. More importantly, it further fortifies the NBBO and provides optimal pricing for investors.

The Commission's decision to prohibit locked (and crossed markets) was largely based on prioritizing perceived market efficiency while attempting to minimize the potential confusion amongst investors. We are confident that today's investor would not be confused by a locked market condition and that removal of this burdensome regulatory imposition would not negatively impact market quality or resiliency. There are additional policy reasons to support eliminating locked market restrictions.

Exchanges and liquidity providers are likely to have different capabilities and speeds of processing quote/order messages. To the extent that a market maker on one exchange could shift bid/ask prices faster than a market maker on another exchange, they should be allowed to do so and not be impeded. This dynamic is particularly acute in the listed options market. Preventing locked markets constrains

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[3] *See* Letter from Patrick Sexton, General Counsel and Corporate Secretary, Cboe Global Markets, Inc., to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated April 5, 2024, *available at,* Cboe-Letter-on-SEC-Proposal-on-Access-Fees_4-5-24.pdf.

[4] *See* Letter from Edward J. Joyce, former President and CEO, Cboe Global Markets, Inc., to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated February 14, 2005, *available at,* https://www.sec.gov/files/rules/proposed/s71004/s71004-767.pdf.

liquidity by not allowing bid/ask spreads to be further narrowed. The Commission acknowledged this when it approved Reg NMS but argued the impact would be negligible: "any widening of average effective spreads caused solely by the adopted rule will be limited to the difference between a sub-penny and penny spread."[5] Presumably, the Commission believed this was an insignificant amount; however, even a small reduction in average effective spread could have a significant cost savings for investors. The average effective spread of one of the most traded securities, TSLA is $0.085. If we assume even a 5% reduction in average effective spread as a result of allowing locked markets, this would potentially save TSLA investors over $115 million annually and many multiples more if applied to the entire market. Beyond the direct cost savings to investors, allowing locked markets would also reduce complexity. In addition to market participants repricing their own orders, Cboe offers multiple different order types that allow orders to be repriced to prevent locked/crossed market. As a result, equity orders in TSLA are repriced at least twice every second on Cboe exchanges to prevent locked/crossed markets.

For all these reasons Cboe believes allowing locked markets would have substantial positive implications for the equity and option markets. Not only would effective spreads be reduced, thereby saving investors millions of dollars, but orders would be executed more efficiently by reducing the number of orders repriced by exchanges. Any effort to revisit trade-through restrictions should also examine how locked market restrictions may be costing investors.

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Thank you for the opportunity to share our perspectives on this important matter. We welcome any questions and look forward to providing additional feedback in the future.

Sincerely,

/s/ Patrick Sexton

Patrick Sexton
EVP, General Counsel, and Corporate Secretary
Cboe Global Markets, Inc.

CC: The Honorable Paul Atkins, Chairman
The Honorable Hester Peirce, Commissioner
The Honorable Caroline Crenshaw, Commissioner
The Honorable Mark Uyeda, Commissioner
Mr. Jamie Selway, Director, Division of Trading and Markets

[5] Reg NMS Release at 37587.