McKay Brothers

September 5, 2025

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Written Statement for the September 18, 2025 SEC Roundtable on the Order Protection Rule and Related Market-Structure Reforms

Dear Ms. Countryman:

McKay Brothers, LLC (“McKay”) and its affiliate Quincy Data, LLC (“Quincy”) (collectively, the “Firm”) appreciate the opportunity to contribute to the Commission’s upcoming roundtable on the Order Protection Rule (OPR) and related Regulation NMS reforms.

For over a decade, our team has been at the forefront of developing and operating competitive market data and connectivity services. We deliver infrastructure that is neutral, transparent, and broadly accessible, enabling both large institutions and smaller firms to compete on a level playing field. This unique vantage point informs our perspective: we see firsthand how thoughtful market-structure reforms can reduce friction, expand access, and support healthier, more competitive markets.

As detailed in this letter, we share observations and targeted recommendations that reflect our direct operational experience. Our goal is to help the Commission calibrate reforms that enhance displayed liquidity, anchor price discovery, and promote efficient, competitive trading without compromising investor protections. We offer concrete proposals designed to reinforce displayed liquidity and best-execution outcomes while keeping room for innovation.

As the Commission prepares for the September 18, 2025 roundtable, we look forward to sharing our perspective as a soon-to-be-registered competing consolidator under the Market Data Infrastructure Reform (“MDIR”) rules.[1] In our view, the healthiest market outcomes arise when regulations foster a level playing field and anchor price discovery in transparent, displayed liquidity, while still preserving space for innovation in routing and data services. This balance reduces unnecessary regulatory friction, empowers competitive forces to deliver better execution quality at lower costs, and strengthens investor protections.

We support retaining the Order Protection Rule but in a calibrated, earned-protection form. The core OPR function (preventing trade-throughs of firm, immediately accessible displayed prices) should remain. Our proposals narrow “protected” status to quotes that are reliably accessible,

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[1] Market Data Infrastructure (MDIR) Final Rule. Securities Exchange Act Release No. 34-90610, 86 FR 18596 (Apr. 9, 2021) (adopting competing-consolidator framework and Rule 603 updates).

reduce mandatory connectivity to quotes that rarely fill, and align market-data incentives with bona fide price discovery.

Below we outline our observations and targeted recommendations across seven interrelated topics:

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1. Order Protection Rule: Earned Protection via a Market-Share Threshold

Goal: Preserve order protection for venues that truly contribute to price discovery while reducing mandatory connectivity burdens that do not improve price discovery.

Recommendation: Amend Rule 600(b)(57) so that an exchange qualifies as a "protected" market only after it reaches and maintains a modest market-share threshold (e.g., 2.5% of consolidated equity trading over a meaningful assessment window).[2] Venues that incorporate systematic delays (e.g., "speed bumps") should be unprotected.[3] This is directionally consistent with Canada's practical approach[4] and simply calibrates protection to a venue's demonstrated contribution to price discovery. Our proposal is different from Canada in that we omit the automatic protection of listing exchanges to reduce connectivity burdens and gaming risk.[5]

Order protection should extend only to firm, accessible quotations, meaning quotes not subject to asymmetric venue-operated delays or repricing during the interval when incoming orders are prevented from executing.[6] Protecting non-firm or frequently inaccessible displayed prices

[2] A 2.5% threshold would currently unprotect many venues; the point is that protection becomes a performance target: open to all, but not a permanent franchise independent of actual contribution to price discovery.

[3] Order protection should apply only to quotations that are immediately and automatically accessible, without intentional, venue-operated systematic delay. For clarity, a "systematic delay" is asymmetric if it (i) holds or slows incoming marketable interest or cancels, while (ii) allowing the venue's own quote updates, repricing, or other venue-controlled message classes to act without an equivalent delay. Quotes exposed to such engineered asymmetry are not "firm" for protection purposes under Rule 611 and should be unprotected. By contrast, uniform technology latency that applies equally to all message classes and venue-controlled updates is not the concern. This bright-line test preserves auction integrity, deters tactical reranking, and ensures protected prices are truly accessible. The Commission's 2016 interpretation of "automated quotation" permits only de minimis intentional access delays and focuses on preserving fair and efficient access; this proposed symmetry test simply codifies that principle.

[4] Section 1.1.2.1 of Companion Policy 23-101 Trading Rules outlines the circumstances in which a marketplace that introduced an intentional order processing delay would not be considered to be providing automated trading functionality. In those circumstances, the orders on that marketplace would not be protected.
https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy2/23101-CP-July--6-2016.pdf

[5] We do not wish to stifle innovation in new listings. To ensure we can still encourage such new listings and easier IPOs, we support a companion initiative to modernize listing processes (faster SRO approvals, standardized disclosure rails, and more). This promotes vibrant public markets without making protection automatic solely due to listing status.

[6] For the avoidance of doubt, a displayed price is firm and accessible only if it can be executed immediately and automatically without human intervention and without any asymmetric, intentional delay

substitutes regulatory compulsion for market choice and risks weaker execution quality, especially for retail flow. This reform would reduce mandatory connectivity burdens while:

- Lowering infrastructure and connectivity complexity for all broker-dealers and, by extension, the investing public;
- Allowing the MDIR's competing-consolidator framework to scale without being swamped by low contribution feeds;
- Making quote protection a status earned through genuine contribution to price discovery;[7] and
- Ensuring that the SIP revenue is not diverted to exchanges that do not facilitate actual trading.

OPR calibration should not treat rarely fillable "best" quotes as protected. Tying protection to firm, accessible prices preserves auction triggers and protects retail investors' price-improvement opportunities. Where investors are compelled to route to prices that are not reliably accessible, regulation (not competition) picks winners.

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2. Re-Balance SIP Revenue toward Executions Against Displayed Liquidity

Goal: Strengthen incentives to display and interact with public quotes.

Recommendation: Direct the significant majority of SIP revenue to trades that execute against displayed quotations on exchanges.[8] A simple approach is to allocate 85% to executions

between inbound interest and venue-controlled quote updates. Codifying this symmetry test aligns protected status with prices that are reliably fillable in practice.

[7] Consistency with Sections 3(f) and 23(a)(2). Section 3(f) of the Exchange Act requires the Commission, when acting in the public interest, to consider whether its actions "will promote efficiency, competition, and capital formation." Calibrating protected-quote status to *demonstrated* contribution to price discovery advances efficiency by reducing fixed connectivity overhead, strengthens competition by making protection a contestable status that venues can earn (rather than a regulatory entitlement), and supports capital formation by deepening actionable displayed liquidity and improving execution quality. Section 23(a)(2) further cautions against rules that impose burdens on competition not necessary or appropriate to the Act's purposes; mandatory connectivity to venues whose quotes rarely fill imposes such a burden without commensurate investor benefit. Our approach does not bar routing to smaller venues; it simply ends *compelled* routing and shifts protection to quotes that are actually tradable, thereby preserving bona fide competition on execution quality and service.

[8] We deliberately do not limit this revenue allocation to "protected" venues. While earned protection remains appropriate for OPR routing obligations, SIP revenues should follow lit executions against firm displayed quotes wherever they occur. Otherwise, incumbents would receive a guaranteed stipend while new entrants, even those generating bona fide executed trades, would be denied participation until they clear the 2.5% protection threshold. This risks creating an insurmountable moat for startups and dampens competitive pressure to improve displayed liquidity.

against displayed quotations, with the balance split between measurable quote quality (10%) and a listings innovation stipend (5%) for the listing venue. This aligns revenue with actual price formation and naturally encourages useful quotes, without a complex set of carve-outs or punitive rules.

To encourage continued innovation in new listings, especially given the removal of automatic listing protection from the Canadian approach, we recommend using, for each security, the Security Information Allocation (SIA, i.e., the SIP revenue pool for that security) to reward the listing exchange. Allocate 85% of the SIA to trades executed against displayed quotations on exchanges (directly rewarding real price discovery). Allocate 10% based on quote quality, such as time at the NBBO that promptly results in executions to encourage useful, actionable quoting without complex carve-outs. Allocate the remaining 5% of the SIA to the listing venue irrespective of quoting quality (a listings innovation stipend). This 85/10/5 structure ties the vast majority of revenue to lit executions, preserves a listings incentive, and maintains a simple, auditable framework. It also minimizes incentives to post inaccessible “best” prices that harvest quote-based revenues but result in few fills.

If SIP revenue primarily follows executions against displayed liquidity, market participants are paid for providing and interacting with lit liquidity – a healthy side-effect that supports deeper order books, clearer reference prices, and better best-execution proofs.

If the market structure continues to incentivize non-executed quotations over bona fide trades that contribute to price formation, public exchanges will fail to function as the primary venues for price discovery:

- More internalization, less display means thinner order books, worse depth-of-book for institutions.
- Wider effective spreads for buy-side and retail (price improvement becomes cosmetic rather than competitive).
- Higher adverse-selection costs on exchanges, pushing even more flow off-exchange in a negative feedback loop.
- Innovation tax: exchanges invest less in matching/auction quality when OPR’s protections, coupled with SIP quote-based revenue allocation, financially rewards providers of quotes that never trade.

Re-weighting 85% to trades and 15% to useful quotes (tethered to near-term executions) and listings counters these risks and reinforces the anchor role of displayed liquidity.

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3. Tick-Size Parity

Goal: Reduce the structural disadvantage of exchanges in tick-constrained names and re-center competition around meaningful increments.

Recommendation: Adopt a dynamic tick-size schedule that targets an average quoted spread of roughly two to three ticks per symbol, consistent with the research articulated by Nasdaq's chief economist.[9,10]

Getting the tick size "right" shrinks the economic advantage of sub-penny or ultra-fine pricing elsewhere, meaningfully addressing the biggest issue:[11] flow leaving lit markets when ticks are too coarse. Getting the tick "right" trims regulatory micromanagement by letting price formation work through market incentives rather than bespoke exceptions.

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4. Competing Consolidators and a Location-Aware NBBO

With OPR likely to be recalibrated, it is more important, not less, that the Commission promptly finalize and implement the MDIR and CT Plan framework, including fees, so brokers have affordable baseline NBBO access and observer-accurate, location-aware views of the market to support best-execution. The 2020 MDIR final rule replaced the exclusive SIP monopoly with a competitive model in which multiple *competing consolidators* can register to disseminate core data.[12,13] Our planned consolidator will operate geographically distributed nodes that:

- Observer-accurate National Best Bid and Offer (O-NBBO) values computed from the perspective of each geographically distributed node;
- Disseminate richer content: depth-of-book, odd-lot, and auction information; and
- Leverage the fastest transport commercially available in constructing the feed.

We strongly support the Commission's approval of the CT Plan's governance reforms and the broader goals of the MDIR, including improved access, transparency, and competition in the distribution of consolidated market data. We intend to register as a competing consolidator once

[9] Tick-Size Research (Nasdaq Chief Economist). Phil Mackintosh, Nasdaq Economic Research (tick-size calibration to target 2–3 ticks per average spread), https://www.nasdaq.com/articles/tick-sizes-are-trade and https://www.nasdaq.com/articles/getting-ticks-right-improves-valuations.

[10] E.g., in practice, reassess periodically and set each symbol's tick so that:
Tick = floor(Average_bid_ask_spread ÷ 2), with one significant digit
E.g., if bid_ask = 0.0189
then bid_ask/2 = 0.00945
tick = 0.009.

[11] A note on fee-vs-price improvement. We recognize that in dark venues, fee improvement can act similarly to sub-penny price improvement. Rather than attempt to eliminate midpoint or fee-based improvements outright, we propose to solve the core problem first (tick calibration for exchanges) and acknowledge that fee-improvement parity remains an open topic for future work, noting that exchanges should also be able to compete for midpoint executions transparently (e.g., via on-exchange auctions) so that midpoint crossing is not exclusively off-exchange.

[12] Competing Consolidators / Location-Aware NBBO. See MDIR Final Rule, Release No. 34-90610, 86 FR 18596 (Apr. 9, 2021), available at https://www.sec.gov/files/rules/final/2020/34-90610.pdf

[13] SEC Adopts Rules to Modernize Key Market Infrastructure Responsible for Collecting, Consolidating, and Disseminating Equity Market Data at https://www.sec.gov/newsroom/press-releases/2020-311

the initial registration period commences. However, the viability of our participation will depend on the fee structure adopted for the distribution of consolidated market data. We stand ready to assist the Commission, staff, and other stakeholders in developing competing consolidator participation and catalyzing the next phase of market-data modernization. We appreciate the opportunity to contribute to this important initiative.

Target Fee Principles:

Tier	Pricing Model	Alignment with OPR
Baseline NBBO	Cost-plus, rate-regulated	Ensures universal compliance access
Low-latency tier	Market-based subscription	Lets innovators monetize speed and reduce uncertainty without taxing brokers that do not need it
Derived analytics, historical data, and signals	The data would be owned by the producers (CCs) and the price set by competitive market forces	Promotes differentiation and competition

Rate-regulated baseline access combined with market-priced optionality preserves universal access, enables innovation, and ensures that brokers who do not need speed are not forced to subsidize those who do.

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5. 24x7 Equity Trading: Thoughtful Expansion with Symmetric Protections

We support policy changes that enable extended and overnight sessions, provided disclosure, risk controls, and best-execution/OPR obligations are symmetric across time blocks.

Key policy points:

- **Disclosure symmetry.** Issuers should use continuous Reg FD-compliant channels (e.g., machine-readable filings) so material news reaches all investors irrespective of local time;
- **Risk controls.** Extend clearly-erroneous trade (“CE”) parameters and Reg SCI coverage to overnight sessions;
- **Definitions**. Clarify “regular trading hours” to include approved night sessions, ensuring seamless OPR and best-execution across the clock.

Symmetric, technology-neutral rules reduce compliance overhead and let market forces determine participation across time blocks.

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6. Digitized and Tokenized Equities: Same Activity, Same Rules

Goal: Modernize market plumbing without fragmenting price discovery or weakening investor protections.

Tokenization can modernize post-trade processes, but does not change the nature of the activity. We support applying the same Exchange Act safeguards (registration, best-execution, fair access, market-data parity, and prompt quote/print dissemination through competing consolidators) to tokenized instruments that represent or track listed shares. Consistent standards ensure a level playing field where lit markets and ATSs compete on fair, transparent terms while still leaving room for innovation. The right path is to enhance existing rules to foster fair competition, not create regulatory gaps that systematically disadvantage today's lit markets.

Tokenization should not create parallel price-discovery venues or quote/print pathways outside the MDIR/CT Plan framework.

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7. A "Lean" Consolidated Audit Trail (CAT): Trades-Only, All Securities

After a decade of complexity and limited surveillance benefit, we support a "minimal-viable CAT" that records executed trades only (not orders or customer identifiers) across all SEC-regulated securities, including bonds and ETFs. The focus is on **time**, **place**, **and outcome**, which is sufficient for market-abuse analytics while minimizing privacy risk and compliance cost. There should be no exceptions: all the trades must be part of the public record, anonymized, but with price, time, and location data.

Proposal for a "Minimal-Viable CAT."

- **Timestamp.** Universal ± 1 μs UTC(NIST)-synchronized clock on every order/trade message. Enables latency-aware surveillance without storing PII;

- **Location Tag.** Data center identifier. Lets regulators reconstruct routing paths. Gives clients transparency on the venues that matched their trades;

- **Public, Aggregated File.** 24-hour delayed, symbol-level statistics. "Sunlight" discourages manipulative routing without raising privacy risks;

- **Client Transparency**. Every client receives the list of public-record prints that constitute its executions, enabling robust execution-quality review.

A "prints-only" CAT reduces the data footprint while improving signal quality for anomaly detection. With precise timestamps and venue tags, regulators can deploy modern AI models to detect spoofing, layering, or cross-venue wash patterns from public prints, without collecting PII or full order-life-cycles. The result is higher surveillance power at lower cost, consistent with broader federal efforts to use AI to streamline rules while improving outcomes. By focusing on prints only and their precise timing and location, the CAT can achieve its surveillance goals at a fraction of current complexity and cost.

Reinforcing Lit-Market Quality

These reforms (earned quote protection, revenue alignment to displayed executions, right-sized tick increments, richer and faster consolidated data, symmetric rules for 24x7 trading, and a lean yet effective CAT) work together to deepen displayed liquidity, clarify reference prices, and improve execution outcomes for retail and institutions. Taken together, they remove unnecessary regulatory burdens, unleash competitive forces, and trim regulatory complexity where it does not improve price formation. This ensures that market forces deliver efficiency while ATSs and internalizers continue to compete on fair terms. We welcome the opportunity to share latency-measurement data from our pilot competing consolidator nodes and to engage further with staff on implementation details.

Respectfully submitted,

Timothy J. Boyle
Chief Operating Officer
McKay Brothers, LLC

Cc: The Hon. Paul S. Atkins, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner

Mr. Jamie Selway, Director, Division of Trading and Markets
Mr. Eric Juzenas, Associate Director, Division of Trading and Markets
Mr. Robert Fisher, Acting Director, Division of Economic and Risk Analysis