



2001 K Street NW, Suite 725, Washington, DC 20006 | Tel +1 202.466.5460

March 8, 2023

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

Re: Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change  
Relating to Alternative Display Facility New Entrant  
Release No. 34-96550; File No. SR-FINRA-2022-032

Dear Ms. Countryman:

The FIA Principal Traders Group (“FIA PTG”)<sup>1</sup> appreciates the opportunity to submit this letter to the Securities and Exchange Commission (“SEC” or the “Commission”) as a follow-up to our previous letter (“First Letter”)<sup>2</sup> on the Financial Industry Regulatory Authority, Inc., (“FINRA”) proposal to add IntelligentCross ATS (“IntelligentCross”) as a new entrant to the Alternative Display Facility (“ADF”) (the “Proposal”).<sup>3</sup> In this letter we will be addressing Imperative Execution’s response<sup>4</sup> to the three issues we raised in our First Letter.

**Not all less than one millisecond intentional delays are de minimis.** FIA PTG continues to disagree with FINRA’s determination that IntelligentCross has provided sufficient information about how its intentionally delayed matching process operates to demonstrate compliance with Rule 611 of Regulation NMS. Below is one example that an FIA PTG member confirmed with

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<sup>1</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.

<sup>2</sup> See: [Letter from Joanna Mallers, Secretary, FIA PTG, to Vanessa Countryman, Secretary, SEC, dated January 17, 2023](#). (“First Letter”)

<sup>3</sup> <https://www.sec.gov/rules/sro/finra/2022/34-96550.pdf>.

<sup>4</sup> See: [Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa Countryman, Secretary, SEC, dated February 16, 2023](#).

IntelligentCross that is symptomatic of the broader issue that the filing is deficient, and we are continuing to uncover problems with granting IntelligentCross protected quote status:

- Prior to the following orders, the National Best Bid and Best Offer is \$9.95 by \$10.05.
- IntelligentCross receives a Displayed Day limit sell order 100 @ \$10.00 that is displayed on the SIP creating a revised NBBO of \$9.95 by \$10.00.
- IntelligentCross then receives a Displayed Day limit buy order 100 @ \$10.00. This order would trigger a match event. During the up to 900 microseconds of the match event, IntelligentCross would display the buy order at \$9.99 on the SIP (the order is “price slid” and displayed one minimum price variation below the best offer in order to not create a locked market), creating an NBBO of \$9.99 by \$10.00.

For the duration of the match event, the NBBO is made up entirely of two orders on the IntelligentCross ATS, which new, incoming orders cannot interact with.

In this example, if another market participant responded to the \$9.99 NBB with an order to sell at \$9.99 (a better price than the \$10.00 offer) and the new order arrived before the match event completed, it would be sequentially added to the queue and would not trade, as the \$10.00 offer was received prior to the \$9.99 offer and orders are matched sequentially.

FIA PTG has concerns about IntelligentCross creating a new Protected NBB or NBO on the SIP for orders that are pending a match and are very likely inaccessible. At the very least, this illustrates the novel issues raised in the proposal and the importance of more fulsome disclosure of IntelligentCross' operation.

**There is currently no process for ongoing operation of non-exchange venues with protected quotes with intentional access delays.** In our First Letter we were concerned that without the prescribed exchange notice and comment process required in connection with changes to operations it was unclear how this would be managed at IntelligentCross and the ADF? We acknowledge Imperative Execution's response recognizing this disparity and statement that it would:

*not object to the commenter's recommendation that if changes are made to the level and cost of access to the ASPEN Fee/Fee book impacting the display of IntelligentCross' protected quotations on the ADF, or the operation of the ASPEN Fee/Fee book impacting the provision of the protected quote, that IntelligentCross will notify the Commission and FINRA in advance of such changes and describe how such changes are consistent with the ASPEN Fee/Fee book quotations continuing to be included as protected quotations, the Exchange Act, and protection of investors, to ensure that any changes are consistent with applicable regulations. We also do not object to an appropriately structured process through which the Commission may provide an opportunity for comment to assist in its evaluation of such changes.<sup>5</sup>*

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<sup>5</sup> See *supra* note 4, at 11.

While FIA PTG agrees that a Commission order approving the Proposal should, at minimum, include conditions addressing these concerns, we look forward to additional details on such a process.

**The proposed implementation period is too short.** As we stated in our First Letter, market participants must have sufficient time to establish direct connectivity to IntelligentCross and certify with them, or make other connectivity arrangements, as well as update internal systems to recognize a new “protected venue” and route to it when required. We appreciate Imperative Execution’s recent acknowledgement that a “...reasonable timeframe would be to require that industry participants begin treating IntelligentCross’ quotes as a protected quotation no later than 90 days after the date of the Commission’s approval order.<sup>6</sup> This suggestion is in line with previous Commission guidance on treating new quotes as protected.<sup>7</sup>

Because of the ongoing questions, FIA PTG continues to recommend the Commission disapprove this Proposal. If you have any questions, please do not hesitate to contact Joanna Mallers at [REDACTED].

Respectfully,

FIA Principal Traders Group



Joanna Mallers  
Secretary

cc: Gary Gensler, Chair  
Hester M. Peirce, Commissioner  
Caroline A. Crenshaw, Commissioner  
Mark T. Uyeda, Commissioner  
Jaime Lizárraga, Commissioner

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<sup>6</sup> See *supra* note 4, at 10.

<sup>7</sup> See, e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (approval of the BATS Exchange), 61698 (March 12, 2010), 75 FR 13151, 13163 (March 28, 2010) (approval of the EDGA and EDGX exchanges) and 78101 (June 17, 2016), 81 FR 41141, (approval of the Investors’ Exchange).