

# FIA PTG

## PRINCIPAL TRADERS GROUP

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October 31, 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 two letters (“First Letter” and “Second 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>

**Concerns with Rule 611 compliance persist.** 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. In our Second Letter we provided the following example to illustrate our concerns:

- 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.

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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”); [Letter from Joanna Mallers, Secretary, FIA PTG, to Vanessa Countryman, Secretary, SEC, dated March 8, 2023](#), (“Second Letter”).

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

- 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.

Earlier this month, an FIA PTG member analyzed IntelligentCross market data<sup>4</sup> to confirm our previous concerns and found that this scenario, whereby the IntelligentCross BBO is made up of orders in a pending match that are fully or partially inaccessible, happened approximately 10,000 times per day from 10/1/2023 – 10/17/2023. Keeping in mind that IntelligentCross' quote is not currently published on the SIP, we believe some market makers may currently be reluctant to provide liquidity due to the Quote Rule as some firms may not have systems in place to ensure that they do not have a better quotation on IntelligentCross than they have available on a market that publishes to the SIP. If more market makers begin to quote on IntelligentCross, we anticipate this scenario will happen even more often.

Accordingly, FIA PTG remains concerned about IntelligentCross creating a new Protected NBB or NBO on the SIP for orders that are pending a match and are very likely inaccessible and do not believe these concerns can be dismissed as hypothetical. At the very least, this illustrates the novel issues raised in the proposal and the importance of more fulsome disclosure of IntelligentCross' operation.

**FINRA should publish a detailed process document describing the ongoing operation of non-exchange venues with protected quotes with intentional access delays.** Throughout the Order Approving Proposed Rule Change Relating to Alternative Display Facility New Entrant dated August 24, 2023 (the “Approval Order”),<sup>5</sup> the Commission discusses representations that FINRA has made as to how they will handle various change scenarios. We have noted that inconsistencies persist between various documents provided in connection with IntelligentCross' operations that

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<sup>4</sup> Specifically, the member looked for the following pattern:

1. Order A is added to the book
2. <900 microseconds later, Order A is deleted from the book
3. The next event in the IntelligentCross feed (using their sequence number) is an execution such that:
  - The executed order, Order B, is on the opposite side of the book as Order A
  - Order B is exactly 1 MPV away from Order A
  - The execution is less than 20 microseconds after the delete

<sup>5</sup> <https://www.sec.gov/files/rules/sro/finra/2023/34-98212.pdf>

may impact the determination of whether or not they should continue to have a protected quote. For example, their ATS-N<sup>6</sup> suggests that match events operate on a schedule that is independent of incoming orders, whereas their FAQs<sup>7</sup> state that match events are triggered by '[a]n incoming order that will make the book potentially matchable.' FIA PTG requests that FINRA's process representations be described in detail in a publicly available document subject to industry review and comment.

Because our questions and concerns have not been sufficiently addressed, FIA PTG continues to recommend the Commission disapprove this Proposal. If you have any questions, please do not hesitate to contact Joanna Mallers at [jmallers@fia.org](mailto:jmallers@fia.org).

Respectfully,

FIA Principal Traders Group

A handwritten signature in blue ink that reads "Joanna Mallers". The signature is written in a cursive, flowing style.

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> [https://www.sec.gov/Archives/edgar/data/1708826/000170882623000019/xslATS-N\\_X01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1708826/000170882623000019/xslATS-N_X01/primary_doc.xml))

<sup>7</sup> <https://www.imperativex.com/faq>