



IMPERATIVE EXECUTION

February 16, 2023

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Alternative Display Facility New Entrant (SR-FINRA-2022-032)

Dear Ms. Countryman:

Imperative Execution is writing to respond to certain comments filed on the FINRA proposed rule change¹ to add the IntelligentCross ATS (“IntelligentCross”) as a new entrant to the Alternative Display Facility (“ADF”).²

We welcome the opportunity to provide additional information that may assist in better understanding of how IntelligentCross operates; why we believe the addition of our well-priced displayed liquidity to the public quote through the ADF will improve market efficiency, transparency, and execution quality; and why the proposal is consistent with both the spirit of, and applicable requirements under, Regulation NMS.

Significantly, as discussed further below, the IntelligentCross ASPEN Fee/Fee quotations displayed on the ADF would meet the definition of an “automated quotation” under Regulation NMS and therefore should be considered a “protected quote.” In addition, the IntelligentCross matching mechanism utilizes a matching process that provides fair and efficient access to its quotations and any delay in the IntelligentCross matching process also is de minimis, *i.e.*, so short as to not frustrate the purposes of Regulation NMS by impairing fair and efficient access to the IntelligentCross quotation.

I. Benefits of IntelligentCross Displayed Liquidity as a Protected Quote

IntelligentCross was created with one purpose in mind - to build a venue that optimizes price discovery, achieves maximum price stability after trades, and provides an opportunity for market participants to improve performance and achieve best execution by reducing market impact and adverse selection. In the four years that IntelligentCross has been in operation, we have seen our vision come to fruition and the benefits that IntelligentCross brings to the markets.

¹ SEC Release No. 34-96550 (December 20, 2022), 87 FR 79401 (December 27, 2022) (“FINRA Proposal”).

² IntelligentCross is a SEC-registered US equities Alternative Trading System (“ATS”). Imperative Execution is a financial technology company that is the parent company of IntelligentCross. For further information on Imperative Execution and IntelligentCross, see <https://www.imperativex.com/intelligentcross>.

IntelligentCross is already widely used by most major US broker-dealers and electronic trading firms. Orders are provided by a variety of market participants covering all facets of the markets, including long-only institutional investors, hedge funds, algorithmic traders, and market makers. In January 2023, our average daily market share was 110 basis points³ and IntelligentCross has been consistently listed third in total shares traded by ATSs of NMS Tier 1 and Tier 2 stocks in the FINRA ATS weekly statistics,⁴ averaging \$5.9 billion notional traded per day single counted.⁵

The ASPEN Fee/Fee book, which is the subject of the proposed rule change and that would be displaying quotes to the ADF, has been operating since 2019.⁶ The displayed liquidity on the ASPEN Fee/Fee book provides brokers an opportunity to improve performance and achieve best execution for their end-investors. For example, ASPEN Fee/Fee currently publishes displayed prices from round lot or larger orders in over 7,900 securities daily and improves the NBBO over 5.3 million times per day (for orders of round-lot size or larger on arrival).⁷ The prices displayed on ASPEN Fee/Fee, however, are currently not available to most investors because the orders displayed on IntelligentCross are not disseminated over the SIP and therefore are not part of the NBBO.

Not including IntelligentCross' displayed quotes as part of the SIP and therefore as a protected quote has allowed market participants to effectively "ignore" the IntelligentCross quote, even when it is the best displayed quote in the market. For example, during January 2023, approximately 79 million shares, valued at \$4.9 billion per day, were printed to the SIP at prices worse than those displayed by ASPEN Fee/Fee (as a round lot size or larger) at that time. The fact that these quotes have not had an opportunity to interact with quotes in the broader markets is, in our opinion, a basic compromise of market efficiency.

Adding the ASPEN Fee/Fee book's displayed liquidity to the public quote as a protected quotation will make these quotes available to all market participants and enable them to access better prices, bringing more quality liquidity and price discovery to the broader markets, consistent with the objectives of the national market system and Regulation NMS. When it adopted Regulation NMS, the Commission explained that one purpose of the Order Protection Rule was to incentivize greater use of displayed limit orders, which contribute to price discovery and market liquidity, by protecting them from trade-throughs.⁸ Bringing the ASPEN Fee/Fee quote to the public quote also is consistent

³ 110 basis points represents the combined share of the IntelligentCross ASPEN and Midpoint books matched shares (excluding hosted book), single counted.

⁴ See <https://otctransparency.finra.org/otctransparency/AtsData>

⁵ Based on platform statistics for January 2023.

⁶ IntelligentCross operates two different matching models: (1) a Midpoint book that only accepts non-displayed midpoint orders and (2) ASPEN, a full limit order book with optional displayed capability. The two books are distinct and do not interact with one another. The ASPEN book has three distinct books distinguished by different fee structures – ASPEN Fee/Fee, ASPEN Maker/Taker and ASPEN Taker/Maker. All three books act independent of each other, i.e., orders resting in one book do not rest on or interact with orders resting in another book. The ASPEN Fee/Fee book would be the only order book displaying orders on the ADF.

⁷ Based on platform statistics for January 2023.

⁸ See Regulation NMS Adopting Release at 37516 ("Given the large number of trades that fail to obtain the best displayed prices, ... the Commission is concerned that many of the investors that ultimately received the inferior price in these trades



with the objectives of creating a more competitive marketplace for investors and offering market participants additional choices of venues when trading, as well as incentivizing innovation and quality liquidity to ensure investors receive best execution on their orders.

II. IntelligentCross ASPEN Quotations Qualify as Automated Quotations

Rule 611 of Regulation NMS provides for price protection across markets against trade-throughs for “automated quotations” in NMS stocks. Under Regulation NMS, an “automated quotation” is one that, among other things, can be executed “immediately and automatically” against an incoming immediate-or-cancel (“IOC”) order.⁹

The Commission provided an interpretation of Regulation NMS’ immediacy requirement, stating that:

In the context of Regulation NMS, the term “immediate” does not preclude all intentional delays regardless of their duration, and such preclusion is not necessary to achieve the objectives of Rule 611. As long as any intentional delay is de minimis - i.e., does not impair fair and efficient access to an exchange’s protected quotations - it is consistent with both the text and purpose of Rule 611.¹⁰

SEC staff further elaborated on the Commission’s interpretation, stating that “consistent with the Commission’s interpretation regarding an automated quotation under Rule 600(b)(3) of Regulation NMS, delays of less than a millisecond are at a de minimis level that would not impair fair and efficient access to a quotation, consistent with the goals of Rule 611.”¹¹

A. The IntelligentCross Matching Process Offers Fair and Efficient Access

The Commission’s interpretation states that the term “immediate” in the context of Regulation NMS does not preclude a de minimis intentional delay – i.e., a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s quotations. Several commenters set forth rationale why they believe the IntelligentCross matching process frustrates the purposes of Rule 611, principally due to the operation of certain aspects of the IntelligentCross matching process. We disagree and address these issues below, as well as the mischaracterizations of the IntelligentCross matching process provided by some of these commenters.

may not be aware that their orders did not, in fact, obtain the best price. The Order Protection Rule will backstop a broker’s duty of best execution on an order-by-order basis by prohibiting the practice of executing orders at inferior prices, absent an applicable exception.”).

⁹ 17 CFR 242.600(b)(6).

¹⁰ Commission Interpretation Regarding Automated Quotations Under Regulation NMS, Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016).

¹¹ Staff Guidance on Automated Quotations under Regulation NMS (June 17, 2016), available at: <https://www.sec.gov/divisions/marketreg/automated-quotations-under-regulation-nms.htm> (“SEC Staff Guidance”).



1. The IntelligentCross Matching Process is Symmetrical in Nature

As a preliminary matter, several commenters incorrectly infer that the IntelligentCross matching process favors one side of the trade over the other.¹² For example, one commenter states that “[w]hile incoming orders will be subject to this execution delay, the Proposal indicates that orders posted on the ASPEN fee/fee limit order book can be cancelled at any time without a delay.”¹³ This commenter then equates the IntelligentCross matching process with an “asymmetrical ‘speed bump’ in which one of the orders and/or messages on one side of the market are subject to a delay whereas others are not.”¹⁴ Interestingly, the same commenter acknowledges later in its comments that both takers and makers have the same ability to cancel their orders, but then states that this “equal ability” is “illusory” because of the order transmitters’ regulatory obligations to attempt to access the protected quote.¹⁵

As we stated in our letter accompanying the proposed rule change,¹⁶ the IntelligentCross matching process is completely symmetric in nature and does not favor a particular side of the trade; there is no differential treatment of certain market participants. Both sides of the trade – both the taker and the maker – are on equal footing for the next scheduled match while maintaining full control of their orders, *i.e.*, both sides can cancel or update their orders at any time prior to the match. In addition, unlike a speed bump, orders in IntelligentCross are not locked in for any period of time in advance of a match event. Both sides of the trade must wait equally for the next scheduled match event to occur.

As far as the commenter’s concern above relating to an order transmitter’s regulatory obligations, it is important to consider that the protected quote regime under Regulation NMS does not provide a guarantee of an execution. A market participant may route an order to any market with the intention of matching against a displayed order and ultimately not receive an execution. This fact is not unique with respect to IntelligentCross, and is not indicative of the absence of fair and efficient access. As the Commission has previously stated, “the ability of any market participant to successfully execute against any particular displayed quote is subject to a number of factors and is not guaranteed on any

¹² See, *e.g.*, Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 8, 2023 (“SIFMA Letter”) and Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, dated January 23, 2023 (“Citadel Letter”). Another commenter claims that the “quotes that IntelligentCross displays from its ASPEN Fee/Fee order book may not be immediately accessible to market participants due to the operation of match band events” but does not provide any explanation or basis why they believe IntelligentCross’ quotes are not immediately accessible. See Letter from Brett Kitt, Associate Vice President & Principal, Associate General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated January 17, 2023 (“Nasdaq Letter”).

¹³ SIFMA Letter, at 3.

¹⁴ *Id.*, at 3.

¹⁵ *Id.*, at 3-4.

¹⁶ See Letter from Ari Burstein, General Counsel, Imperative Execution, to Brendan Loonam, Senior Director, FINRA, dated December 15, 2022.



market, as at any time any market participant can be seeking to execute against an order that is being repriced, changed, cancelled, or executed by a different market participant.”¹⁷

In addition, in the case of Intermarket Sweep Orders (“ISOs”), which ASPEN Fee/Fee will accept once it displays orders on the ADF, concerns are misplaced as once the ISO is sent to a trading center displaying a protected quotation, a broker’s obligations under Rule 611 have been met. The definition does not require an execution, only that the order is “routed to execute.” As a result, the fact that an ISO might not always execute against IntelligentCross’ protected quotation does not raise any regulatory implications related to the Order Protection Rule.

2. The Ability for Taker or Maker to Cancel Does Not Harm the Markets

Some commenters imply that the ability for a liquidity provider to cancel their order in IntelligentCross is detrimental to the markets as a whole and may harm investor confidence and execution quality. From our experience with users of IntelligentCross, we believe this cannot be further from the truth.

IntelligentCross provides an innovative and proven matching process for market participants, calibrated to reduce market impact and adverse selection, and to provide for price stability in the markets for both the buyer and seller immediately after a trade. Match times are structured such that order flow from all participants - both liquidity makers and takers - is able to interact at the most optimal time.¹⁸ IntelligentCross aims to bring these benefits to the broader market by providing market participants with a new source of displayed liquidity, which we believe will make it easier – not more difficult - for both takers and makers to access and execute against displayed quotes for their clients.¹⁹ IntelligentCross has found that most liquidity removers (*i.e.*, takers) want to interact with a stable liquidity provider. If a liquidity provider is confident that they are not likely to be adversely selected, they will be incentivized to provide more displayed liquidity into the markets, resulting in tighter spreads, thereby benefiting the liquidity remover. This calibration to the goals of the various participants in IntelligentCross is responsible, in part, for the quality of displayed quotations available via the ASPEN Fee/Fee book; as noted above, in January 2023, ASPEN Fee/Fee improved the NBBO over 5.3 million times per day (for orders of round-lot size or larger on arrival).

Undoubtedly, there is always a trade-off when trading in the markets, which is why market participants employ a wide variety of trading strategies to address their particular needs in interacting in the markets in particular situations, for example, the trade-off of price stability vs. speed or certainty of execution. Market participants deal with these trade-offs on a daily basis

¹⁷ Order Approving a Proposed Rule Change to Add a New Discretionary Limit Order Type Called D-Limit, SEC Release No. 34-89686 (August 26, 2020), 85 FR 54438 (September 1, 2020).

¹⁸ Matching schedules are calculated using an overnight optimization process that uses historical performance measurements from prior days’ matches. Each day starts with a prepared matching schedule for each security that does not change throughout the day.

¹⁹ One commenter notes that the Commission has never before granted protected quotation status to a matching process that uses discrete match events. *See* Citadel Letter at 7. There is nothing inherently inconsistent with a discrete matching process and Regulation NMS, and there certainly is no requirement under Regulation NMS of a one-size-fits-all trading model (nor should there be).

through the use of order routing logic that adjusts for differences in the way certain markets operate, the multitude of order types, and varying latencies, among other things. If there are trade-offs to be had due to the manner in which the IntelligentCross matching process operates, those trade-offs certainly do not frustrate the purposes of Regulation NMS by impairing fair and efficient access to IntelligentCross' displayed quotations.²⁰

Several commenters also infer that in a scenario where the liquidity provider has the ability to cancel their order before a match event occurs, IntelligentCross is providing a "free option" for liquidity providers and that incoming orders are likely to be filled only when the market is moving in the opposite direction (i.e., when commercially beneficial for the liquidity provider).²¹ Our experience with the IntelligentCross ATS does not show this to be the case.²² In addition, IntelligentCross does not provide a free option for liquidity providers. The commenter is correct in one regard - that there is an "option" - but that option is equally available to both the liquidity taker and the liquidity provider in IntelligentCross, i.e., both sides have complete control of their orders until match time, and both sides can cancel or amend the order accordingly if they so choose.

Finally, we disagree with the commenter that states that the IntelligentCross matching process creates "significant challenges for best execution for brokers," and that the matching process could lead to "significant risk of material information leakage and quote fading - leading to materially worse execution quality for investors."²³ As discussed above, IntelligentCross is currently used by most brokers and electronic trading firms, and our system is designed to promote best execution. In just the past year, IntelligentCross has grown from 70 basis points of the market on average in January 2022 to 110 basis points during January 2023. Our value proposition is to provide for best execution, thereby our continued growth shows the clear value added to the markets as market participants experience the execution quality provided by the IntelligentCross matching process. The commenter also has no basis for its assumption that there is a significant risk of information leakage and quote fading that would lead to worse execution quality for investors due to an IntelligentCross protected quote.²⁴

²⁰ One commenter claims that a scenario where a market participant may not receive an execution where a displayed quote is canceled, or the NBBO moves, before the match event occurs, is "precisely what the definition of a "protected quotation" in Regulation NMS was intended to prevent." See Citadel Letter at 4 and 7. On the contrary, the Commission emphasized that intermarket price protection was designed to promote national market system objectives in two primary ways - promote the use of displayed "non-marketable" limit orders (orders with limit prices that are not immediately executable at current quoted prices) and minimize the extent to which investor market orders and marketable limit orders are executed at inferior prices.

²¹ Citadel Letter at 5.

²² In January 2023, liquidity removers who executed on IntelligentCross achieved 0.85bps lower markouts 20ms after execution vs. protected venues on balance using ASPEN Fee/Fee.

²³ See Letter from Tyler Gellasch, President and CEO, Healthy Markets Association, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated January 13, 2023 ("Healthy Markets Letter").

²⁴ One commenter claims that in a scenario where an execution does not occur due to a change in the NBBO, the IntelligentCross matching process is preventing executions even when both parties wish to transact. See Citadel Letter at 7. The commenter fails to recognize that in the case of a pegged order, IntelligentCross is complying with the instructions of the provider of the pegged order to reprice their order to the new NBBO. The commenter also does not point out that in the scenario where the NBBO moves between the time an order is received and the next match event takes place, depending on the direction the NBBO moves, the liquidity taker may end up better off not executing at the old NBBO.



While certain commenters raise concerns about “free options” and “quote fading,” we believe the primary concerns of these commenters is that either the IntelligentCross matching process may not always guarantee a trade, particularly when receiving an execution may be in their best economic interests²⁵ - although not necessarily, at the same time, in the best interests of the other side of the trade from the standpoint of market stability and best execution - or that IntelligentCross will bring more competition to the exchange space. The determination of fair and efficient access should not be about protecting the economic interests of one particular group of market participants or impeding innovation or the introduction of competition to protect the exchange status quo; it should be focused on increasing access to displayed liquidity and better priced quotes to the benefit of all market participants – exactly what adding IntelligentCross’ displayed liquidity to the markets will accomplish.

3. Market Participants Can Adapt to the IntelligentCross Matching Process

IntelligentCross believes that market participants would not have difficulties adjusting to an IntelligentCross protected quote. As already noted, IntelligentCross is widely used by most major broker-dealers and electronic trading firms. These firms and others make routing decisions every day in response to the numerous order types already in place by exchanges, as well as implement a plethora of routing strategies to interact with, and respond to, the displayed liquidity in the markets. Similarly, brokers must currently consider and account for technological and geographic differences and latencies when routing. Any market participant should be able to account for the IntelligentCross protected quote without significant or material changes to their technology, and certainly without employing any change that would frustrate the purposes of Regulation NMS.

Several commenters refer to the randomized nature of the IntelligentCross matching process and state that this would prevent or make it more difficult for market participants to adopt routing strategies to account for the IntelligentCross matching process by, for example, staggering order routing such that orders arrive (and are executed) at different venues at the same time,²⁶ or for “predictable staging of order sending activity by brokers across multiple venues.”²⁷ Under the IntelligentCross matching process, the actual match event time is randomized within the match event band throughout the course of the trading day. While the randomized nature of the matching process may not be the same as addressing a deterministic delay, it certainly does not “prevent” market participants from adopting routing strategies, and given the technological capabilities of order routers today, a market participant should not have difficulties in configuring their routers to adapt to the IntelligentCross matching process. In fact, none of these commenters provide any basis

²⁵ See Citadel Letter at 8 (“Compelling market participants to access this fleeting liquidity limits their ability to act in their own economic interest ...”).

²⁶ Citadel Letter at 6-7. The commenter’s own submission suggests that it and others may not actually adopt this routing approach: “We note there are many reasons why a market participant may not elect to do this practice, as conforming to the lowest denominator (i.e. the longest time to execution) may risk missing out on liquidity available on other venues that could otherwise be accessed more quickly.” Citadel Letter at 7.

²⁷ Healthy Markets Letter at 14.



under current regulations or from a practical standpoint why they would not be able to adjust and account for the IntelligentCross matching process.²⁸

4. Frequency of Non-Match Events is not “Material”

As discussed above, situations may occur in IntelligentCross where an order may not execute at match event time due to the other side canceling prior to the next match event.²⁹ It should be noted that non-match events in IntelligentCross occur in a minority of cases, and market participants will receive an execution the majority of time.³⁰ To that end, we do not believe that such non-match events are “material” in nature (and not de minimis), as certain commenters claim, and we similarly do not believe that such non-match events should lead to a conclusion that IntelligentCross’ displayed quotes are not successfully accessed in the markets.³¹

We also do not agree with one commenter’s assertion that they would expect the non-match rates to increase if market participants are required to route order flow to IntelligentCross.³² There is no evidence to this effect and we believe that it is just as likely that cancellations will decrease as a result of being in a protected quote state as, for example, the IntelligentCross order book will be in a matchable state more frequently.

The commenter provides an example to support their assertion, *i.e.*, where a broker-dealer attempts to sweep displayed liquidity across multiple venues to execute a large order. The hypothetical the commenter illustrates is just that, a hypothetical example that may or may not take place. For their scenario to occur, an order would need to be routed to another exchange, the exchange receive the order, the exchange executes the order, the exchange prints the execution through the market data feed, the liquidity provider identifies the execution occurred, the liquidity provider sends a cancel message to IntelligentCross, and IntelligentCross processes that message prior to the next scheduled match event. This would presumably have to all occur within the span of at most 900 microseconds, and most likely less depending on what point the process was started vis-à-vis the next IntelligentCross match event.

²⁸ Randomizing the match frequency also provides benefits for both sides of the trade by, for example, reducing the potential for “gaming,” which can frustrate the process of seeking best execution and is one of the key challenges for institutional investors.

²⁹ Specifically, non-match events may occur when an existing resting order cancels prior to the next match event; an incoming order is canceled prior to the next match event; the NBBO moves between the time an order is received and the next match event takes place, making either the incoming order or the resting order non-marketable; or the NBBO changed before the next match event and pegged orders were repriced to the new NBBO, making the incoming order or the resting pegged order non-marketable.

³⁰ In January 2023, 3.9 percent of potential matches on ASPEN Fee/Fee did not complete because a displayed order was canceled, and 4.5 percent of potential matches did not complete because the NBBO changed and at least one of the sides became non-marketable.

³¹ Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated January 17, 2023 (“FIA PTG Letter”). *See also* Citadel Letter.

³² Citadel Letter at 8.

5. There is No Human Intervention Involved in the IntelligentCross Matching Process

Some commenters tie their argument that the IntelligentCross displayed quote should not be considered “automatically” executable into Commission guidance that “a quotation will not qualify as ‘automated’ if any human intervention after the time an order is received is allowed to determine the action taken with respect to the quotation.”³³

All quotations displayed on ASPEN Fee/Fee are handled on an automated basis and there is no human discretion in determining any action taken with respect to an order after the order is received. Specifically, there is no human intervention that handles the incoming IOC order or that determines whether that IOC will execute at the next scheduled match event. IntelligentCross has programmed rules about how orders interact, and those rules dictate whether a match will occur; there is no human intervention requiring that match to happen. Even if the discussion in Regulation NMS can be said to apply to the cancel message being entered by a market participant as these commenters imply, there is still no “human intervention,” as the speed at which match events occur would require automated trading systems to interpret and send cancel messages that quickly.

B. The IntelligentCross Matching Process is Consistent with the One Millisecond De Minimis Standard

While the IntelligentCross matching process provides fair and efficient access to its quotations, it is important to note that the matching process also is consistent with current SEC Staff Guidance which states that, consistent with the Commission’s interpretation regarding automated quotation under Rule 600(b)(3) of Regulation NMS, intentional delays of less than a millisecond are at a *de minimis* level that would not impair a market participant’s ability to fairly and efficiently access a quotation, consistent with the goals of Rule 611.³⁴

While the Commission did not establish a bright line *de minimis* threshold, IntelligentCross’ ASPEN Fee/Fee’s matching engine operates near-continuously and when a new order arrives in the ASPEN Fee/Fee book, it will participate in the next scheduled match event by interacting with existing orders in the order book within a maximum time capped at 900 microseconds. In addition, commenters have failed to point to any inconsistency between the Commission interpretation and later Staff guidance, nor have they pointed to any changes in latency statistics that upend the viability of the Staff’s application of the Commission’s interpretation.

III. Time to Implementation of IntelligentCross Quotation as a Protected Quotation

Several commenters suggested that the proposed implementation period for adding IntelligentCross’ displayed liquidity as a protected quotation is too short.³⁵ Some of these commenters were

³³ See Citadel Letter at 5, SIFMA Letter at 4.

³⁴ At the same time, the Commission’s interpretation did not enumerate a specific threshold for the maximum permissible latency that could be imposed by an intentional access delay. See also SEC Staff Guidance, which states that “While the Staff believes that intentional access delays that are less than one millisecond are *de minimis*, that does not necessarily mean that all intentional delays that are one millisecond or more are not *de minimis*.”

³⁵ See, e.g., FIA PTG Letter, SIFMA Letter.

responding to the March 27, 2023 date that IntelligentCross was provided (and that was disseminated to the public), which was the earliest possible “go live” date to begin quoting both CTA and UTP listed securities on the ADF.

IntelligentCross recognizes that the industry needs reasonable and sufficient time to make changes to accommodate a new protected quote, including to establish direct connectivity to IntelligentCross (if they do not already have connectivity) or make other connectivity arrangements, as well as update internal systems to recognize a new protected venue and route to it when required.

To that end, IntelligentCross has been working with industry participants to ensure that they have all the information necessary to prepare for the IntelligentCross protected quote. Specifically, IntelligentCross has been holding calls with various industry groups as well as individual market participant firms to provide information around operational issues. IntelligentCross also has on its website a “pre-quotation notice” to advise that the IntelligentCross ATS intends to become an active quoting participant on the ADF that contains information on how to obtain information regarding IntelligentCross’ operations, as well as specifications around IntelligentCross’ market data feed, how to obtain IntelligentCross FIX specifications and an IntelligentCross subscriber agreement, as well as current industry-wide user acceptance test dates.³⁶

It is important to note that, as discussed above, most major broker-dealers and electronic trading firms are already connected to, and trading with, the IntelligentCross ATS.³⁷ In addition, the ADF will be part of the SIP, and therefore broker-dealers are already receiving the feed that will carry IntelligentCross’ quotes, and IntelligentCross provides its full market data feed for free to anyone interested in receiving the data.

Nevertheless, given the precedent from other approvals of new protected quotes, we believe 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. We believe this timeframe would provide reasonable and sufficient time to make any system changes necessary to accommodate a new protected quote and address concerns around the length of time since broker-dealers were configured to access the ADF.³⁸

IV. Changes to an ATS’ Fees or Operations with a Protected Quote

Several commenters raise questions surrounding the process in connection with potential changes to IntelligentCross’ operations and fees associated with displaying protected quotations on the ADF.³⁹ One commenter states that if the Commission chooses to permit any trading center to disseminate quotations using the ADF, it must have limitations that are consistent with the limitations that are imposed upon other trading venues (*i.e.*, exchanges) whose quotations are awarded protected

³⁶ See <https://www.imperativex.com/adf>.

³⁷ IntelligentCross has 56 subscribers as of the end of Q4 2022.

³⁸ See Nasdaq Letter at 2.

³⁹ See, *e.g.*, FIA PTG Letter, Healthy Markets Letter.

quotation status, and that any changes to the ASPEN Fee/Fee book rules and operations should be treated the same for regulatory purposes as if they were changes made by an exchange.⁴⁰ The commenter provides four items in which they suggest the Commission expressly condition upon approval of the proposed rule change.⁴¹

IntelligentCross is regulated by both FINRA and the SEC as a broker-dealer and an ATS, with significant associated regulatory responsibilities including requirements around its operations (and any changes to those operations) as well as disclosures and notices around fees and connectivity. In addition, Regulation NMS provides requirements with which a trading center displaying quotations through the ADF must comply. Specifically, Rule 610 of Regulation NMS requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock. Rule 610 also requires that such a trading center not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.

As we stated in our letter accompanying the proposal, IntelligentCross provides access to orders in a manner that is functionally equivalent to the access that is generally available for quotes displayed by a SRO trading facility and, for orders displayed in an SRO display-only facility, a level and cost of access that is substantially similar to the level and cost of access to quotations displayed by SRO trading facilities in that stock.

It is important to note that there is nothing requiring an ATS relying upon the ADF to be subject to the same obligations of a registered securities exchange. In addition, while IntelligentCross, as an ATS, is not subject to the same requirements as exchanges, it also does not share the same benefits as exchanges. IntelligentCross, however, does 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.

At the same time, we do not understand or support the commenter's recommendation to condition IntelligentCross' approval on "continuing to not charge for market data or connectivity." While

⁴⁰ Healthy Markets Letter.

⁴¹ Specifically, approval would be conditioned upon IntelligentCross: (1) continuing to not charge for market data or connectivity; (2) having fees and rebates (if adopted) that are at or below those charged by exchanges; (3) notifying the Commission and FINRA of all changes related to the ASPEN Fee/Fee order book; and (4) expressly describing how any such changes are consistent with the ASPEN Fee/Fee order book quotations continuing to be included as protected quotations, the Exchange Act, and protection of investors. See Healthy Markets Letter at 2. The same commenter states that if the Commission approves the proposal, it should expressly condition the approval on IntelligentCross being compliant with Regulation SCI like other trading centers with protected quotations. IntelligentCross has no objection to being required to be compliant with Regulation SCI. IntelligentCross expects to be subject to Regulation SCI in the near future due to its current volume in the markets.



Ms. Vanessa Countryman

February 16, 2023

Page 12 of 12

IntelligentCross does not charge for market data and connectivity, it is unclear why an ATS such as IntelligentCross displaying quotes through the ADF should be held to a higher standard than exchanges in this regard, *e.g.*, never charge for market data or connectivity, particularly when the basis under Rule 610 is “substantially equivalent.” Such a requirement would not be consistent with the limitations imposed on exchanges nor would be treating an ATS with a protected quote the same for regulatory purposes as an exchange.⁴²

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As discussed above, IntelligentCross believes that adding its displayed liquidity to the markets as a protected quotation would not only be beneficial to the markets but is consistent with, and would satisfy, the applicable requirements under Regulation NMS. Please do not hesitate to contact the undersigned at ari.burstein@imperativex.com should you have any additional questions regarding this matter.

Sincerely,



Ari Burstein
General Counsel
Imperative Execution

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Haoxiang Zhu, Director, Division of Trading and Markets

⁴² Another commenter stated that it is concerned that the proposal has the potential for “regulatory arbitrage,” specifically that IntelligentCross would leverage the ADF to gain trade-through protection for its displayed quotes, and therefore gain access to a share of SIP revenues, without undertaking the obligations associated with registration as a national securities exchange. *See* Nasdaq Letter at 2. The commenter is incorrect in this regard; IntelligentCross will not be sharing in SIP revenues through its display of quotations through the ADF, which should assuage the commenter’s concerns.