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January 17, 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”) in response to 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>2</sup> While some of our members have recently had productive discussions with the staff at IntelligentCross, we feel that overall the Proposal lacks the level of detail necessary for the Commission to approve it.

**Not all less than one millisecond intentional delays are de minimis.** FIA PTG disagrees with FINRA’s determination that IntelligentCross has provided sufficient information about its intentionally delayed matching process to demonstrate it complies with Rule 611 of Regulation NMS. Rule 611 provides for price protection for automated quotations that, among other things, can be executed “immediately and automatically” against an incoming immediate-or-cancel (“IOC”) order. The Commission noted in its Interpretation Regarding Automated Quotations Under Regulation NMS that “[a]t this time, the Commission is not adopting the proposed guidance under this interpretation that delays of less than one millisecond are *de minimis*. The Commission

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

believes that, in light of the evolving nature of technology and the markets, and the need to assess the impact of intentional access delays on the markets, establishing a bright line *de minimis* threshold is not appropriate at this time.”<sup>3</sup> While subsequent guidance issued by Commission staff purports to establish the same bright line threshold of one millisecond that was explicitly rejected by the Commission, FIA PTG believes the Commission staff has no authority to depart from the Commission’s position in the Interpretation.

Since the Proposal assumes that any delay under a millisecond is *de minimis*, and lacks basic information, such as whether the speed bump is symmetric or asymmetric and how it operates in practice, the filing does not determine whether it meets the *de minimis* standard imposed in the Interpretation.<sup>4</sup>

**There is currently no process for ongoing operation of non-exchange venues with protected quotes with intentional access delays.** The Interpretation contemplates a clear articulation of the purpose, operation, and application of any intentional delay and how it is consistent with the Act, as well as requiring that any intentional delay be fully described in a written rule of the exchange, which in turn must be filed with the Commission and published for notice and comment. Without the prescribed exchange notice and comment process required in connection with changes to operations, how will this be managed at IntelligentCross and the ADF?

**The proposed implementation period is too short.** While FIA PTG believes strongly that this filing should not be approved, if the Commission approves the Proposal, the effective date of the proposed rule change will be the date of the Commission’s approval. FIA PTG believes this is unworkable. Market participants must have sufficient time to establish direct connectivity to IntelligentCross and certify with them, or make other connectivity arrangements. In addition, participants will need to update internal systems which will now need to recognize a new "protected venue" and route to it when required. We suggest an implementation period of no less than 120 days.

For these reasons, FIA PTG recommends the Commission disapprove this Proposal until sufficient details are provided, questions are answered, and reasonable and fair access has been ensured.

If you have any questions, please do not hesitate to contact Joanna Mallers at [jmallers@fia.org](mailto:jmallers@fia.org).

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<sup>3</sup> [Commission Interpretation Regarding Automated Quotations Under Regulation NMS](#), Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785, 40792 (June 23, 2016) (the “Interpretation”).

<sup>4</sup> For example, the Proposal details that a material percentage of potential matches are not executed, meaning displayed quotes are not successfully accessed, including due to situations where (i) the resting order is canceled after an incoming order reaches IntelligentCross or (ii) if the NBBO has moved between the time the order is received and the next match event.

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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