



# IMPERATIVE EXECUTION

October 29, 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 the Securities and Exchange Commission's "Order Scheduling Filing of Statements on Review" ("Order")<sup>1</sup> and earlier Commission stay of an approval order ("Approval Order Stay")<sup>2</sup> relating to the FINRA proposed rule change to add the IntelligentCross ATS ("IntelligentCross")<sup>3</sup> as a new entrant to FINRA's Alternative Display Facility ("ADF").

IntelligentCross has the utmost respect for the work of the Commission and its staff, which has facilitated the continued evolution and success of the US equities markets and, which in turn, has allowed innovative trading firms such as IntelligentCross to become an important part of the national market system. However, in this case, the actions taken (and delays caused) by the Commission through the Approval Order Stay and the current Order are disappointing and stand in sharp contrast to the objectives of creating efficient, competitive and orderly markets.

Specifically, the Approval Order Stay and Order mean that IntelligentCross is currently delayed, indefinitely and without any explanation or timeframe for Commission action, from moving forward with providing more displayed liquidity to the public markets – a goal long espoused by the Commission – even though the Commission on August 24, 2023 approved, pursuant to delegated authority to the staff of the Division of Trading and Markets, the proposed rule change on the merits ("Approval Order").<sup>4</sup> As discussed further below, the Approval Order Stay and Order contravene both Congress' intent and the "letter of the law" when it set procedures and specific deadlines associated with SRO rule filings under the Dodd-Frank Act<sup>5</sup> and also harms investors by, among other things, allowing firms to avoid accessing the additional liquidity that will be provided by IntelligentCross via the ADF.

It also is unclear why an additional 30-day comment period, under which this letter is being filed, is necessary when the public has had more than ample time under the deadlines dictated by the Dodd-Frank

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<sup>1</sup> Order Scheduling Filing of Statements on Review, SEC Release No. 34-98642 (September 29, 2023).

<sup>2</sup> Letter from J. Matthew DeLesDernier, Deputy Secretary, Securities and Exchange Commission, to Faisal Sheikh, Assistant General Counsel, FINRA, August 25, 2023.

<sup>3</sup> 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>.

<sup>4</sup> Order Approving Proposed Rule Change Relating to Alternative Display Facility New Entrant, SEC Release No. 34-98212 (August 24, 2023), 88 FR 59958 (August 30, 2023).

<sup>5</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Act (*i.e.*, a full 240 days) to raise any questions or concerns regarding the proposed rule change (questions that were addressed and concerns that were rejected by Commission staff in the Approval Order), as have SEC Commissioners and staff during the same timeframe. Nevertheless, without any explanation and in what we believe is a violation of the 240-day deadline imposed by Congress, the Commission has determined that a further comment period is necessary.

As we have emphasized throughout this process, allowing for innovation and the introduction of competition in the displayed markets, as well as increasing access to displayed liquidity and better priced quotes to the benefit of all market participants, is what the national market system was designed to facilitate and provide, and what the Commission is charged with striving towards. The goal of the national market system is not to impede innovation or suppress the introduction of competition to protect the economic interests of one group of market participants to the disadvantage of another. It is certainly not to insulate the current exchange status quo. Unfortunately, the Commission's stay and subsequent delay takes us further away from the former and closer to the latter.

We therefore urge the Commission to promptly take the actions necessary to remove the stay, itself a step that contravenes requirements established by Congress under the Dodd-Frank Act, and uphold the Approval Order that found that the proposed rule change met Exchange Act requirements so that IntelligentCross can move forward, as permitted by the Approval Order and mandated under statutory requirements, and provide all investors and market participants with the benefits of our additional displayed liquidity.

## **I. Timeline Associated with Consideration of Proposed Rule Change**

To fully understand the significance of the Approval Order Stay as well as questions surrounding the legitimacy thereof, it is important to understand the history surrounding the Commission's extensive and lengthy consideration of the proposed rule change.

Prior to publication for public comment in the Federal Register in December 2022, the proposed rule change was the subject of extensive discussion among IntelligentCross, FINRA and the Commission for almost a full year. As noted above, the proposed rule change was then subject to the full 240 days of consideration permitted by the Dodd-Frank Act,<sup>6</sup> and the findings in the Approval Order reflects months of efforts by Commission staff and FINRA to assess IntelligentCross' regulatory compatibility as a participant in the ADF, and with Regulation NMS and other applicable regulatory requirements.

Following is the complete timeline of the formal process relating to the consideration of the proposal -not including the significant time of discussion of the proposal and IntelligentCross' operations with FINRA and the Commission prior to the filing of the proposed rule change.

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<sup>6</sup> Significantly, Section 916 of the Dodd-Frank Act amended 19(b) of the Exchange Act such that:

- Within 45 days of the publication of a proposed rule change in the Federal Register, the Commission shall either issue an order approving or disapproving the proposed rule change, or institute proceedings to determine whether such proposed rule change shall be disapproved;
- The Commission may extend that 45-day time period by an additional 45 days if either the Commission determines that a longer period is appropriate and the Commission publishes the reasons for such determination, or the SRO consents to the longer period;
- If the Commission institutes proceedings to determine whether the proposed rule change shall be disapproved, the Commission must issue an order approving or disapproving of the proposed rule change within 180 days after the proposed rule change was published in the Federal Register;
- The Commission may extend that 180-day limit by "not more than 60 days" if either the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the SRO consents to the longer period; and
- The proposed rule change is deemed approved by the Commission if the Commission does not approve or disapprove it within the above time periods.

- On December 20, 2022, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, a proposed rule change to add IntelligentCross as a new entrant to the ADF.
- The proposed rule change was published for comment in the Federal Register on December 27, 2022.<sup>7</sup>
- On February 9, 2023, the Commission extended the time period within which to approve, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 27, 2023.<sup>8</sup>
- On March 24, 2023, the Commission initiated proceedings under Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule change.<sup>9</sup>
- On June 21, 2023, the Commission extended the time period for Commission action on the proposed rule change to August 24, 2023.<sup>10</sup>

As discussed below, over the course of these eight months, various market participants submitted comments in response to the proposed rule change, to which IntelligentCross and FINRA responded and the Commission considered in issuing the Approval Order. Throughout this process, IntelligentCross welcomed the opportunity to provide information to assist in explaining how IntelligentCross operates; why we believe the addition of our 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.<sup>11</sup>

On August 24, 2023, Commission staff, exercising delegated authority from the Commission, stated in the Approval Order that the proposed rule change had met all of the requirements for approval. This Approval Order was issued on the last permissible date allowed under requirements set forth in Section 19(b) of the Exchange Act as adopted under the Dodd-Frank Act in 2010. Yet, on August 25, 2023, one day after publication of the Approval Order, the Commission stayed the order “until the Commission orders otherwise,” with no explanation for issuing the stay.<sup>12</sup>

Finally, over a month after the Approval Order Stay was published, during which time there had been no action by the Commission, on September 29, 2023, the Commission issued the Order which provided an additional thirty-day comment period for the filing of any statement regarding the approval and reiterated

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<sup>7</sup> Notice of Filing of a Proposed Rule Change Relating to Alternative Display Facility New Entrant, SEC Release No. 34-96550 (December 20, 2022), 87 FR 79401 (December 27, 2022).

<sup>8</sup> Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change Relating to Alternative Display Facility New Entrant, SEC Release No. 34-96864 (February 9, 2023), 88 FR 9945 (February 15, 2023).

<sup>9</sup> Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Alternative Display Facility New Entrant, SEC Release No. 34-97195; (March 24, 2023), 88 FR 19173 (March 30, 2023).

<sup>10</sup> Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Alternative Display Facility New Entrant, SEC Release No. 34-97784, (June 21, 2023), 88 FR 41710 (June 27, 2023).

<sup>11</sup> See Letter from Ari Burstein, General Counsel, Imperative Execution, to Brendan Loonam, Senior Director, FINRA, dated December 15, 2022, Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 16, 2023, Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated July 14, 2023, and Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated August 18, 2023.

<sup>12</sup> Specifically, on August 25, 2023, the Deputy Secretary of the Commission notified FINRA that, pursuant to Commission Rule of Practice 431, the Commission would review the Division of Trading and Markets’ (“Division”) action pursuant to delegated authority, and that the Division’s action pursuant to delegated authority was stayed.

that the Approval Order “shall remain stayed pending further order of the Commission” with no timeframe for further Commission action.

## II. The Commission Stay Order and Subsequent Order Contradicts the Dodd-Frank Act

Congress, in Section 916 of the Dodd-Frank Act, amended Section 19(b) of the Exchange Act to impose strict parameters on the Commission’s process of approving or disapproving SRO proposed rule changes. Section 916 “responds to industry concerns that the SEC has not always approved (or disapproved) proposed rules in a timely manner.”<sup>13</sup> To that end, Section 19(b) provides that an SRO proposed rule change is deemed approved if the Commission fails to approve or disapprove of proposed rule changes within, at most, 240 days of the publication of a proposed SRO rule change in the Federal Register.

The Approval Order was issued 240 days after the proposed rule change was published in the Federal Register, *i.e.*, the last possible day to take action pursuant to Section 19(b).<sup>14</sup> One day after the Approval Order, and therefore outside the timeframe enacted by the Dodd-Frank Act, the Commission indefinitely stayed the Approval Order “until the Commission orders otherwise.”

### *The Commission’s Actions Contravene Both the Provisions of the Dodd Frank Act and Congress’ Unmistakable Intent*

Congress was very clear in its reasoning for its revisions to Section 19(b). In the Senate Banking Committee report on the Dodd-Frank Act, the Committee stated that “[t]he Committee recognizes that in the modern securities markets it is important that the SEC operate efficiently and responsively. The Committee has heard concerns about current SEC processes for action on rule changes by exchanges and other self-regulatory organizations. **The Committee expects that the changes will encourage the SEC to employ a more transparent and rapid process for consideration of rule changes**” (emphasis added).<sup>15</sup>

The Committee report further states that, in a letter in strong support of these provisions, several exchanges noted that “[a]lthough the SEC has made progress in increasing the number of rule proposals that may be submitted for immediate effectiveness, the process that rule proposals that are not subject to immediate effectiveness must undergo remains a point of frustration for SROs. **The current process enables the SEC to use internal interpretations to avoid what should be reasonable timelines to move rule filings toward a determination of approval or denial**” (emphasis added).<sup>16</sup>

Importantly, the Commission itself recognized the finality of the process established under the Dodd-Frank Act. In the Commission’s final rule release relating to the delegation of authority to the Director of the Division of Trading and Markets after the Dodd-Frank Act,<sup>17</sup> the Commission explained that the final rule

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<sup>13</sup> See Congressional Research Service Report for Congress, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title IX, Investor Protection* (November 24, 2010) at p.2.

<sup>14</sup> The Commission delineated the timeframe specific to the proposed rule change in the Approval Order: “Section 19(b)(2) of the Act provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the Federal Register on December 27, 2022. June 25, 2023 is 180 days from that date, and August 24, 2023 is an additional 60 days from that date.”

<sup>15</sup> See 111<sup>th</sup> Congress Report, Senate 2d Session 111-176, *The Restoring American Financial Stability Act of 2010*, April 30, 2010, Pub. L. No. 111-203, H.R. 4173 (June 29, 2010) at p.106.

<sup>16</sup> *Id.*

<sup>17</sup> SEC Release No. 34-63049 (*Delegation of Authority to the Director of the Division of Trading and Markets*), at p.3-4.

amendments to Rule 30-3 authorize the Director of the Division to, among other things: “(6) pursuant to Section 19(b)(2)(B) of the Exchange Act, 15 U.S.C. 78s(b)(2)(B), to extend for a period not exceeding 240 days from the date of publication of notice of the filing of a proposed rule change the period **during which the Commission must conclude proceedings to determine whether to disapprove the proposal ...**” (emphasis added). The final rule release further states that “[t]he Commission anticipates that the delegation of authority will help facilitate timely compliance with the amendments to Section 19 of the Exchange Act **and the new statutory deadlines prescribed therein**” (emphasis added).<sup>18</sup>

Unfortunately, the Approval Order Stay and the delays that have followed ignore the finality of the process that was mandated by Congress and recognized by the Commission in adopting changes to its own approval process.<sup>19</sup>

### ***The Commission Must Lift the Stay and Uphold the Approval Order***

The Approval Order Stay issued pursuant to Rule 431(e) of the Commission’s Rules of Practice conflicts with Section 916 of the Dodd-Frank Act. Under the Commission’s own Rules of Practice, an approval pursuant to delegated authority had “immediate effect and [was] deemed the action of the Commission.”<sup>20</sup> The 240-day timeframe under Section 19(b) elapsed, and no further order was issued by the Commission within that timeframe. The Approval Order thus stands as the Commission’s last and final order within the 240-day period. Alternatively, if the Division’s order for some reason is argued to not constitute Commission approval, then the proposed rule change must be deemed approved under the Dodd-Frank Act because the Commission did not approve or disapprove the proposed rule change within the 240-day timeframe. Either way, the proposed rule change stands approved under the statutory regime that Congress mandated for the Commission.

Nevertheless, the Commission has continued to maintain its stay of the Approval Order. We believe the Commission’s Rules of Practice do not and cannot supersede and circumvent the Commission’s statutory obligations under the Exchange Act and the time limitations imposed by Congress in Section 19(b). Indeed, Commission Rule of Practice 103 itself states that “[i]n any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.”<sup>21</sup>

The Commission cannot, in effect, subvert the review period set by Congress through the artifice of a stay. If that were permissible, the Commission could stay every action undertaken pursuant to delegated authority, and the time limitations imposed on the Commission by the Dodd-Frank Act would be rendered hollow. The Commission could repeat this process any time it did not wish for a proposed rule change to become effective in the absence of a disapproval.

The Commission points to no new evidence or concerns in the record and the Approval Order indicates that the proposal was thoroughly vetted and deemed to have met the standards set forth in the Exchange Act. We believe the Approval Order Stay therefore represents, regrettably, a plain violation of a Congressional mandate. Imperative Execution urges that the Commission promptly vacate its Approval

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<sup>18</sup> Id., at p.4-5.

<sup>19</sup> Further, in the Commission’s final rule adding to its Rules of Practice to implement the mandates under the Dodd-Frank Act, the Commission noted that the new rules incorporate three existing Rules of Practice by reference, significantly, Rule 103 (Construction of Rules) which specifies that the Rules of Practice “shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.” SEC Release No. 34-63723.

<sup>20</sup> 17 C.F.R. § 201.431(e).

<sup>21</sup> 17 C.F.R. § 201.103(b).

Order Stay and confirm that the proposed rule change stands approved and/or deemed approved as of August 24, 2023.

### III. The Commission Stay and Resulting Delay is Harmful to Investors

Arguably the most significant consequence of the Commission's stay, and the indefinite delay that has ensued as a result, is the harm to investors. This is both disappointing and a curious outcome for a Commission that otherwise looks very attentively toward continuously driving better outcomes for investors.

As discussed above, and addressed thoroughly throughout the rulemaking record for the proposed rule change, adding IntelligentCross' displayed liquidity to the public quote as a protected quotation will make these quotes available to all investors 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. Bringing the IntelligentCross quote to the public quote also is consistent with the objectives of creating a more competitive marketplace for investors, as well as incentivizing innovation and quality liquidity to ensure investors receive best execution on their orders. To this end, the stay and resulting delay is contrary to the Commission's mandate to protect investors and is a basic compromise of market efficiency.

In our previous letters, we explained why IntelligentCross is seeking a protected quote for our displayed liquidity; reasons that oftentimes are seemingly ignored by certain market participants. We will not reiterate all these reasons as they are discussed at length in our previous letters and in the Approval Order itself. However, given the indefinite timeframe for any Commission action related to this inappropriate stay, and therefore the uncertainty for investors (and other market participants) as to when IntelligentCross' displayed liquidity will be a protected quote, it is worth restating some of the relevant facts, updated as of the date of this submission:

- ASPEN Fee/Fee publishes displayed prices from round lot or larger orders in over 6,510 securities daily and improves the NBBO over 4.5 million times per day (for orders of round-lot size or larger on arrival).<sup>22</sup>
- Year to date through October 27, 2023, approximately 95 million shares, valued at \$5.9 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.
- Year to date through October 27, 2023, IntelligentCross quotes (of round lot or larger) were "traded-through" 470 thousand times per day on average (round-lot size or larger), meaning those trades missed the best displayed prices that were available.

The Commission, by delaying further the ability for IntelligentCross to bring our additional displayed liquidity to the public quote through the ADF, and to display our quotes as part of the SIP, has continued to perpetuate the ability for market participants to effectively "ignore" the IntelligentCross quote, even when it is the best displayed quote in the market. It also perpetuates a major, yet preventable, opportunity cost to a wide range of investors who do not have visibility to those quotations under the current system, and plainly undermines the goal of ensuring investors are getting best execution for their orders.

Our average daily market share also has continued to grow since our most recent letter due to the value proposition that the IntelligentCross matching process brings to the markets, and the attention an increasing number of market participants are paying to IntelligentCross in achieving best execution for their customers. As of the date of this submission, IntelligentCross reached its highest daily market share

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<sup>22</sup> Based on platform statistics year to date through October 27, 2023.

versus total consolidated volume on October 27, 2023 at 182bps and has averaged over 133bps daily year to date through October 27, 2023.<sup>23</sup> IntelligentCross continues to be consistently listed among the top two in total shares traded by ATSS of NMS Tier 1 and Tier 2 stocks in the FINRA ATS weekly statistics,<sup>24</sup> averaging \$7.3 billion notional traded per day single counted.<sup>25</sup>

As long as the stay remains in place, IntelligentCross is unable to begin the process of, and undertaking the steps necessary for, implementing its entry to the ADF and will be further delayed from providing this important service more broadly to investors, as recognized by the findings of the Commission's staff in the Approval Order. In turn, the harm to investors will continue to be compounded, and the opportunities for investors to access better priced liquidity will continue to be lost.

#### **IV. IntelligentCross Protected Quote Was Approved by the Commission on the Merits**

The Approval Order sets forth a lengthy discussion of the Commission's findings. Significantly, the Approval Order states that "[a]fter careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association" and notes that:

- The proposed rule change is consistent with the provisions of the Exchange Act which requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest;
- The proposed rule change is consistent with Rule 610(b) of Regulation NMS, which requires that IntelligentCross provide a level and cost of access to its quotations that is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility in that stock, and not impose unfairly discriminatory terms that would prevent or inhibit any person from obtaining efficient access to such quotations; and
- IntelligentCross would operate as an automated trading center, in compliance with Regulation NMS, such that its quotations would be "automated," and thus "protected" under Regulation NMS.

In making these determinations, the Commission, in the Approval Order, extensively and exhaustively addressed the various objections and concerns raised by commenters in response to the proposed rule change, and the Approval Order rejected each of these objections and concerns as without merit.

Regarding objections and concerns on the definition of automated quotation and protected quote status, the Commission found that:

- IntelligentCross' delayed matching functionality does not preclude IntelligentCross from maintaining an automated quotation;
- The intentional delay in IntelligentCross' system will not frustrate the purposes of Regulation NMS by impairing fair and efficient access to IntelligentCross' quotations;
- Other concerns related to the IntelligentCross matching process and the qualification of its displayed quotes as a protected quotation have been adequately addressed such that the proposed rule change is consistent with the requirements of the Exchange Act;
- The regulatory obligations associated with protected quotations under Regulation NMS do not provide a guarantee of an execution, which the Commission noted that commenters appear to suppose when highlighting IntelligentCross' non-match events or cancellation rates;

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<sup>23</sup> Represents the combined share of the IntelligentCross ASPEN and Midpoint books matched shares, single counted.

<sup>24</sup> See <https://otctransparency.finra.org/otctransparency/AtsData>

<sup>25</sup> Based on platform statistics year to date through October 27, 2023.

- The length of IntelligentCross' delay or its randomized nature would not frustrate the purposes of Regulation NMS by impairing fair and efficient access to IntelligentCross' displayed quotations;
- IntelligentCross has addressed transparency concerns surrounding its matching process such that the information provided will promote fair and efficient access to its quotations;
- The Commission is unpersuaded by comments regarding the difficulties for market participants to adapt to an IntelligentCross protected quote; and
- With respect to ISOs, market participants can satisfy their obligations under Regulation NMS by simply routing ISOs to IntelligentCross' protected quotations, as necessary.

Regarding compliance with Rule 610 of Regulation NMS and the process for making changes to IntelligentCross' fees or operations, the Commission found that:

- The fees, and policies and procedures, governing access to protected quotations displayed by IntelligentCross would provide market participants with fair and efficient access and are not unfairly discriminatory; and
- Commenter concerns regarding the regulatory process for proposed changes to IntelligentCross' operations and fees have been adequately addressed through filing of material changes as proposed rule changes with the Commission.

Finally, regarding the time to implementation of IntelligentCross' quotation as a protected quote and the readiness of ADF technology, the Commission stated that:

- It would be reasonable to require that industry participants begin treating IntelligentCross' quotes as protected quotations within 90 days after the date of the Approval Order, or such later date as IntelligentCross begins operation as an ADF participant; and
- FINRA has demonstrated that the ADF technology infrastructure will be consistent with current speed and capacity standards for processing and disseminating IntelligentCross' quotations.

We appreciate the Commission staff for its diligence in examining all the issues raised by commenters relating to the proposed rule change. The Approval Order reflects the very careful scrutiny to which the proposal was subject and articulates how the proposal very clearly met the statutory standard of review under the Exchange Act. There is a clear standard for review of such proposals, and IntelligentCross more than met that standard.

Put simply, the Commission does not get to do a "do over" if it decides after 240 days of consideration under the Dodd-Frank Act to, in effect, restart the process, consider the same arguments once again, and obtain further (and essentially duplicative) comment that has already been thoroughly vetted. That there is no definitive timeframe associated with this process and therefore no timeline for making any final determination is a regrettable violation of a Congressional mandate.

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Ms. Vanessa Countryman

October 29, 2023

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For the reasons discussed above, we urge the Commission to promptly vacate the Approval Order Stay so that IntelligentCross can move forward, as permitted by the Approval Order and in keeping with statutory requirements, with the implementation of our participation as an ADF participant. Please do not hesitate to contact the undersigned at [ari.burstein@imperativex.com](mailto:ari.burstein@imperativex.com) should you have any additional questions regarding this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ari Burstein", with a long horizontal flourish extending to the right.

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  
Haixiang Zhu, Director, Division of Trading and Markets