



**Robert A. McNamee**

Vice President and Associate General Counsel  
Office of General Counsel

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December 6, 2024

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

**Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

**Re: File No. SR-FINRA-2022-032 – Proposed Rule Change Relating to  
Alternative Display Facility Entrant**

Dear Ms. Countryman:

As a courtesy to commenters, attached is Partial Amendment No. 1 to the above-referenced proposed rule change that was filed with the Securities and Exchange Commission on December 3, 2024. If you have any questions, please contact me at (202) 728-8012.

Sincerely,

/s/ Robert A. McNamee

Robert A. McNamee  
Vice President and Associate General Counsel  
FINRA

**Attachment**

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 15		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2022 - * 032 Amendment No. (req. for Amendments *) 1	
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input type="checkbox"/>		Amendment * <input checked="" type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>	
				Section 19(b)(3)(B) * <input type="checkbox"/>	
				Rule	
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Section 806(e)(2) * <input type="checkbox"/>		
			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div></div>					
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Faisal Last Name * Sheikh Title * Assistant General Counsel E-mail * faisal.sheikh@finra.org Telephone * (202) 728-8379 Fax					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 12/03/2024 (Title *) By Robert McNamee Vice President and Associate General Counsel (Name *) NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. Robert McNamee Digitally signed by Robert McNamee Date: 2024.12.03 10:54:34 -05'00'					

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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FINRA-2022-032 Partial A-1.docx  
FINRA-2022-032 Partial A-1 Exhibit 3.0

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On December 16, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) proposed rule change SR-FINRA-2022-032, pursuant to which FINRA proposed to add IntelligentCross alternative trading system (“ATS”) (“IntelligentCross”) as a new entrant to the Alternative Display Facility (“ADF”). The proposed rule change would not make any changes to the text of FINRA rules.

The Commission published the proposed rule change for public comment in the Federal Register on December 27, 2022.<sup>1</sup> On February 9, 2023, the Commission designated a longer period for action on the proposed rule change.<sup>2</sup> The Commission received eight comment letters on the proposed rule change.<sup>3</sup> On March 13, 2023,

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<sup>1</sup> See Securities Exchange Act Release No. 96550 (December 20, 2022), 87 FR 79401 (December 27, 2022) (Notice of Filing of File No. SR-FINRA-2022-032) (“Proposal”). As discussed in the Proposal, IntelligentCross prepared for FINRA a summary of its policies and procedures regarding access to quotations in an NMS stock displayed on the ADF, and a summary of its proposed fees for such access. See Letter from Ari Burstein, General Counsel, Imperative Execution, to Brendan Loonam, Senior Director – Business Services, Transparency Services Department, FINRA, dated December 15, 2022 (“IntelligentCross Summary”). The IntelligentCross Summary is available on FINRA’s website as Exhibit 3 to the proposed rule change, available at <https://www.finra.org/sites/default/files/2022-12/sr-finra-2022-032.pdf>.

<sup>2</sup> See Securities Exchange Act Release No. 96864 (February 9, 2023), 88 FR 9945 (February 15, 2023) (Notice of Designation of a Longer Period for Commission Action on File No. SR-FINRA-2022-032).

<sup>3</sup> See Letter from Tyler Gellasch, President and CEO, Healthy Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated January 13, 2023; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa A. Countryman, Secretary, SEC, dated January 17, 2023; Letter from Brett Kitt, Associate Vice President & Principal Associate General Counsel, Nasdaq, Inc., to Vanessa A. Countryman, Secretary, SEC, dated January 17, 2023; Letter from Nataliya Bershova, MD, Head of Execution Research, Sanford C. Bernstein & Co., LLC, to Vanessa A. Countryman, Secretary, SEC, dated January 17, 2023; Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa A. Countryman, Secretary, SEC, dated January 23, 2023; Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated February 8, 2023; Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa A. Countryman, Secretary, SEC, dated February 16, 2023; and Letter

FINRA submitted a response letter to the comments received.<sup>4</sup> On March 24, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> The Commission received four additional comment letters on the proposed rule change.<sup>6</sup> On June 21, 2023, the Commission designated a longer period for action on proceedings to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission subsequently received three comment letters on the proposed rule change.<sup>8</sup> On August 22, 2023, FINRA submitted a second response letter to the additional comments received.<sup>9</sup> On August 24, 2023, the SEC's Division of Trading and Markets, acting pursuant to delegated authority, issued an order approving

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from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa A. Countryman, Secretary, SEC, dated March 8, 2023.

<sup>4</sup> See Letter from Faisal Sheikh, Assistant General Counsel, FINRA, to Vanessa A. Countryman, Secretary, SEC, dated March 13, 2023.

<sup>5</sup> See Securities Exchange Act Release No. 97195 (March 24, 2023), 88 FR 19173 (March 30, 2023) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-032).

<sup>6</sup> See Letter from Tyler Gellasch, President and CEO, Healthy Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated March 14, 2023; Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa A. Countryman, Secretary, SEC, dated April 14, 2023; Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa A. Countryman, Secretary, SEC, dated May 4, 2023; and Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa A. Countryman, Secretary, SEC, dated July 14, 2023.

<sup>7</sup> See Securities Exchange Act Release No. 97784 (June 21, 2023), 88 FR 41710 (June 27, 2023) (Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-032).

<sup>8</sup> See Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa A. Countryman, Secretary, SEC, dated August 3, 2023; Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa A. Countryman, Secretary, SEC, dated August 4, 2023; and Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa A. Countryman, Secretary, SEC, dated August 18, 2023.

<sup>9</sup> See Letter from Faisal Sheikh, Assistant General Counsel, FINRA, to Vanessa A. Countryman, Secretary, SEC, dated August 22, 2023.

the proposed rule change.<sup>10</sup> On August 25, 2023, the Commission sent a letter notifying FINRA that, pursuant to Rule 431 of the Commission's Rules of Practice, the Commission will review the delegated action and, pursuant to Rule 431(e), the approval order is stayed until the Commission orders otherwise.<sup>11</sup> On September 29, 2023, the Commission issued an order scheduling filing of statements on review of the approval order, with statements due on or before October 29, 2023.<sup>12</sup> The Commission received eight additional statements on the proposed rule change.<sup>13</sup> The proposed rule change is currently pending Commission review.

On November 12, 2024, IntelligentCross submitted to FINRA a letter supplementing the IntelligentCross Summary, specifically discussing the display capabilities of the IntelligentCross ASPEN Fee/Fee matching model ("ASPEN Fee/Fee")

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<sup>10</sup> See Securities Exchange Act Release No. 98212 (August 24, 2023), 88 FR 59958 (August 30, 2023) (Order Approving File No. SR-FINRA-2022-032).

<sup>11</sup> See Letter from J. Matthew DeLesDernier, Deputy Secretary, SEC, to Faisal Sheikh, Assistant General Counsel, FINRA, dated August 25, 2023.

<sup>12</sup> See Securities Exchange Act Release No. 98642 (September 29, 2023) (In the Matter of Financial Industry Regulatory Authority, Inc., For an Order Granting the Approval of Proposed Rule Change Relating to Alternative Display Facility New Entrant (File No. SR-FINRA-2022-032), Order Scheduling Filing of Statements on Review).

<sup>13</sup> See Letter from Edgar T. Snodgrass, to Vanessa A. Countryman, Secretary, SEC, dated September 14, 2023; Letter from Tyler Gellasch, President and CEO, Healthy Markets Association, to Gary Gensler, Chair, SEC, dated October 27, 2023; Citadel Securities, LLC's Statement in Opposition to Order Approving Proposed Rule Change, dated October 29, 2023; Letter from Ari Burstein, General Counsel, Imperative Execution, to Vanessa A. Countryman, Secretary, SEC, dated October 29, 2023; Letter from Stephen W. Hall, Legal Director and Securities Specialist & Scott Farnin, Legal Counsel, Better Markets, Inc., to Vanessa A. Countryman, Secretary, SEC, dated October 30, 2023; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa A. Countryman, Secretary, SEC, dated October 31, 2023; Letter from Tyler Gellasch, President and CEO, Healthy Markets Association & Christopher Iacovella, President & CEO, American Securities Association, to Gary Gensler, Chair, SEC, dated January 5, 2024; and Letter from R. T. Leuchtkafer, to Vanessa A. Countryman, Secretary, SEC, dated March 19, 2024.

that would be providing quotes to the ADF (the “Supplemental Summary”).<sup>14</sup> As discussed in the Supplemental Summary, IntelligentCross has implemented certain changes to the match priority criteria impacting the ASPEN Fee/Fee matching model to move to a price/display/time priority regime throughout the matching process. IntelligentCross represents that this change simplifies the matching process, brings it more in line with trading venues with displayed liquidity and protected quotes, responds to issues raised by certain commenters relating to, among other things, the IntelligentCross “price-sliding mechanism” and the accessibility of the IntelligentCross displayed quote, and addresses any uncertainty and lack of clarity over the IntelligentCross matching priority criteria, as described in the IntelligentCross Summary and the Proposal. IntelligentCross has represented in the Supplemental Summary that ASPEN Fee/Fee will continue to operate as described in the IntelligentCross Summary and the Proposal, except for the modifications to the match priority criteria described in the Supplemental Summary.

A copy of the Supplemental Summary is attached as Exhibit 3 to this Partial Amendment No. 1. With this Partial Amendment No. 1, FINRA is amending the description of IntelligentCross’ operations in the Proposal to reflect the changes described in the Supplemental Summary provided by IntelligentCross.<sup>15</sup>

#### 19b-4 and Exhibit 1 Changes

1. FINRA proposes to add the following new paragraphs to the purpose section of the Proposal immediately prior to the Regulation NMS Requirements for Protected Quotations section beginning on page 11 of the 19b-4 and page 31 of the Exhibit 1.

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<sup>14</sup> See Letter from Ari Burstein, General Counsel, Imperative Execution, to Brendan Loonam, Senior Director – Business Services, Transparency Services Department, FINRA, dated November 12, 2024. As discussed in the Proposal, IntelligentCross ASPEN operates three separate limit order books with optional display capability distinguished by different fee structures. The ASPEN Fee/Fee limit order book would be the only order book displaying orders on the ADF.

<sup>15</sup> In the Proposal, FINRA addressed the application of Regulation NMS requirements for protected quotations to ASPEN Fee/Fee, as well as the level of cost and access to ASPEN Fee/Fee quotations. See Proposal, 87 FR 79401, 79402-04. As noted above, IntelligentCross has represented that all other aspects of ASPEN Fee/Fee remain the same as described in the Proposal, other than the modified match priority criteria described in the Supplemental Summary. As such, FINRA believes that the modifications to IntelligentCross’ operations described in the Supplemental Summary do not affect FINRA’s analysis of these issues as discussed in the Proposal.

On November 12, 2024, IntelligentCross submitted to FINRA a letter supplementing its original summary of its policies and procedures regarding access to quotations in an NMS stock displayed on the ADF, attached as Exhibit 3, specifically discussing the display capabilities of ASPEN Fee/Fee that would be providing quotes to the ADF (the “Supplemental Summary”).<sup>16</sup> As set forth in its Supplemental Summary, IntelligentCross represented that it has modified the match priority criteria impacting the ASPEN Fee/Fee matching model to implement a price/display/time priority regime throughout the matching process, *i.e.*, before and after the ASPEN Fee/Fee book enters into a matchable state. FINRA understands that these changes were effective for all symbols quoted on ASPEN Fee/Fee as of October 30, 2024. IntelligentCross has represented in the Supplemental Summary that ASPEN Fee/Fee will continue to operate as otherwise described herein, except for the modifications to the match priority criteria described in the Supplemental Summary.

Specifically, IntelligentCross represents that, under the previous match priority criteria for ASPEN Fee/Fee, prior to entering into a matchable state, ASPEN Fee/Fee gathered orders in its system and such orders’ match priority was based on price, display type, and the time at which such orders were received relative to other orders. However, after ASPEN Fee/Fee entered into a matchable state, the match priority for any orders that arrived between that time and before the match event was based on the time of their receipt by ASPEN Fee/Fee, *i.e.*, sequentially in order of arrival, regardless of whether an order that arrived later was priced more aggressively. Under the revised match priority criteria, orders eligible for matching are matched based on price, display type (*i.e.*, with respect to ASPEN Fee/Fee, at each price level, displayed orders will have priority over non-displayed orders), and the time at which such orders are received relative to other orders throughout the matching process, *i.e.*, both before and after ASPEN Fee/Fee enters into a matchable state.

IntelligentCross represents that this change brings the ASPEN Fee/Fee matching process more in line with other price-time trading venues with displayed liquidity and protected quotes. IntelligentCross states that this modification also addresses concerns raised by commenters relating to the IntelligentCross “price-sliding mechanism” and the resulting executions that may occur; specifically, concerns regarding a scenario where an IntelligentCross displayed order would lock displayed contra-side interest on the ATS and be displayed one minimum price variation less aggressive than the price of the

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<sup>16</sup> See Letter from Ari Burstein, General Counsel, Imperative Execution, to Brendan Loonam, Senior Director – Business Services, Transparency Services Department, FINRA, dated November 12, 2024. As discussed above, IntelligentCross ASPEN operates three separate limit order books with optional display capability distinguished by different fee structures. The ASPEN Fee/Fee limit order book would be the only order book displaying orders on the ADF.

displayed contra-side interest on the ATS.<sup>17</sup> IntelligentCross states that these commenters claimed that, due to the operation of the previous ASPEN Fee/Fee match priority criteria, the resulting IntelligentCross displayed quote (that was slid) “would be inaccessible to incoming orders.”<sup>18</sup> IntelligentCross represents that the change to the matching process eliminates such concerns. Specifically, IntelligentCross represents that under the revised match priority criteria, a more aggressively priced order will now receive an execution against the IntelligentCross displayed quote and will be price improved (whereas prior to the match priority criteria change, that order would not have matched due to its later time of arrival). IntelligentCross further states that the revised ASPEN Fee/Fee match priority criteria also further rewards displayed liquidity (and provides priority to such liquidity) throughout the matching process.

Finally, IntelligentCross states that the change clarifies the matching priority criteria described in its original summary, as summarized above, which did not clearly distinguish between the two steps in the previous match priority process (*i.e.*, what happens before and after the ASPEN Fee/Fee book enters into a matchable state). Specifically, the prior description further above stated that “for each match event time, the ASPEN Fee/Fee book retrieves the NBBO and processes all the orders that have arrived and have not been cancelled in price-time priority.” However, as discussed above, prior to the change, price-time priority was in fact only applied before the IntelligentCross book entered into a matchable state.

The Supplemental Summary includes several examples that illustrate the application of the modified match priority criteria to the ASPEN Fee/Fee matching process. These examples are summarized below.

- In example 1, assume ASPEN Fee/Fee receives a displayable 100 share day order from Subscriber A to sell XYZ stock with a limit price of \$10.00. ASPEN Fee/Fee subsequently receives a displayable 100 share day order from Subscriber B to buy XYZ stock with a limit price of \$10.00. Given that Subscriber B’s limit order would lock Subscriber A’s displayed buy order in ASPEN Fee/Fee, Subscriber B’s order will be displayed at \$9.99 or one minimum price variation less aggressive than the price of the displayed contra-side interest inside ASPEN

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<sup>17</sup> See Supplemental Summary at 2; see also Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, LLC, to Vanessa A. Countryman, Secretary, SEC, dated October 29, 2023; and Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa A. Countryman, Secretary, SEC, dated October 31, 2023.

<sup>18</sup> See Supplemental Summary at 2; see also Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, LLC, to Vanessa A. Countryman, Secretary, SEC, dated October 29, 2023.

Fee/Fee.<sup>19</sup> Following the receipt of these orders, the ASPEN Fee/Fee book enters into a matchable state, with a match event scheduled to occur in 180 microseconds. While in a matchable state and before the match event, ASPEN Fee/Fee receives a non-displayable 100 share day order from Subscriber C to sell XYZ with a limit price of \$9.99. During the next scheduled match event for Security XYZ, the ASPEN Fee/Fee matching engine determines that the NBBO is \$9.99 by \$10.00.

Prior to the change to the matching criteria described in the Supplemental Summary, in example 1 Subscriber A would have matched 100 shares with Subscriber B at \$10.00, and Subscriber C's order would not have matched with Subscriber B because the match priority criteria provided priority to Subscriber A and Subscriber B due to their earlier time of arrival (even though Subscriber C had a more aggressively priced order, because orders received after entering a matchable state were matched based on only time priority). However, after the change to the matching criteria described in the Supplemental Summary, Subscriber B will instead match 100 shares with Subscriber C at \$10.00, as Subscriber C has the more aggressively priced order, and Subscriber C will be price improved (because under the modified matching criteria, all orders will be matched based on price/display/time priority). Subscriber A's order will be eligible for the next match event.

- In example 2, assume the same facts as example 1, except that instead the order from Subscriber B was to buy 200 shares (rather than 100 shares).

Prior to the change to the matching criteria described in the Supplemental Summary, in example 2 Subscriber A would have first matched 100 shares with Subscriber B at \$10.00 for 100 shares, and Subscriber C's order would then match with Subscriber B for 100 shares because the match priority criteria provided priority to Subscriber A due to its earlier time of arrival. Under the modified match priority criteria, in the match event, Subscriber C will first match 100 shares with Subscriber B at \$10.00 and Subscriber A will then match 100 shares with Subscriber B at \$10.00.

- In example 3, assume the same facts as example 1, except that Subscriber C cancels its order prior to the match event. Under both the previous and the modified match priority criteria, in the match event, Subscriber A will match 100

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<sup>19</sup> ASPEN Fee/Fee applies a price-sliding mechanism when a displayable order received by ASPEN Fee/Fee would lock displayed contra-side interest inside ASPEN Fee/Fee. ASPEN Fee/Fee will reprice the order and display the order one minimum price variation less aggressive than the price of the displayed contra-side interest inside ASPEN Fee/Fee. This mechanism, as described in the IntelligentCross Summary and herein, has not changed.

shares with Subscriber B at \$10.00 (i.e., the modifications to the match priority criteria would not affect the outcome in this example).

- In example 4, assume the same facts as example 1, except that (i) Subscriber A's order is non-displayed, rather than displayable, and (ii) Subscriber C sell limit order is displayed, rather than non-displayed and has a limit price of \$10.00, rather than \$9.99.

Prior to the change to the matching criteria described in the Supplemental Summary, in example 4 Subscriber A would have matched 100 shares with Subscriber B at \$10.00 for 100 shares, and Subscriber C's order would not have matched with Subscriber B because the previous match priority criteria did not provide priority to displayed orders over non-displayed orders after entering a matchable state and before the match event. Under the modified match priority criteria, in the match event, Subscriber C will match 100 shares with Subscriber B at \$10.00, and Subscriber A will not match (as displayed orders have priority over non-displayed orders throughout the matching process, including while in a matchable state and before the match event).

- In example 5, assume the same facts as example 1, except that (i) Subscriber A's order is non-displayed, rather than displayable, (ii) Subscriber B's displayed limit order for 100 shares at \$10.00 is to sell, rather than buy, and (iii) Subscriber C's non-displayed limit order is to buy with a limit price of \$10.00, rather than to sell at a limit price of \$9.99.

Prior to the change to the matching criteria described in the Supplemental Summary, in example 5 Subscriber C would have matched 100 shares with Subscriber B at \$10.00, as the previous match priority was based on price, display type, and the order arrival time, and Subscriber B's displayed order had priority over Subscriber A's non-displayed order. Similarly, under the modified match priority criteria, in the match event, Subscriber C will match 100 shares with Subscriber B at \$10.00, and Subscriber A will not match, as displayed orders will have priority over non-displayed orders throughout the matching process (i.e., the modifications to the match priority criteria would not affect the outcome in this example).

**IMPERATIVE EXECUTION**

November 12, 2024

Mr. Brendan K. Loonam  
Senior Director - Business Services, Transparency Services Department  
FINRA  
10 Harborside Plaza  
3 Second Street, Suite 900  
Jersey City, NJ 07302

Dear Mr. Loonam:

Imperative Execution is submitting this letter to supplement our previous letter<sup>1</sup> regarding the IntelligentCross ATS (“IntelligentCross”) and specifically the display capabilities of the IntelligentCross ASPEN (“ASPEN”) Fee/Fee matching model that would be providing quotes to the FINRA Alternative Display Facility (“ADF”).<sup>2</sup>

As discussed further below, IntelligentCross has implemented certain changes to the match priority criteria impacting the ASPEN Fee/Fee matching model to move to a price/display/time priority regime throughout the matching process, *i.e.*, before and after the ASPEN Fee/Fee book enters into a matchable state. The change simplifies the matching process, brings it more in line with trading venues with displayed liquidity and protected quotes, responds to issues raised by certain commenters relating to, among other things, the IntelligentCross “price-sliding mechanism” and the accessibility of the IntelligentCross displayed quote, and addresses any uncertainty and lack of clarity over the IntelligentCross matching priority criteria as described in our previous letter and in FINRA’s proposed rule change to add IntelligentCross as a new entrant to the ADF.<sup>3</sup>

### **I. Description of Change to ASPEN Fee/Fee Match Priority Criteria**

Aside from the change described below regarding the ASPEN Fee/Fee match priority criteria, the ASPEN matching process will continue to operate as discussed in our previous letter and as described in FINRA’s proposed rule change. Specifically, the ASPEN Fee/Fee book continues to use a matching mechanism which is near-continuous and that matches orders at scheduled times (“Match Events”). Any order for a security that arrives prior to a Match Event for that security will be eligible to participate in the next Match Event.

Match Events are scheduled while the book is in a “matchable state” (*i.e.*, there is an order on each side eligible to match). An incoming order that will make the book potentially matchable will trigger a scheduling of a Match Event if one has not already been scheduled. When a new order arrives in the ASPEN Fee/Fee book, it may participate in the next scheduled Match Event by interacting with existing orders in the order book. In Match Events, when applicable, price improvement will always be provided to the taker (*i.e.*, the remover).

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<sup>1</sup> See Letter from Ari Burstein, General Counsel and Chief Policy Officer, Imperative Execution, to Brendan K. Loonam, Senior Director - Business Services, Transparency Services Department, FINRA, dated December 15, 2022.

<sup>2</sup> IntelligentCross is a registered broker-dealer and operates as an Alternative Trading System (“ATS”). IntelligentCross has an effective Form ATS-N under Rule 304 of Regulation ATS, which requires ATSs that trade NMS stocks to publicly file with the SEC an initial Form ATS-N (and amendments thereto) containing disclosures about the manner of operations of the ATS and the ATS-related activities of the broker-dealer operator and its affiliates, among other things. Imperative Execution is a financial technology company that is the parent company of IntelligentCross. For further information on Imperative Execution and IntelligentCross, please see <https://www.imperativex.com/intelligentcross>.

<sup>3</sup> See SEC Release No. 34-96550 (December 20, 2022), 87 FR 79401 (December 27, 2022); SR-FINRA-2022-032.

Under the previous match priority criteria, prior to entering into a matchable state, IntelligentCross gathered orders in its system and such orders' match priority was based on price, display type, and the time at which such orders were received relative to other orders. After the IntelligentCross book entered into a matchable state, the match priority for any orders that arrived between that time and before the Match Event was based on the time of their receipt by the ATS, *i.e.*, sequentially in order of arrival, regardless of whether an order that arrived later was priced more aggressively.

Under the revised match priority criteria, orders eligible for matching are matched based on price, display type (*i.e.*, with respect to ASPEN, at each price level, displayed orders will have priority over non-displayed orders), and the time at which such orders are received relative to other orders throughout the matching process, *i.e.*, before and after the ASPEN book enters into a matchable state.

This change brings the ASPEN matching process more in line with other price-time trading venues with displayed liquidity and protected quotes, addressing an issue raised by certain commenters in recent letters on the proposed rule change.<sup>4</sup> The change also directly addresses concerns raised by these commenters relating to the IntelligentCross "price-sliding mechanism" and the resulting executions that may occur where, in certain situations, an IntelligentCross displayed order would lock displayed contra-side interest inside the ATS and such displayed order would therefore be displayed one minimum price variation less aggressive than the price of the displayed contra-side interest inside the ATS. Specifically, these commenters claimed that due to the operation of the previous ASPEN match priority criteria, the resulting IntelligentCross displayed quote (that was slid) "would be inaccessible to incoming orders."

The change to our matching process eliminates such concerns. As illustrated below in Example 1, under the revised match priority criteria, a more aggressively priced order will now receive an execution against the IntelligentCross displayed quote and will be price improved (whereas prior to the match priority criteria change, that order would not have matched due to its later time of arrival). The revised ASPEN match priority criteria also further rewards displayed liquidity (and now provides priority to such liquidity) throughout the matching process (see Example 4 below).

Finally, the change clarifies the IntelligentCross matching priority criteria described in our previous letter and in the accompanying FINRA proposed rule change, as these did not clearly distinguish between the two steps in the previous match priority process (*i.e.*, what happens before and after the ASPEN Fee/Fee book enters into a matchable state). The prior description only noted that "for each match event time, the ASPEN Fee/Fee book retrieves the NBBO and processes all the orders that have arrived and have not been cancelled in price-time priority." As discussed above, prior to the change, price-time priority was only applied before the IntelligentCross book entered into a matchable state.

## **II. Operation of Change in ASPEN Fee/Fee Match Priority Criteria**

Following are some examples of how the IntelligentCross match priority criteria works for the ASPEN Fee/Fee book under the revised match priority criteria.

**Example 1.** The assumptions include:

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<sup>4</sup> See Statement in Opposition to Order Approving Proposed Rule Change, Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, LLC, dated October 29, 2023, and Letter from Joanna Mallers, Secretary, FIA Principal Traders Group to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated October 31, 2023.

- Subscriber A has submitted a displayed 100 share sell limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.
- Subscriber B has submitted a displayed 100 share buy limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.
- The ASPEN book enters into a "matchable state" (*i.e.*, there is an order on each side eligible to match) and a Match Event is scheduled.
- Subscriber B's order will be displayed at \$9.99 as in ASPEN, if a displayed limit order would lock contra-side interest inside the ATS, such order will be displayed one minimum price variation less aggressive than the price of the displayed contra-side interest inside the ATS.
- Security XYZ has a Match Event interval between 175 to 250 microseconds, and in this example the Match Event is scheduled to occur in 180 microseconds.
- During the 180 microseconds (*i.e.*, after the ASPEN book enters into a matchable state) and before the Match Event occurs, Subscriber C submits a non-displayed 100 share sell limit order with a limit price of \$9.99 and TIF of Day for Security XYZ.

At the next scheduled Match Event for Security XYZ, the matching engine retrieves the NBBO and determines that the NBBO is \$9.99 by 10.00. As a result, the following executions occur during the Match Event:

- Subscriber B will match 100 shares with Subscriber C at \$10.00, as Subscriber C has the more aggressively priced order, and Subscriber C also will be price improved. Subscriber A's order will be eligible for the next Match Event.

Prior to the match priority criteria change, Subscriber A would have matched 100 shares with Subscriber B at \$10.00, and Subscriber C's order would not have matched with Subscriber B as the IntelligentCross match priority criteria provided priority to the orders of Subscriber A and Subscriber B due to their earlier time of arrival.

**Example 2.** Assume in the above Example 1 that Subscriber B had 200 shares to buy. At Match Event time, the following executions will occur:

- Subscriber C will match 100 shares with Subscriber B at \$10.00
- Subscriber A will match 100 shares with Subscriber B at \$10.00.

Prior to the match priority criteria change, Subscriber A would have matched 100 shares with Subscriber B at \$10.00 first for 100 shares, and then Subscriber C's order would have matched with Subscriber B for 100 shares as the IntelligentCross match priority criteria provided priority to the orders of Subscriber A due to its earlier time of arrival.

**Example 3.** Assume in the above Example 1 that during the 180 microseconds (*i.e.*, after the ASPEN book enters into a matchable state) and before the Match Event occurs, Subscriber C cancels its order. At Match Event time, the following executions will occur:

- Subscriber A will match 100 shares with Subscriber B at \$10.00.

There is no change to this example due to the change in match priority criteria.

**Example 4.** Assume in the above Example 1 that:

- Subscriber A has submitted a non-displayed 100 share sell limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.
- Subscriber C has submitted a displayed 100 share sell limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.

At Match Event time, the following executions will occur:

- Subscriber C will match 100 shares with Subscriber B at \$10.00.
- Subscriber A will not match as, with respect to ASPEN, at each price level, displayed orders (Subscriber C) have priority over non-displayed orders (Subscriber A) throughout the matching process.

Prior to the match priority criteria change, Subscriber A would have matched 100 shares with Subscriber B at \$10.00, and Subscriber C's order would not have matched with Subscriber B as the IntelligentCross match priority criteria did not provide priority to displayed orders over non-displayed orders after entering into a matchable state.

**Example 5.** Assume in the above Example 1 that:

- Subscriber A has submitted a non-displayed 100 share sell limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.
- Subscriber B has submitted a displayed 100 share sell limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.
- Subscriber C submits a non-displayed 100 share buy limit order with a limit price of \$10.00 and TIF of Day for Security XYZ.

At Match Event time, the following executions will occur:

- Subscriber C will match 100 shares with Subscriber B at \$10.00
- Subscriber A will not match as, with respect to ASPEN, at each price level, displayed orders (Subscriber B) will have priority over non-displayed orders (Subscriber A) throughout the matching process.

There is no change to this example due to the change in match priority criteria. Prior to the match priority criteria change, Subscriber C would have matched 100 shares with Subscriber B at \$10.00 as prior to entering into a matchable state, orders' match priority was based on price, display type, and the time at which such orders were received relative to other orders, and Subscriber B's displayed order has priority over Subscriber A's non-displayed order.

\* \* \* \* \*

IntelligentCross continues to believe that the proposed rule change is consistent with both the spirit of, and applicable requirements under, Regulation NMS. As noted above, the modifications that IntelligentCross has implemented further conform the ASPEN Fee/Fee book with other displayed price-time priority markets regarding the accessibility of displayed orders during a Match Event, while maintaining key features that facilitate best execution and an optimal trading experience for market participants.

As noted in our prior letter, bringing IntelligentCross' additional displayed liquidity to the public quote through the ADF further contributes to price formation in the US National Market System and enables market participants to see and more efficiently access better prices and additional quality liquidity; the changes made to the match priority criteria furthers such access. It also is consistent with the objectives of creating a more competitive marketplace for investors and offering market participants additional choices of venues when trading.

Please do not hesitate to contact me at [ari.burstein@imperativex.com](mailto:ari.burstein@imperativex.com) should you have any additional questions regarding this matter.

Sincerely,



Ari Burstein  
General Counsel and Chief Policy Officer  
Imperative Execution