

Apr 3, 2026

Via Electronic Mail (rule-comments@sec.gov)

Ms. Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Notice of Filing of a Proposed Rule Change Relating to Alternative Display Facility New Entrant, File No. SR-FINRA-2022-032 and *In the Matter of the Financial Industry Regulatory Authority, Inc.*, Exch. Act Rel. No. 34-98642

Dear Ms. Countryman:

The Healthy Markets Association<sup>1</sup> writes to object to FINRA's Proposal to add IntelligentCross to its generally abandoned Alternative Display Facility (the "ADF Proposal").

The ADF Proposal was first submitted to the Commission for approval nearly three and a half years ago.<sup>2</sup> We have raised numerous procedural and substantive objections over the past three years.<sup>3</sup> In the intervening years, FINRA and IntelligentCross have had ample opportunity to fix the proposal's many deficiencies. And while we understand that IntelligentCross has recently been advocating for the Commission to approve the proposal,<sup>4</sup> it has nevertheless failed to publicly provide sufficient evidence for the

---

<sup>1</sup> The Healthy Markets Association is a not-for-profit member organization focused on improving the transparency, efficiency, and fairness of the capital markets. Healthy Markets promotes these goals through education and advocacy to reduce conflicts of interest, improve timely access to market information, modernize the regulation of trading venues and funding markets, and promote robust public markets. Its members include public pension funds, investment advisers, broker-dealers, exchanges, and data firms. To learn about HMA or our members, please see our website at <http://healthymarkets.org>.

<sup>2</sup> Notice of Filing of a Proposed Rule Change Relating to Alternative Display Facility New Entrant, SEC, Dec. 20, 2022, available at <https://www.sec.gov/files/rules/sro/finra/2022/34-96550.pdf> ("Initial ADF Proposal Filing").

<sup>3</sup> See Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, Jan. 13, 2023, available at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-20154755-323003.pdf> ("First HMA Letter"); Letter from Tyler Gellasch, HMA, to Vanessa Countryman, SEC, Mar. 14, 2023, available at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-20159679-327732.pdf> (Second HMA Letter"); Letter from Tyler Gellasch, HMA, to Hon. Gary Gensler et. al, SEC, Oct. 27, 2023, available at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-283479-692102.pdf>, ("Third HMA Letter"); Letter from Tyler Gellasch, HMA and Chris Iacovella, American Securities Association, to Hon. Gary Gensler, SEC, Jan. 5, 2024, available at <https://www.sec.gov/comments/s7-18-23/s71823-356059-881262.pdf> ("Fourth HMA Letter"); and Letter from Tyler Gellasch, HMA, to Acting Chairmen Uyeda, SEC, et. al., Mar. 24, 2025 ("Fifth HMA Letter") available at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-583895-1682922.pdf>.

<sup>4</sup> See, e.g., Letter from Ari Burstein, IntelligentCross, to Vanessa Countryman, SEC, Mar. 5, 2026, available at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-719347-2251894.pdf>.



Commission to conclude that the change complies with the Exchange Act and Commission Rules.

Accordingly, the ADF Proposal should be disapproved.

## Summary of the Proposal

FINRA has proposed to let IntelligentCross publish quotations on its ASPEN fee/fee limit order book to the ADF. The ADF offers (1) quote processing, display, and distribution, (2) trade report handling, display, and distribution, and (3) trade comparison.<sup>5</sup>

The effect of this inclusion would be to have those quotations be considered “protected,” and included in the National Best Bid and Offer (NBBO). This inclusion has significant impacts on a broad swath of market participants – irrespective of whether they ever trade in the ASPEN fee/fee order book – including on their regulatory responsibilities and costs.

The ASPEN fee/fee order book is notably different from all other venues with protected quotations in several respects. For example, unlike the exchanges, the ASPEN fee/fee order book:

- All rules and changes would not be clearly subject to Commission publication for notice-and-comment, analysis, review, suspension, or disapproval pursuant to statutorily-prescribed processes; and
- operates with a randomized time delay within certain time bands.

## Summary of the ADF Proposal’s Deficiencies

At root, the ADF Proposal contains at least three sets of material deficiencies.

First, the proposal does not delineate the exact mechanisms through which the Commission and FINRA would ostensibly ensure compliance with the law, as the Commission’s and FINRA’s authorities, rules, and procedures for oversight of registered securities exchanges are materially different from those for ATSS. Unfortunately, while there is clear statutory authority, Commission Rules, and precedent for the Commission to suspend and disapprove exchange connectivity filings, for example, there isn’t the same with respect to connectivity to ATSS.

As explained more fully below, while FINRA’s submission expressly references numerous representations made by IntelligentCross to support its proposal,

---

<sup>5</sup> *Fact Sheet: Alternative Display Facility*, FINRA, available at [https://www.finra.org/sites/default/files/ADF\\_Fact\\_Sheet.pdf](https://www.finra.org/sites/default/files/ADF_Fact_Sheet.pdf).



IntelligentCross has separately expressly declared that the facts underlying those representations may change subsequent to the Commission’s approval.

So, for example, FINRA has noted that IntelligentCross doesn’t currently charge connectivity fees.<sup>6</sup> IntelligentCross has reiterated that statement,<sup>7</sup> but then expressly defended its purported right to – subsequent to approval by the Commission – begin charging connectivity fees.<sup>8</sup>

But how would that work? How would FINRA, the Commission, and the public become aware of the changes? At what times, and with what details? What regulator(s) would review them? To what standards would the changes be subjected? What legal authority would the Commission or FINRA have to block (prospectively) or void (retroactively) the fees? If IntelligentCross disagreed with the blocking or voiding of its new fees, to whom could it appeal? And what would be the legal standards for resolving the dispute? For each of these questions, the answers are clear for the venues of all other protected quotations. Yet, none of them are materially resolved in the ADF Proposal.

Second, the proposal does not explain how the venue’s quotations would meet the requirements for a protected quotation, which would appear to be especially challenging given IntelligentCross’s own data. Rather than demonstrate with relevant evidence that its quotations meet the criteria, IntelligentCross has instead provided data suggesting that its quotations are demonstrably not “firm” and selectively (but frequently) “faded.”

Third, the proposal does not explain how protected quotations on IntelligentCross would impact the markets generally, including how they may “protect” investors when investors would generally be unable to consistently access other protected quotations without creating opportunities for significant information leakage.

### **IntelligentCross’s and FINRA’s Representations Don’t Establish Clear Legal Authority or Effective Oversight to Ensure Compliance With the Law and Commission Rules**

The ADF Proposal is extraordinarily dependent upon IntelligentCross’s representations of its policies, procedures, and practices – none of which are generally subject to direct Commission review and disapproval like exchange rules.<sup>9</sup>

---

<sup>6</sup> Initial ADF Proposal Filing, at 14.

<sup>7</sup> Letter from Ari Burstein, Imperative Execution, to Vanessa Countryman, SEC, at 12, Feb. 16, 2023, available at <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-20157506-325781.pdf> (“IntelligentCross Response Letter”).

<sup>8</sup> IntelligentCross Response Letter, at 12.

<sup>9</sup> Initial ADF Proposal Filing, at 12 n. 37 (“Based on IntelligentCross’ representations, FINRA believes that IntelligentCross’ proposed level and cost of access to quotations on ASPEN Fee/Fee is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.”).



Unlike all other venues that currently enjoy having protected quotations, IntelligentCross is not a registered securities exchange, and therefore does not generally have its operational rules (including for trading, data, and fees) subject to Commission review and disapproval. Further, its operations are not generally bound by the statutory protections against abuses by registered securities exchanges and FINRA, such as the explicit statutory obligations to ensure that its costs are (1) “reasonable” and “equitably allocated,” (2) non-discriminatory, or (3) not unduly burdensome on competition. These differences are material to the operations of ATSS. For example, ATSS generally can (and do) “discriminate” between different customers.

However, because IntelligentCross isn’t subject to the same rules as exchanges in material respects, the ADF Proposal is uniquely and expressly dependent upon several material representations made to FINRA by IntelligentCross, including representations regarding IntelligentCross’s current policies, procedures, and practices regarding its connectivity, data, and matching.<sup>10</sup> These representations included a number of essential elements for the Proposal’s consideration by both FINRA and the Commission.<sup>11</sup>

The ADF Proposal uses some variation of the phrase “Intelligent Cross has represented” twenty times in the same number of pages.<sup>12</sup> And IntelligentCross’s representations were central to FINRA’s submission of the ADF Proposal (*i.e.*, the proposal is replete with phrases like “Based on IntelligentCross’ representations, FINRA believes that IntelligentCross’ proposed level and cost of access to quotations on ASPEN Fee/Fee is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.”).<sup>13</sup>

IntelligentCross has explicitly noted that the facts underpinning its representations could change at any time. Specifically, the IntelligentCross Response Letter unmistakably defends the firm’s ability to materially change its rules from what it had represented in the IntelligentCross Representation Letter (upon which the ADF Proposal is explicitly conditioned).<sup>14</sup> For example, the IntelligentCross Response Letter declares “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.’”<sup>15</sup>

---

<sup>10</sup> See, Letter from Ari Burstein, Imperative Execution to Brendan K. Loonam, FINRA, Dec. 15, 2022, available at <https://www.sec.gov/rules/sro/finra/2022/34-96550-ex3.pdf> (“IntelligentCross Representation Letter”).

<sup>11</sup> IntelligentCross Representation Letter, at 1.

<sup>12</sup> Initial ADF Proposal Filing, at 6, 6 n.22, 6 n.23, 7 n.28, 8, 8 n.28, 9, 11, 12, 12n.38, 14, 15 n.43, and 17.

<sup>13</sup> Initial ADF Proposal Filing, at 12 n. 37.

<sup>14</sup> Initial ADF Proposal Filing, at 12 n.37 (“Based on IntelligentCross’ representations, FINRA believes that IntelligentCross’ proposed level and cost of access to quotations on ASPEN Fee/Fee is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.”).

<sup>15</sup> IntelligentCross Response Letter, at 12.



Unfortunately, neither the IntelligentCross Representation Letter nor the ADF Proposal meaningfully address to what extent and how (or pursuant to what rules or authority) FINRA or the Commission would ensure compliance with existing law and Commission Rules.

IntelligentCross simply represents that it would, consistent with Form ATS-N, file “material changes” with the Commission and “provide the changes made to FINRA.”<sup>16</sup> While IntelligentCross essentially promising to file “material changes” with FINRA is a nice acknowledgement, that act does not establish a regulatory process to review the filing, much less analyze it for any impacts on the inclusion of the ATS’s quotations in the ADF. And that, of course, is a far cry from providing the regulator with clear, enforceable legal authority to disapprove the change or exclude the ATS’s quotations from being included in the ADF.

If the SEC approves the Proposal, it would be difficult, if not impossible, for the Commission to practically constrain IntelligentCross’s fees and potential limitations for accessing the newly protected quotations.

SEC Rule 610(b) would appear to require IntelligentCross to: (1) “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;” and (2) “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.”<sup>17</sup>

These limitations are facially not identical to the restrictions statutorily imposed on exchanges, which include that an exchange’s rules must:

- provide for an equitable allocation of reasonable dues, fees, and other charges;<sup>18</sup>
- generally allow for any broker-dealer to become a member;<sup>19</sup>
- “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of” the Act;<sup>20</sup>
- “promote just and equitable principles of trade;”<sup>21</sup>
- “in general, to protect investors and the public interest;”<sup>22</sup> and

---

<sup>16</sup> IntelligentCross Representation Letter, at 8 n. 14.

<sup>17</sup> 17 CFR 242.610(b)(1) and (2).

<sup>18</sup> 15 U.S.C. § 78f(b)(4).

<sup>19</sup> 15 U.S.C. § 78f(b)(2).

<sup>20</sup> 15 U.S.C. § 78f(b)(8).

<sup>21</sup> 15 U.S.C. § 78f(b)(5).

<sup>22</sup> 15 U.S.C. § 78f(b)(5).

- be designed to not “permit unfair discrimination between customers, issuers, brokers, or dealers.”<sup>23</sup>

It is not clear precisely what “substantially equivalent” “level and cost” for access actually means. They are not defined by statute, rule, or guidance.

We think it’s worth noting that while transaction fee caps may be (arguably) more substantively constrained than connectivity and other types of fees, there is still very significant ambiguity in the enforcement of those caps with respect to IntelligentCross. For example, while Rule 610(c) would ostensibly subject IntelligentCross to the same transaction fee caps as exchanges, given that fees and rebates often vary by 40% or more across different trading venues, it is unclear what level of variability would be viewed as “substantially equivalent.” Some trading venues charge nothing at all to take liquidity. Others generally charge 30 cents per 100 shares. Some venues charge less. And many venues – including IntelligentCross<sup>24</sup> – charge different fees to different customers. Some also pay different rebates to different customers. What would be a “substantially equivalent” fee cap that could be reasonably enforced against IntelligentCross? How would that be enforceable across different customers or subscribers of IntelligentCross?

We understand IntelligentCross’s current fee structure for the ASPEN fee/fee order book, and understand from its executive that they currently have no plans for changing those fees.<sup>25</sup> And while the IntelligentCross Representation Letter asserts that the fees are non-discriminatory, we note that they do, in fact, discriminate against some subscribers, in favor of subscribers with greater trading volumes.<sup>26</sup> That said, we appreciate that IntelligentCross’s subscriber discrimination on fees does not appear – based upon the limited information that we have available – to be materially different from that permitted by exchanges today.

We also understand that the ADF Proposal is conditioned in part upon that representation. What happens if that changes? Neither the Proposal nor any existing rule would require a trading center relying upon the ADF to disseminate quotations to notify FINRA of a change and evaluate it for compliance with the conditions imposed by Rule 610.

What if IntelligentCross tweaks its fees, as it expressly contemplated in the IntelligentCross Representation Letter? Is the Commission or FINRA somehow volunteering to collect that information and analyze in perpetuity to ensure that it will continue to be consistent with the admittedly loose standards set forth by the Commission? How? How would either regulator intervene, if it identified a concern? What would be the basis and mechanism for challenging the change? The Commission

---

<sup>23</sup> 15 U.S.C. § 78f(b)(5).

<sup>24</sup> IntelligentCross Representation Letter, at 8.

<sup>25</sup> Telephone conversation between Ari Burstein and John Palazzo, IntelligentCross, and Tyler Gellasch and Chris Nagy, HMA, Jan. 3, 2022.

<sup>26</sup> IntelligentCross Representation Letter, at 8.



likely does not have clear authority to block a fee change under Regulation ATS. So what would the Commission or FINRA practically do?

None of these questions are materially addressed in the ADF Proposal.

Perhaps our greatest fears with respect to fees relate to those for market data and connectivity.

Because the ADF itself is not a venue or routing mechanism, market participants have no other alternative than to directly or indirectly connect to IntelligentCross. IntelligentCross has indicated that it does not charge for its market data or for connectivity to the ASPEN fee/fee limit order book.<sup>27</sup> However, the venue could begin charging for these products. Given that its quotations would now be protected, there would likely be significant demand for (and value of) these products – which would provide faster data and access to the trading book.

What would be the legal or pragmatic restrictions on the fees it assesses to different customers?

Unlike a registered securities exchange, the limitations on access, including data and connectivity products, on a trading center disseminating quotations through the ADF are not statutorily defined. Rather, as discussed above, the only potentially useful protections relate to the “substantially equivalent” language in Rule 610 and the Commission’s “guidance” associated with the adoption of Regulation NMS.<sup>28</sup> That’s not a practical, enforceable limit.

IntelligentCross currently charges nothing for connectivity. Some exchanges charge \$7500 per month or more,<sup>29</sup> while others charge substantially less. Would \$500 per month be “substantially equivalent?” How about \$5,000? How about \$10,000?

While IntelligentCross might not abuse that freedom to exploit brokers, data vendors, exchanges, and investors, we are deeply concerned that another ATS (or ATs) would, or that IntelligentCross might, after approval, change its mind, given the fundamental change to its economic analysis and position. If any of these happened, how would FINRA or the Commission be able to intervene? How would it defend such intervention in court (likely before the Court of Appeals for the DC Circuit)?

---

<sup>27</sup> IntelligentCross Representation Letter, at 8; *Accord*, Initial ADF Proposal Filing, at 14 (“IntelligentCross has represented that it does not currently charge connectivity fees to access ASPEN and has offered to pay for certain of subscribers’ cross-connect fees at NY4. IntelligentCross also currently pays for one primary connection and one back-up connection, and any direct subscriber is eligible for this payment.”).

<sup>28</sup> *Supra*, (citing *Regulation NMS*, SEC, 70 Fed. Reg. 37496, 37549, (June 29, 2005)).

<sup>29</sup> See, e.g., *Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Physical Port Fees for BYX*, SEC, Exch. Act Rel. No. 34-83441, June 14, 2018, available at <https://www.sec.gov/rules/sro/cboebyx/2018/34-83441.pdf>.



If the Commission approves the Proposal, as drafted, what would happen if the trading center (or another who follows with a similar application) decides to charge for connectivity or market data subsequent to receiving approval?

To effectively ensure compliance, FINRA and the Commission would have to collect that information and analyze all subsequent changes (not just “material changes”), analyze them, and have both the authority and legal, defensible rules and procedures through which it would intervene to suspend, block, or vacate an offending fee or access provision.

These factors are especially challenging, given that the Commission likely does not have clear authority to block such a change under Regulation ATS. Put simply, what would the Commission or FINRA practically do if IntelligentCross or a subsequent firm relying upon the ADF to disseminate quotations enables abuses or adopts rules that may be consistent with their ATS obligations, but are not consistent with obligations of a registered securities exchange?

The ADF Proposal does not address any of these concerns. Because the ADF Proposal lacks any clear, credible mechanism to enforce compliance with the law and Commission Rules, the Commission must disapprove it.

## IntelligentCross’s Quotations Do Not Satisfy the Requirements for a Protected Quotation

The Commission has spent considerable resources considering whether a quotation is sufficiently automated so as to qualify for inclusion as a “protected quotation.” And the Commission explicitly permitted a “de minimis” exception, provided that the delay was consistent and short. Further, the Commission’s *de minimis* interpretation required a market center to immediately and automatically execute or cancel, and transmit a response to the customer. That’s not what would happen for protected quotations on the ASPEN fee/fee order book, if the ADF Proposal is approved.<sup>30</sup>

The *de minimis* exemption depended, in part, upon the delay in matching being predictable. This is essential for routing brokers to be able to adjust their systems to time their orders to different venues in ways that minimize information leakage. However, because the matching delay is randomized, that would be impossible for market participants. Put simply, the ADF Proposal would thus be inconsistent with the Commission’s past interpretations related to protected quotations.

That said, the matching process is just one example of a broader concern with the proposal, which is its general reliance on “representations” by IntelligentCross that could easily change over time.

---

<sup>30</sup> But see, IntelligentCross Response Letter, at 9.

While the ADF Proposal goes into reasonable detail (considering that the whole filing is just twenty pages long) into the matching process used by IntelligentCross for its ASPEN fee/fee trading book, the proposal includes no analysis of how that process is actually “fair and efficient.” It does not compare and contrast the process to that of other trading venues that currently enjoy protected quotation status.

Further, just like with the other essential representations upon which the ADF Proposal is hinged, there is nothing to ensure that, over time, those policies, procedures, and practices don’t change in a way that would warrant discontinuation of its access to the ADF. Put another way, what if IntelligentCross tweaks its matching engine? Is the Commission or FINRA somehow volunteering to collect that information and analyze in perpetuity to ensure that it will continue to be consistent with the admittedly loose standards set forth by the Commission? How? How would they intervene, if they identified a concern? What would be the basis and mechanism for challenging the rule? The Commission likely does not have clear authority to block a change under Regulation ATS. So what would the Commission or FINRA practically do?

Again, the ADF Proposal does not raise, much less answer, any of these concerns.

Further, there are also significant questions about whether the randomized delayed matching on the ATS would mean that the quotations on the ATS would be predictably and automatically accessible.

The Commission wrestled with determining whether an intentional delay on IEX inhibited access to quotations on that exchange. At that time, the Commission adopted an interpretation 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.”<sup>31</sup> Further, the Commission noted that:

Even the most technologically advanced market participants today encounter delays in accessing protected quotations of other “away” automated trading centers that either are transitory (e.g., as a result of message queuing) or permanent (e.g., as a result of physical distance). Furthermore, as noted above, any market participant co-located with the major exchanges’ data centers in northern New Jersey necessarily encounters delays of 3-4 milliseconds – due to geography alone – in accessing the protected quotations of securities traded on the Chicago Stock Exchange’s matching engine.<sup>32</sup>

Interestingly, the Commission did not appear to contemplate at the time that there were or could be protected quotations on venues that were not registered securities

---

<sup>31</sup> *Commission Interpretation Regarding Automated Quotations Under Regulation NMS*, SEC, Exch. Act Rel. No. 34-78102, at 14, June 17, 2017, available at <https://www.sec.gov/rules/interp/2016/34-78102.pdf>.

<sup>32</sup> *Id.*, at 15.

exchanges. To the contrary, the interpretation expressly noted that “[a]ny proposed application of an access delay would therefore be subject to notice, comment, and the Commission’s separate evaluation of the proposed rule change.”<sup>33</sup> That, of course, is not generally applicable to an ATS who would be afforded the same benefit of having a protected quotation.

It is also particularly challenging for the Commission to assess the impact of the delay in this context, given that the delay in matching is changed by IntelligentCross and is randomized. Thus, even if the Commission were to become comfortable with the current delays contemplated by the bands currently applied by IntelligentCross, there is currently nothing to prevent IntelligentCross from changing them. And while IntelligentCross would presumably notify the Commission of any “material” changes in its Form ATS-N, that is not subject to “notice, comment, and the Commission’s separate evaluation of the proposed rule change,” as the Commission previously determined was essential for determining whether to permit a quotation to be considered accessible, which is itself essential for it to be afforded protected status.

Again, matching on IntelligentCross’s ASPEN fee/fee order book is not instantaneous, nor does it occur on a fixed, delayed schedule. Rather, on any given day, order matching occurs on a randomized schedule within certain time bands that are established overnight.

Specifically, according to the ADF Proposal,

Match schedules are defined by minimum/maximum time bands for each security, and these bands can have a minimum time of 150 microseconds and a maximum time of 900 microseconds (i.e., the maximum time for scheduling a match event is capped at 900 microseconds). For example, on a particular day, the match event band for XYZ stock may have a minimum time of 450 microseconds and a maximum time of 600 microseconds. The time of the actual match event is randomized within the match event band throughout the course of the trading day.<sup>34</sup>

In this way, the matching schedule on the ASPEN fee/fee order book is determined, in part, based upon prior trading in not just that book, but also the other two order books that are not part of this Proposal.

During the period between an order’s submission and execution, IntelligentCross permits a broker to modify or cancel the order.<sup>35</sup> As a result, unlike any other venue with a protected quotation, a market participant with a resting order, would be able to cancel or modify an order as a result of price movements during the delay.

---

<sup>33</sup> *Id.*, at 20.

<sup>34</sup> Initial ADF Proposal Filing, at 6.

<sup>35</sup> Initial ADF Proposal Filing, at 6-7; *Id.*, at 6 n.23.



Interestingly, IntelligentCross has submitted evidence that this does, in fact, occur. Specifically, the firm has recently shared with the Commission that:

situations may occur where an incoming order may not execute against a resting order at match event time. In February 2026, 8.9 percent of potential matches on the ASPEN Fee/Fee book did not complete because a displayed order was cancelled, 3.4 percent of potential matches on the ASPEN Fee/Fee book did not complete because a taker cancelled, and 7.4 percent of potential matches did not complete because the NBBO changed and at least one of the sides became non-marketable.<sup>36</sup>

Put simply, IntelligentCross has expressly admitted that the very quotations that it believes should receive protected status are frequently abandoned and unexecuted, despite orders coming in that would have otherwise matched. While investors may be willing to accept this outcome when they are able to selectively choose whether and how to access the venue, it is an entirely different proposition when they are compelled to seek to access quotations that are currently proving to be inaccessible.

## A Randomized Delay May Harm Investors' Executions on Other Venues

The randomized delayed match mechanism on the ASPEN fee/fee order book creates significant challenges for investors seeking to simultaneously access protected quotations at different venues. While the proposal declares that the “ASPEN Fee/Fee will accept incoming intermarket sweep orders (“ISOs”),”<sup>37</sup> it is unclear how market participants can effectively use them.

Specifically, if a market participant were to try to access all current protected quotations simultaneously, it could sequence the orders to ensure that they arrive at the matching engines for execution at the same time. That’s because the latencies for all existing protected quotations are fixed. However, the ASPEN fee/fee latency varies. As a result, market participants seeking to access protected quotations at all venues simultaneously would be unable to time it. If it access the IntelligentCross quotations first, it could leak information that would adversary impact executions on other venues, and if it waits, then it would almost certainly be unable to access the displayed, protected quotations on IntelligentCross’s ASPEN fee/fee order book, because those orders will have likely vanished by the time the delay runs out.

---

<sup>36</sup> Letter from Ari Burstein, Imperative Execution, to Vanessa Countryman, SEC, Mar. 5, 2026 *available at* <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032-719347-2251894.pdf>.

<sup>37</sup> ADF Proposal, at 6.



## Other Inadequately Addressed Issues in the ADF Proposal

There are issues raised by many of the representations by IntelligentCross that could have complex consequences on how market participants interact with the ATS, but are generally not addressed in the ADF Proposal. For example, while its distinct order books do not interact, they all operate with the same MPID. How would this interact with existing Rule 605 and the proposed Rule 605? Would this lead to misleading execution quality statistics reporting?

Further, as drafted, it appears as though IntelligentCross would report all transactions through Rule 605, even though the ASPEN fee/fee order book portion would represent a completely disparate model than other aspects of the ATS. The confusion that could likely be created by this potential co-mingling of statistics could undermine a brokers' abilities to pursue best execution (in addition to having the firm disseminating misleading statistics).

Put simply, IntelligentCross has made a number of representations on its operations that are essential for consideration of the ADF Proposal, some of which it analyzes for potential impacts, and some of which it doesn't.

## The FINRA Alternative Display Facility Should Be Retired

The Alternative Display Facility is a vestige of an unnecessary pilot program that had been largely abandoned for years. As part of Nasdaq's then-pending application to register as a securities exchange, the NASD initially filed with the Commission to create the Alternative Display Facility (ADF) in December 2001.<sup>38</sup>

The ADF was intended to address Commission concerns that Nasdaq's registration as a securities exchange and creation of its SuperMontage facility would essentially compel brokers to use that system in order to "satisfy their order display and execution access obligations under the Order Handling Rules and Regulation ATS."<sup>39</sup>

---

<sup>38</sup> *Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation from the NASD and the Establishment of the NASD Alternative Display Facility*, SEC, Exch. Act Rel. No. 34-45156, Dec. 14, 2002, available at <https://www.sec.gov/rules/sro/34-45156.htm>.

<sup>39</sup> *Order with Respect to the Implementation of Nasdaq's SuperMontage Facility*, SEC, Exch. Act Rel. No. 34-46429, Aug. 29, 2002, available at [https://www.sec.gov/rules/sro/34-46429.htm#P25\\_3376](https://www.sec.gov/rules/sro/34-46429.htm#P25_3376).



The Nasdaq proposal received robust public comment.<sup>40</sup> Many commenters thought the ADF was (or should be) dead on arrival.<sup>41</sup>

Nevertheless, Nasdaq amended its proposal,<sup>42</sup> and the Commission approved it as a short pilot program.<sup>43</sup>

In doing so, however, the Commission expressly demanded:

1. that the NASD will offer a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSS, ECNs, and market makers;
2. that NASD quotes disseminated through the exclusive securities information processor ("SIP") for Nasdaq-listed securities will identify the ATS, ECN, or market maker source of the quote; and
3. that participation in SuperMontage will be entirely voluntary, because NASD quotes will be included in the Nasdaq quotation management system while Nasdaq is the exclusive SIP, but only for display purposes, and the NASD will provide access to its quotes on a market-neutral basis.<sup>44</sup>

Thus, in order for a broker to access a quotation disseminated using the ADF, a user must be separately connected to the venue whose quotes are posted on it.

The Commission did not require that a non-exchange trading venue that has the privilege of a protected quotation submit its rules, policies, procedures, or practices to the Commission for review and potential disapproval. The Commission also did not specifically restrict operations or fees on trading centers providing protected quotations.

---

<sup>40</sup> See, *Comments on NASD Rulemaking*, SEC, available at <https://www.sec.gov/rules/sro/nasd200190.shtml>.

<sup>41</sup> Editorial, *Is ADF Dead on Arrival? Some Skepticism Over the Future of System*, *Traders Magazine*, May 31, 2002, available at <https://www.tradersmagazine.com/news/is-adf-dead-on-arrival-some-skepticism-over-the-future-of-system/>.

<sup>42</sup> See, e.g., *Notice of Filing of Amendment No. 2 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation from the NASD and the Establishment of the NASD Alternative Display Facility*, SEC, Exch. Act Rel. No. 34-45991, May 28, 2002, available at <https://www.sec.gov/rules/sro/34-45991.htm>.

<sup>43</sup> *Notice of Filing and Order Granting Accelerated Approval on a Pilot Basis to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Operation of the Alternative Display Facility for Quoting and Trading in Securities of The Nasdaq Stock Market, Inc.*, SEC, 67 Fed. Red. 49822 (July 31, 2002), available at <https://www.sec.gov/rules/sro/34-46249.htm>.

<sup>44</sup> *Order with Respect to the Implementation of Nasdaq's SuperMontage Facility*, SEC, Exch. Act Rel. No. 34-46429, Aug. 29, 2002, available at [https://www.sec.gov/rules/sro/34-46429.htm#P25\\_3376](https://www.sec.gov/rules/sro/34-46429.htm#P25_3376).



As a result, the Commission essentially created an opportunity for rent-seeking behavior by a non-exchange trading venue that would have protected quotations.

That opportunity for market abuse was not readily apparent at the time, and it was not generally exploited. That was because the ADF was never materially relied upon for the stated purpose (of addressing a potential monopolistic pricing power from Nasdaq).

With the adoption of Regulation NMS, rather than scrap the ADF, the Commission created some modest regulatory structures to continue to permit its existence. The Commission was concerned, amongst other things, that “a competitive problem could arise if a least preferred market was allowed to charge exorbitant fees to access its protected quotations, and then pass most of the fee on as rebates to liquidity providers to offset adverse selection costs.”<sup>45</sup>

Ultimately, the Commission adopted a rule that a trading center displaying quotations in an NMS stock through an SRO display-only facility must not impose unfairly discriminatory terms that prevent or inhibit a person from obtaining efficient access.<sup>46</sup> The Commission further argued that the “level and cost of access would ‘encompass both (1) the policies, procedures, and standards that govern access to quotations of the trading center, and (2) the connectivity through which market participants can obtain access and the cost of such connectivity.’”<sup>47</sup>

Over time, some Electronic Communications Networks (ECNs) and other trading centers used the ADF to display their quotations and report trades.<sup>48</sup>

Unfortunately, the ADF appeared to introduce significant risks to investors for latency arbitrage (and information leakage). Specifically, brokers or investors seeking to access those protected quotations were often unable to execute against them, or if they were, they would immediately find that they were subject to poor execution quality. Some of this was likely a result of the ADF itself being a much slower data dissemination mechanism than the trading venues’ proprietary data streams.

---

<sup>45</sup> *Regulation NMS*, SEC, Exch. Act Rel. No. 34-51808, at 114 n.243, available at <https://www.sec.gov/rules/final/34-51808.pdf>.

<sup>46</sup> See, *Order Approving the Proposed Rule Change Relating to Alternative Display Facility New Entrant*, SEC, Exch. Act Rel. No. 34-71457, at 2, Jan. 31, 2014, available at <https://www.sec.gov/rules/sro/finra/2014/34-71457.pdf> (citing 17 CFR 242.610(b)(2)).

<sup>47</sup> *Order Approving the Proposed Rule Change Relating to Alternative Display Facility New Entrant*, SEC, Exch. Act Rel. No. 34-71457, at 2, Jan. 31, 2014, available at <https://www.sec.gov/rules/sro/finra/2014/34-71457.pdf> (citing *Regulation NMS*, SEC, 70 Fed. Reg. 37496, 37549, (June 29, 2005)).

<sup>48</sup> See, e.g., *Order Approving the Proposed Rule Change Relating to Alternative Display Facility New Entrant*, SEC, Exch. Act Rel. No. 34-71457, Jan. 31, 2014, available at <https://www.sec.gov/rules/sro/finra/2014/34-71457.pdf> (adding LavaFlow as an ADF Participant).



Over time, FINRA has attempted to upgrade the system,<sup>49</sup> but it is unclear to what extent it has materially improved.<sup>50</sup> We understand that the ADF is Regulation SCI compliant, as are all other entities who enjoy having protected quotations. There is no express restriction on the ADF that submitters would need to be SCI compliant, and we understand that IntelligentCross is not today.<sup>51</sup> That is inadequate to protect investors, and should be remedied.

As FINRA's website makes clear, while the ADF hasn't been officially retired by FINRA or the Commission, it has been largely abandoned by market participants. We suspect that this lack of usage of the ADF may explain why neither FINRA nor the Commission have updated their rules to reflect the risks posed by using the ADF for quotation dissemination in the current national market system.

### *Latency and ADF Systems Concerns*

As mentioned above, market participants have had to try to access protected quotations from non-exchanges using the ADF before. And it generally didn't go well for them. To the contrary, many market participants found that by attempting to access the liquidity, they ultimately experienced inferior executions – often as a result of latencies in the dissemination mechanisms.

Interestingly, when the Commission approved the application of IEX to become a registered exchange and have protected quotations, part of that analysis hinged upon the latency introduced by the coil being of a fixed duration. Accordingly, brokers could knowingly sequence their market sweeping orders so that they would minimize the risks of information leakage. However, in this instance, the randomized nature of the delayed match doesn't allow for predictable staging of order sending activity by brokers across multiple venues. As a result, there could be significant risk of material information leakage and quote fading – leading to materially worse execution quality for investors.

We recognize that some of these concerns could be addressed by market participants obtaining the proprietary data and connectivity from IntelligentCross directly, but that would then give IntelligentCross significant pricing power over those services. Even beyond that, the latency built into the delayed, randomized matching process creates significant challenges for best execution for brokers.

Somewhat oddly, we do not yet know the details of the ADF's systems capabilities. It hasn't been used for quotation dissemination in years, and we are not aware of any public details regarding the details of its operations, including system specifications and

---

<sup>49</sup> Editorial, *NSX Blasts FINRA's ADF Proposal*, Traders Magazine, Sept. 17, 2013, available at <https://www.tradersmagazine.com/news/nsx-blasts-finras-adf-proposal/>.

<sup>50</sup> We are not aware of the ADF generally publishing latency statistics (unlike other quotation and trade dissemination mechanisms). We understand that some of the ADF's systems may have been modernized. However, if any material improvements have been made, they have not been publicly detailed.

<sup>51</sup> If the Commission approves the Proposal, it should expressly condition such approval on the ATS being compliant with Regulation SCI, like all other trading centers with protected quotations. If not, the purposes of Regulation SCI could be materially undermined.



latencies. Are the intake, processing, and dissemination systems up to 2023 speed and capacity standards? None of these details are included in the filing, and the only meaningful documents we were able to obtain regarding the system appear to be nearly a decade old.

For example, using an internet search, we were able to identify the FIX Specifications for Quoting to the Alternative Display Facility that were dated from 2014. That document suggested that the timing increment for the ADF would have been whole seconds, although “FIX allows milliseconds as well.”<sup>52</sup> This would be wholly unacceptable in a modern trading environment that is often measured in nanoseconds, much less microseconds, much less milliseconds. Seconds aren’t even in the ballpark. Subsequent to our comments a few years ago, it appears that FINRA updated its FIX Specifications, but those still appear to have inadequate specificity to ensure reasonable standards akin to the other protected quotations.

We don’t understand how the Commission could reasonably approve a proposal to ensure timely dissemination of quotations without knowing the details of the dissemination mechanisms.

Unfortunately, the ADF Proposal does not even address these potential concerns. FINRA has not proposed providing detailed latency statistics akin to those provided for other protected quotations. There is no analysis of the built in latencies or the impacts on investor costs and routing strategies.

### *Resurrecting the Flawed ADF Is Inconsistent with the Chairman’s Stated Market Structure Agenda*

Chairman Atkins has publicly stated an interest in revisiting the Commission’s equity market structure rules, and Rules 611 and 610, in particular. The agency has hosted two roundtables on the topics.<sup>53</sup>

Conceptually, the ADF Proposal would bestow upon IntelligentCross a privilege afforded to exchanges (the protected quotation), but without the regulatory burdens and investor protections that the Commission imposes upon exchanges in return for that benefit. That would be disastrous for market participants who would be effectively compelled to access the venue.

We appreciate IntelligentCross as a unique trading venue, but cannot support their proposal. At root, if brokers find an ATS’s prices worth incorporating into their routers or display to investors, they will do it. And many brokers use IntelligentCross today. That

---

<sup>52</sup> FIX Specifications for Quoting to the Alternative Display Facility (ADF), FINRA, at 13, Feb. 2, 2014, available at [https://www.finra.org/sites/default/files/2021-08/ADF\\_FIX\\_Specification\\_Quoting\\_v1.2.pdf](https://www.finra.org/sites/default/files/2021-08/ADF_FIX_Specification_Quoting_v1.2.pdf).

<sup>53</sup> Roundtable on Rule 611 of Regulation NMS, SEC, Dec. 16, 2025 available at <https://www.sec.gov/newsroom/meetings-events/roundtable-rule-611-regulation-nms>; and Roundtable on Trade Through Prohibitions, SEC, Sep. 18, 2025, available at <https://www.sec.gov/newsroom/meetings-events/roundtable-trade-through-prohibitions>.

isn't what the proposal is about. The Commission is being asked to compel brokers to connect to IntelligentCross and attempt to access randomly delayed quotations. As such, the real questions before the Commission are whether it will grant the request to remove broker and investor choice, and if so, pursuant to what investor protections and constraints? The Commission has spent decades studying order protection, and it is ironic that just as the agency is revisiting whether the benefits are sufficient to justify the costs of this restraint in free trade with respect to exchanges' orders, the agency is being asked to consider applying that restraint to a venue with much greater risks of negative impacts on investors.

This seems inconsistent with the Commission's recent equity market structure reforms, as well as the Chairman's concerns with the Order Protection Rule.

*FINRA Isn't Proposing This To Improve Markets, But Rather, Generate New Revenues For Itself*

Since the ADF was first established (as a trial), the vast majority of sophisticated market participants have come to access the markets through the faster proprietary data feeds from trading venues. Disseminating IntelligentCross's ASPEN fee/fee quotations through the ADF will generally offer market participants any new value.

That said, this isn't really about the ADF providing new information to market participants. Rather, the ADF is being used simply as a means to an end for IntelligentCross. It's the way that IntelligentCross could become a protected quotation without having to subject itself to the investor protections and obligations of being an exchange – nothing more. Without subjecting itself to exchange regulation, IntelligentCross could charge exchange-like fees for connectivity, data, and trading.

But FINRA would also stand to gain. As it would also incur new revenues as a result of the inclusion of the ASPEN fee/fee order book in the ADF. The reality is that this whole process is little more than a ruse through which IntelligentCross and FINRA may capitalize on exploiting a valuable regulatory privilege.

## Conclusion

The ADF Filing does not provide the Commission with sufficient information with which to conclude that the proposal would comply with the law and Commission Rules, and so it should be disapproved.

Further, to effectively consider the proposal, we strongly urge the Commission and FINRA to first clearly establish:

- pursuant to what authority and mechanisms they intend to ensure compliance with the law and Commission Rules, including advanced notifications of all changes related to the ASPEN fee/fee order book, procedures for seeking and



reviewing public comment, the standards to which IntelligentCross rules would be subjected, and procedures for suspension and disapproval of them;

- details of how ASPEN fee/fee order book quotations comply with the Exchange Act and Commission Rules, given the mechanism of the randomized delay; and
- how the inclusion of IntelligentCross as a protected quotation impacts the broader markets, including the increased risk of information leakage and negative market externalities.

Unfortunately, those factors and impacts cannot be reasonably established upon the record for this ADF Proposal.

Lastly, the Commission should work with FINRA to finally shutter the little-used, ill-conceived, and outdated ADF. If FINRA is to maintain the ADF for quotations, it should work with the Commission to establish clear rules for more effective oversight and examination of trading centers whose quotations are included in the ADF, improve the system for timeliness, and ensure that FINRA publishes latency and other relevant statistics, like other quotation dissemination mechanisms.

If you have any questions, please contact me at (202) 909-6138 or [ty@healthymarkets.org](mailto:ty@healthymarkets.org). Thank you for your consideration.

Sincerely,

President and CEO

Cc: Hon. Paul Atkins  
Hon. Hester Peirce  
Hon. Mark Uyeda