

May 9, 2024



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

Re: Proposal to Expand Cabinet Proximity Option Program (SR-NASDAQ-2024-007, SR-BX-2024-007, SR-ISE-2024-07, SR-GEMX-2024-04, SR-MRX-2024-03, SR-PHLX-2024-06; Release Nos. 34-99633, 34-99643, 34-99647, 34-99646, 34-99645, 34-99644) and Proposal to Establish a Reservation Fee for Cabinets with Power Densities Greater Than 10kW (SR-NASDAQ-2024-013, SR-BX-2024-010, SR-ISE-2024-13, SR-GEMX-2024-08, SR-MRX-2024-09, SR-PHLX-2024-12; Release Nos. 34-99796, 34-99794, 34-99799, 34-99800, 34-99798, 34-99797)

Dear Ms. Countryman:

Nasdaq, Inc. (“Nasdaq” or the “Exchange”) writes to respond to comment letters¹ submitted in response to its proposals filed with the Securities and Exchange Commission (the “SEC” or the “Commission”) to expand its Cabinet Proximity Option program and establish a reservation fee for cabinets with power densities greater than 10kW.² In response to the Letters, Nasdaq offers additional information and assurances regarding the Proposals.

¹ See Letter from J. Considine, McKay Brothers LLC (“McKay”), to V. Countryman, dated March 22, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-013/srnasdaq2024013-449139-1150422.pdf> (“McKay Letter”); Letter from G. Babyak, Bloomberg L.P., to V. Countryman, dated April 16, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-013/srnasdaq2024013-459271-1176314.pdf> (“Bloomberg Letter”); Letter from B. Redfearn, Panorama Financial Markets Advisory (“PFMA”), to V. Countryman, dated April 23, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-013/srnasdaq2024013-462411-1209635.pdf> (“PFMA Letter”); Letter from T. Gellasch, Healthy Markets Association (“HMA”), to V. Countryman, dated April 29, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-007/srnasdaq2024007-464571-1229934.pdf> (“HMA Letter”); and Letter from J. Mallers, FIA Principal Traders Group (“FIA PTG”), to V. Countryman, dated April 30, 2024, available at <https://www.sec.gov/comments/sr-phlx-2024-12/srphlx202412-464831-1230674.pdf> (“FIA PTG Letter”) (collectively, the “Letters”). The concerns raised in the Bloomberg Letter, PFMA Letter, HMA Letter, and FIA PTG Letter largely echo the concerns raised in the McKay Letter.

² See Securities Exchange Act Release No. 34-99633 (February 29, 2024), 89 FR 16073 (March 6, 2024); Securities Exchange Act Release No. 34-99643 (February 29, 2024), 89 FR 16040 (March 6, 2024); Securities Exchange Act Release No. 34-99647 (February 29, 2024), 89 FR 16047 (March 6, 2024); Securities Exchange Act Release No. 34-99646 (February 29, 2024), 89 FR 16064 (March 6, 2024); Securities Exchange Act Release No. 34-99645 (February 29, 2024), 89 FR 16067 (March 6, 2024); Securities Exchange Act Release No. 34-99644 (February 29, 2024), 89 FR 16069 (March 6, 2024); Securities Exchange Act Release No. 34-99796 (March 20, 2024), 89 FR 21088 (March 26, 2024); Securities Exchange Act Release No. 34-99794 (March 20, 2024), 89 FR 21155 (March 26, 2024);

Nasdaq wishes to clarify that clients will not be liable to pay reservation fees until such time as cabinets can be converted to powered cabinets. In addition, Nasdaq will not accept reservations until cabinets are available in NY11-4.³ Nasdaq intends to file such clarification with the Commission. Nasdaq also wishes to point out that the Proposals are not specific to NY11-4 and apply to the Exchange's existing cabinets in NY11. To be clear, the Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW currently applies to any such reservations in the existing data center. Although Nasdaq has an expansion of the data center underway, none of the fees for the Cabinet Proximity Option program apply to NY11-4 as of yet. In addition, Nasdaq notes that the fee proposals were filed and immediately effective on March 1, 2024, and no fees were assessed on customers prior to being publicly filed with the Commission, contrary to McKay and PFMA's allegations. Furthermore, Nasdaq has not assessed any fees under the Proposals and does not intend to assess any reservation fees for NY11-4 until such time as cabinets can be converted to powered cabinets.

Nasdaq does not intend to submit a filing to the SEC for the sole purpose of accounting for the construction of the new NY11-4 data hall. To be clear, and contrary to the assertions made in the McKay, Bloomberg, PFMA, and FIA PTG Letters, NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11. Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion. To the extent that Nasdaq offers new services, whether in the existing NY11 data halls or the in new NY11-4 data hall, the Exchange will submit filings for those new services with the SEC, in accordance with its obligations under the Securities Exchange Act of 1934 ("Exchange Act").

The Letters express concern that Nasdaq has yet to disclose all of the details of its plans for NY11-4 and its capabilities and services. Nasdaq is disclosing details of its plans as it formulates them. Planning even for an expansion of the data center is complex and not all details are known as of yet. Even so, Nasdaq believes that it is appropriate and in the interests of market participants to plan ahead even with incomplete or preliminary information about NY11-4. Contrary to allegations, Nasdaq has not provided details regarding its NY11-4 plans to select clients and telecommunications providers in advance of announcing such plans to the general public.

Nasdaq wishes to confirm that connections between colocated client cabinets and the carrier cage will be of equal length in NY11-4. Nasdaq believes that equalizing connectivity from the client cabinets to the carrier cage in NY11-4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11-4 and for particular space in NY11-4. Nasdaq acknowledges that it intends to treat telecommunications access to its data center differently in NY11-4 as compared to NY11. In NY11, connections between colocated client cabinets and telecommunication providers vary based on the client's cabinet location. While connections between client cabinets and telecommunications providers are not of the same length in our existing facilities, Nasdaq is working on a plan to equalize

Securities Exchange Act Release No. 34-99799 (March 20, 2024), 89 FR 21162 (March 26, 2024);
Securities Exchange Act Release No. 34-99800 (March 20, 2024), 89 FR 21020 (March 26, 2024);
Securities Exchange Act Release No. 34-99798 (March 20, 2024), 89 FR 21126 (March 26, 2024);
Securities Exchange Act Release No. 34-99797 (March 20, 2024), 89 FR 21148 (March 26, 2024)
(collectively, the "Proposals").

³ Although the timing is subject to change, Nasdaq anticipates that the NY11-4 expansion will be complete by September 2024.

⁴ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11-2, NY11-3, and NY11-4.

such connections (“Equalization Project”). The Equalization Project is complex and will take time to accomplish, given that it may require Nasdaq to re-cable existing connections. While the Exchange works to accomplish the Equalization Project, it intends to avoid recreating this same problem in the expanded data hall by establishing equalized telecommunication connections at the outset. To avoid creating any advantages or disadvantages while Nasdaq transitions the existing facilities, Nasdaq is designing the new data hall to provide latencies that are no worse or no better than those achievable in the existing data halls. Nasdaq believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with our obligations under the Exchange Act.

Finally, Nasdaq believes that the allegations concerning wireless services are outdated and misinformed. The SEC conducted an examination of Nasdaq’s wireless services at the time when McKay first raised these allegations, in 2020,⁵ and such examination resulted in no negative findings. Since the examination concluded in 2021, no changes have been made to Nasdaq’s wireless services that would offer any new validity to such allegations.

Nasdaq hopes that the additional steps it proposes to take in this letter will allay concerns raised in the Letters about the Proposals.

Sincerely,


Katie Hopkins

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

⁵ See Letter from J. Considine, McKay Brokers, to V. Countryman, dated December 10, 2020, available at <https://www.sec.gov/comments/4-729/47298131081-226476.pdf>. Bloomberg L.P. submitted a similar letter in 2021. See Letter from G. Babyak, Bloomberg L.P., dated March 1, 2021, available at <https://www.sec.gov/comments/4-729/4729-8426150-229604.pdf>.