



2001 K Street NW, Suite 725, Washington, DC 20006 | Tel +1 202.466.5460

April 30, 2024

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

Re: Proposed Rule Changes to Expand the Cabinet Proximity Option Program and Proposed Rule Changes to Amend the Cabinet Proximity Option Fee to Establish a Reservation Fee for Cabinets with Power Densities Greater Than 10kW (File Nos. SR-NASDAQ-2024-007, SR-NASDAQ-2024-013, SR-BX-2024-007, SR-BX-2024-010, SR-GEMX-2024-04, SR-GEMX-2024-08, SR-ISE-2024-07, SR-ISE-2024-13, SR-MRX-2024-03, SR-MRX-2024-09, SR-PHLX-2024-06; SR-PHLX-2024-12).

Dear Ms. Countryman:

The FIA Principal Traders Group (“**FIA PTG**”)<sup>1</sup> appreciates the opportunity to submit this letter to the Securities and Exchange Commission (“**SEC**” or the “**Commission**”) in response to the above-referenced rule changes proposed by The Nasdaq Stock Market LLC and its affiliate exchanges (collectively, “**Nasdaq**”) to expand the Cabinet Proximity Option Program and to amend the Cabinet Proximity Option Fee to establish a reservation fee for cabinets with power densities greater than 10kW (the “**Proposed Rule Changes**”). For the reasons detailed below, we urge the Commission not to approve the Proposed Rule Changes.

### **Summary of FIA PTG Concerns**

FIA PTG raises the following three principal concerns with respect to the Proposed Rule Changes, each of which is discussed in greater detail below:

First and foremost, Nasdaq’s Proposed Rule Changes threaten to (a) codify the variable and un-equalized connectivity infrastructure (*i.e.*, intra- and inter-data center fiber connectivity) between

---

<sup>1</sup> FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

critical locations within Nasdaq's existing data center facilities in Carteret, NJ ("NY11") and at Nasdaq's new facility under construction just to the north of NY11 ("NY11-4"), and (b) ratify and exacerbate this non-uniform connectivity infrastructure for market participants at Nasdaq's NY11 and NY11-4 facilities, each of which would have the effect of institutionalizing Nasdaq's unequal treatment of customers' intra- and inter-connectivity within its facilities.<sup>2</sup>

Second, Nasdaq's lack of transparency regarding whether and how it will ensure fair access for all market participants in its new NY11-4 facility, as well as between customers in NY11 and NY11-4. This, together with Nasdaq's evident failure to prioritize these concerns,<sup>3</sup> is inconsistent with the requirements of the Exchange Act and its supporting rules and regulations which mandate that as a self-regulatory organization ("SRO") subject to Commission oversight, Nasdaq must not establish rules that (a) permit unfair discrimination or (b) impose any unnecessary burden on competition.

Finally, if the Commission approves the Proposed Rule Changes and Nasdaq does not ensure equal treatment (*i.e.*, equalized cross-connect connectivity) of its data center customers at NY11 and NY11-4 and provide full disclosure regarding access and cross-connect distances (*ergo* latency) into, within and between those facilities, then latency-sensitive market participants will effectively be compelled to purchase cabinet space in NY11-4 and install equipment in order to determine for themselves whether the space will provide fair access or simply be redundant with (or at a disadvantage to) their cabinets in NY11.

Based on these concerns, each of which is more fully set out below, FIA PTG asks that the Commission not approve the Proposed Rule Changes until Nasdaq designs, discloses and deploys policies and technologies which ensure that all market participants in both NY11 and NY11-4 will enjoy equal access and not be unfairly disadvantaged.

**The introduction of NY11-4 as currently contemplated may create impediments which result in an "imperfect mechanism" for trading.**

In modern equity markets, nothing is more critical than timely access to exchange systems to submit orders and receive market data. The Commission has repeatedly acknowledged that in today's markets, "small degrees of latency affect trading strategies"<sup>4</sup> and being faster, "even if only by a microsecond,"<sup>5</sup> can make a competitive difference. It is therefore imperative that Nasdaq provide market participants, especially latency sensitive market makers, with the information they

---

<sup>2</sup> FIA PTG has raised concerns about Nasdaq's data center configuration previously. See [Letter from Joanna Mallers, Secretary, FIA PTG to Vanessa Countryman, Secretary, SEC dated February 11, 2021](#).

<sup>3</sup> In several meetings between FIA PTG members and representatives of Nasdaq since the release of Nasdaq's original draft "Nasdaq Carteret DC Expansion (NY11-4) Technical Specifications" on or about January 19, 2024, Nasdaq has expressed uncertainty when asked how Nasdaq intends to ensure fair and equal treatment of customers in its new NY11-4 facility and as between customers in NY11 and NY11-4.

<sup>4</sup> Exchange Act Release No. 88216 at n.13 (Feb. 14, 2020).

<sup>5</sup> Exchange Act Release No. 61358, 75 FR 3593, 3610 (Jan. 21, 2010).

need in order to confirm that “no measurable latency differentials”<sup>6</sup> exist in either data center. To date, Nasdaq has failed to provide any such information or assurances.

In recent discussions with FIA PTG members, not only has Nasdaq failed to confirm there will be no latency advantages or disadvantages within the NY11-4 data center (as compared to NY11), nor between the NY11 and NY11-4 data centers, but they have expressed uncertainty about how equipment in either data center will interact with equipment elsewhere in the same data center or in the other data center. For example, when presented with a slide showing multiple and varying possible paths (each having a different distance characteristic (*ergo*, latency)) by which data could be routed between NY11 and NY11-4, Nasdaq representatives were unable to identify which of the several routes would apply in any situation or even whether all market participants’ data would follow the same route with the same latency. Further, when asked whether they intend to equalize fiber distances between critical points within NY11 and NY11-4, Nasdaq representatives indicated that they have yet to finalize such a plan nor a timeline to implement it.

**Nasdaq must provide clear information and assurances with respect to equal access.**

Through the Proposed Rule Changes Nasdaq seeks to expand the existing Cabinet Proximity Option Program to include “Super High Density Cabinets.” Nasdaq has installed these cabinets in NY11 and intends to do so in NY11-4. Over the course of several months, FIA PTG members have met with representatives from Nasdaq to discuss the infrastructure at NY11-4 but have been unable to obtain the necessary connectivity conditions and assurances described in more technical detail in the McKay Letter,<sup>7</sup> which FIA PTG supports. Yet, at the same time Nasdaq is marketing these cabinets, filing Proposed Rule Changes and urging market participants to place reservations. Additionally, Nasdaq is advising market participants that cabinet space will be allocated on a first-come basis and a reservation is the only way to secure cabinet space and power in NY11-4.

As Nasdaq has not yet attested as to whether market participants will have an equal, better or worse experience (from an infrastructure connectivity / latency standpoint), market participants are effectively forced to enter into colocation agreements with Nasdaq for space in NY11-4 in order to determine for themselves whether the experience in that facility is better, worse or the same than in the existing NY11 space. Market participants on a National Securities Exchange should not have to spend time, money, or other resources to determine if a physical location within a National Securities Exchange will have an equal, better or worse experience than other locations in that National Securities Exchange’s facilities. It should be a certainty that all market participants within a National Securities Exchange will enjoy the same (e.g., equal) infrastructure access, connectivity and latency. In effect, under the guise of a rule change purporting to provide market participants

---

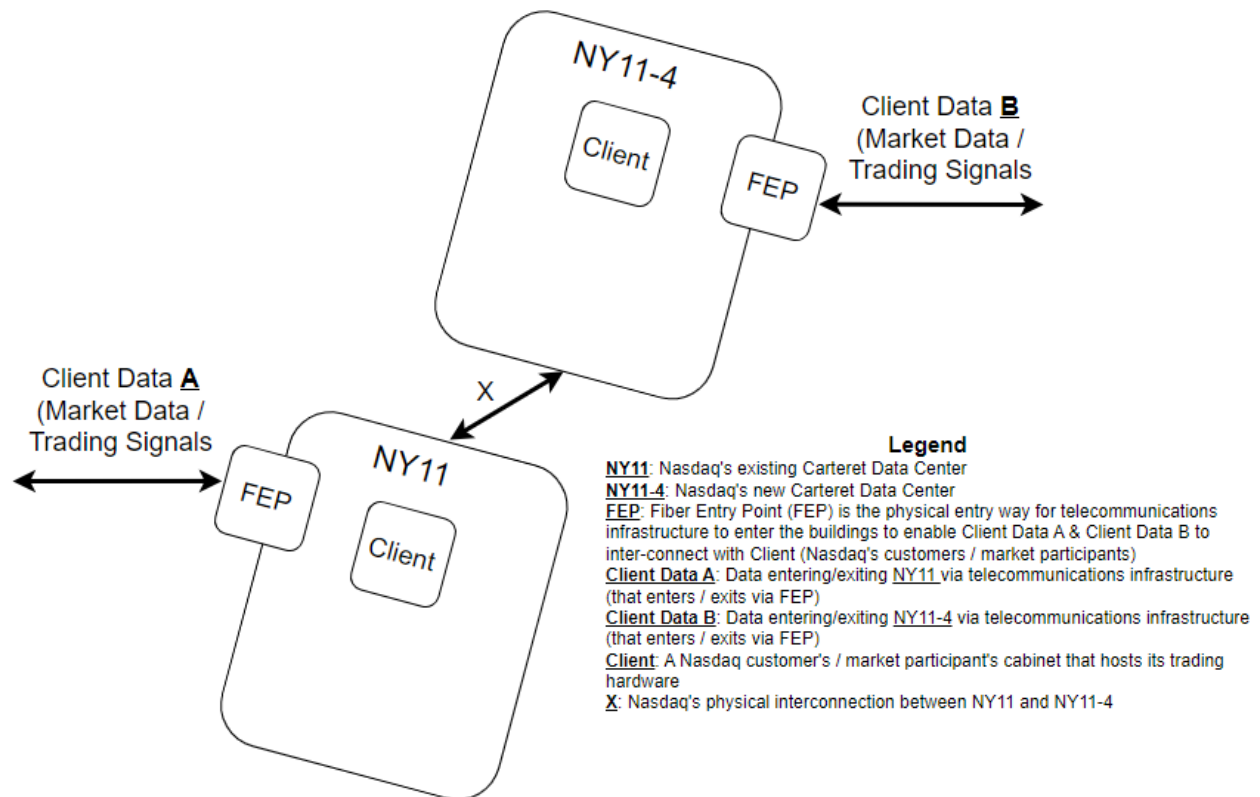
<sup>6</sup> See October 15, 2020 Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Notice of Filings of Partial Amendment No. 3 and Order Granting Accelerated Approval to Proposed Rule Changes, each as Modified by Partial Amendment No. 3, to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections at 43.

<sup>7</sup> See [Letter from Jim Considine, Chief Financial Officer, McKay Brothers, LLC to Vanessa Countryman, Secretary, SEC dated March 22, 2024](#) (the “McKay Letter”).

with more and better cabinet power options, Nasdaq may be building an ecosystem in which unequal treatment of users is inherent, and, by virtue of Nasdaq's lack of transparency, placing the cost of determining the degree and effects of that inequality on market participants.

FIA PTG encourages Nasdaq to clarify what market participants will experience with respect to delivery of data into, within and between NY11 and NY11-4. Looking at the diagrams below of the existing NY11 and proposed NY11-4 setups, FIA PTG seeks clarity from Nasdaq as to the expected experience of market participants with respect to connectivity into, within and between key points in the NY11 and NY11-4 data centers. Specifically:

1. Will a Client in NY11 receiving Client Data A have the same or different experience (i.e., longer or shorter physical connectivity (ergo latency)) as a Client in NY11-4 receiving Client Data A?
2. Will a Client in NY11-4 receiving Client Data B have the same or different experience (i.e., longer or shorter physical connectivity (ergo latency)) as a Client in NY11 receiving Client Data B?



Until such time as Nasdaq provides the necessary infrastructure transparency and assurances, FIA PTG fears Nasdaq may be establishing a connectivity ecosystem that inherently advantages some market participants and disadvantages others, whether inadvertent or not. Given the availability of options by which Nasdaq could avoid this disparate treatment (*i.e.*, hardware solutions (*e.g.*, equalized structured cabling) or software / FPGA-based solutions (*e.g.*, platforms that automatically and systematically equalize data flow over unequal cross-connects)), the Commission should reject the Proposed Rule Changes and require Nasdaq to enact policies which ensure fair access for all market participants in Nasdaq's NY11 and NY11-4 facilities.

**By virtue of Nasdaq's lack of transparency with respect to interaction between equipment in NY11-4 and equipment in NY11, latency-sensitive participants will effectively be compelled to purchase and build-out cabinets in NY11-4, which will be costly, burdensome, duplicative and potentially disruptive to market making activities.**

Since January, Nasdaq has been encouraging market participants, including FIA PTG members, to use the Nasdaq Customer Portal to reserve power cabinets in NY11-4. Nasdaq explained that these cabinets will be allocated on a first-come basis and this reservation process is the only way to ensure market participants will have cabinet space and power when the NY11-4 data center goes live later this year. Obviously, latency sensitive market makers cannot risk not having the necessary cabinet space and power required for their systems, especially considering the potential latency issues described above, and are therefore effectively compelled to reserve the requisite cabinet space now, and purchase it once available, in order to ensure effective conduct of their market making activities.

In Nasdaq's initial communications with market participants, and in their Proposed Rule Changes, Nasdaq indicated their intention to charge monthly reservation fees of \$3,000 per cabinet, which would continue until such time as the NY11-4 data center goes live. At that point, the actual cabinet fees would begin to be assessed, thereby rewarding Nasdaq for delays to go-live at the expense of market participants who could not know whether the space they were compelled to reserve would be of any value. Recently, following the filing of the McKay Letter and a subsequent comment letter from Bloomberg opposing the Proposed Rule Changes,<sup>8</sup> Nasdaq has amended their communications with market participants to indicate that they no longer plan to charge a reservation fee. To date, the Proposed Rule Changes have not been updated to reflect this.

Notwithstanding Nasdaq's apparent retreat from the reservation fee, unless Nasdaq provides assurances that there will be no latency differentials within NY11-4 or between NY11 and NY11-4, along with the information necessary to validate those assurances, latency sensitive market participants will be compelled to reserve cabinets at NY11-4, install duplicative equipment and then wait until the facility comes online in order to run their own tests to determine their latencies and whether their new cabinets in NY11-4 are needed. All of this will be costly and time-

---

<sup>8</sup> See [Letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Vanessa Countryman, Secretary, SEC dated April 16, 2024](#) (the "Bloomberg Letter").

consuming without any advantage to efficient market functioning and could be avoided if Nasdaq were to develop and disclose equal access policies and how they will be implemented.

\*\*\*\*\*

For these reasons, as well as the detailed technical analysis provided by the McKay Letter and the Bloomberg Letter, FIA PTG urges the Commission not to approve the Proposed Rule Changes until such time as Nasdaq provides the necessary clarity through an enhanced rule filing subject to public review and comment, as to how connectivity and the related latencies in both data centers comply with the Commission's rules and advance the Commission's objective of promoting just and equitable principles of trade and removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.

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

Respectfully,

FIA Principal Traders Group



Joanna Mallers  
Secretary

cc: Gary Gensler, Chair  
Hester M. Peirce, Commissioner  
Caroline A. Crenshaw, Commissioner  
Mark T. Uyeda, Commissioner  
Jaime Lizárraga, Commissioner

Haoxiang Zhu, Director, Division of Trading and Markets  
David Saltiel, Deputy Director, Division of Trading and Markets  
Andrea Orr, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets  
Eric Juzenas, Associate Director, Division of Trading and Markets