



November 5, 2024

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

Re: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand its Co-Location Services (SR-NASDAQ-2024-054; SR-BX-2024-035; SR-GEMX-2024-34; SR-ISE-2024-45; SR-MRX-2024-36; SR-Phlx-2024-47) and Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees for Its Expanded Co-Location Services (SR-NASDAQ-2024-056; SR-BX-2024-037; SR-GEMX-2024-36; SR-ISE-2024-47; SR-MRX-2024-37; SR-Phlx-2024-49)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter in connection with the above-referenced rule change filed with the U.S. Securities and Exchange Commission (“Commission”) by The Nasdaq Stock Market LLC and its affiliate exchanges (“Nasdaq” or the “Exchanges”) regarding their proposed expansion of colocation services to NY11-4 and expanded cabinet optionality therein (the “Rule Change”).² While SIFMA supports Nasdaq’s equalization of connections in NY11-4, SIFMA shares the concerns raised by other commenters that expanding into NY11-4 before equalizing connections in NY11 may create unnecessary or inappropriate burdens on competition and cause unfair discrimination between and among colocation customers, contrary to Section 6 of the Exchange Act.³

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See, e.g., Securities Exchange Act Release No. [101078](#) (Sept. 18, 2024), 89 FR 77937 (Sept. 24, 2024) (SR-NASDAQ-2024-054) and Securities Exchange Act Release No. 101267 (Oct. 7, 2024), 89 FR 82666 (Oct. 11, 2024) (SR-NASDAQ-2024-056).

³ 15 U.S.C. 78f(b)(5) and (8).

In the Rule Change, Nasdaq states that connections between telecommunications access and inter-client connectivity will be different in NY11-4 as compared to NY11.⁴ As a result, it appears that colocation customers will have differing access to the Exchanges in at least some respects depending on whether they colocate in NY11 or NY11-4. Such different treatment should be clearly explained and appropriately justified, consistent with Nasdaq's rule filing obligations.

It is not clear that Nasdaq has adequately done so here. Nasdaq appears to argue that it is justified in proceeding with the opening of NY11-4 while maintaining unequal connectivity in NY11 because it plans to eventually equalize connectivity in NY11 within two years. This does nothing to address existing concerns of unfair discrimination and competitive burdens arising from unequal connectivity currently and which would persist with the expansion to NY11-4.

SIFMA has previously raised concerns related to ensuring equalized connectivity at exchange datacenters. In connection with the use of a private pole by the New York Stock Exchange LLC's ("NYSE") affiliate Ice Data Services in 2020, SIFMA expressed concern for potential latency advantages in exchange connectivity provided to select market participants and supported the neutralization of such latency advantages to promote a level competitive playing field.⁵ In connection with that same NYSE rule filing, SIFMA also raised concerns regarding exchange connectivity fees and the need to ensure that any such fees are (i) reasonable, (ii) equitably allocated, (iii) not unfairly discriminatory and (iv) not an undue burden on competition.⁶ Nasdaq must have been aware of the Commission requiring NYSE to equalize connectivity in its datacenter, but has done nothing in the subsequent four years to take similar steps toward equalization.

The Rule Change raises similar concerns of both ensuring all market participants have equalized access to the Nasdaq as well as appropriate justification of connectivity fees. As McKay Brothers LLC ("McKay") has pointed out in its comment letters, some colocation customers in NY11 currently have more advantageous positions than others, which means that such customers cannot know whether they will have a more or less advantageous connection in NY11-4 relative to their current position in NY11.⁷ Nasdaq is surely aware that many colocation customers desire the most efficient access to the Exchanges. By creating uncertainty regarding which colocation facility (NY11 or NY11-4) may provide the most favorable connectivity, Nasdaq incentivizes colocation customers to establish multiple points of presence at double the cost.

⁴ See Rule Change at n.5.

⁵ See Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, re: SR-NYSE-2020-11, <https://www.sifma.org/wp-content/uploads/2020/09/SIFMA-Letter-on-NYSE-Wireless-Market-Data-Connection-September-2-2020.pdf>.

⁶ See *id.* at 2.

⁷ See *e.g.*, Letter from Jim Considine, Chief Financial Officer, McKay, to Vanessa Countryman, Secretary, re: SR-NASDAQ-2024-026, at 6, <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf>.

SIFMA believes that it is unreasonable for colocation customers to have to pay for an additional point of presence in NY11-4 simply to determine whether such connection will be more advantageous than their current position in NY11. Contrary to Nasdaq's claims, colocation customers do not have sufficient information to assess whether NY11-4 will be more or less advantageous to them relative to their current position in NY11 because such customers have not been informed by Nasdaq of their existing connectivity lengths in NY11. In addition, given that colocation customers in NY11-4 and NY11 will have different access to Nasdaq, it is unclear how charging the same fees to such customers results in an equitable allocation of fees dues and other charges or why it does not result in unfair discrimination or a competitive burden.⁸

The Commission should not permit Nasdaq to further profit from its decision to maintain unequal connectivity at its datacenter through the opening of NY11-4. Given that Nasdaq already plans to equalize NY11, Nasdaq should accelerate such plans to equalize NY11 prior to expanding to NY11-4. Doing so would help ensure that all colocation customers have equal access to the Exchanges, align Nasdaq with other equalized exchange datacenters like NYSE, and would potentially save colocation customers considering collocating in NY11-4 millions of dollars.

* * *

SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact me (at 212-313-1287 or egreene@sifma.org).

Sincerely,



Ellen Greene
Managing Director
Equity and Options Market Structure

⁸ 15 U.S.C. 78f(b)(4), (5) and (8).