FIA PTG
PRINCIPAL TRADERS GROUP

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

October 21, 2024

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

Re: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand its Co-Location Services (File Nos. SR-NASDAQ-2024-054, SR-BX-2024-035, SR-GEMX-2024-34, SR-ISE-2024-45, SR-MRX-2024-36, and SR-Phlx-2024-47)

Dear Ms. Countryman:

The FIA Principal Traders Group ("FIA PTG")[1] 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[2] proposed by The Nasdaq Stock Market LLC and its affiliate exchanges (collectively, "Nasdaq") to expand its Co-Location Services (the "Proposed Rule Change"). The Proposed Rule Change mirrors a prior proposal that was submitted by Nasdaq earlier this year[3] and subsequently withdrawn on August 13, 2024, to allow Nasdaq to address outstanding comments and concerns raised by the Commission staff and commenters, including, *inter alia*, FIA PTG. This is the third time[4] FIA PTG has submitted comments to the Commission raising concerns about the Nasdaq data center configuration. We remain troubled by the latency inconsistencies that remain unresolved in the current Nasdaq data center ("NY11") and fear that they will be exacerbated by the addition of the planned expansion into Nasdaq's new "data hall"

[1] 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.

[2] *See* Form 19b-4 filed by Nasdaq with the Commission dated September 5, 2024 (the "Nasdaq Second Filing").

[3] *See* Form 19b-4 filed by Nasdaq with the Commission dated June 14, 2024 (the "Nasdaq First Filing") and withdrawn by Nasdaq on August 13, 2024 (the "Withdrawn Filing").

[4] *See* Letter from Joanna Mallers, Secretary, FIA PTG to Vanessa Countryman, Secretary, SEC dated February 11, 2021 ("FIA PTG First Letter"); and Letter from Joanna Mallers, Secretary FIA PTG to Vanessa Countryman, Secretary, SEC dated April 30, 2024 ("FIA PTG Second Letter").

("NY11-4"). Notwithstanding our significant concerns, we understand the current space constraints in NY11 and therefore do not oppose the Proposed Rule Change.

Despite our decision not to oppose the Proposed Rule Change, based on recent history, FIA PTG's members are justifiably concerned that Nasdaq may delay remedying these inconsistencies following its launch of NY11-4. Our fears are based on Nasdaq's long delay in addressing the problems in NY11, Nasdaq's unwillingness to commit to equalizing the latency of connections within and between NY11 and NY11-4 on a definitive timeline and Nasdaq's general resistance to undertaking this equalization, all as demonstrated in meetings with FIA PTG members as well as Nasdaq's various filings and communications with the Commission on the topic. We believe that if Nasdaq had commenced the equalization of NY11 at the time it began developing the expansion plans for NY11-4, the entire Nasdaq collocation campus would be equalized and this debate would be moot. Unfortunately, the equalization of NY11 was not prioritized, and as a result Nasdaq finds itself in the untenable situation that exists today. For these reasons, explained in more detail below, we urge the Commission to ensure Nasdaq's plan to equalize latencies between all critical locations in NY11 and NY11-4 (the "Equalization Project") is prioritized without further delay.

Background: The "Problems" in NY11:

Nasdaq has acknowledged in prior communications to the Commission that, in NY11, "connections between collocated client cabinets and telecommunications providers vary based on the client's cabinet location"[5] and that, "connections between client cabinets and telecommunications providers are not of the same length."[6] Nasdaq has gone so far as to characterize these inequalities as "problems."[7] Despite Nasdaq's recognition of these "problems" and the fact that FIA PTG members have highlighted these disparities to Nasdaq for years and, more recently, to the Commission, Nasdaq has allocated the time and resources to construct the new NY11-4 data hall and file the Proposed Rule Change with the Commission twice, but has yet to provide transparency into the design or commit to a detailed timeline for the Equalization Project.

Nasdaq assures the Commission that "Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4."[8] But as Nasdaq knows well, and as FIA PTG and its members have previously expressed to the Commission[9] and to Nasdaq,[10] simply

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5 *See* Letter from Katie Hopkins, Associate General Counsel, Nasdaq to Vanessa Countryman, Secretary, SEC dated May 9, 2024 at 2.
6 Ibid.
7 Ibid at 3.
8 *See* Nasdaq Second Filing at 77937.
9 *See* FIA PTG First Letter and FIA PTG Second Letter.
10 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 offered no details when asked how they intend to ensure fair and equal treatment of customers in its new NY11-4 facility and as between customers in NY11 and NY11-4.

equalizing connections between client cabinets and the matching engine will not solve the latency inequalities in NY11, nor between critical locations in NY11 and NY11-4. Nasdaq's focus on customer connections to the matching engine addresses only the most familiar part of the problem while disregarding the equally-important fact that customers depend on data originating outside of NY11 to make the trading decisions which trigger signals between customer cabinets and the matching engine. That data enters NY11 through one of several points of entry ("POEs") and is then routed to one of several vendor "meet-me rooms" ("MMRs") and then on to the customer's cabinet. The sum of the different spans along this route dictates the customer's actual latency experience within the facility, which directly impacts order execution.

It is not FIA PTG's objective by this letter to impugn Nasdaq's motives. We simply fear that Nasdaq's prioritization of projects is subject to change based on factors which FIA PTG does not believe should further delay the Equalization Project. Nasdaq asserts in the Nasdaq Second Filing that equalization of cabling between customer equipment and equipment owned and operated by third-party telecommunications providers in the NY11-4 facility "is incident, but not strictly relevant to" their Proposed Rule Change. If Nasdaq does not believe that ensuring equalization of connections between all critical locations in a newly designed and constructed facility is "strictly relevant to" the commissioning of the facility, it can only take a dimmer view of equalizing an already existing facility. Nasdaq acknowledges as much in the Nasdaq Second Filing, characterizing the retrofitting of a data center for equalized telco connectivity as "a wasteful process" which they "must now engage in with respect to NY11." We understand Nasdaq's disinclination to allocate resources to a project which will not generate new revenue, but Nasdaq has an obligation to adhere to the Exchange Act mandate that the rules of an exchange be designed to "remove impediments to and perfect the mechanism of a free and open market," and not to "permit unfair discrimination between customers."

The Impact of Launching NY11-4 Before Remedying the "Problems" in NY11:

Currently, latency-sensitive customers at NY11 incur substantial additional expenses jockeying for, equipping and maintaining multiple cabinets within the data hall to improve proximity to their telecommunications vendors and thereby ensure their competitive position. FIA PTG believes that the effects of unequalized connections between various locations in NY11 will be compounded when NY11-4 comes online because latency-sensitive clients in NY11 may be compelled to take redundant cabinets in NY11-4 in order to minimize the distance between their cabinets and the POEs and MMRs through which their vendors are routed. This will require not only leasing space in NY11-4 and purchasing redundant equipment, but also allocating significant staff time for installing, testing, etc. While Nasdaq has made assurances that they have provided members with the data they need to analyze and compare the various latencies in NY11 to those in NY11-4, we fear many members will have no way of knowing with certainty how their various existing cabinet location latencies compare to those they might achieve in NY11-4 without purchasing the equipment, leasing the space and testing for themselves. To the extent that existing NY11 clients lack the necessary data they need to perform these comparisons, Nasdaq should ensure that they provide it or help clients obtain it, so as to allow each client to make informed decisions.

Under a section of the Nasdaq Second Filing titled: "Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality," Nasdaq dedicates two paragraphs to the argument that, because the latency of all customers in the NY11-4 facility will be equalized, "the launch of a full-equalized [sic] NY11-4 before equalizing NY11 would actually diminish the overall *average latency differential* among collocated customers' telecom provider connections" [italics added]. Nasdaq's premise is that, because all customers in NY11-4 will be equalized with one another, when their individual latencies are included in a data set with the disparate latencies of customers in NY11, the average latency differential between customers in the facility will be lower. While we cannot determine the accuracy of this statement without knowing the distribution of latencies within NY11, even if mathematically accurate, this misses the point. It would be more accurate to title this section: "Launching NY11-4 Before Equalizing NY11 Will Increase the Overall Number of Customers Experiencing Inequality." So, while the title of this section is intended to suggest to the reader that launching NY11-4 first will not increase the number of customers experiencing latency inequality within the Nasdaq facility, this is only true in a narrow mathematical way which is not relevant to our concerns. We would much prefer a section titled: "Launching NY11-4 After Equalizing NY11 Would Have Eliminated Inequality Altogether."

Timing, Sequencing and Timelines are Important:

Another section of the Nasdaq Second Filing is titled: "Any Advantage Attainable from the Launch of NY11-4 First Will Be Temporary." This section is dedicated to, among other things, minimizing the duration of the disparate treatment which will be exacerbated by the launch of NY11-4 prior to the equalization of NY11. Nasdaq dismisses concerns about the risk that some customers could gain a latency advantage from the launch of NY11-4 before equalization of NY11 asserting that, "such an advantage would be temporary given the fact that equalization of NY11 will follow *soon after* the launch of NY11-4" [italics added]. In the next sentence, Nasdaq refers to, "The *fleeting* nature of any such advantage" [italics added]. While it is true that the advantages will be temporary (assuming Nasdaq follows through and completes the Equalization Project), Nasdaq's attempts to minimize the duration of such an advantage are belied by statements elsewhere in the Nasdaq Second Filing where Nasdaq laments the cost and difficulty of the Equalization Project: "The Equalization Project will be complex, *time consuming*, and costly to complete," "the Equalization Project cannot and *will not be accomplished instantaneously*" and, most specifically, "the Project will require *18-24 months to complete*, commencing as of the launch of NY11-4" [italics added]. Nasdaq would have us believe that 18 to 24 months is "fleeting" for customers but not for Nasdaq.

Elsewhere in the Nasdaq Second Filing, Nasdaq claims that "Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, resequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities." Nasdaq's conclusion that the degree and duration of the customer disparities would be the same regardless of the order in which it launches NY11-4 and equalizes NY11 is inaccurate. Launching NY11-4 before equalizing NY11 necessarily means that the disparities within NY11 and between NY11 and NY11-4 will continue for nearly the entire 18-24 month period projected to plan and carry out the Equalization Project and that the pool of customers experiencing those disparities will increase to include the entire customer population of NY11-4 in addition to the existing customers in NY11, whereas the Nasdaq Second Filing states elsewhere that Nasdaq expects the phased transition period during which customers would experience temporary disparities will "occur in tranches *over the course of several weekends at the tail end of the 18-24 [sic] project period*" [italics added].

Conclusion

Despite FIA PTG's concerns with the way Nasdaq has historically approached the equalization of NY11 as well as the more recent expansion plans, it is *not* our intention to cause the Commission to delay the launch of NY11-4 by disapproving the Proposed Rule Change. However, we urge the Commission to take the following actions to ensure equalization of the entire Nasdaq collocation campus is completed expeditiously:

- Compel Nasdaq to provide a detailed Equalization Project plan including measurable milestones with required written project progress updates prior to the launch of NY11-4. At this point Nasdaq has had ample time to contemplate what would be required to equalize NY11, it is time for that information to be shared with market participants and the Commission.
- Ensure Nasdaq abides by its assurances that it will equalize latencies between all critical locations in NY11 and NY11-4 and require this equalization to be completed in the shortest time possible.
- Require Nasdaq to provide and justify the timeline necessary for this equalization to market participants and the Commission.

If you have any questions, please do not hesitate to contact Joanna Mallers at jmallers@fia.org.

Respectfully,

FIA Principal Traders Group

Joanna Mallers

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