

June 27, 2024

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

Re: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Cabinet Proximity Option Fee to Establish a Reservation Fee for Cabinets with Power Densities Greater Than 10kW (SR-NASDAQ-2024-022; SR-BX-2024-017; SR-ISE-2024-19; SR-GEMX-2024-11; SR-MRX-2024-12)

Dear Ms. Countryman:

Akuna Securities LLC (“AKSEC”) on behalf of itself and its affiliates, including Akuna Capital LLC (“AKC”) appreciate the opportunity to provide comment on the above referenced rule changes (the “Rule Changes”) by The Nasdaq Stock Market LLC (“Nasdaq”) and its affiliate exchanges (the “Exchanges”). We write in support and recognition of the multiple comment letters that have been submitted to date on this topic (collectively the “Letters”)¹. For the reasons detailed below and the reasons previously detailed by the Letters, AKSEC also urge the Commission not to approve the Nasdaq Proposed Rule Changes.

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> and Letter from J. Considine, McKay Brothers LLC (“McKay”), to V. Countryman, dated June 18, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-022/srnasdaq2024022-483611-1383074.pdf> (collectively “McKay Letters”); 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 McKay Letter(s), Bloomberg Letter, PFMA Letter, HMA Letter, and FIA PTG Letter largely echo the same concerns shared by AKSEC.

Background

AKSEC is part of a global proprietary trading firm with affiliates trading from Chicago and Sydney. AKSEC is a registered broker dealer that is a proprietary options market maker and currently is a member of the Nasdaq Options Market (“NOM”), NASDAQ PHLX (“PHLX”), Nasdaq ISE (“ISE”), and Nasdaq BX Options (“BX”), as well as numerous other exchanges. AKSEC is also a consumer of telecommunication services for exchange connectivity and is acutely aware of the complexities and expense of telecommunication services and the impact on financial markets generally. Therefore, AKSEC is well positioned to understand and support the concerns raised by the Letters addressing the Nasdaq Proposed Rule Changes.

Several Critical Concerns raised by the Letters.

The Letters collectively correctly identify several critical concerns with the Nasdaq Proposed Rule Changes warranting its disapproval. AKSEC has summarized some of those concerns below of which we are most aligned:

1. Concern about the variable and un-equalized infrastructure – i.e. connectivity (both intra and inter data center fiber) at the Nasdaq data center.
2. Concern about fair access for new and existing customers.
3. Concern about lack of transparency from Nasdaq which will compel latency sensitive customers to purchase cabinet space in NY11-4 in order to determine whether the new data hall is setup advantageously relative to the old hall.

On these points, AKSEC is particularly concerned about latency sensitivity and fair access as are the majority of similarly-positioned market-makers in the industry and which have been eloquently detailed in the arguments presented by the Letters referenced in the above footnote, which again AKSEC fully support.

In summation, AKSEC fully support the Letters’ general call for transparency and disclosure from Nasdaq. Without full disclosure from Nasdaq on the concerns raised in the Letters, the impact of the Nasdaq Proposed Rule Changes to all market participants cannot be fully established and the Commission and the marketplace will be unable to reasonable determine whether the proposal unfairly discriminates against or creates an unduly burdensome competition hurdle for any particular market participant.

Conclusion

For the foregoing reasons, AKSEC supports the Letters submitted to date and we respectfully urge the Commission to disapprove the Nasdaq Proposed Rule Changes. Should you have any questions in connection with our comments, please feel free to contact me at 312-994-4640.

Respectfully,



Desiree DeSalle-Baron
General Counsel

Cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jamie Lizárraga, Commissioner

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