August 12, 2024

BRETT KITT
VICE PRESIDENT,
DEPUTY GENERAL COUNSEL
805 KING FARM BLVD
ROCKVILLE, MD 20850

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

Re: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand its Co-Location Services, Securities Exchange Act Release No. 34-100440 (SR-NASDAQ-2024-026)

Dear Ms. Countryman:

Nasdaq, Inc. ("Nasdaq" or the "Exchange") writes to respond to two comment letters[1] submitted in response to its proposal filed with the Securities and Exchange Commission (the "SEC" or the "Commission") to expand its NY11 data center in Carteret, New Jersey to provide additional and upgraded colocation services in a new expanded space ("NY11-4").[2] In response to the Letters, Nasdaq offers additional information and assurances regarding the Proposal.

Nasdaq wishes to respond to McKay's efforts in its comment letter to dissuade the Commission from approving the Proposal. Specifically, we wish to address McKay's argument that the Commission should halt Nasdaq's plan to launch NY11-4 with equalized connectivity between customer equipment collocated in NY11-4 and third-party telecommunications providers. McKay argues that this plan should be placed on hold until Nasdaq retroactively effectuates equal telecommunications connectivity among its customers in NY11. These arguments are self-serving, specious, and based upon false premises.

First, at its core, McKay's argument is nothing more than a thinly veiled effort to obstruct the launch of NY11-4 to preserve for itself the commercial advantage it presently enjoys, as a telecommunications provider to customers collocated in NY11, due to the close proximity of its transmission tower to NY11. The introduction by Nasdaq of equalized connectivity between customers and telecommunications providers in NY11-4 and eventually in NY11 stands to negate that advantage. Although in its letter, McKay decries the unfairness of the inequality of telecommunications connections that the launch of NY11-4 would purportedly inject into the data center environment, the fact of the matter is that McKay raised no prior complaints to the SEC about inequality that currently exists in

1 See Letter from J. Considine, McKay Brothers LLC ("McKay"), to V. Countryman, dated July 24, 2024, available at https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf ("McKay Letter"); Letter from Desiree DeSalle-Baron, Akuna Capital, to V. Countryman, dated July 24, 2024, available at https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf ("Akuna Letter") (collectively, the "Letters"). The Akuna Letter largely expresses support for the McKay Letter. Thus, Nasdaq responds herein only to the McKay Letter.

2 See Securities Exchange Act Release No. 34-100440 (June 27, 2024), 89 FR 55294 (July 3, 2024) (SR-NASDAQ-2024-026) (the "Proposal").

NY11. Indeed, until the announcement of NY11-4, McKay was content to benefit from NY11 customers competing to collocate as close to its tower as possible.

Second, McKay's warnings that a new "land rush" will occur in NY11-4 are simply unfounded. As the Commission knows, Nasdaq currently is accepting orders for space in NY11-4, and while interest in the new space is healthy, it is not yet sold out. There is no indication that existing colocation customers are scrambling to secure space for themselves in NY11-4 (including otherwise unneeded space), let alone spending the lofty sums to do so that McKay projects they would in its letter. Contrary to McKay's assertions, the Exchange has been transparent about its plans for NY11-4; the location of NY11-4 and the locations of cabinets within it are known publicly or knowable such that there should be no uncertainty that would reasonably compel an existing NY11 colocation customer to purchase additional and unneeded space in NY11-4 simply as a means of ensuring that it secures what it considers to be the best available space within the data center. Moreover, any colocation customer within NY11 that believes it would be advantageous, for whatever reason, to relocate its equipment to NY11-4 will be free to do so at any time. Indeed, most of the pending customer interest in NY11-4 involves expanding their existing footprint in NY11.

Third, McKay's suggestion that Nasdaq must solve connectivity inequality in NY11 before doing so in NY11-4 would be risky and pointless. It would be risky because Nasdaq is building NY11-4 not only to begin the process of equalizing telecommunications connectivity within its data center, but also, more importantly, to meet its growing customer demands for space, power, and upgraded technological capabilities. Halting or even delaying the launch of NY11-4 would endanger Nasdaq's ability to meet the needs of its customers and investors. Such a result would be not only contrary to their interests, but it also would be inconsistent with Regulation SCI, which requires Nasdaq to reasonably anticipate and accommodate its capacity needs and those of its customers.

Meanwhile, McKay's suggestion would be pointless because equalizing telecommunications connectivity in NY11 before launching NY11-4 would not avoid the inescapable reality that full equalization – however accomplished – will require temporary disparities in the lengths of the cables running between telecommunications providers and customers in Nasdaq's data center. This is the case because this equalization project is a mammoth, complex, and costly endeavor that cannot be accomplished instantaneously, but rather must occur in phases. Equalization of telecommunications connections in NY11 will involve replacing multiple thousands of cables. Even if Nasdaq had the capability to replace all of those cables overnight (it does not), doing so would be inadvisable. Nasdaq would instead stage the re-cabling over time. During the transition period, certain customers' cables would become equidistant to one another while other customers' cables would remain unequal. <u>This is the exact same scenario that would occur if Nasdaq launched NY11-4 before equalizing NY11.</u>

Lastly, it is worth emphasizing again that even without NY11-4, NY11 presently does not contain equidistant cabling of our customers' telecommunications connections. As such, the launch of NY11-4 would not introduce any novel concerns. We note, moreover, the current configuration of NY11 is by no means unique among exchanges. Cboe, MEMX, and IEX operate similarly in their Secaucus data center and have done so for years.[3] That said, Nasdaq has determined for itself that the interests of market participants would be better served by changing our current business practice, and this Proposal is the first

[3] Although McKay is correct that NYSE operates a data center with telecommunications connections that are fully equalized, the Secaucus data center where Cboe, IEX, and MEMX operate is designed similarly to Nasdaq's Carteret data center, in that customer connections to the matching engine are equal, but telecommunications connections to customer equipment are not equal.

phase of our efforts to do so. Equalization efforts have to start somewhere, and McKay presents no good reason why Nasdaq should not start its equalization effort with the launch of NY11-4.

Nasdaq appreciates the opportunity to respond to the Letters.

Sincerely,

Brett Kitt

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