

FIA PTG

PRINCIPAL TRADERS GROUP

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February 11, 2021

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Market Access Concerns with the Nasdaq Carteret Data Center Roof (File No. 4-729)

Dear Ms. Countryman:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to provide additional comments to the U.S. Securities and Exchange Commission (the “Commission”) on market access concerns at certain equity exchanges. At the time of our comments on the NYSE Stock Exchange LLC (“NYSE”) Proposed Rule Change to Establish a Schedule of Wireless Connectivity Fees and Charges with Wireless Connections,² we stated, “We are aware of other exchanges with seemingly similar configurations that warrant attention and would welcome the opportunity to review and comment.”³ At this time we echo the concerns raised by McKay Brothers, LLC (“McKay”) in their December 10, 2020 letter⁴ concerning the wireless connectivity configuration to Nasdaq Stock Market LLC, (“Nasdaq”) via the roof of the Nasdaq data center in Carteret, NJ.

McKay identifies several critical concerns with the current wireless connectivity (i.e., bandwidth) and market data services (collectively the “Nasdaq Wireless Services”) warranting review and remediation. McKay correctly notes that:

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 and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.

² Release No. 34-88168; File No. SR-NYSE-2020-05.

³ Letter from Joanna Mallers, Secretary, FIA PTG, to Vanessa Countryman, Secretary, SEC, dated September 25, 2020 (the “[FIA PTG NYSE Wireless Letter #2](#)”) at 2.

⁴ Letter from Jim Considine, CFO, McKay, to Vanessa Countryman, Secretary, SEC, dated December 10, 2020 (the “[McKay Letter](#)”).

- the Nasdaq Wireless Services should be viewed as facilities of the Exchange, and should therefore be subject to the exchange rule filing process; and
- allowing the firm that operates the Nasdaq Wireless Services to offer its own independent wireless connectivity services using the same rooftop connection, with a limited capacity for a small number of market participants, raises questions of potential unfair discrimination against Nasdaq members who do not have access to this service thus raising concerns of unfair discrimination and inappropriate burdens on competition under the Securities Exchange Act of 1934 (the “Exchange Act”), similar to those recently addressed by the NYSE’s wireless connectivity and market data services.
 - In this regard, McKay correctly notes that it is appropriate to question “whether an exchange can use its direct and indirect control over its data center to provide a latency advantage to its services or those of a select vendor(s)”. The answer, of course, is a resounding no.
 - Permitting an exchange to operate a facility on such an exclusive, materially advantaged and limited availability basis seems counter to Sections 6(b)(8) and 6(b)(5) of the Exchange Act.

FIA PTG also supports McKay’s call for transparency and disclosure. Without details regarding the magnitude of the facility’s latency advantage, the facility’s availability, the path within Nasdaq’s controlled space in the data center that fiber connections from the roof must take, and the expected impact to participants who are unable to avail themselves of the service, among other items, the marketplace is unable to reasonably determine whether the current configuration unfairly discriminates against certain market participants or unduly burdens competition.

When it comes to market access, FIA PTG believes the most important principle is creating and maintaining a level playing field. In this instance, we do not believe that Nasdaq has met that principle and therefore urge the Commission to require Nasdaq to comply with the exchange rule filing process including public review and comment.

If you have any questions or need more information, please contact Joanna Mallers (jmallers@fia.org).

Respectfully,

FIA Principal Traders Group



Joanna Mallers
Secretary

Vanessa Countryman, U.S. Securities and Exchange Commission

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cc: Allison H. Lee, Acting Chair
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
Caroline A. Crenshaw, Commissioner