

SEWARD & KISSEL LLP

901 K STREET, NW
WASHINGTON, DC 20001

ANTHONY C. J. NULAND
PARTNER
nuland@sewkis.com

TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184
WWW.SEWKIS.COM

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004
TELEPHONE: (212) 574-1200
FACSIMILE: (212) 480-8421

January 17, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish Fees for New Optional Wireless Connectivity for Co-located Clients (SR-NASDAQ-2012-119) (the "Proposal").

Dear Ms. Murphy:

We thank the staff of the Division of Trading and Markets for accommodating our request to submit a comment letter during the extension of the initial 45 day period for consideration of the Proposal by the Securities and Exchange Commission. We represent Quincy Data, LLC, a wireless market data vendor that competes directly with the Nasdaq Stock Market LLC ("Nasdaq") in providing the services covered by the fees addressed in the proposal. Our client believes that the explanations in the Proposal do not satisfy the requirements of Section 6 of the Securities Exchange Act of 1934 (the "Act"), and that Nasdaq has not explained in sufficient detail how the Proposal will provide for the equitable allocation of reasonable fees, will not result in a burden on competition and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Nasdaq states that its Proposal is consistent with Sections 6(b)(4) and 6(b)(5) of the Act, explaining that the Proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a

national market system, and, in general to protect investors and the public interest (emphasis supplied).¹

In Section 2 of the Proposal, Nasdaq asserts (and generally repeats throughout the Proposal), that the Proposal must be reasonable because the services it covers are so constrained by the highly competitive co-location market, that if the fees were not reasonable, the market for the services would self-correct and Nasdaq would lose customers. For example, Nasdaq explains that the “[e]xchange operates in a highly competitive market...[a]ccordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members.”² Nasdaq uses a similar explanation to argue that the Proposal will not result in any burden on competition.³ Nasdaq also states that the Proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement and that wireless technology is widely used and available from multiple providers.

While Nasdaq states that the Proposal will promote competition in the distribution of ITCH and other Nasdaq market data feeds (together, “Nasdaq Data”) to customers at other data centers, as well as for the distribution of NYSE, BATS and DirectEdge market data (together, “Other Market Data”) to customers at the Nasdaq data center, aspects of the proposal are inherently anti-competitive and the competition upon which Nasdaq bases its Section 6(b) arguments, exists only to the extent that Nasdaq permits. By submitting the Proposal, Nasdaq is attempting to gain the Commission’s implicit approval of an anti-competitive arrangement involving the distribution of Nasdaq Data and Other Market Data.

Under the Proposal Nasdaq would be the only wireless provider permitted to install microwave dishes on the rooftop of the Verizon data center in Carteret, New Jersey (together with any future data centers utilized by Nasdaq, the “Nasdaq Data Center”) from which Nasdaq Data is distributed and Other Market Data is collected and distributed to customers within the Nasdaq Data Center.⁴ Rooftop access is a critical ingredient for a wireless market data vendor to create a competitive network. A wireless market data provider that is forced to run fiber optic cable from

¹ See Proposal at 7.

² See Proposal at 7. “Accordingly, the Exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with execution of orders routed to it by affected members.” See also, pg. 11. “[T]he Exchange believes that fees for co -location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange’s ability to compete for order flow rather than burdening competition.”

³ See Proposal at 11. Nasdaq further states, “the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets.”

⁴ See Proposal at 10. “Some market participants have already adopted wireless technology, using towers near the data centers, and others have approached the Exchange seeking to rent roof rights to mount their towers. Rather than lease out roof space to the highest bidders, a process that would stratify and limit access to the low latency delivery, this approach allows unlimited numbers of users to utilize the equipment that the Exchange will mount and accommodates all clients fairly and equally.”

the Nasdaq Data Center to its transmitter on a nearby tower will be at a competitive disadvantage in relation to a wireless provider that has direct access to the Nasdaq Data Center rooftop. By limiting rooftop access to its own wireless network, the arrangements contemplated by the Proposal, would inhibit the competition the Proposal claims to promote.⁵

Moreover, Nasdaq can limit and control competition for its own wireless network.

1. Through its market data license application process, Nasdaq can control, delay or limit the vendors that can distribute the Nasdaq Data.
2. Through its co-location application and approval process, Nasdaq can control, delay or limit vendors' ability to co-locate in the Nasdaq Data Center, thus impeding such vendors from distributing Nasdaq Data or Other Market Data.
3. Through its authorized telecom provider application and approval process, Nasdaq can control, delay or limit the telecom providers that can service the Nasdaq Data Center.
4. Through Nasdaq's control over (i) the initial dissemination of Nasdaq Data from the trading engine, (ii) the re-dissemination of Nasdaq Data to the wireless network and (iii) the distribution of Other Market Data within the Nasdaq Data Center, Nasdaq is in a position to delay or limit the ability of wireless market data vendors to provide the Nasdaq Data and Other Market Data in a form and with a latency that is competitive with Nasdaq's service.

Thus, a vendor that wishes to distribute Nasdaq Data via a wireless network to the vendor's customers at other data centers or wishes to receive Other Market Data via wireless technology from other trading centers and distribute such data to the vendor's customers located in the Nasdaq Data Center, can be disadvantaged in numerous ways. And, as a beneficiary of these disadvantaging effects, Nasdaq can reduce the competition with its own wireless network, thereby enabling Nasdaq to charge fees for distribution of the Nasdaq Data or Other Market Data that are not grounded in competition.

If engaged in, this type of anti-competitive activity results in a type of "vertical tying" in which customers who desire the lowest possible latency, and may be able to obtain it through another data transmitter, must instead use the Nasdaq wireless network and pay at the potentially non-competitive fees that Nasdaq chooses to impose.

Furthermore, in defense of providing the services contemplated by the Proposal, Nasdaq states in several places that the expense of building or acquiring alternative wireless networks will stratify

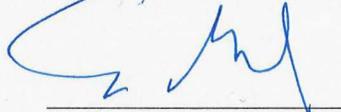
⁵ In footnote 7 of the Proposal Nasdaq argues it is promoting competition by "selecting, on a competitive basis, the service provider to install and maintain the system" ...[t]he program, far from burdening competition among connectivity service providers, promotes it." This argument misses the point, Nasdaq may have received competitive bids from wireless vendors seeking to be the provider for Nasdaq's network (thereby becoming the sole wireless service provider with access to the data center rooftop), however, this bidding process does not promote competition, outside of the bidding process, i.e., among wireless vendors distributing Nasdaq Data and Other Market Data to their clients

access so that only those able to establish wireless networks will be able to obtain lower latency. In fact, wireless market data providers have sufficient resources to compete with Nasdaq, and will provide competitive services if access to the Nasdaq Data, the Nasdaq Data Center and the Nasdaq Data Center rooftop is fair and open. And based on the fees Nasdaq is proposing, it is likely that wireless market data providers will be able to provide competitive services at lower prices.

We suggest that Nasdaq be requested to provide additional detail and support for its Section 6(b) arguments in the Proposal and undertake to not discriminate against competing market data vendors by delaying or denying full and fair access to the the Nasdaq Data, the Nasdaq Data Center and the Nasdaq Data Center rooftop.

We appreciate the opportunity to submit our comments on the Proposal. We request that the Commission delay the approvals sought in the Proposal until Nasdaq satisfactorily addresses the concerns identified in this letter. If you have any questions, please feel free to contact the undersigned at (202) 737-8833.

Sincerely,



Anthony C.J. Nuland

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