



December 20, 2016

VIA EMAIL: RULE-COMMENTS@ SEC.GOV

Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Re: Release No. 34-79431; File No. SR-Nasdaq-2016-120 (Nov. 30, 2016)

Dear Sir or Madam:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced notice and again on this rule filing (the “Proposal”). SIFMA notes that the staff initiated proceedings to determine whether to approve or disapprove the proposed rule change regarding the Nasdaq Ultra connectivity service.² We will not repeat here the points SIFMA raised in our first comment letter³ in opposition to the proposal for the Third Party Connectivity Service (the “Service”). Instead, we will answer the two questions the Commission asked in its order instituting proceedings to determine whether to approve or disapprove the proposed rule change

Is the proposal consistent with Sections 6(b)(4), (b)(5), and (b)(8), or any other provision of the [Securities Exchange Act of 1934], or the rules and regulations thereunder”?

SIFMA does not believe the Proposal is consistent with the Exchange Act because Nasdaq has ignored the fundamental conflict of interest it has in the two hats that it wears: (1) a for-profit owner and operator of a securities exchange, and (2) a Securities Information Processor (“SIP”) operator and administrator selected pursuant to and governed by the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (“Nasdaq UTP Plan”).

Wearing its first hat, Nasdaq’s proposed Third Party Connectivity Service is contrary to Section 6(b)

¹ SIFMA represents these broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Rules 7034 and 7051 to Establish the Third Party Connectivity Service, SEC Release No. 34-79431; File No. SR-Nasdaq-2016-120 (November 30, 2016).

³ SIFMA Comment Letter re: SEC Release No. 34-78713, dated November 30, 2016.

for reasons stated in the prior comment letters filed in this matter by BATS, Virtu Financial, SIFMA, and IEX: namely, Nasdaq would siphon off the UTP SIP data and make it more expensive to connect to and access.⁴ It would place this burden on disseminators and users of consolidated data. This is neither equitable nor reasonable – contrary to Section (6)(b)(4); is not designed to “perfect” a national market system or to protect investors – contrary to Section 6(b)(5); and would impose an unnecessary burden on competition – contrary to Section 6(b)(8).

Further, Nasdaq has ignored its second hat. As a National Market System (“NMS”) Plan, the Nasdaq UTP Plan is a creature of, and constrained by, Section 11A of the Exchange Act and, therefore, so is Nasdaq as the SIP operator/administrator. The Proposal would impact how UTP SIP data is disseminated. That word, “Dissemination,” is important enough that it is in the title of the UTP Plan. As BATS stated in its comment letter, the Service would impose an access fee that must be addressed through changes to the UTP Plan. In the very least Nasdaq committed a procedural error, in that it did not propose for UTP Plan approval the change to how the consolidated data is disseminated. It is a “joint” SRO plan, and there was no joint action. Nasdaq therefore violated NMS Rule 603(b). Two of the UTP Plan members, BATS and IEX, rightfully have complained about this in their comment letters. No further proof of procedural violation is necessary.

More importantly, exchanges cannot treat consolidated data as their own to do with as they please. Forty-one years ago, Congress enacted Section 11A of the Exchange Act to mandate that the Commission and the exchanges treat the securities markets as a “national asset” to enhance “the availability of information with respect to quotations for and transactions in securities” and to link the markets to “foster efficiency, competition [and] increase information available” to market participants. By unilaterally imposing a new Service to access UTP SIP data, with a new and additional fee, and increased technological requirements and administrative burdens, Nasdaq would violate Section 11A and, in particular, Section 11A(b)(5)(A), by limiting access to the SIP data.

What are the relative merits and advantages or disadvantages of obtaining UTP Data from sources other than directly from Nasdaq via the proposed Third Party Connectivity Service?

Nasdaq is the operator and administrator of the SIP that processes and disseminates Nasdaq UTP SIP data; there is no other source. Any external provider must access this data through Nasdaq. Any fee would burden re-dissemination through an external provider and would be passed along to the ultimate users of the data, including SIFMA member firms. Therefore, there are no relevant advantages of obtaining the UTP SIP data directly from another provider.

⁴ BATS Comment Letter re: SR-Nasdaq-2016-120, dated September 12, 2016; BATS Comment Letter No. 2 re: SR-Nasdaq-2016-120, dated October 12, 2016; Virtu Financial Comment Letter re: SR-Nasdaq-2016-120, dated October 6, 2016; IEX Comment Letter re: SR-Nasdaq-2016-120, dated December 9, 2016.

For the reasons stated above, we urge the Commission to disapprove the Proposal.

If you have any questions or need any additional information, please contact me at 202-962-7385 or mmacgregor@sifma.org.

Sincerely,

/Melissa MacGregor/

Melissa MacGregor
Managing Director and Associate General Counsel