KCG Holdings, Inc.
545 Washington Boulevard
Jersey City, New Jersey 07310
1 201 222 9400 tel
1 800 544 7508 toll free

www.kcg.com

KCG

December 23, 2016

**Via Electronic Mail**

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Securities Exchange Act Release 79431;
File No. SR-Nasdaq-2016-120**

Dear Sir or Madam:

KCG Holdings, Inc. ("KCG")[1] appreciates the opportunity to respond to the Securities and Exchange Commission (the "Commission") and comment on the proceedings to determine whether to approve or disapprove the above-referenced rule filing.

KCG agrees with the numerous concerns raised by commenters[2] and, therefore, respectfully opposes Nasdaq's proposed rule change to establish the Third Party Connectivity Service on the following grounds:

- It constitutes an access services fee for UTP data that has not been approved by the UTP Operating Committee;

[1] KCG is a leading independent securities firm offering investors a range of services designed to address trading needs across asset classes, product types and time zones. As an electronic market maker, KCG commits its capital to facilitate trades by buyers and sellers on exchanges, ATSs, and directly with clients. We combine advanced technology with exceptional client service to deliver greater liquidity, lower transaction costs, improve pricing, and provide execution choices. KCG has multiple access points to trade global equities, fixed income, currencies and commodities through voice or automated execution.

[2] *See* letters to the Commission from: Bats Global Markets, Inc., dated September 12, 2016 and October 12, 2016 ("Bats"); Virtu Financial, dated October 6, 2016 ("Virtu"); Securities Industry and Financial Markets Association, dated November 23, 2016 ("SIFMA") and Investors Exchange LLC, dated December 9, 2016 ("IEX").

- It benefits Nasdaq's proprietary data over UTP data and is therefore anti-competitive;
- There is no indication that it is technically necessary;
- It raises conflict of interest concerns stemming from exchanges' role as market data providers to market participants who are required by regulation to obtain it; and
- It contravenes the UTP SIP's fundamental purpose of providing market participants with quality market data at relatively low cost.

For these reasons, the Commission should disapprove Nasdaq's proposed rule change to establish the Third Party Connectivity Service as inconsistent with Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Securities Exchange Act of 1934 ("Exchange Act").

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## I. Background

On August 16, 2016, Nasdaq Stock Market LLC ("Nasdaq") filed with the Commission a proposed rule change to amend Rules 7034 and 7051 to establish the Third Party Connectivity Service that would segregate connectivity to Nasdaq and its proprietary data feeds from connectivity to UTP SIP data feeds and other third party data feeds (the "proposal"). Historically, Nasdaq has permitted customers to obtain a single direct physical connection to receive both UTP data and Nasdaq proprietary data. Under the proposal, customers seeking connectivity to Nasdaq's proprietary data feed would continue to receive it through existing connectivity options whereas customers seeking direct connectivity to the UTP SIP data feed administered by Nasdaq would have to establish a new and separate physical connection and would be charged a new monthly subscription fee of $5,000.

The Commission solicited input regarding the proposal and received several comment letters opposing the proposed rule change as well as a response from Nasdaq supporting its proposal. In view of the issues raised by commenters contesting the proposal, the Commission has instituted proceedings to determine whether to approve or disapprove Nasdaq's proposed rule change and has requested that interested persons provide their views on the matter.[3]

## II. Discussion

As noted by the Commission in the Proceedings Order, all commenters that submitted views with respect to Nasdaq's Third Party Connectivity Service oppose the proposed rule change. Collectively, they express numerous grounds why the proposal violates the statutory requirements applicable to a national securities exchange, specifically including Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Exchange Act. KCG agrees with several of the concerns expressed by commenters regarding the proposal.

First, we agree with Bats, SIFMA and IEX that the proposed rule change constitutes a UTP access services fee for direct access to UTP data that should have been approved – but was not – by the UTP Operating Committee. Given Nasdaq's role as the sole provider of direct access to UTP data, the proposed rule change effectively targets UTP data recipients because it would require customers who currently directly receive UTP data and Nasdaq proprietary data via a single physical connection to subscribe and pay for the new Third Party Connectivity Service in order to directly receive UTP data going forward. This is an entirely new set of terms and conditions regarding direct access to UTP data and, as such, it is critical that the proposal be approved by the UTP Operating Committee.

Second, we agree with the perspective provided by BATS and Virtu - the proposal is anti-competitive in that it benefits Nasdaq's proprietary data over UTP data. Specifically, customers would be able to continue to directly connect to Nasdaq's proprietary data products for no additional charge whereas customers seeking to continue to directly access UTP data will be required to purchase an additional connection via the Third Party Connectivity Service. Nasdaq's proposal effectively

[3] *See* 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, Exchange Act Release No. 79431 (November 30, 2016) ("Proceedings Order"); *See also*, Securities Exchange Act Release No. 78713 (August 29, 2016).

separates or unbundles UTP data from Nasdaq's proprietary data and, for the first time, imposes a separate fee for direct access to UTP data.

Third, Bats, Virtu and SIFMA collectively assert that the establishment of the Third Party Connectivity Service is not technically necessary. We concur with this view. Before compelling customers into a 10Gb connection for UTP data, Nasdaq should prove the projected usage requirements for the new SIP technology necessitates that much bandwidth. Fourth, we agree with SIFMA and IEX that the rule change raises long-standing concerns about conflicts of interest stemming from exchanges' role as providers of market data to market participants who are required by regulation to obtain it. Finally, SIFMA insists that the proposal contravenes the fundamental purpose of the UTP SIP, which is to provide market participants with quality market data at relatively low cost. We agree with this assessment.

Given these concerns, as well as the consistency of views on this matter among commenters contesting the proposal, the Commission should disapprove Nasdaq's proposed rule change to establish the Third Party Connectivity Service as inconsistent with the following sections of the Exchange Act:

- Section 6(b)(4), which requires that rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members;
- Section 6(b)(5), which requires exchange rules not be designed to permit unfair discrimination among participants; and
- Section 6(b)(8), which requires exchange rules not impose any undue burden on competition.

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KCG greatly appreciates the opportunity to comment on the proposed rule change and would be pleased to discuss these comments in greater detail. If you have any questions, please do not hesitate to contact John A. McCarthy (at [redacted] or [redacted]) or Tom Eidt (at [redacted] or [redacted]).

Sincerely,

/John A. McCarthy/

John A. McCarthy
General Counsel