CITADEL | Securities

December 27, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: Securities Exchange Act Release No. 79431; SR-NASDAQ-2016-120; 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

Dear Mr. Fields:

Citadel Securities ("Citadel")[1] appreciates the opportunity to comment on the Commission's order instituting proceedings[2] to determine whether to approve or disapprove the proposed rule change by The Nasdaq Stock Market LLC ("Nasdaq" or the "Exchange") to establish a "Third Party Connectivity Service". This Proposal would separate connectivity to the Exchange and its proprietary data feeds from connectivity to third party services and data feeds, including Securities Information Processor ("SIP") data feeds.[3]

The proposed fee increases are emblematic of a continuing negative trend of exchanges significantly increasing connectivity, market data, and other fees with little justification or benefit. We agree with commenters and the Commission that the Proposal raises concerns under the Securities Exchange Act of 1934 ("Exchange Act"), including (a) Section 6(b)(4), which requires that the rules of an exchange provide for the equitable allocation of reasonable fees, (b) Section 6(b)(5), which requires that the rules of an exchange protect investors and the public interest and not permit unfair discrimination, and (c) Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Proposal's new connectivity fees for third party data feeds are an example of the proliferation of exchange fees that may not be equitably allocated among Exchange members. Under the Proposal, market participants will now be required to establish a separate connection to access third party data feeds and will be required to purchase a high bandwidth 10Gb Ultra connection in order to have access to SIP data. Moreover, firms must continue to pay current

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[1] Citadel Securities is a leading global market maker across a broad array of fixed income and equity securities. In partnering with us, our clients, including asset managers, banks, broker-dealers, hedge funds, government agencies and public pension programs, are better positioned to meet their investment goals. On an average day, Citadel accounts for approximately 15 percent of U.S. listed equity volume, 19 percent of U.S. listed equity option volume, and more than 35 percent of all retail U.S. listed equity volume.

[2] Securities Exchange Act Release No. 79431, 81 FR 87981 (December 6, 2016) ("Order Instituting Proceedings").

[3] Securities Exchange Act Release No. 78713, 81 FR 60768 (September 2, 2016) (the "Proposal").

connectivity fees to Nasdaq in order to have access to the Exchange and its proprietary data feeds.[4] It appears these current connectivity fees will remain unchanged, even though they previously included access to all three services (i.e. Nasdaq connectivity, third party data feeds, and SIP feeds).

Nasdaq has failed to provide a reasonable justification for requiring market participants to purchase a high bandwidth 10Gb Ultra connection in order to have access to SIP data. Even if recent upgrades to the SIP have resulted in an increase in the recommended bandwidth, there is no apparent reason that a 10Gb connection should be required.[5] In addition, Nasdaq does not provide any justification for maintaining the existing connectivity fees at their current levels, despite removing connectivity to third party data feeds and the SIP from the included services.

These additive and layered fees are a persistent problem with exchange fees more generally. While any individual new fee, change in a fee structure, or fee increase by an exchange could appear to be "reasonable" and not "unfairly discriminatory," the aggregate and cumulative impact of exchange fees impedes a free and open market and is contrary to the public interest, in contravention of Section 6(b)(5) of the Exchange Act. Citadel appreciates the Commission's close scrutiny of the Nasdaq Proposal and encourages a similar level of review for new exchange fee proposals that takes into account all of the various fees that are imposed on market participants, in particular with respect to market data products where exchanges have a monopoly as the initial distributors. Increases in exchange fees raise the cost of providing services to customers and ultimately result in higher trading costs for investors.

While exchanges may argue that subscribing and connecting to certain data products is "voluntary" and point to alternative means of access through a third-party, in reality, market participants do not have effective alternatives to paying exchange fees for access to such services and products. Exchanges are afforded two distinct advantages that are not readily available to any other market participant: (1) market data; and (2) protected quotation status under the Order Protection Rule.[6] Market participants must be able to access exchanges displaying protected quotations to comply with the Order Protection Rule, and need the exchanges' market data to determine the best quotations and available liquidity.

Within this regulatory framework, broker-dealers face significant competition from other broker-dealers for the order flow of institutional, retail, and other investors. These competitive pressures oblige broker-dealers to seek the most efficient access to markets and market data to execute orders, a dynamic that improves conditions for investors by fostering price competition and innovation. Broker-dealers are thus often faced with either assuming the risks associated with slower and less efficient access, to the ultimate detriment of their customers, or paying whatever fees exchanges may charge for the most efficient access, either directly to the exchange or through another broker-dealer. The ultimate impact of these fee monopolies is to impede a free and open market to the detriment of the public interest and investors by raising trading costs, increasing

[4] *Id.* at 60770.

[5] *Id.*at 60768.

[6] 17 CFR 242.611.

barriers to entry for smaller broker-dealers and new entrants, and increasing incentives for exchanges to focus on profits at the expense of their responsibilities to the market as a whole.

The SEC is a critical safeguard to monitor and remedy these issues. In its review of exchange fee proposals, Citadel urges the Commission to give greater consideration to the aggregate impact of fees, the existence of certain exchange monopolies as a consequence of the current equity market structure, and whether exchange fees are reasonable, equitably allocated, and not unfairly discriminatory where broker-dealers do not have equivalent alternatives.

In sum, Citadel believes that Nasdaq has not provided a reasonable basis for the proposed fees under the Exchange Act. Establishing a separate connectivity fee for access to SIP data while maintaining the existing connectivity fees at their current levels does not appear to be an equitable allocation of reasonable fees as required by Section 6(b)(4) of the Exchange Act for those that rely on these products. In addition, the Nasdaq Proposal implicates more general concerns regarding exchanges significantly increasing connectivity, market data, and other fees on market participants that typically do not have viable alternatives. This trend leads to unfair discrimination, in contravention of Section 6(b)(8) of the Exchange Act, and fails to protect investors and the public interest, in contravention of Section 6(b)(5) of the Exchange Act. As noted above, Citadel appreciates the Commission's close scrutiny of the Nasdaq Proposal and encourages a similar level of review for new exchange fee proposals that takes into account all of the various fees that are imposed on market participants.

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Please feel free to call the undersigned at ([redacted] with any questions regarding these comments.

Respectfully,

/s/ Adam C. Cooper

Senior Managing Director and Chief Legal Officer