



**T. Sean Bennett**

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January 26, 2017

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street NE  
Washington, DC. 20549

Re: Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768  
(September 2, 2016) (SR-NASDAQ-2016-120)

Mr. Fields:

Nasdaq is responding to comments by IEX Group, Inc.,<sup>1</sup> SIFMA,<sup>2</sup> KCG Holdings, Inc.,<sup>3</sup> and Citadel Securities,<sup>4</sup> regarding the above-captioned proposed rule change ("Proposal"). The Proposal would establish a state-of-the-art telecommunications network and network connectivity for distribution by Nasdaq of over forty non-Nasdaq data feeds and services, and

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<sup>1</sup> See Letter dated December 9, 2016, from John Ramsay, Chief Market Policy Officer, IEX Group, Inc., to Brent J. Fields, Secretary, US Securities and Exchange Commission, available at: <https://www.sec.gov/comments/sr-nasdaq-2016-120/nasdaq2016120-8.pdf>.

<sup>2</sup> See Letter dated December 20, 2016, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, US Securities and Exchange Commission, available at: <https://www.sec.gov/comments/sr-nasdaq-2016-120/nasdaq2016120-1432553-129883.pdf>.

<sup>3</sup> See Letter dated December 23, 2016, from John A. McCarthy, General Counsel, KCG Holdings, Inc., to Brent J. Fields, Secretary, US Securities and Exchange Commission, available at: <https://www.sec.gov/comments/sr-nasdaq-2016-120/nasdaq2016120-1442926-130028.pdf>.

<sup>4</sup> See Letter dated December 27, 2016, from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, US Securities and Exchange Commission, available at: <https://www.sec.gov/comments/sr-nasdaq-2016-120/nasdaq2016120-1447134-130074.pdf>.

corresponding fees. The Commission received four comment letters in opposition to the Proposal.<sup>5</sup> On November 30, 2016, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the Proposal (“Order”).<sup>6</sup> In response to the Order, the Commission received four additional comment letters.<sup>7</sup> None of the letters received in response to the Order raise novel issues, but rather mirror the underlying themes of prior comments, namely: (1) the Proposal is an access fee for UTP SIP data that must be approved by the UTP Operating Committee; and (2) the 10Gb Ultra feed is not technically necessary. As discussed in Nasdaq’s initial response to comments (“Response”)<sup>8</sup> and below, Nasdaq strenuously disagrees with both arguments.

Commenters are seeking to extend UTP Operating Committee jurisdiction to Nasdaq’s connectivity offerings with no substantiating authority granted expressly by the UTP Plan. As discussed in detail in the Response, the UTP Plan has provisions that cover nearly every aspect of the SIP and was the product of intense negotiation, yet it does not discuss the governance of the network or network connectivity. Commenters acknowledge that Nasdaq has long-offered connectivity to the UTP SIP data for a fee, but argue that the UTP Operating Committee somehow approved of the fees by not vocalizing any opposition to them. Apparently, the commenters believe that now is the time for the Operating Committee to exercise this long latent, and unwritten, “authority” to approve or disapprove Nasdaq’s connectivity fees. Nasdaq finds this argument contrived and inconsistent with the other NMS market data plans (OPRA, CTA and CTB).

Commenters also argue that the 10Gb connectivity is not technically necessary and that Nasdaq should prove the capacity requirement. Nasdaq disagrees with this argument and finds it to be reckless given that there is no disagreement that data feed requirements have increased significantly, and will continue to do so. As discussed in the Response, Nasdaq has witnessed spikes in data that exceed 1Gb, the capacity of Nasdaq’s other connectivity offering. Nasdaq continues to observe spikes in the UTP feeds that exceed 1Gb, making the 10Gb offering technically necessary, and perhaps necessary to fulfill the customer’s regulatory

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<sup>5</sup> See letters from Eric Swanson, Esq., General Counsel, BATS, dated September 12, 2016 and October 12, 2016, Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated October 6, 2016, and from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated November 23, 2016, to Brent J. Fields, Secretary, Commission.

<sup>6</sup> See Securities Exchange Act Release No. 79431 (November 30, 2016), 81 FR 87981 (December 6, 2016) (SR-NASDAQ-2016-120).

<sup>7</sup> See notes 1 – 4, *supra*.

<sup>8</sup> See letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Brent J. Fields, Secretary, Commission, dated October 4, 2016.

responsibilities, in Nasdaq's opinion. As noted in the Proposal, the CTA and OPRA SIPs have also increased capacity projections, which will place additional strain on existing connectivity.<sup>9</sup>

The comments received on the Proposal are misleading and serve to only to confuse the issues. The Proposal provides a robust solution to organizing and managing the significant and increasing demands of the numerous third party data feeds offered in Nasdaq's data center.<sup>10</sup> As Nasdaq stated in its filing and Response, the Proposal is about segregating data for network resiliency and ensuring connectivity is adequate for the intended use. Nasdaq isolated the network carrying SIP data and other Third Party Data also due in part to intense pressure to reduce potential conflicts of interest arising from Nasdaq's operation of the Processor along with its exchanges. Nasdaq does not agree with, or acquiesce to, the commenters' claims and unsubstantiated expansive views on what must be approved by the Operating Committee.

Nasdaq is willing to make two changes to address the comments received and make it clear that Proposal does not in any way target or disadvantage customers seeking connectivity to UTP SIP data. First, Nasdaq will offer every customer one Third Party connection to UTP SIP data only at no cost. If the customer chooses to add other data feeds to their Third Party Connectivity, the fees will apply. However, as stated if the Third Party Connectivity is used only for UTP SIP data, the first connection will be provided at no charge. Second, Nasdaq will allow customers to select a 1Gb port or a 10Gb port to connect to UTP SIP data, both for the one free connection provided by Nasdaq and for any additional connections to which they subscribe. If a customer elects to subscribe to UTP SIP data using a 1Gb connection, Nasdaq will require senior management of the customer to approve the connection, given the potential issues that may result from a connection with insufficient capacity to handle UTP SIP data. Taken together, these two changes address any concern that the intent of the Proposal is to somehow disadvantage subscribers to UTP SIP data or to increase their fees -- Nasdaq is offering such connectivity at no cost to each customer. Moreover, Nasdaq is providing customers with flexibility to choose either a 1Gb or 10Gb capacity connection for their UTP SIP data, although Nasdaq strenuously believes that a 1Gb connection is not sufficient to handle the spikes in data that exceed 1Gb, which frequently occur. Thus, these changes completely negate the concerns voiced by commenters.

Nasdaq will file an amendment to the Proposal to reflect the changes discussed above, after which Nasdaq believes that the Proposal will have addressed commenters' concerns and will

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<sup>9</sup> See [https://www.opradata.com/specs/opra\\_bandwidth\\_apr2016.pdf](https://www.opradata.com/specs/opra_bandwidth_apr2016.pdf); see also [https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Capacity%20Notif\\_09132016.pdf](https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Capacity%20Notif_09132016.pdf).

<sup>10</sup> By way of example, Nasdaq has added data eSpeed and NFX data to the proprietary feeds, and will be adding new feeds from its newly-acquired ISE markets.

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continue to be consistent with the Exchange Act. Accordingly, Nasdaq asks that the Commission approve the Proposal, once amended, without delay.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal line extending to the right.

T. Sean Bennett