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October 4, 2016

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090

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

Mr. Fields:

Nasdaq is responding to comments by BATS Global Markets, Inc. (“BATS”) regarding the above-captioned proposed rule change (“Proposal”).¹ The Proposal would establish a state-of-the-art telecommunications network and network connectivity for distribution by Nasdaq and nine extranets of over forty non-Nasdaq data feeds (“Third Party Data”) and services, and corresponding fees. The new network enables Nasdaq to isolate Nasdaq proprietary data feeds (“Nasdaq Data”) from Third Party Data, including consolidated data for Nasdaq-listed securities (“SIP Data”), and to protect SIP Data from potential disruption by Nasdaq proprietary systems and data.² The Proposal would impose no new obligations or fees on BATS; nor would it impair BATS’ rights under the Nasdaq UTP Plan. Nonetheless, BATS opposes the Proposal, making critical factual and legal misstatements in its opposition. Nasdaq will correct BATS’ inaccuracies in order that the Commission can approve the proposal without delay.

¹ See Letter dated September 12, 2016, from Eric Swanson, EVP and General Counsel, BATS Global Markets, Inc. to Brent J. Fields, Secretary, US Securities and Exchange Commission, available at: <https://www.sec.gov/comments/sr-nasdaq-2016-120/nasdaq2016120-1.pdf>.

² SIP Data is governed by the national market system plans governing Nasdaq-listed securities (“Nasdaq UTP Plan” or “Plan”), which can be found at http://www.utpplan.com/utp_plan. The Plan is operated by a committee comprised of representatives of each exchange that trades Nasdaq-listed securities (“UTP Operating Committee”), assisted by advisors from various segments of the industry.

BATS concedes early in its letter that the network and network connectivity are not now and have never been governed by the UTP Operating Committee. For over 25 years, Nasdaq has, without objection, controlled the network and network connectivity associated with SIP Data, designing the networks, selecting equipment, operating the service, authorizing extranets, setting prices, and collecting revenue without input from the UTP Operating Committee. From 1990 through 2002, all Nasdaq and SIP systems (networking, trading, and data dissemination) were combined and SIP Data was interwoven with Nasdaq Data. While in 2002, the UTP Operating Committee acted to separate SIP systems from Nasdaq systems and SIP Data from Nasdaq Data, the Committee declined to assert control over the network and network connectivity used to distribute SIP Data. BATS concedes as much in its Letter: “[t]he UTP Operating Committee has historically permitted this arrangement” whereby Nasdaq controls the network and network connectivity associated with SIP Data.³

One simple explanation for the Operating Committee’s historical acquiescence is that the Nasdaq UTP Plan does not grant the Operating Committee power over the network or network connectivity associated with SIP Data. The UTP Plan defines the Operating Committee’s rights and obligations with respect to the SIP and the data the SIP produces. The Plan has provisions governing nearly every aspect of the SIP, including its construction, operation, and governance. The Plan defines the SIP Data, including its content, the obligations of those creating it, the obligations of the Processor and the Administrator, the prices charged for the data, and the revenue collected and distributed. The UTP Operating Committee has amended the UTP Plan thirty-seven times, yet it has not added a Plan provision governing network or network connectivity.⁴ The current fees for all Plan services are set forth in the Plan; none of those fees applies to network connectivity. In fact, the term “connectivity” does not appear in the Nasdaq UTP Plan. BATS cites no Plan provision to support its argument that the UTP Operating Committee controls the network and network connectivity because none exists.⁵

BATS’ claim is all the more puzzling because less than one year ago BATS and the Operating Committee executed a detailed, long-term contract concerning the Processor. On October 26,

³ Nasdaq first authorized extranets to offer competing telecommunications and network connectivity in December 2004. The UTP Operating Committee has acquiesced in the current framework for twelve years. See, e.g., Nasdaq Data News 2004-72 at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2004-73>.

⁴ Nasdaq is not aware that such a Plan amendment has ever been proposed.

⁵ Nasdaq notes that neither the Consolidated Quote/Consolidated Tape Plan nor the Options Price Regulatory Authority Plan grant those operating committees control over telecommunications or network connectivity. Those offerings are provided by SIAC via the SFTI service.

2015, the Operating Committee and Nasdaq signed a 495-page agreement cataloguing every detail of every aspect of the Processor and its functions. The Operating Committee sought input on virtually every piece of hardware and software comprising the SIP system; every task performed by every Nasdaq employee who operates the SIP system; and every element of ownership, intellectual property, information security, and confidentiality are explicitly defined. Yet, nowhere in the Processor Agreement is telecommunications or network connectivity defined as part of the SIP system, as BATS now claims. Nasdaq's responses to the RFP, both its original response and multiple supplements, clearly discuss network and network connectivity; as did all other RFP respondents. The Processor Agreement is the culmination of almost two years of heated negotiation, yet BATS identifies not a single contractual provision supporting its new position. If the UTP Operating Committee intended to control the network and network connectivity, it has had ample opportunity to assert such intentions.

BATS makes other misstatements. For example, BATS states incorrectly that the Proposal would "establish a service and a fee specifically targeting direct UTP data recipients." This is false. In actuality, the Proposal cleanly separates all Nasdaq Data into one network and all non-Nasdaq data into a separate network. Thus, SIP Data is combined with and carried on the same network as data from the Consolidated Tape Association, the Options Price Regulatory Authority, the Chicago Mercantile Exchange, the Financial Industry Regulatory Authority, and multiple national securities exchanges.⁶ Any recipient of any non-Nasdaq, Third Party Data will access that data via the same network, whether they take SIP Data alone, SIP Data in combination with non- SIP Data, or non-SIP Data alone. The proposed service and fees are agnostic to the source of the Third Party Data and to the recipients of that data. BATS states incorrectly that the separation and grouping of multiple Third Party Data and services on a single network is "an illusion" because few subscribers consume Third Party Data other than SIP Data. This is inaccurate. Almost 90 percent of clients that take SIP Data via a direct connection to Nasdaq also take another third party service from Nasdaq.

In reality, Nasdaq isolated the network carrying SIP Data and other Third Party Data in response to intense pressure to reduce the potential for conflicts of interest stemming from Nasdaq's operation of the Processor and the simultaneous operation of Nasdaq's own exchanges. BATS and other members of the UTP Operating Committee have repeatedly and publicly decried what they claim is an incentive for Nasdaq to favor its Nasdaq Data over SIP Data. For example, BATS drafted, proposed and supported a conflict of interest amendment to the Nasdaq UTP Plan that requires strict separation between all Nasdaq operations related to Nasdaq Data from operations related to SIP Data. BATS and the Operating Committee also

⁶ A complete list of Third Party Data is set forth on NasdaqTrader.com at: <http://www.nasdaqtrader.com/content/ProductsServices/trading/NasdaqThirdPartyServices.pdf>.

inserted detailed conflicts provisions in the new Processor and Administrator Agreements, strictly limiting Nasdaq personnel and systems related to proprietary data. In response, Nasdaq has spent tens of thousands of dollars creating new and distinct internal and external systems that separate consolidated and proprietary accounts for purposes of customer usage tracking, invoicing, billing, audits, and collections. BATS's opposition to a Proposal that separates SIP Data from Nasdaq Data is thus a complete reversal of BATS' long-held position.

Additionally, BATS states incorrectly that the Proposal "extends what is considered the UTP system to include direct UTP connectivity." This conclusory statement is also unsupported. The UTP System is clearly defined in the UTP Plan and in the Processor Agreement and it does not include telecommunications and network connectivity. As stated above, neither the UTP Plan, nor the Processor Agreement, nor Nasdaq's response to the Processor RFP indicates that telecommunications and network connectivity are part of the UTP System as BATS now claims. BATS has not paid for the proposed network and connectivity, and Nasdaq has not charged BATS for the proposed network and connectivity. Thus, BATS' claim to own the network and revenue associated with it is wholly unsupported. Again, Nasdaq is not aware that any national market system plan grants the operating committee control, ownership, or sets or price-setting authority for network connectivity associated with SIP Data. BATS cites none.

BATS also misstates the competitive nature of SIP network connectivity and data distribution. Contrary to BATS' conclusory assertion, the Proposal will not impact competition because multiple extranets connect to the network and provide competing data distribution services. Currently, nine extranets connect directly to the network and distribute SIP Data to firms, including Verizon, Century Link, and BT Radianz.⁷ Nasdaq believes that extranets distribute SIP Data to approximately four times the number firms that receive the feeds directly from Nasdaq. At least one advisor to the Operating Committee has stated that their firm has switched from direct connectivity to an extranet in response to the Proposal, demonstrating the competitive nature of connectivity services.⁸

BATS asserts without evidence that the proposed network is the only means of direct access to SIP Data, therefore extranets and extranet subscribers will face a competitive disadvantage. This is incorrect. Extranet providers receive SIP Data via the exact same switches that Nasdaq

⁷ A complete list of current extranets can be found on the UTP website at:
<http://www.utpplan.com/DOC/extranetlist.pdf>.

⁸ Extranets pay an access fee set forth in Nasdaq Rule 7025; however that fee specifically states that "[n]o extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the UTP SIP." Nasdaq is not proposing to amend Rule 7025.

receives the SIP Data; therefore, clients that receive SIP Data via direct connections (all of whom are located outside Nasdaq's colocation facility) enjoy no location or speed advantage. Similarly, extranet providers and direct connect clients deliver SIP Data and Third Party Data to many locations and sub-clients outside the Nasdaq data center over fiber optic telecommunications lines. The fiber optic lines, in turn, are purchased from independent telecommunications providers who provide competitive latencies and pricing for their services.

BATS incorrectly states that "Nasdaq is proposing to charge firms more for access to UTP data than it charges for access to Nasdaq own proprietary data." This is patently false. In fact, Nasdaq is proposing to charge firms less for access to SIP Data than it will charge for access to Nasdaq Data. The proposed monthly fees for direct connections to the Third Party Data are \$2,000 for 1G connections and \$5,000 for 10G connections, where the current fees for direct connections to Nasdaq Data are \$2,500 and \$7,500 for the same services. Additionally, Nasdaq notes that the majority of direct connection subscribers that currently receive SIP Data do so via a 1 Gb connection. The increased bandwidth required for SIP Data (discussed below) would require these subscribers to upgrade to a 10 Gb connection, incurring an increase of \$5,000 under Nasdaq Rule 7051. By offering the new 10G Third Party Connectivity at \$5,000 per month, Nasdaq ensures that these clients pay the same \$5,000 and also get a connection that is separate from the Nasdaq proprietary network and more resilient.

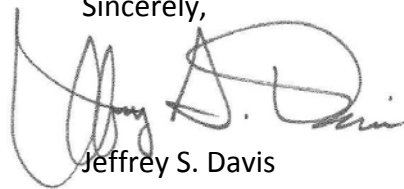
Finally, BATS asserts without evidence that the bandwidth recommendation is excessive and designed to generate extra revenue. This claim is incorrect in several ways. First, from a procedural perspective, the UTP Operating Committee has had and continues to have input into the bandwidth recommendation. Nasdaq has already lowered the recommendation once based on this input and it stands ready to lower the recommendation again should the Operating Committee so direct. Nasdaq provides BATS and the Operating Committee with all information required to understand and re-formulate the recommendation. While Nasdaq has years of experience formulating bandwidth recommendations, if BATS and the Committee believe the recommendation is excessive, they can act to lower it further. In addition, market participants can choose to act on those recommendations as they see fit.

Second, Nasdaq has done substantial analysis to support the recommendation, and it believes the recommendation is consistent with its limited experience with the new Processor. During a one month period (23 trading days) this summer, Nasdaq observed the new UTP Trade Data binary feed exceeding a 1G capacity for a 1 microsecond timeframe in 18 of the 23 trading days. If you add the new UTP Quote Data binary feed to that same connection, the combined feeds exceed 1G capacity for a 1 microsecond timeframe in 23 trading days. These performance measurements of the new UTP binary feeds were accomplished using precise monitoring tools, ingesting the new UTP feeds in a "beta" environment that mirrors the production feeds containing real-time market activity.

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The BATS comment letter is rife with inaccuracies, and it should be given little weight in the Commission's consideration of Nasdaq's Proposal. For the reasons stated above and in the Proposal itself, the Proposal is consistent with the Exchange Act. Accordingly, Nasdaq asks that the Commission approve the Proposal without delay.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Davis". The signature is stylized and cursive, with the first name "Jeffrey" being more prominent and the last name "Davis" following in a similar style. The signature is positioned above the printed name "Jeffrey S. Davis".

Jeffrey S. Davis