September 12, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

RE: Securities Exchange Act Release No. 78713 (August 29, 2016); SR-Nasdaq-2016-120

Dear Mr. Fields:

Bats Global Markets, Inc. ("Bats") appreciates the opportunity to comment on the above-referenced proposed rule change in which the Nasdaq Stock Market LLC ("Nasdaq") proposes to adopt the Third Party Connectivity Service under Nasdaq Rules 7034(b) and 7051.[1] In sum, Nasdaq proposes to segregate physical connectivity for UTP SIP ("UTP") data feeds to a new network for third party services, for which a new and separate connectivity fee will be charged. To directly receive the UTP feeds, including the UQDF and UTDF data feeds administered by Nasdaq, Nasdaq would require customers to subscribe to the 10 Gb Ultra connectivity option. Nasdaq proposes to charge a monthly fee of $5,000 for a 10 Gb connection and $2,000 for a 1 Gb connection.

As explained in more detail below, Bats believes the proposed rule change: (i) constitutes a UTP access services fee required to directly receive UTP data, and such fee was not approved by the UTP Operating Committee; (ii) is anti-competitive as it benefits Nasdaq's proprietary data products over UTP data; and (iii) is technically unnecessary, despite Nasdaq's assertions to the contrary. Bats, therefore, urges the Securities and Exchange Commission ("Commission") to disapprove the proposed rule change as inconsistent with Section 6(b)(4) and (5) of Securities Exchange Act of 1934 (the "Act").[2]

I. The Proposed Rule Change Constitutes an Access Services Fee for UTP Data That Was Not Approved by the UTP Operating Committee

Nasdaq operates the Securities Information Processor for the UTP Plan and, in that role, acts as the sole provider of UTP data. Currently, Nasdaq allows firms to obtain a single direct physical connection to receive UTP data, Nasdaq proprietary data, as well as access to each of Nasdaq's exchanges. In return, Nasdaq charges a per-connection fee (i.e., cross-connect fee or direct connection fee) and receives 100% of the revenue from those connections. The UTP

[1] *See* Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768 (September 2, 2016) (SR-Nasdaq-2016-120).

[2] 15 U.S.C. 78f(b)(4) and (5).

Operating Committee has historically permitted this arrangement as there is a significant overlap between those firms who want direct UTP access and those who want direct access to Nasdaq's proprietary services. By leveraging a single physical connection for access to both Nasdaq and UTP services, firms can save on the total cost of access, which is a worthwhile benefit to direct UTP data recipients. However, under the proposed rule change, Nasdaq would require customers who wish to directly receive UTP data to subscribe and pay for access to a Third Party Connectivity Service. This requirement would eliminate the savings firms currently receive because they would be required to purchase a separate physical connection to receive UTP data. The requirement would also establish a service and a fee specifically targeting direct UTP data recipients. Finally, the requirement would extend what is considered the UTP system to include customer connectivity, because firms would be required to obtain a separate UTP connection to directly access the new INET UTP SIP planned for October 2016.

Nasdaq has argued that it is not specifically targeting UTP data recipients because the Third Party Connectivity Service encompasses access to services other than the UTP. Bats believes that this is simply an illusion, and that those other services have limited use or reflect services where Nasdaq simply acts as a redistributor. Bats believes the vast majority of connections to Nasdaq's proposed Third Party Network will come from those firms who wish to receive UTP data. Nasdaq has also claimed that firms may use an extranet provider or market data redistributor to receive UTP data rather than through a direct connection from Nasdaq. However, for those interested in direct access, the *only* method by which UTP data may be obtained is through a direct connection to Nasdaq. Extranet providers and market data distributors act as redistributors, and both must first have a direct connection to Nasdaq in order to receive and redistribute the data. In all cases, whether it is the customer, extranet provider or market data distributor, a direct connection to Nasdaq via the proposed service is required to receive UTP data and, hence, this additional cost will be borne by the end user of the UTP data regardless of whether such user acquires the data directly from Nasdaq or from a market data distributer.

Nasdaq's proposal would create a service and a fee that specifically targets UTP data recipients, extends what is considered the UTP system to include direct UTP connectivity, requires firms to use the service in order to connect to the new INET UTP SIP, and is the sole means of access for those who want to directly access the UTP. Thus, the proposed rule change constitutes a UTP service and fee that Bats believes must first be approved by the UTP Operating Committee.[3]

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[3] The UTP Plan specifically provides authority to the Operating Committee to set "the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan." *See* Section IV.B.3 of *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 Privileges Basis*, Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007). In addition, the UTP Plan provides that an "affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to the

II. The Proposed Rule Change is Anti-Competitive as it Clearly Benefits Nasdaq's Proprietary Data Products over UTP Data

Nasdaq offers a wide array of market data products, including those that offer forms of consolidated data in direct competition with UTP data.[4] Unlike UTP data, subscribers to Nasdaq data feeds would be able to continue to receive those feeds through their existing connections to Nasdaq and would not be required to obtain an additional connection by subscribing to the proposed Third Party Connectivity Service. As stated earlier, Nasdaq has a unique role as the sole provider of UTP data for direct access and in that role, Bats believes that Nasdaq has an obligation to ensure there is no incremental cost of access to UTP data, just as there is no incremental cost to access Nasdaq's proprietary data products that compete against UTP data products.

Nasdaq argues that the proposed rates are lower than their rates for current connectivity to Nasdaq and, therefore, reasonable and not unfairly discriminatory because it takes into "account for the fact that *most* members will be required to acquire a new connectivity subscription due to the change" (*emphasis added*).[5] However, Nasdaq fails to mention that this in turn makes the cost of access to UTP data higher than its own competitive proprietary products. Nasdaq members who maintain direct connections to Nasdaq for trading and quoting purposes would be able to continue to receive Nasdaq's proprietary data products for no additional charge. Meanwhile, those that wish to also obtain UTP data will be required to purchase an additional connection via the proposed Third Party Connectivity Service, thereby making access to UTP data materially more expensive. Nasdaq also states, in an example, that firms can save money by purchasing Third Party connections because the price for a Third Party connection is lower than a connection to Nasdaq for proprietary services. While that may be true for the small number of firms that have separate connectivity for higher bandwidth Third Party services, we believe the vast majority of firms that directly access Nasdaq do not have separate Third Party connectivity and therefore would not enjoy any savings, but instead a substantial fee increase, under the proposed service.

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establishment of new fees, the deletion of existing fees, or increases or reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities." *Id*. at Section IV.C.2.

[4] Nasdaq Basic is a product that includes two feeds, QBBO, which provides BBO information for all U.S. exchange-listed securities on Nasdaq and the FINRA/Nasdaq TRF. *See* Nasdaq Basic, http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq TRF). NLS Plus provides last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq NLS Plus, http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq BX, and Nasdaq PSX).

[5] *See supra* note 1 at 60770.

Given that Nasdaq is proposing to charge firms more for access to UTP data than for Nasdaq's own proprietary data, Bats believes that the proposed rule change is anti-competitive and in violation of Section (6)(B)(8) of the Act[6] because it clearly benefits Nasdaq's proprietary data products over UTP data.[7]

III. The Proposed Rule Change is Technically Unnecessary and is Simply an Attempt to Increase Nasdaq Revenue by Charging Fees for UTP Access

Nasdaq states that it is proposing the new service in response to increased capacity requirements, to more efficiently allocate services, and to assist the subscriber with risk management. Bats believes these reasons for proposing the new service are unfounded. First, there is no technical reason compelling Nasdaq to create a separate network for third party services. Increased capacity requirements alone do not require the creation of a separate network. Nasdaq has made no statements regarding degradation of service, heightened risk of network failure due to capacity increases, or any other valid capacity-based reason for concern. In addition, while Nasdaq states that the separation is an efficient allocation of services, they do not describe why the separation is efficient or why the current infrastructure is inefficient. Finally, Nasdaq states that the separation will assist firms with risk management, but provides no detail supporting the notion that firms are concerned about the failure of a network that currently supports access to exchanges comprising 17% of total US equity consolidated volume and 22% of total US options consolidated volume.[8]

While Nasdaq describes increased capacity as the "issue" that must be addressed through a separate network and references all SIPs including the CTA and Options Price Reporting Authority ("OPRA") feeds[9] as proof of the issue, Bats believes the true driver for the creation of a third party network is the prospect of increasing the number of physical connections, thereby increasing Nasdaq's revenue. Bats believes that Nasdaq provides far more connections that access UTP data than connections that access CTA and OPRA data. In order to maximize the number of UTP connections and thereby maximize revenue, Nasdaq, through the Nasdaq SIP,

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[6] 15 U.S.C. 78f(b)(8).

[7] It is worth noting that the New York Stock Exchange, Inc. ("NYSE") acts as the sole distributor of Consolidated Tape Association ("CTA") data via the CTS and CQS data feeds. NYSE recently submitted a proposed rule change to the Commission that proposes just the opposite of what Nasdaq has proposed to do, which is to continue to make available CTS and CQS data via a subscriber's current connections to the NYSE along with access to NYSE proprietary data feeds for one price. *See* Securities Exchange Act Release No. 78556 (August 11, 2016), 81 FR 54877 (August 17, 2016) (SR-NYSE-2016-45).

[8] *See also id.* The NYSE proposal further evidences that current connections are sufficient to obtain UTP data, in addition to other services, and that Nasdaq's perceived risks from not bifurcating connections for Nasdaq's services and UTP data are unfounded and not shared by its counterparts. *See also* Bats Market Data Summary *available at* http://batstrading.com/market_summary//

[9] *See* https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20SIP%201Q16%20Consolidated%20Data%20Operating%20Metrics%20Report.pdf; *see also*, http://www.opradata.com/specs/opra_bandwidth_apr2016.pdf.

published new INET UTP SIP bandwidth recommendations that are not consistent with and much higher than 150% of current peak UTP message traffic.[10] The recommendation, which is cited within Nasdaq's filing, states that firms should accommodate a total of 3.4 Gbps of bandwidth (1.7 Gbps per data feed) when the current 150% of peak only requires approximately 500Mbps of bandwidth. The 3.4 Gbps bandwidth recommendation reflects the maximum burst rate capability of the new system and does not reflect the current capacity requirement. Bats believes Nasdaq's inclusion of these numbers will have the effect of misleading UTP data recipients into purchasing higher cost 10 Gb connections vs. a 1 Gb connection that could safely support the capacity needs when receiving data from the new INET UTP SIP.

In addition, Nasdaq's bandwidth recommendations are excessive given that Nasdaq's bandwidth recommendations for its own proprietary data products are much lower than what has been proposed to receive UTP data. For example, Nasdaq currently recommends firms accommodate a total of 273 Mbps of bandwidth to receive Nasdaq TotalView, BX TotalView, and PSX TotalView, which are the depth of book feeds for all of Nasdaq's equity markets.[11] Each of the Nasdaq proprietary feeds are unthrottled. Given Nasdaq's significant market share and speed of their exchange systems, the maximum burst rate capability for Nasdaq exchange systems is likely to far exceed current recommended bandwidth, which is about 1/12th of the recommended bandwidth for the INET UTP SIP. A firm could still easily support all of Nasdaq's proprietary depth data feeds and UTP data, which is just top-of-book information, from the new INET UTP SIP on a single 1 Gb connection. As such, Bats believes Nasdaq's new service is technically unnecessary and simply designed to increase Nasdaq's revenue at the expense of direct UTP data recipients.

IV. Conclusion

Bats appreciates the opportunity to comment on the above proposed rule change and, for the reasons set forth above, strongly urges the Commission to disapprove it. Please feel free to contact me if you have any questions related this matter.

Sincerely,

Eric Swanson
EVP, General Counsel and Secretary

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[10] *See* UTP Vendor Alert #2016-13, *REVISED Bandwidth Recommendations for the Enhanced INET Platform Migration*, July 22, 2016, *available at* http://www.nasdaqtrader.com/TraderNews.aspx?id=utp2016-13. *See also*, *UTP SIP Key Quarterly Operating Metrics of Tape C*, *available at* http://www.utpplan.com/DOC/UTP%202016-Q1%20Stats%20with%20Processor%20Stats.pdf.

[11] *See* Nasdaq's Bandwidth Report *available at* www.nasdaqtrader.com/content/technicalsupport/.../bandwidthreport.xls (updated August 10, 2016).