



December 9, 2016

**Via E-Mail**

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

Re: Release No. 34-79431; File No. SR-Nasdaq-2016-120

Dear Mr. Fields:

Investors Exchange LLC (“IEX”) is pleased to respond to the Commission’s request for comment on a proposal (the “Proposal”) by the Nasdaq Stock Market LLC (“Nasdaq”) to require that market participants pay fees for a new third party connectivity service in order to receive UTP data directly from Nasdaq.<sup>1</sup> The Commission recently issued an order (the “Proceedings Order”) instituting proceedings under Section 19(b)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) to determine whether to approve or disapprove the Proposal and seeking additional comment.<sup>2</sup>

IEX generally agrees with the concerns about the Proposal that have been expressed in letters submitted by Bats Global Markets, Inc., Virtu Financial LLC, and the Securities Industry and Financial Markets Association (“SIFMA”).<sup>3</sup> In particular, as a member of the Operating Committee of the UTP Plan (the “Plan”), we agree that the Proposal should be subject to approval by the Operating Committee. We do not think that the fact that historically Nasdaq has been permitted to charge a single connection fee covering access to its exchanges, proprietary data, and UTP data in any way affects this conclusion. Nasdaq is now proposing to set new terms and conditions that would affect all participants that want or need to directly receive UTP data and for the first time would require that they pay for a separate network connection in order to do so. On its face, this is a matter that bears directly on the purpose of the Plan and the oversight role of the Operating Committee.

We also agree with SIFMA that the Proposal raises broader questions about competitive burdens and conflicts of interest arising from the ways in which exchanges sell market data to participants who require it to conduct business. In this case, the conflicts are clear. Nasdaq stands to benefit directly by gaining a new source of revenue, and also indirectly by the economic advantage that would accrue to the sale of its proprietary data by imposing a new, unique cost on the receipt of UTP data. Nasdaq receives all of the revenue from the first type, but only a portion of the

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<sup>1</sup> See Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768.

<sup>2</sup> Securities Exchange Act Release No. 79431 (November 30, 2016), 81 FR 87981.

<sup>3</sup> All comments are available at <https://www.sec.gov/comments/sr-nasdaq-2016-120/nasdaq2016120.shtml>.

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revenue from the second. Particularly in light of these conflicts, we do not believe that Nasdaq has met its burden of showing that the Proposal is consistent with the standards for approval under Section 6(b)(4) and (5) of the Exchange Act.

Sincerely,

A handwritten signature in black ink that reads "John Ramsay". The signature is written in a cursive, flowing style.

John Ramsay  
Chief Market Policy Officer