

November 27, 2017

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

Re: Release No. 34-82065; File No. SR-NASDAQ-2017-117

Dear Mr. Fields:

Themis Trading appreciates the opportunity to comment on Nasdaq's proposed rule change to withdraw the Nasdaq Market Analytics Data Package.

Nasdaq formally [withdrew](#) "Market Velocity" and "Market Forces" on November 13th. The timing of this withdrawal seems strange to us since it comes only a few days after the WSJ published an article titled ["Wall Street Fears Nasdaq Proposal Would Expose Trading Secrets"](#). We think that Nasdaq's withdrawal of these products opens the door to many more questions including:

- 1) How many subscribers did Nasdaq have for their Velocity and Forces product?
- 2) What percentage of Nasdaq volume did these subscribers represent? In other words, even if there were only a few subscribers as Nasdaq claims, were these subscribers significant contributors to Nasdaq volume?
- 3) Was this product a client driven idea? Or, did the Nasdaq staff create this product on their own?
- 4) Will the SEC investigate the concerns of customers that "data contained in the product may reveal too much information about the trading strategies of participants on the Exchange"?
- 5) Did the SEC properly scrutinize [Nasdaq's original proposal](#) dated June 16, 2006? Nasdaq admitted in their original filing that they would be using information that was "not visible in existing quote and order data feeds". Did Nasdaq misrepresent the definition of a non-displayed order in communications or marketing to clients? Did the SEC analyze the proposal for the potential for information leakage? Since the proposal was deemed "**non-controversial**" by Nasdaq, it meant that the SEC did not have to issue an order approving it:

"Nasdaq has designated the proposed rule change as constituting a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder, which renders the proposal effective upon filing with the Commission."

6) Did the SEC address the concerns of the [four comment letters](#) that they received? These concerns included deficient filing information and monopoly pricing power. We think the Securities Industry Association (SIA) asked the right questions in their July 14, 2006 [comment letter](#) which the SEC appeared to overlook:

"What is the proper role of a for-profit exchange in utilizing its members' data, particularly where that SRO receives that data in its role as a government-sponsored monopoly? What is the cost basis for these fees? **Should Nasdaq be utilizing regulatory data for commercial purposes** and particularly where, as in this instance, the Commission has expressly prohibited the use of OATS data for commercial purposes in its order approving Nasdaq's exchange registration? These and similar questions apply not just to the instant rule filings, but more broadly to all rule filings involving the sale of market data."

**For 11 years, Nasdaq sold a product that revealed information that was not visible in their data feeds.** Apparently, once they realized that the media and others were asking questions about this product, they simply withdrew the product with no repercussions, no fine and no penalty. The question that we have is why was Nasdaq allowed to simply withdraw these information leaking products without any further action taken by the SEC?

Sincerely,

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cc: Hon. Jay Clayton, Chairman  
Hon. Kara Stein, Commissioner  
Hon. Michael Piwowar, Commissioner  
Brett Redfearn, Director, Division of Trading and Markets