



October 23, 2018

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

Re: File No 4-729; SEC Roundtable on Market Data and Market Access

Dear Mr. Fields:

The Clearpool Group (“Clearpool”) welcomes the opportunity to provide its views on the issues to be examined at the SEC Roundtable on Market Data and Market Access (“Roundtable”).

Launched in 2014 and based in New York, Clearpool Group is an independent agency broker-dealer and provider of tools to assist other broker-dealers in the areas of routing, execution, pre- and post-trade compliance and risk monitoring.<sup>1</sup> We created Clearpool as we recognized the need for a solution to allow smaller broker-dealers, *i.e.*, so called Tier 2 broker-dealers, to effectively compete for electronic trading flow, as well as the constraints and cost burdens placed on many of these brokers due to, among other things, market data and market access.

As a relatively new entrant in the markets, Clearpool can attest that costs relating to market data and market access were a significant consideration in our thinking on whether to start the firm, and a significant part of our upstart costs. In our first year, costs related to market data and market access represented approximately twenty-five percent (25%) of our non-human capital operating expense, a considerable amount for a new firm.

While we are a small broker-dealer, we account for over two percent (2%) of the average daily volume in the U.S. markets. Clearpool therefore has a significant interest in ensuring that there is an efficient, competitive and properly functioning system for market data and market access, and that the regulations overseeing market data and market access create a fair and equitable trading environment for all market participants. To this end, Clearpool has submitted comment letters to the Commission on various trading and market structure proposals relating to market data and market access,<sup>2</sup> and prepared a “white paper” on issues of significance to Clearpool, its clients, and

---

<sup>1</sup> The Clearpool Group offers advanced electronic trading software and provides independent agency broker-dealer execution services. Clearpool’s Algorithmic Management System (AMS) and execution services allow our clients, who are primarily institutional broker-dealers who, in turn, serve some of the largest asset managers, to deliver advanced electronic trading solutions to the benefit of these asset managers, and the long-term investors who they serve. For further information on the Clearpool Group, see [www.clearpoolgroup.com](http://www.clearpoolgroup.com).

<sup>2</sup> *See, e.g.*, Letter from Joe Wald, Chief Executive Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. SR-NYSE-2016-45; File No. SR-NYSEMKT-2016-63; and File No. SR-NYSEArca-2016-89), dated December 16, 2016 (<https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1430031-10.pdf>), Letter from Ray Ross, Chief Technology Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. SR-BatsBZX-2017-34), dated June 12, 2017

the ultimate investor.<sup>3</sup> We also co-signed a petition for rulemaking to the Commission relating to a number of concerns surrounding market data fees.<sup>4</sup>

Clearpool believes the time is long overdue to address issues relating to market data and market access. While ideally, competition and market forces would produce a solution that obviates the need for Commission action in this area, we believe that some regulatory solution is necessary to force exchanges to change the manner in which they conduct business. We therefore strongly support the SEC holding the Roundtable to gather views from market participants on how to resolve these longstanding issues and to examine the effects that market data and market access have on our markets.

As discussed further below, issues surrounding market data and market access have a unique impact on smaller broker-dealers such as Clearpool, and create burdens upon our ability to compete in today's markets - burdens not faced by larger broker-dealers. At the end of the day, investors will be ill-served if the impact of market data and current market access practices prevents Clearpool, and the broker-dealers which we serve, from competing in the current market environment, from continuing to provide innovative trading tools to assist investors, and creates a barrier to entry for new market participants.

### **There is a Disproportionate Impact on Smaller Broker-Dealers of the Current Market Data and Market Access Regime**

For smaller broker-dealers, trading as efficiently as some larger broker-dealers can prove difficult as the cumulative fees related to the costs of paying for market data charged by exchanges puts these broker-dealers at an unfair advantage vis-à-vis their larger competitors, especially as investors seek to limit the number of counterparties with which they interact due to pressures to reduce costs. Similarly, fees charged by exchanges relating to market access, such as those related to connectivity, can disproportionately impact smaller broker-dealers.

Our current market structure has created an environment where smaller broker-dealers end up subsidizing larger-sized firms when it comes to the costs surrounding trading. For example, for larger sized broker-dealers, the high fixed costs associated with market data and connectivity are more than offset by the favorable tiered pricing structure for execution and related volume discounts provided by the exchanges to these brokers. These tiered pricing structures, however, have provided questionable benefits for smaller broker-dealers such as Clearpool. Smaller broker-dealers, in order to remain competitive, increasingly must utilize these larger firms for access to the markets

---

(<https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-1797219-153617.pdf>) (Bats Market on Close Letter), Letter from Ray Ross, Chief Technology Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. SR-NASDAQ-2017-074), dated September 11, 2017 (<https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074-2436763-161051.pdf>), and Letter from Ray Ross, Chief Technology Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. S7-05-18), dated May 25, 2018 (<https://www.sec.gov/comments/s7-05-18/s70518-3718534-162486.pdf>).

<sup>3</sup> See <http://info.clearpoolgroup.com/blog/2018-viewpoints-on-market-microstructure-from-clearpools-founders>.

<sup>4</sup> The rulemaking petition can be found at <https://www.sec.gov/rules/petitions/2017/petn4-716.pdf>.

to take advantage of their pricing structures. Tiered pricing structures also challenge the concept of “fair access” and, with hundreds of different pricing tiers and related order types, contribute to the opacity around pricing and the complexity of the markets. Even the most sophisticated of market participants are challenged under these structures to comprehend what they are paying for the purchase or sale of a stock.

Unfortunately we do not see any slowing to this trend. Fixed costs continue to rise and discounts provided by exchanges to larger broker-dealers continue to improve as these firms aggregate increased flow from smaller brokers. This results in a concentration of more flow into fewer entities, thereby increasing the overall risk for the markets, and presents a potential barrier to entry into the markets for many smaller firms.

While the industry has seen the benefits of competition when exchanges are forced to compete regarding certain types of fees, these benefits have not yet translated to a significant number of the fees associated with trading. The lack of competitive price pressures has contributed to an environment where the revenues collected by exchanges have eclipsed the need to keep fees in check. Smaller broker-dealers cannot wait for market driven solutions to address concerns raised by the costs of trading and to create a more competitive or equitable environment for market participants, as it is clear that exchanges have little interest in changing the status quo.

### **There are No Viable Alternatives to Purchasing Proprietary Data Feeds**

Clearpool believes there are currently no viable alternatives for broker-dealers to paying exchanges for their market data, particularly as it relates to the choice of obtaining market data information via the Securities Information Processor (“SIP”) or exchanges’ proprietary data feeds.

Clearpool and other broker-dealers are compelled to purchase exchanges’ proprietary data feeds both to provide competitive execution services to our clients and to meet our best execution obligations due to the content of the information contained in proprietary data feeds, as well as the lack of latency in those feeds, both important considerations for brokers. As Chair Clayton noted in his recent statement on market data fees and market structure, algorithms, which are the lifeblood of trading for firms such as Clearpool, depend on market data, and accessing this market data is integral to the proper functioning of such algorithms and related trading activity. As Chair Clayton astutely put it, “the ‘electronification’ of our markets has raised new regulatory issues and other questions, including the increased importance of timely and robust ‘market data.’”<sup>5</sup> Unfortunately, exchanges have become increasingly reliant on the revenues generated by market data vis-à-vis other revenues, such as those generated from trading and listings, that the incentives for exchanges to place their interests ahead of the users of market data has increased, as have the disincentives to reign in market data fees.

As discussed in our white paper, some have recommended that the SEC and FINRA issue guidance or rules clarifying that broker-dealers may satisfy their best execution obligations by relying on SIP

---

<sup>5</sup> See Statement on Market Data Fees and Market Structure, <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2018-10-16>.

data rather than proprietary data feeds if the broker-dealer does not otherwise subscribe to or use those proprietary data feeds.<sup>6</sup> We do not believe, however, that such guidance or rules would eliminate the need for broker-dealers to subscribe to proprietary data feeds. While such guidance or rules may clarify a broker-dealer's *regulatory* obligations as they relate to best execution, it would not obviate our *business* obligations to purchase the exchanges' proprietary data feeds to continue to provide competitive execution services to, and to fulfill the needs of, our clients. To be clear, obtaining information in exchanges' proprietary data feeds is not "optional" - our best execution obligations in effect "require" us to purchase this data to serve our customers.

Clearpool also believes the best execution issue raises important questions around what is "core data" when considering what information should be provided to the markets through the SIP or via exchanges' proprietary data feeds. We believe that certain information currently provided through proprietary data feeds, for example, imbalance data and order depth of book information, should be considered core data and provided to all market participants through the SIP. In addition, allowing exchanges to sell core market data and more robust data feeds at faster speeds to only a few market participants who are able to "pay-up" presents a clear information advantage that would not be accepted in other aspects of trading. At the very least, we support a comprehensive and timely reexamination of what should be considered as core market data and would welcome reforms in this area.

### **There is a Lack of Transparency Around Market Data Fees and Market Access Fees**

Compounding the difficulties for market participants, the current level of transparency around market data and market access offerings also is lacking. As discussed in the rulemaking petition on market data noted above, exchanges are not required to itemize by product or service their revenues from the sale of market data, or to indicate whether their market data revenues derived from the sale of proprietary data or SIP data. In addition, there is a lack of transparency concerning the allocation of the revenue collected by exchanges for the dissemination of data through SIPs, and exchanges are not required to disclose any information about their costs related to the collection and dissemination of market data. It is therefore very difficult for consumers of market data disseminated by exchanges to understand the reasonableness of pricing without additional information about these offerings. We also believe that when for-profit exchanges offer data products that compete with the SIP, it creates a clear conflict of interest in both their obligation to run the SIP and their obligations of confidentiality regarding market participants order flow. As such, we believe that these types of conflicts necessitate additional reporting and disclosure requirements. Finally, increased transparency would facilitate the SEC and others to better determine whether exchanges are meeting their obligations under the Exchange Act when it comes to the provision of market data.

Clearpool strongly supports requiring exchanges to make information around fees more publicly available, and in an easily accessible manner. Currently, market participants must go to great lengths to compile and understand the changes made by exchanges around fees. While exchanges generally

---

<sup>6</sup> See, e.g., U.S. Department of the Treasury, "A Financial System that Creates Economic Opportunities – Capital Markets," at p. 64, <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

send out alerts and notices about such changes, this is not always the case and, as discussed below, the current rule filing process around fees is cryptic and very difficult to understand.

At the very least, exchanges should be required to provide transparency and reporting around the fees from proprietary data products they provide as well as the fees surrounding trading including the revenue itemized by each product and the associated number of clients that use each product. In addition, exchanges should be required to disclose the amount of revenue generated by the SIP plans, as well as, among other things, the sources of that revenue and the allocation of revenues resulting from data distributed through SIPs.

### **There is a Need for More Opportunities to Provide Input on Changes to Fees**

Given the significance of issues surrounding the costs of trading, Clearpool believes market participants should have a greater ability to provide input when an exchange makes a change to a fee associated with market data, market access, or other type of trading fee. Permitting rule changes relating to fees to be typically filed with the SEC on an “immediate effectiveness” basis often does not provide sufficient opportunity for market participants impacted by such rule changes to review the fee change or to provide any comments prior to those changes becoming effective. We believe allowing these rule filings to become immediately effective also does not provide time for the SEC to conduct more than a minimal review to ensure that a filing is consistent with the requirements of the Exchange Act. While we appreciate the desire to balance the needs of exchanges to be able to make changes to and implement changes to fees quickly in a competitive environment, we believe market participants impacted by these changes need the ability for a more meaningful comment process.

The recent decision by the Commission to set aside certain market data fees filed by NYSE Arca and Nasdaq, finding that neither exchange had met its burden to show that such fees were fair and reasonable under the Securities Exchange Act, illustrates the concerns around the current regime for making rule changes in this area. These concerns, however, are not new. For example, the Treasury Report last year recommended that the SEC should ensure that fee changes are “fair and reasonable,” “not unreasonably discriminatory,” and an “equitable allocation” of reasonable fees among persons who use the data and that these factors are considered when determining whether to approve SRO rule changes that set data fees.

We believe the SEC needs to scrutinize rule changes relating to fees more carefully to determine whether there is a need for any action related to a filing. While the Commission’s decision in the NYSE Arca and Nasdaq case did not conclude that the fees themselves are unfair or unreasonable, we would emphasize that the debate correctly should not be around whether fees are too high but whether there is a level playing field, whether there is sufficient transparency around fees, and whether exchanges should even be charging for some of this information in the first place.

## **There is a Need for a Broader Examination of the Current Market Structure Rules and their Impact on Market Data and Market Access Practices**

Clearpool believes there should be a broader examination of the current structure for the provision of market data including the collection, distribution, and sale of market data. Such review should include, among other things, an examination whether there should be one source of market data, *i.e.*, wrapping proprietary market data into the SIP, and treating such as a utility, particularly if other actions discussed above to remedy concerns regarding the costs of trading are not taken. At the same time, the SIP should, at the very least, be “upgraded” to support the speed necessary for the dissemination of data in a timely manner. In addition, as discussed above, we support a comprehensive reexamination of what should be considered as core market data and that such a review be conducted by the SEC in a timely manner.

We also agree with Commissioners Peirce and Roisman’s recent call for the Commission to do a retrospective review of the Order Protection Rule and other interrelated aspects of equity market structure, and to examine the impact of this and other rules on the demand for certain market data products and the market data and market access regime in general.<sup>7</sup> We concur that such a review may now be necessitated by advances in technology that may have made this rule outdated, or in need of reform at the very least.

\* \* \* \* \*

We offer our assistance to the Commission as it examines the issues raised by the Roundtable. If you have any questions on our comment letter, please feel free to contact me directly at

[REDACTED] [or at](#) [REDACTED].

Sincerely,



Joe Wald  
Chief Executive Officer

cc: The Honorable Jay Clayton, Chair  
The Honorable Kara M. Stein, Commissioner  
The Honorable Robert J. Jackson, Jr., Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner

Brett Redfearn, Director, Division of Trading and Markets

---

<sup>7</sup> See, Joint Statement on the Application of SIFMA for Review of Action Taken by NYSE Arca, Inc., and NASDAQ Stock Market LLC, <https://www.sec.gov/news/public-statement/peirce-roisman-statement-101618>.