



17 State Street, 38th floor New York, NY 10004

February 28, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Notice of Proposed Order Directing the Exchanges and the Financial Industry
Regulatory Authority to Submit a New National Market System Plan Regarding
Consolidated Equity Market Data (File No. 4-757)

Dear Ms. Countryman:

Clearpool Group (“Clearpool”)¹ is writing to provide its views on the SEC’s proposed order directing the exchanges and FINRA to submit a new national market system plan (the “New Consolidated Data Plan”) regarding consolidated equity market data. The New Consolidated Data Plan would replace the existing national market system plans (the “Equity Data Plans”) that govern the public dissemination of real-time, consolidated equity market data for NMS stocks.

Clearpool has long advocated for changes to address concerns relating to the provision of market data, including the current governance model of the NMS plans. Specifically, we have provided several recommendations in previous letters and submissions to the Commission,² as well as at our participation in the October 2018 SEC Roundtable on Market Data and Market Access³ and through a petition for rulemaking relating to a number of concerns surrounding market data fees.⁴

We are therefore pleased that the Commission is taking the initial steps to address some of the issues that have been raised by market participants, including Clearpool, relating to market data, particularly those around governance issues, the makeup of core data, and the dissemination of core data, all issues that go to the heart of the market data debate. To that end, we are also encouraged by the Commission’s recent proposed rule to make changes to the market data infrastructure that is

¹ Launched in 2014 and based in New York, Clearpool Group, Inc. offers holistic electronic trading solutions and provides independent agency broker-dealer execution services. With over 120 Algorithmic Management System (AMS) clients and executing between 2-3% of the US equity market volume, Clearpool empowers market participants to achieve better quality executions in an evolving equity market microstructure and competitive landscape. For further information on Clearpool Group, visit www.clearpoolgroup.com.

² See, e.g., Clearpool Group Viewpoints Papers at <http://bit.ly/2lSs8cR> and <http://bit.ly/2YFpN4H>.

³ See Letter from Joe Wald, Chief Executive Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. 4-729), dated October 23, 2018 (SEC Roundtable on Market Data and Market Access).

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

in addition to the proposed order that is the subject of this letter.⁵ Given the separate proposed rule, our comments in this letter will focus solely on issues raised by the proposed order and changes to the SIP governance model. We look forward to providing our comments on the broader issues around market data in our letter on the proposed rule.

The time is long overdue for reform of the SIP governance structure. In lieu of completely overhauling the governance and operations model, the decision to give non-SRO members voting rights and recognizing exchange operators as a single entity for purposes of voting is a positive step in helping to promote useful upgrades of the SIP with representation from a diverse group of market participants. As discussed further below, Clearpool therefore supports the provisions of the proposed order. Our specific comments and recommendations follow.

Background

As we stated in our previous comments, of all the issues relating to the costs of trading, the trend toward higher market data fees has had the most negative impact on the securities markets. After expenses associated with employees, costs associated with market data and connectivity to the markets is the second highest fixed expense for Clearpool.

To genuinely address issues surrounding the SIP and market data in general, we believe the governance around SIP plans must be incrementally changed to benefit all market participants. As discussed extensively in the proposed order, SIP plans are governed by SROs that have conflicts of interest in the provision of market data, primarily because they are selling market data products that directly compete with the SIPs. These SROs therefore have a disincentive to either invest in the SIPs or to make SIPs competitive products to their proprietary data products, and it is unlikely that they would vote to make needed changes to the SIP plans.

We agree with the Commission that these conflicts of interest, combined with the concentration within exchange groups of voting power in the Equity Data Plans, create significant concerns regarding whether the consolidated feeds meet the purposes set out by Congress and by the Commission in adopting the national market system or the need to ensure prompt, accurate, reliable, and fair dissemination of core data through the Equity Data Plans.

We therefore support the creation of a new single NMS plan that would better reflect how the equity markets actually operate today, and how participants interact with those markets, and that may improve the content and speed of market data for the public markets.

⁵ The proposed rule would expand the content of market data information that is required to be collected, consolidated, and disseminated and would amend the method by which “consolidated market data” for NMS stocks is collected, calculated, and disseminated by introducing a model where competing consolidators replace the exclusive SIPs. *See* <https://www.sec.gov/rules/proposed/2020/34-88216.pdf>.

Changes to Equity Data Plan Voting Structure

The proposal would make significant changes to the current voting structure of the Equity Data Plans. While all of the proposed changes are important to address concerns around conflicts of interest, two stand out as issues that Clearpool has previously identified as needing reform – expanding the voting representation of non-SROs and eliminating the current “one vote per exchange” model.

Expansion of Voting Representation to Non-SROs

The proposal would provide for non-SROs to participate as full voting members of the operating committee. Specifically, the New Consolidated Data Plan would provide for separate voting member representatives of an institutional investor, a broker-dealer with a predominantly retail investor customer base, a broker-dealer with a predominantly institutional investor customer base, a securities market data vendor, an issuer of NMS stock, and a retail investor. Currently, advisory committee representatives (which closely mirror these groups) have no voting power in the Equity Data Plans and can be shut out from many discussions about substantive changes to the plans.

Clearpool continues to believe that it will be important for the rules and regulations overseeing trading and market structure to provide a meaningful role for broker-dealers like Clearpool. As an initial step in governance reform, we therefore support expanding voting representation to non-SROs. We believe expanding voting representation in this manner would allow non-SROs to have a role in the Equity Data Plans’ decision-making process, which is significant given that these firms and individuals are the actual users of market data. We also believe this is an important step to ensure broader participation in the reform of the SIP governance structure and needed enhancements to SIP products.

Similarly, we believe that the selection of non-SRO members should be free of conflicts. We therefore support provisions that the initial non-SRO members would be selected by a majority vote of the current members of the Equity Data Plans’ advisory committees, excluding advisory committee members who were selected by a participant to be its representative, and that subsequent non-SRO members would be selected only by the then-serving non-SRO members of the New Consolidated Data Plan operating committee. We acknowledge that there also can be conflicts of interest among non-SRO members and we encourage the Commission to provide the proper guidance on how to monitor, evaluate and rectify such conflicts.

Elimination of “One Vote Per Exchange” Model

The proposal would allocate voting rights so that each unaffiliated SRO and exchange group has one vote on the operating committee, with a second vote provided only if the unaffiliated SRO or exchange group has maintained consolidated equity market share of at least 15 percent for at least four of the six calendar months preceding a vote of the operating committee.

Clearpool strongly supports recognizing exchange operators as a single entity for purposes of voting, *i.e.*, eliminating the current “one vote per exchange” model. As the proposal notes, the three

“exchange groups” currently represent a clear majority of the votes on the operating committees of the Equity Data Plans while at the same time sell proprietary data products that are significant sources of revenues for these exchanges, thereby raising clear conflicts of interest.

Clearpool also believes that it is important to prevent exchanges from effectively purchasing votes by opening additional exchanges or not shuttering defunct exchanges. We therefore support setting thresholds for providing additional votes to exchanges. We believe that a 15 percent threshold for a second vote and the associated “look-back” period is reasonable, but we would not support the lowering of this threshold. We also support not providing votes to an exchange that ceases operation as an equity trading venue, or has yet to commence operation as an equity trading venue to ensure that only those exchanges that are truly contributing to the generation or collection of the core data have a vote on plan decisions.

Together, we believe these aspects of the proposed order represent progress towards addressing the longstanding conflicts of interest that exist relating to SIP governance.

Other Issues around Voting

Clearpool supports other provisions of the proposed order that would address conflicts of interest around voting, and that relate to the issues discussed above.

For example, to address concerns raised by the current unanimous voting requirements for certain actions under the plans, the submission of amendments to the New Consolidated Data Plan would be approved by an “augmented majority vote,” *i.e.*, a two-thirds majority of all votes on the operating committee (provided that this vote also includes a majority of the SRO votes) rather than by a unanimous vote. Clearpool believes this is an important provision to address a single exchange effectively having veto power over certain plan matters.

In addition, the New Consolidated Data Plan would provide the SROs in aggregate with two-thirds of the voting power on the operating committee, and non-SRO members of the operating committee in aggregate with one-third of the voting power (with proportionate fractional votes allocated to non-SRO members of the operating committee as necessary to preserve this ratio).⁶ While we appreciate the need for SROs to have sufficient voting power to act jointly on behalf of the plan, this should not preclude extending sufficient voting rights on the Equity Data Plans to non-SROs and ensuring a meaningful say in the operation of the Equity Data Plans. We support the allocation of voting rights in this manner.

Operation of the New Consolidated Data Plan

The proposed order sets forth a number of provisions relating to the operation and associated responsibilities of the New Consolidated Data Plan, including those around conflicts of interest

⁶ The relative value of non-SRO votes would be adjusted as necessary to account for new exchange registrations and consolidations to ensure that the ratio remains the same.

policies, confidentiality, executive sessions, and operation of the plan administrator and plan processors.

As discussed above, the conflicts of interest that exist in the provision of market data goes to the heart of the issues that market participants are facing in this area. The New Consolidated Data Plan would be required to include a comprehensive policy designed to address the conflicts of interest of SRO members and non-SRO members. Clearpool strongly supports such a policy to address the conflicts on the part of exchange participants that, for example, are part of a publicly held company that also offers proprietary data products. With that said, while having a conflicts of interest policy is important, such a policy should not be based merely on disclosure. The conflicts that SROs face when it comes to market data already has been well documented and are well known. We believe a conflicts of interest policy must therefore be vigorous enough to ensure that SROs take steps to mitigate such conflicts.⁷

To further address conflicts of interest, Clearpool also supports the provision of the proposed order requiring independence of the plan administrator. We agree with the Commission that an entity that acts as the administrator while also offering its own proprietary data products faces an inherent conflict of interest. Clearpool also supports the operating committee's evaluation of the independent plan administrator.

Similarly, Clearpool supports increasing transparency around the plan processor's performance that, as the Commission notes, may allow market participants to provide meaningful input to the operating committee and to the Commission, and provide the operating committee with enhanced incentives to ensure that the processor is functioning well.

Finally, Clearpool supports the inclusion of an executive session policy in the New Consolidated Data Plan that would limit circumstances in which non-SRO members could be excluded from executive sessions. Specifically, the policy would provide that requests to enter into an executive session of SRO members will be required to be included on a written agenda, along with a clearly stated rationale for each matter to be discussed and must be approved by a majority vote of the SRO members of the operating committee.

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Clearpool offers its assistance to the Commission as it examines the proposed order. If you have any questions on our comment letter, please feel free to contact Joe Wald at [REDACTED] or at [REDACTED], or Ray Ross at [REDACTED].com or at [REDACTED].

⁷ Clearpool also believes it is important to protect confidential and proprietary information from misuse. We therefore support provisions to address commercial use of confidential or proprietary information by plan participants.

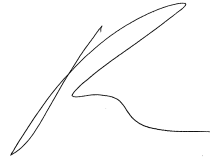


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Sincerely,



Joe Wald
Chief Executive Officer



Ray Ross
Chief Technology Officer

cc: The Honorable Jay Clayton, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
Brett Redfearn, Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Markets, SEC