



June 2, 2020

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

Re: Market Data Infrastructure (File No. S7-03-20)

Dear Ms. Countryman:

Clearpool¹ is writing to provide its views on the SEC's proposed rule to update the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system ("NMS") stocks.

Clearpool has been strong advocates for change to the current rules that govern the content and dissemination of NMS market data and the related costs of trading. 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,² and issued several "white papers" discussing our views on key trading and market structure issues.³ In addition, we participated in the October 2018 SEC Roundtable on Market Data and Market Access⁴ and co-signed a petition for rulemaking to the Commission relating to a number of concerns surrounding market data fees.⁵

We are therefore pleased that the Commission is continuing to take steps to address some of the issues that have been raised by Clearpool relating to market data, including the current proposal that would expand the content of "core data" and introduce long needed competition into the

¹ Launched in 2014 and based in New York, Clearpool is the brand name for the Electronic Trading Technology Platform of BMO Financial Group, offering holistic electronic trading solutions and providing agency broker-dealer execution services. With over 100 Algorithmic Management System (AMS) broker-dealer clients and executing approximately 2% 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 more information about Clearpool, visit www.clearpoolgroup.com

² See, e.g., Letter from Joe Wald, Chief Executive Officer, and Ray Ross, Chief Technology Officer, Clearpool to Vanessa Countryman, Secretary, SEC (File No. 4-757), dated February 28, 2020 (Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data).

³ See Clearpool Viewpoints Papers at <http://bit.ly/2ISs8cR> and <http://bit.ly/2YFpN4H>

⁴ 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).

⁵ The rulemaking petition can be found at <https://www.sec.gov/rules/petitions/2017/petn4-716.pdf>.

dissemination of such data. We also are pleased that several aspects of the proposal are in line with previous Clearpool recommendations.

As discussed further below, Clearpool supports the goals of the proposal and the overall framework of the proposed changes to the current market data regime. Given the breadth of the issues addressed by the proposal, and the significant changes that the proposal would entail, Clearpool urges regulators to take a measured approach to the implementation of such changes. Specifically, we believe that the Commission should implement the proposal in three phases to help ensure that the markets have time to adjust and adapt to the new structure. Clearpool recommends that the Commission first implement changes to the provision and dissemination of consolidated market data. This would be followed by implementation of enhancements to what constitutes consolidated market data (without addressing the new definition of round lot or protected quote). Finally, the Commission would implement changes to the definition of round lot and address issues surrounding protected quotes and the reform of the Order Protection Rule (“OPR”).

In addition, we believe the market data infrastructure proposal and the recent Commission order to modernize the governance structure of NMS plans for equity market data are interconnected and it will be important for the Commission to implement the proposed changes to the SIP governance structure in tandem with the proposed changes to the dissemination of market data. We are pleased that the Commission took another step towards this goal by recently approving the final order directing the SROs to submit a new NMS plan (the “New Consolidated Data Plan”) regarding the public dissemination of real-time, consolidated equity market data for NMS stocks. We look forward to reviewing the SROs’ proposals in this regard and to the implementation of the new governance structure on an expedited basis.

The recommendations set forth below echo many of the views expressed in our previous letters and submissions in these areas. Our specific comments and recommendations follow.

I. Addressing the Costs of Market Data

As we have stated on a number of previous occasions, 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. It remains increasingly difficult for many broker-dealers to compete in the current market environment due, in part, to issues related to the costs associated with trading.

As the proposal notes, several market participants, including Clearpool, have expressed concerns that 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 SIP or exchanges’ proprietary data feeds. Clearpool and other broker-dealers are compelled to purchase the exchanges’ proprietary data feeds both to provide competitive execution services to clients and to meet 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.



While the industry has seen the benefits of competition when exchanges are compelled to compete regarding certain types of fees, these benefits have not yet translated to a significant number of the fees associated with market data. 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 push exchanges to change the manner in which they conduct business.

While we support the proposal overall, and believe it will bring benefits to the markets, it is unclear whether the proposed changes will reduce the overall cost of market data at the end of the day. Significantly, as the proposal discusses, a competing consolidator model will not completely solve the problem of the exchanges' control over market data access or the cost of the market data competing consolidators must purchase.

We understand that the goal of the proposal is not, at least directly, to lower the costs of market data. It is our hope, however, that the new competitive regime for disseminating market data, combined with the addition of important, new elements of core market data, will result in lower overall costs for broker-dealers. Nevertheless, brokers will still likely need to buy proprietary data products from the exchanges to cover information not included in "core data." It will therefore be important for the Commission to ensure that robust safeguards are in place under the new regime to control market data costs and prevent exchanges from just increasing market data prices to make up for any loss of revenue due to the proposed requirement to provide the new core data to competing consolidators.

The proposal notes that under the decentralized consolidation model, the effective NMS plan(s) would continue to play an important but modified role in the national market system by, among other things, governing the SROs' provision of the data necessary to generate consolidated market data, including setting fees for the provision of such SRO data to competing consolidators and self-aggregators. It is our hope that the new governance structure associated with market data, including adding meaningful representation from broker-dealers with voting rights and recognizing exchange operators as a single entity for purposes of voting, will provide additional checks into controlling market data costs and help ensure the fairness and reasonableness of such fees.

To be clear, Clearpool is not advocating for the elimination of proprietary feeds or the ability of market participants to purchase data from exchanges that would not be included in the new definition of "core data." For example, we appreciate the desire of certain market participants to obtain information around the full depth of book, and those market participants should have the ability to do so through an exchange's proprietary data feed. We believe the SIP is not supposed to solve all of the issues surrounding the availability of data but it should provide a viable alternative for broker-dealers to paying exchanges for the market data that is the most fundamental in today's markets, as is contemplated by the proposal.

At the same time, Clearpool is concerned about certain aspects of the fees that competing consolidators may charge under the proposed model. As discussed further below, while we believe that competition can help ensure that competing consolidators provide consolidated market data in



a cost effective manner, competition alone should not be relied upon to do so. The Commission acknowledges in the proposal that there is a risk that there could be too few competing consolidators to fully realize the benefits of competition, which could increase the overall prices market participants pay for consolidated market data.

It also is our understanding that competing consolidators may charge different amounts for the provision of the same data to different customers, and may be able to link pricing for their provision of consolidated market data to other areas of their business, such as providing rebates associated to order flow sent to the competing consolidator for execution, as long as these fees and associated arrangements are disclosed, including any “material” changes to those fees and fee arrangements.⁶

Clearpool is concerned that allowing competing consolidators to establish pricing models akin to the pricing tiers and incentives that have long been in place at the exchanges and which have been the subject of much debate (including being one of the impetuses for the current proposal) will put us right back to where we started at the beginning of this process, i.e., with a system for the provision of market data fraught with conflicts of interest and with no or little regulatory oversight.

The proposal states that the Commission considered an alternative to the decentralized consolidation model that would require competing consolidators’ fees to be subject to the Commission’s regulatory approval. The proposal notes that this alternative would potentially reduce the risk and uncertainty surrounding the total price of consolidated market data, particularly that market participants are exposed to unreasonable fees. As with the fees charged by the SROs for the provision of market data to competing consolidators, Clearpool believes that it is important for the Commission to ensure that robust safeguards are in place under the proposed regime to control the costs of data charged by competing consolidators to market participants.

We therefore recommend that competing consolidators should not be able to link pricing for their provision of consolidated market data to other areas of their business. In addition, we recommend that the Commission should scrutinize competing consolidator fees, and fee changes, in a manner similar to the process for review and approval of proposed rule changes currently filed by SROs. Finally, we recommend that the Commission publish each amendment to a competing consolidator’s fees or fee arrangements on its website sooner than the proposed timeframe of no later than 30 days after the competing consolidator filed the amendment. We do not believe that delayed public disclosure of such an amendment would be warranted as with other amendments to

⁶ Exhibit G to proposed Form CC would require a description and identification of any fees or charges for use of the competing consolidator with respect to consolidated market data or any subset of consolidated market data, services, including the types of fees (e.g., subscription, connectivity), the structure of the fee (e.g., fixed, variable), variables that impact the fees, pricing differentiation among the types of subscribers, and range of fees (high and low). A competing consolidator would be required to amend its Form CC prior to the implementation of a material change to the competing consolidator’s pricing, connectivity, or products offered, i.e., a “Material Amendment.”



prevent another competing consolidator from replicating a competing consolidator's innovations before it has a chance to implement them.

II. Implementing the Proposal in Phases and Applicable Transition Period

As a preliminary matter, given the importance of issues addressed by the proposal, and the number of changes that need to be made to fully implement the proposal as a whole, Clearpool recommends that the Commission take a measured approach and implement the proposed changes to the collection, consolidation and dissemination of market data incrementally and in phases to help market participants, and the markets overall, have time to adjust and adapt to the new regime, as well as address some of the more complex issues raised by the proposal.

First Phase

The first phase would consist of the implementation of the decentralized, competitive consolidator model. Clearpool believes that by implementing this aspect of the new model first, the Commission can focus on modernizing the infrastructure of the current system for market data and enhance the speed and quality of the dissemination of such data, addressing concerns regarding, among other things, the latencies of, and conflicts of interest with, the current model. This also will allow the markets to better prepare for the increase in, and enhancements to, core data to be delivered through the new system.

The proposal discusses the transition period that will be necessary to implement the decentralized consolidation model. We understand that these changes will take time to be fully realized and can be a lengthy process given the complexities involved with the changes. During this transition time, we agree with the Commission that the existing exclusive SIPs should continue their operations until such time as the Commission considers and approves an NMS plan amendment that would effectuate a cessation of the operations of the exclusive SIPs.⁷ In addition, during that time, firms intending to act as competing consolidators or self-aggregators will need to register, develop, modify and test systems, establish pricing, and make other preparations needed to function as competing consolidators or self-aggregators. Notwithstanding the changes that will need to occur, Clearpool believes that the goal of the Commission should be to implement this phase within one year of approval of the final rule.

⁷ The Commission states that it would need to consider, among other things: the status of registration, testing, and operational capabilities of multiple competing consolidators, self-aggregators, and market participants; capabilities of competing consolidators to provide monthly performance metrics and other data required to be published; and the consolidated market data products offered by competing consolidators.



Second Phase

The second phase of the implementation of the proposal would consist of certain changes to the core data that would be provided. Specifically, core data would be enhanced through the addition of depth of book and auction information, as well as the aggregation of odd-lots into round lots (under the current definition) displayed at the most conservative price at which such trading interest could be accessed. In addition, we recommend that the Commission require a “retail interest indicator” to be added to quotes to assist market participants in defining what portion of the quote is attributable to retail interest. We believe the second phase should be implemented within six months of the conclusion of the implementation of the first phase. By implementing these changes in the second phase, market participants can receive the benefit of having additional information in core data, which can help alleviate the reliance on proprietary feeds that exists today for such information.

Third Phase

The third and final phase of the implementation of changes would address the definition of round lot, the definition of protected quote, and the reform of the OPR and current trade-through restrictions. These are complex issues that reach into the heart of the execution of investor orders. We believe that changes under this phase should be able to be completed within six months after the completion of the second phase of the implementation. We believe this timeframe would be sufficient given that the Commission and market participants would have two years following approval of the final rule under this timeline to ensure that these changes are in place.

III. Proposed Enhancements to the Provision of Consolidated Market Data

The Commission is proposing to replace the existing centralized, exclusive consolidation model for SIP data with a decentralized, competitive consolidation model under which competing consolidators would collect, consolidate, and disseminate certain NMS information.⁸ To support this model, the proposal would require each SRO to make available all of its data that is necessary to generate NMS market data to two new categories of entities:

- Competing consolidators, which would be responsible for collecting, consolidating and disseminating consolidated market data to the public; and
- Self-aggregators, which would be brokers or dealers that elect to collect and consolidate market data solely for their internal use.

⁸ To implement this model, the Commission proposes to: (1) introduce definitions of competing consolidator and self-aggregator; (2) require the SROs to provide their NMS information to competing consolidators and self-aggregators in the same manner the SROs make available this information to any person and to remove the requirement that there be only one plan processor for each NMS stock; (3) require the registration of competing consolidators and establish the obligations with which they must comply and a new Form CC for competing consolidator registration; and (4) amend Regulation SCI to expand the definition of “SCI entities” to include competing consolidators.



Non-SRO competing consolidators would be required to register with the Commission. All competing consolidators, SRO and non-SRO, would be subject to appropriate standards with respect to the promptness, accuracy, reliability, and fairness of their consolidated market data distribution. The proposal notes that while self-aggregators would not be subject to a separate registration requirement, as registered broker-dealers, they would be subject to the full broker-dealer regulatory regime.

Clearpool strongly supports eliminating the existing exclusive SIP consolidation model with a decentralized, competitive model. Clearpool previously expressed concerns regarding the existence and implications of the two-tiered market that has existed for some time between the exclusive, centralized consolidation model for SIP data and the decentralized consolidation model for enhanced proprietary data. We therefore recommended that there be a broader examination of the current structure for the provision of market data. At the same time, we recommended that the SIP should, at the very least, be “upgraded” to support the speed necessary for the dissemination of data in a timely manner.

Clearpool believes that the proposed decentralized, competitive model has the potential to bring benefits to the markets to address the current two-tiered market structure including, as delineated in the proposal, enhancing the speed and quality of the collection, consolidation, and dissemination of the proposed consolidated market data, fostering competition, mitigating the influence of certain conflicts of interest, and modernizing the infrastructure of the national market system.

Clearpool also supports requiring each SRO to provide its NMS information, including all data necessary to generate proposed consolidated market data, to all competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and data formats, as such SRO makes available any information to any other person. We are skeptical that if this determination is left to the exchanges, they may perpetuate the current situation, and not provide the same technology for the consolidated market data, thereby leaving in place the latency and other issues the Commission and many market participants have long been concerned about.

At the same time, we strongly support requiring each competing consolidator to be subject to appropriate standards with respect to the promptness, accuracy, reliability, and fairness of their consolidated market data distribution, particularly providing “fair access” to market participants who choose to utilize them for their market data needs, including having clear eligibility criteria in place and a publicly available fee schedule.

Finally, we believe it will be important for there to be a number of competing consolidators in place and fully operational before allowing the exclusive SIPs to cease operations to provide sufficient competition necessary to help ensure that the proposed consolidated market data is reliable, accurate, and prompt. In addition, as the proposal discusses, if there are a sufficient number of competing consolidators, those firms should have incentive to provide reliable and accurate consolidated market data with minimal latency and, significantly, in a cost-effective manner so not to risk losing customers to another competing consolidator. We also believe that having a sufficient



number of multiple competing consolidators will be important to ensure resiliency and backup in the collection, consolidation, and distribution of consolidated market data.

A. Introduction of Multiple NBBOs

The proposal notes that potential issues have been raised about a competing consolidator model, among other things, about operational complexities associated with the model including the introduction of multiple national best bid and offers (“NBBO”).

As Clearpool has noted in previous comment letters and submissions, SIP data, and the NBBO, remain the vehicles through which investors, particularly retail and individual investors, receive market information to make trading decisions and is a critical part of the way in which broker dealers measure (and demonstrate to customers and to the public) their best execution obligations. The NBBO also is used for a variety of other purposes in the trading process such as, among other things, for determining reference points for midpoint executions, for risk management purposes, and to determine a stock’s liquidity when modeling trades. For these reasons, Clearpool has recommended that the Commission must act judiciously in considering proposals and reforms that impact what constitutes the NBBO.

The proposal acknowledges that the introduction of multiple competing consolidators would result in multiple versions of the NBBO prevailing at almost the same time and, in turn, discretion in choosing an NBBO. Such discretion can result in uncertainty regarding whether, for example, a broker had executed a customer’s order at a price that was in the customer’s interest or in the broker’s own interest. Similarly, the proposal notes that the use of competing consolidators may introduce sequencing risk and therefore the loss of a single reference for consolidated market data for purposes of the reconstruction of the markets at a given point in time.

Clearpool does not believe that the existence of multiple NBBOs will create problems for market participants or the market as a whole at a level that would warrant not moving forward with the decentralized, competitive model, or that any of the concerns expressed cannot be overcome. As the proposal states, many market participants currently consolidate proprietary data feeds, generate their own consolidated data, and calculate their own NBBO, digesting market data from different sources with little issues today. We also agree that several of the proposed requirements, such as those requiring timestamps to be applied to all consolidated market data by the SROs when they send market data to competing consolidators, as well as by competing consolidators, would help mitigate any concerns.

On the other hand, while the proposal states that the existence of multiple NBBOs does not impact a broker’s best execution obligations, we believe that “fragmenting” the NBBO could lead to several problems around such obligations, which would need to be addressed and clarified by the Commission prior to implementation.



B. Transparency of Information About, and Resiliency of, Competing Consolidators

Given their significant role in the markets, it will be important for market participants, and the markets as a whole, to have certain information about competing consolidators and their operation. Clearpool therefore supports requiring competing consolidators to publicly disclose certain information about their organization, operations, and products, as well as regularly publish certain performance statistics on, for example, capacity, system availability, and latency to illustrate their operational capability and to provide transparency into the performance of their systems. Similarly, we support requiring competing consolidators to have written policies and procedures in place addressing systems capacity levels and requiring each competing consolidator to publish on its website its capacity statistics on a monthly basis.

We agree with the Commission that public disclosure and accessibility of this information would help Clearpool and other broker-dealers evaluate the merits of a competing consolidator, enhance competition, and help ensure that competing consolidators have a demonstrated ability to provide consolidated market data in a stable and resilient manner. In particular, Clearpool believes this information will prove valuable in evaluating a competing consolidator's organization, operational capability, market data products, and fees and determining which competing consolidator to utilize for our market data needs.

In addition to transparency of information, the resiliency of competing consolidators needs to be considered. The Commission acknowledges that if a consolidated market data feed of a competing consolidator became unavailable or otherwise unreliable, it could have a significant impact on the trading of NMS stocks and/or the market participants subscribing to its data feeds, and could possibly interfere with the maintenance of fair and orderly markets. We therefore support subjecting competing consolidators to appropriate requirements to ensure their resiliency.

Finally, Clearpool supports requiring the participants of the NMS plans to file a proposed amendment to the plan(s) to reflect that the participants would need to conduct an annual assessment of the overall performance of competing consolidators, including the speed of the competing consolidators in receiving, calculating, and disseminating proposed consolidated market data; the reliability of the transmission of proposed consolidated market data; and a detailed cost analysis of the provision of proposed consolidated market data, and provide the Commission with a report of such assessment on an annual basis. We recommend that the annual assessment be made public, as this information would further assist broker-dealers in evaluating competing consolidators.

C. Self-Aggregators

The proposal would add a definition of a “self-aggregator.”⁹ A self-aggregator would collect all information with respect to quotations for and transactions in NMS stocks directly from each SRO

⁹ Specifically, a self-aggregator would be defined as “a broker or dealer that receives information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, and



that it needs to trade for its own account or to execute transactions for its customers but would not be permitted to re-distribute or re-disseminate proposed consolidated market data to any person, including to any affiliates or subsidiaries.¹⁰ The proposal notes that currently some broker-dealers effectively act as self-aggregators by purchasing proprietary data products from the exchanges and consolidating that information and calculating the NBBO for their own use.

Clearpool supports allowing broker-dealers to continue to self-aggregate consolidated market data to assist in maintaining the status quo for many broker-dealers in how they execute transactions for their customers. As the Commission notes, this self-aggregated consolidated data may be used in a number of important ways, such as for use in the operation of algorithmic trading systems and as a way to address the latency and content issues that are present with the exclusive SIPs themselves.

The proposal notes that self-aggregators may have a minor latency advantage over market participants that decide to utilize a competing consolidator for their consolidated market data. Clearpool does not believe this latency advantage would be material and therefore should not be an issue. In addition, we agree that because self-aggregators will be registered broker-dealers, imposing an additional registration requirement as well as the competing consolidator obligations on self-aggregators would be unnecessary and could result in undue costs and burdens for broker-dealers.

IV. Proposed Enhancements to NMS Information and Expansion of “Core Data”

In addition to enhancements to the provision of consolidated market data, the proposal would expand the content of NMS information that is required to be collected, consolidated, and disseminated as part of the national market system under Regulation NMS. Significantly, the SEC is proposing to add a definition of “consolidated market data” that would include information that is currently disseminated by the exclusive SIPs as well as additional new information.¹¹ Consolidated market data would include, among other things, “core data,” which would include all of the elements that currently are referred to as core data as well as the data elements that are not currently provided by the exclusive SIPs: (1) quotation data for smaller-sized orders for higher-priced stocks (pursuant to a new definition of “round lot”), (2) data on certain quotations below the best bid or above the best offer (pursuant to a new definition of “depth of book data”), and (3) information about orders participating in auctions (pursuant to a new definition of “auction information”).¹²

generates consolidated market data solely for internal use. A self-aggregator may not make consolidated market data, or any subset of consolidated market data, available to any other person.”

¹⁰ A self-aggregator that re-distributed or re-disseminated proposed consolidated market data, or any subset of proposed consolidated market data, would be required to register as a competing consolidator.

¹¹ Consolidated market data be defined as the following data: (1) core data; (2) regulatory data; (3) administrative data; (4) exchange-specific program data; and (5) additional regulatory, administrative, or exchange-specific program data elements defined as such pursuant to the effective national market system plan or plans required under Rule 603(b).

¹² Specifically, core data would be defined as the following information with respect to quotations for and transactions in NMS stocks: (1) quotation sizes; (2) aggregate quotation sizes; (3) best bid and best offer; (4) national best bid and



As discussed above, currently, the “core data” provided through the SIP only includes the NBBO and top-of-book data. For this reason, there continues to be no viable alternatives for broker-dealers to paying exchanges for their proprietary market data, both to provide competitive execution services to clients and, equally important, to meet best execution obligations. Clearpool therefore strongly supports the inclusion of this additional information in core data, which can reduce the reliance on exchanges’ proprietary data feeds and provide market participants with additional information to make informed order routing and execution decisions. This also would help address concerns regarding exchanges selling core market data and more robust data feeds at faster speeds to only a few market participants who are able to “pay-up” for the additional information.

While Clearpool supports the enhancement of the information to be provided to market participants, we believe the Commission should provide flexibility in the definition of “core data,” or the process by which the elements of “core data” is determined, to allow for the addition of any other information that is later deemed necessary to be disseminated as part of consolidated market data. Clearpool is concerned that the strides made by the proposal in enhancing core data will be diminished if we must go through the current process each time a new core element of market data is identified and determined to be essential information for market participants.

A. Inclusion of Odd-Lots and Proposed Definition of Round Lot

The Commission is proposing to include certain information about quotations that are currently defined as odd-lots in proposed core data by introducing a tiered definition of “round lot.” As proposed, the definition of round lot would assign different round lot sizes to individual NMS stocks depending upon their stock price.¹³ Clearpool supports the inclusion of odd-lot data in core data. As the proposal notes, individual odd-lot quotations, especially for stocks with higher share

national best offer; (5) protected bid and protected offer; (6) transaction reports; (7) last sale data; (8) odd-lot transaction data disseminated pursuant to the effective national market system plan or plans required under Rule 603(b) as of [date of Commission approval of this proposal]; (9) depth of book data; and (10) auction information. The proposal notes that certain OTCBB and corporate bond and index data that are currently provided by the exclusive SIPs would not be included in the proposed definition of core data.

¹³ Specifically, a “round lot” would be defined as, for any NMS stock for which the prior calendar month’s average closing price on the primary listing exchange was:

\$50.00 or less per share, an order for the purchase or sale of an NMS stock of 100 shares;
\$50.01 to \$100.00 per share, an order for the purchase or sale of an NMS stock of 20 shares;
\$100.01 to \$500.00 per share, an order for the purchase or sale of an NMS stock of 10 shares;
\$500.01 to \$1,000.00 per share, an order for the purchase or sale of an NMS stock of 2 shares; and
\$1,000.01 or more per share, an order for the purchase or sale of an NMS stock of 1 share.



prices, have become more important to market participants as those quotations can represent significant amounts of liquidity that are not reflected in current core data.¹⁴

While we support the addition of odd-lots to core data, we believe that the proposed definition of “round lot” raises several significant concerns that must be addressed to make the addition of odd-lots useful. In particular, we believe that, ideally, all quotes over a certain notional value should be included in the proposed definition of core data, rather than utilizing the proposed tiered definition of “round lot.” As the proposal notes, as a result of higher share prices, odd-lot orders in many securities have a high dollar (or notional) value. Basing round lots on notional value would eliminate questions surrounding how many shares results in “meaningful” quotes, *e.g.*, is one share of a stock that is over \$1,000 really meaningful and should such a quote be included in the NBBO.

If the Commission does not amend the proposal in this manner, then we believe that round lot sizes and price intervals different from those in the proposed definition would be more appropriate to capture meaningful odd-lot quotations. Specifically, we recommend that the proposed number of round lot tiers be reduced. We believe that five tiers of round lots may be unnecessary and may add complexity, confusion for investors and market participants, and undermine its usefulness. To that end, we recommend that the number of levels be reduced to, for example, three levels consisting of 100, 50 and 20 shares. We believe the exact share prices that would be included in these ranges is an issue that needs to be further examined but revising the round lots tiers in this manner would at least ensure that any round lot included in the NBBO would be of an amount that would be of significance to Clearpool and other market participants (and, as discussed below, would warrant being considered as a protected quote).

B. Proposed Amendments to the Definition of Protected Bid or Offer and Impact on Order Protection Rule

The Commission is proposing to amend the definition of “protected bid or protected offer” by requiring automated quotations that are the best bid or offer of a national securities exchange or national securities association to be “of at least 100 shares” in order to qualify as a protected bid or protected offer. Rule 611, or the Order Protection Rule (“OPR”), requires trading centers to have policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected bids or protected offers in NMS stocks. In effect, it is intended to ensure that orders are executed at no worse than the NBBO.

Rule 611 currently applies only to round lots. The proposal notes that if the definition of protected bid or protected offer were left unmodified, the Commission’s proposed definition of round lot would result in an expansion of Rule 611 by requiring the protection of quotations in the proposed new smaller round lot sizes. The proposal states that in light of concerns about the existing scope of

¹⁴ In addition, we do not agree with concerns expressed that adding odd-lot quotes to proposed core data in and of itself could increase its complexity, undermine its usefulness, or create issues surrounding systems capacity or “information overload.”



the OPR, Rule 611 should not be extended to smaller-sized quotations reflected in the proposed definition of round lot. In addition, the Commission believes that market developments since the adoption of Regulation NMS, improvements in trading and order routing technology, and best execution responsibilities provide sufficient incentives for market participants to engage with “meaningfully sized orders” even without the extension of the OPR.

Clearpool has previously questioned the inclusion of unprotected quotes in the NBBO. To that end, we continue to believe that until there has been further discussion and resolution as to how inclusion of unprotected quotes would enhance the NBBO without, at the same time, adversely impacting the NBBO and the market information investors use to make trading decisions, as well as the metrics by which broker dealers measure and demonstrate their best execution obligations, that any inclusion of unprotected quotes in the NBBO would be premature. We therefore oppose the proposed definition of protected bid and offer and believe that, at this time, all quotations included in the NBBO should be protected.

Separating the definitions of protected quotes and what is included in the NBBO would create complexity and confusion for the markets. In addition, having, in effect, an NBBO and PBBO raises additional questions for market participants such as the metrics that brokers will use for certain algorithms or trading strategies (i.e., the NBBO or PBBO), whether market participants will make decisions on which broker to execute transaction through based on whether they use the NBBO or PBBO, and whether firms will just adjust their systems to ignore the NBBO. This also raises questions for a broker-dealer’s best execution obligations, such as uncertainty as to whether a broker-dealer has to access unprotected odd-lot quotations to meet their regulatory obligations.

We therefore recommend that the proposal be amended to change the definition of round lot and what is considered as core data as discussed above, i.e., based on pure notional value or, alternatively, have round lots with a reduced number of tiers, with protection provided for such quotations. In this way, protected quotes will be “meaningful” and other quotes will remain unprotected.

While we oppose the proposed definition of protected bid and offer in the proposal, Clearpool believes that given the significant changes in the markets since its adoption, examining whether the OPR makes sense under the current market structure remains an issue worthy of discussion. Along the lines of not creating a “one size fits all market,” an examination can include keeping an OPR for the retail market while providing an exemption for institutional size trades. While we understand that this may result in issues that would need to be examined regarding the impact on retail investors, we believe it is an idea worthy of discussion. We believe, however, that a more measured approach to revising the OPR is warranted, and that such a significant change or examination should not be conducted through the market data infrastructure proposal.

Finally, the locked and crossed markets restrictions of Rule 610 are based on the term “protected quotation.” As a result, quotations in the new, smaller proposed round lot sizes would not be subject to Rule 610(d) and could be locked or crossed. Clearpool is concerned that the proposal would



result in more locked and crossed markets and that the proposal, in turn, may create incentives for certain market participants, for example, to lock markets in order to obtain rebates. We therefore believe the locked and crossing requirements should be extended to orders reflected in the NBBO.

C. Depth of Book Data and Auction Information

In addition to adding information regarding odd-lots, the Commission is proposing to define core data to include certain depth of book data and information regarding auctions.

Depth of Book Data

As the proposal notes, core data currently lacks quotation information in NMS stocks beyond the top of book. The Commission is proposing to define core data to include certain depth of book data, specifically, aggregated quotes at each price between the best bid (and best offer) and the protected bid (and protected offer) (if different), as well as the five price levels above the protected offer and below the protected bid.

Clearpool supports expanding core data to include depth of book data. As the proposal notes, many market participants need more than the best bids, best offers, and the NBBO disseminated by the exclusive SIPs to trade competitively and to optimize the placement of customer orders. Clearpool previously recommended that data provided through the SIP be expanded to include five levels of depth of book information. We believe that providing depth of book at these levels is sufficient to improve the usefulness of core data for most market participants. For example, five price levels typically tend to be a sufficient level of depth for Clearpool for sweeping multiple levels of the book in executing an order. Providing depth of book at five price levels also would not increase message traffic or complexity for market participants to an unacceptable level.

Clearpool believes that providing complete depth of book data is not necessary at this time. At some point, providing additional data results in diminishing levels of returns through the need for, among other things, increased data processing. As the proposal notes, the addition of complete, order-by-order depth of book data to core data would represent a large amount of information, which could increase latencies in the provision of proposed core data and introduce complexity that might impair the usability of such data for many subscribers.¹⁵

Auction Information

The Commission is proposing to include auction information, including auction order imbalance and other auction data generated by the exchanges during an auction, in the proposed definition of core data. Specifically, auction information would be defined as all information specified by national

¹⁵ We also believe that defining the depth of book price levels as the first five levels “at which there is a bid or offer,” rather than a fixed \$0.05 band around the best quotes, is appropriate to allow for the capture of the depth of book quotation information for less liquid stocks.



securities exchange rules or effective national market system plans that is generated by a national securities exchange leading up to and during an auction, including opening, reopening, and closing auctions, and disseminated during the time periods and at the time intervals provided in such rules and plans.

As the proposal notes, only limited auction information is currently included in SIP data and market participants must rely on obtaining much of the auction-related information through exchanges' proprietary data products. Nevertheless, an increasing proportion of total trading volume is executed during opening and closing auctions, which are significant liquidity events every trading day. In addition, auctions generate prices that are used for a variety of market purposes, including setting benchmark prices for index rebalances and for mutual fund pricing. Reopening auctions also play a crucial role in connection with security-specific or market-wide events, helping to assure the resumption of orderly trading following a limit up-limit down or other regulatory halt.

Clearpool supports including auction information in core data. As with the inclusion of odd-lot data and depth of book data, including auction may promote more informed and effective trading in auctions including allowing Clearpool and other broker-dealers to effectively position clients' orders into the close without causing undue impact. Including such information in core data also can address the information asymmetries between users of current SIP data and users of proprietary data products.

V. Reexamining Best Execution

Clearpool continues to believe that there must be an examination of best execution in light of the market structure changes that have been made and, ideally, prior to any further wholesale changes to the current market structure. As we have previously stated, best execution is one of the tenets of trading and factors into almost any decision that a broker must make when it comes to the routing and execution of orders and their interaction with clients.

A number of the proposed changes in the proposal would be inextricably linked to determining what best execution is. For example, as discussed above, the existence of multiple NBBOs, and therefore "fragmenting" the NBBO, could lead to several questions around best execution obligations that would need to be clarified by the Commission prior to implementation. Similarly, proposals to include unprotected quotes in the NBBO, quotes that cannot be ignored when it comes to a broker-dealer's best execution responsibilities, raise compliance questions and would add complexity (and potential costs) to an already complex best execution environment.

As SEC Commissioner Roisman noted in his statement on the proposal, while the Commission does not specify minimum data elements needed to achieve best execution, the proposal repeatedly states that the proposed changes would facilitate best execution. He added that "I recognize that the proposal might not be the most appropriate place to address the issue, but to



Ms. Vanessa Countryman

June 2, 2020

Page 16 of 16

me, it seems like we are dodging the issue altogether.”¹⁶ Given the compliance issues that are likely to be raised if the proposal is approved as proposed, the Commission should say more about how it envisions the proposed changes would facilitate broker’s best execution obligations and clarify how broker-dealers and other market participants should address some of the issues raised by the proposal vis-à-vis their best execution responsibilities. Finally, any assessment of OPR must include a review of best execution. Clearpool therefore recommends, in conjunction with any reform to OPR, that there is a clarification of best execution in light of any new regulatory requirements in this area.

We reiterate our recommendation that the Commission should hold a roundtable on best execution issues and the interplay with trading and market structure issues in general to examine any needed changes to best execution and to facilitate a discussion on the impact on market structure changes going forward. Given the number of issues raised in the proposal that could impact best execution, we believe the timing is ripe for the organization of such a roundtable.

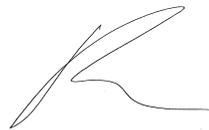
* * * * *

Clearpool offers its assistance to the Commission as it examines the proposal. 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] or at [REDACTED].

Sincerely,



Joe Wald
Managing Director, BMO Capital Markets
Group
Co-Head of Electronic Trading



Ray Ross
Managing Director, BMO Capital Markets
Group
Co-Head of Electronic Trading

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

¹⁶ SEC Commissioner Elad L. Roisman, *Statement on Proposed Updates to the National Market System for the Collection, Consolidation, and Dissemination of Information With Respect to Quotations for and Transactions in National Market System Stock*, February 14, 2020.

