



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

December 10, 2019

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

Re: NMS Plan Fee Amendments (File No. S7-15-19)

Dear Ms. Countryman:

Clearpool Group (“Clearpool”)¹ is writing to provide its views on the proposed rule to amend Regulation NMS to rescind the provision that allows a proposed amendment to a national market system plan (“NMS plan”) to become effective upon filing if the proposed amendment establishes or changes a fee or other charge.

Clearpool strongly supports the proposal. As we stated in previous letters to the Commission as well as in our Viewpoints papers,² market participants should have greater ability to provide input when there is a change to a fee or other charge relating to market data. Along these lines, Clearpool also co-signed a petition for rulemaking to the Commission relating to a number of concerns surrounding market data fees and strongly supported the SEC Roundtable that examined the effects that market data has on our markets.³

As discussed further below, the proposed rule is another step in addressing issues relating to fees and other charges around market data. We agree with the Commission’s statement in the proposal that given the substantial amount and broad effect of NMS plan fees, as well as the need of many market participants to obtain core data and the potential conflicts of interest in setting fees, a proposed fee change should not become effective until after the public has had an

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., 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); Clearpool Group Viewpoints Papers at <http://bit.ly/2lSs8cR> and <http://bit.ly/2YFpN4H>.

³ The rulemaking petition can be found at <https://www.sec.gov/rules/petitions/2017/petn4-716.pdf>. Among other things, the petition proposed that SIP market data fee filings require a public notice and comment period prior to SEC approval or disapproval.

opportunity to comment (and the Commission has approved the change). Our specific comments follow.

Background

Rule 608 of Regulation NMS sets forth the requirements for the filing of, and amendments to, NMS plans. Rule 608(b)(1) and (2) set forth the “standard procedure” for amending NMS plans, which provides that a proposed NMS plan amendment cannot become effective until after the amendment has been published, the public has had an opportunity to comment, and the SEC has approved the amendment by order. Rule 608(b)(3)(i), however, provides an exception to the standard procedure that states that a proposed fee change is effective upon filing with the SEC, and an NMS plan can immediately begin charging the new fee.⁴

Rule 608(b)(3)(iii) provides that the SEC may summarily abrogate a proposed fee change within 60 days after filing and require that the amendment be re-filed pursuant to the standard procedure. Under this provision, market participants can still be charged a new or altered fee before the SEC can evaluate whether to abrogate a proposed fee change.

Need for Meaningful Opportunities to Provide Input on Changes to Fees

The proposed rule would require an amendment to an NMS plan that would establish or change a fee or other charge to be subject to the standard procedure for NMS plan amendments, *i.e.*, it would eliminate the current exception that allows an NMS plan amendment to be effective immediately upon filing.

Given the significance of issues surrounding the costs of trading, Clearpool believes market participants should have a greater ability to provide input when there is a change to a fee associated with market data, market access, or other type of trading fee. As the proposal notes, the Commission comment process is one of the only ways market participants have to express their views on these proposed fee changes. Permitting changes relating to fees to be filed with the Commission on an “immediate effectiveness” basis often does not provide sufficient opportunity for market participants impacted by such changes to review the fee change or to provide any comments prior to those changes becoming effective.

We also believe allowing these rule filings to become immediately effective often does not provide time for the Commission to conduct a sufficient review to ensure that a filing is consistent with the requirements of the Exchange Act and, as the proposal recognizes, while the Commission can abrogate an immediately effective NMS plan amendment as described above, it generally has not abrogated a proposed fee change prior to reviewing the comments provided.⁵

⁴ The fee exception is available for NMS plans that charge or intend to charge fees. Currently, these NMS plans are the four plans that govern the collection, consolidation, and distribution of market data to the public (*i.e.*, the core data plans) and the CAT plan.

⁵ The proposal states that the Commission considered an alternative to provide that NMS plan fee filings would not become effective immediately upon filing but would instead become effective automatically without the Commission

The ability for market participants to provide meaningful input on proposed NMS plan fee changes, and therefore the need to eliminate the current exception for immediate effectiveness, also is important for a number of other reasons. Significantly, as we discussed in previous comment letters, SIP data is a critical part of the way in which broker-dealers meet their regulatory obligations, and measure and demonstrate to customers and to the public their best execution obligations. It is therefore necessary for broker-dealers to obtain core market data and, in turn, pay the fees charged by the NMS plans for such data, no matter what those fees may be.

As the proposal notes, the SIPs have significant power in the market for core and aggregated market data products and plans responsible for providing core data are monopolistic providers of such data, *i.e.*, there is no market competition that can be relied upon to set competitive prices. It is therefore important for market participants such as broker-dealers to have meaningful say through the comment process on any changes to these fees.

Adding to concerns around these issues are the conflicts of interest that exist among those SROs setting fees. Specifically, as the proposal states, given that the SROs approve all proposed fee changes, this can create potential conflicts of interest for the SROs as their duties administering NMS plans that either charge or could charge fees potentially come into conflict with other products the SROs sell, particularly proprietary data products.

The Commission requests comment whether the availability of proprietary data products sold by some SROs mitigates the SEC's preliminary concerns about subjecting market participants to new fees prior to any review by the SEC or opportunity for comment and whether those proprietary data products represent viable, competitively priced alternatives to the core data distributed by the NMS plan processors. Quite the contrary.

Clearpool and other broker-dealers are compelled to purchase exchanges' proprietary data feeds in addition to SIP data both to provide competitive execution services to our clients and to meet our best execution obligations. Unfortunately, exchanges have become increasingly reliant on the revenues generated by market data vis-à-vis other revenues 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, whether it be through the SIP or proprietary data offerings. The fact that nearly all exchange SROs today are public companies that have demutualized contributes to the concerns surrounding conflicts of interest and therefore the immediate effectiveness of NMS plan fee filings.

For these reasons, we believe eliminating the current exception providing for immediate effectiveness of NMS plan fee filings could lead to a more robust process of evaluating proposed fee changes and can help in addressing some of the concerns relating to these fees such as those

having to approve the fee filing at the end of the 60 day period during which the Commission could potentially abrogate the fee filing. Clearpool does not support such an alternative. Significantly, we can envision situations, as the proposal notes, where such an alternative could create issues by allowing automatic effectiveness of the filing where, for example, a proposed fee filing is complicated and the Commission may be unable to complete its review during the 60-day abrogation period.

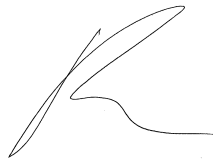
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around the need of market participants to obtain core data and the potential conflicts of interest in setting fees.⁶

Conclusion

We continue to offer our assistance to the Commission as it examines these important issues. If you have any questions on our comment letter, please feel free to contact me directly at [REDACTED] or at [REDACTED]

Sincerely,



Ray Ross
Chief Technology Officer

cc: The Honorable Jay Clayton, Chair
The Honorable Robert J. Jackson, Jr., Commissioner
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

⁶ While outside the scope of the proposed rule, Clearpool continues to urge the Commission to carefully examine and scrutinize fee changes that SROs individually propose through the Section 19(b)(3)(A) process that provides for an effective-upon-filing procedure for such fee changes, and ensure that all the factors under the Exchange Act are considered when determining whether to approve individual SRO rule changes that involve market data.