



17 State Street, 38<sup>th</sup> floor New York, NY 10004

July 17, 2019

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

Re: File No. SR-CboeEDGA-2019-012

Dear Ms. Countryman:

Clearpool Group (“Clearpool”)<sup>1</sup> is writing to provide its views on the Cboe EDGA Exchange (“EDGA”) proposed rule change to introduce a delay mechanism, or “speed bump,” through the Liquidity Provider Protection (“LP<sup>2</sup>”).

As we stated in our previous letters to the Commission,<sup>2</sup> as well as in our Viewpoints paper on trading and market structure issues,<sup>3</sup> as an independent agency broker-dealer, and provider of tools to assist other broker-dealers in routing, execution, pre- and post-trade compliance and risk monitoring, Clearpool has a significant interest in ensuring that the U.S. markets are the most orderly, efficient and competitive markets possible. Consistent with this goal, Clearpool supports encouraging additional liquidity in the markets through innovative order types and other methods that may have a positive impact on order routing behavior, execution quality, and market quality more generally.

We support the goals associated with the LP<sup>2</sup> delay mechanism, and the order type in general, and agree that an order type that allows liquidity providers to, in effect, place “non-firm” quotes may

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<sup>1</sup> 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](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; Letter from Ray Ross, Chief Technology Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. SR-BatsBZX-2017-34), dated June 12, 2017 (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 (“Nasdaq MELO Letter”); Letter from Ray Ross, Chief Technology Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. S7-05-18), dated May 25, 2018; and 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).

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

bring additional liquidity to the markets. Similar order types have existed in off-exchange trading venues and have been used effectively to enhance execution quality for both retail and institutional investors. However, as discussed further below, we believe the proposed inclusion of the LP<sup>2</sup> quotes in the Securities Information Processor (“SIP”) market data feed (and therefore in the NBBO) would adversely impact 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, thereby resulting in confusion for investors when trading and eliminating much of the benefits that the proposal could bring to the markets. We therefore recommend that the LP<sup>2</sup> quote be excluded from SIP data and the NBBO.

## **I. Liquidity Providing Mechanisms are Critical to the Markets**

According to the filing, the purpose of LP<sup>2</sup> is to introduce a delay mechanism that is designed to encourage and enhance liquidity and improve price discovery by reducing the impact and importance of speed as a factor in trading.

Clearpool is a strong advocate of efforts to provide incentives for order flow to be directed to exchanges, including several that have contained holding periods or similar delays.<sup>4</sup> Providing options to investors is important in the execution of their orders, particularly for institutional investors seeking to execute in large-size. As the Commission is aware, in today’s fragmented and complex markets, it has become increasingly difficult for institutional investors to find sufficient, and quality, liquidity to execute large size orders. In particular, institutional order flow has been challenged in an environment where many market participants trade in small size, off-exchange, and have a much shorter investment timeframe.

The proposed LP<sup>2</sup> delay mechanism is unique, however, as it is asymmetrical, *i.e.*, all liquidity taking orders would be subjected to the proposal’s four millisecond delay, while all non-executable orders that would add liquidity would be exempt from the delay mechanism. In addition, market participants would be able to interact with their resting orders (*e.g.*, by cancelling the order or modifying the order’s size) without being subject to the delay mechanism. Combined with the inclusion of the LP<sup>2</sup> quote in the SIP, Clearpool believes the asymmetrical nature of the LP<sup>2</sup> raises unique issues as compared to some of the other speed bumps and delay mechanisms previously approved by the Commission. Specifically, we believe that liquidity providers, who this proposal is geared towards, may be encouraged to provide more aggressive quotes than they normally would have and given the ability to interact with resting orders, the LP<sup>2</sup> will enable these liquidity providers to “fade away” when the markets become unfavorable to them, leaving incoming orders from liquidity takers, often retail investors, unfilled, or filled at an adverse price.

To be clear, Clearpool understands that in a fast moving market, as we have today, it is important that market participants have the ability to cancel or update orders. Given the markets fragmented nature, many firms, including Clearpool, use algorithms to source liquidity simultaneously from multiple venues to ensure that we obtain the best execution for our orders. To the extent that liquidity is found elsewhere, it is important that we can cancel our orders and re-allocate those shares

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<sup>4</sup> See Nasdaq MELO Letter, *supra* note 2.

to other venues. Nevertheless, the LP<sup>2</sup> quotes would directly impact the NBBO that, as discussed further below, is shared with investors and other market participants, and relied upon by investors and others as the measure of the current state of the market and available liquidity.<sup>5</sup>

## II. LP<sup>2</sup> Quote Should Not be Included in the SIP

Despite our support for innovative mechanisms to enhance liquidity in the securities markets, we believe the LP<sup>2</sup> delay mechanism, as proposed, raises issues that the Commission must carefully consider before approval, particularly due to the inclusion of the LP<sup>2</sup> quote in the SIP.

As the proposal discusses, quotation information under LP<sup>2</sup> would be disseminated to the SIP as a “manual” rather than “automated” quotation under Regulation NMS. In addition, given that manual quotations are not protected pursuant to the Order Protection Rule (“OPR”), the LP<sup>2</sup> quotes would not be eligible for protected market status. LP<sup>2</sup> quotations also would be disseminated to the SIP immediately without being processed by the delay mechanism therefore, according to the proposal “ensuring that the most up to date information about orders and executions on the EDGA Book is shared with investors and other market participants.”

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 (both on-exchange and off-exchange), for risk management purposes, and to determine a stock’s liquidity when modeling trades. Given that the LP<sup>2</sup> quotes would not be subject to the delay mechanism, and would be disseminated to the SIP immediately, under the proposal the NBBO would contain information that can adversely impact the various means for which the NBBO is used. For these reasons, the Commission must act judiciously in considering proposals that impact what constitutes the NBBO and what is included in the SIP.

Clearpool recognizes that these issues are complex, and that reform of the current system is a major and timely undertaking. Issues surrounding reform of the data that should be included in the SIP, as well as related cost and governance issues, have been well documented and debated recently, including concerns expressed by Clearpool in several comment letters and on the SEC’s Roundtable on Market Data and Market Access. Nevertheless, given the reliance by investors and others on the NBBO and the role that SIP data still plays in the markets, we believe it is inappropriate to include the LP<sup>2</sup> quote in the SIP.

We also believe that the inclusion of the LP<sup>2</sup> quote in the SIP was not the type of situation contemplated when Regulation NMS considered the manual vs. automated debate, and the approval of the LP<sup>2</sup> without serious consideration of the issues involved with quote inclusion can set a

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<sup>5</sup> While we understand that the LP<sup>2</sup> quotes may contain a special identifier to distinguish its manual nature from the other automated quotes, we believe this will not alleviate the potential confusion for investors by the LP<sup>2</sup> quote inclusion in the SIP.

precedent as other exchanges consider and propose similar delay mechanisms, which likely will occur and therefore perpetuate the difficulties presented for investors.

In addition, similar to the way odd lot quotes are not included in the SIP, we believe EDGA could disseminate these quotes exclusively through their direct market feeds with little or no impact to the NBBO. Odd lots can currently be used by brokers to enhance the quality of executions of orders they receive, but the onus to use or not use those quotes (which also are unprotected) falls to the broker and their best execution process. We believe that the unprotected LP<sup>2</sup> quotes should be treated in the same manner. While we are advocates for enhancing the information contained in the SIP, we believe until there has been further discussion and resolution as to how inclusion of unprotected quotes would enhance the SIP without, at the same time, adversely impacting the NBBO, any inclusion of such information would be premature.

Finally, while the LP<sup>2</sup> quotes included in the NBBO would be unprotected under the OPR and therefore can be ignored for trade through purposes, these quotes cannot be ignored when it comes to a broker-dealer's best execution responsibilities. Broker-dealers will be compelled to take into account the LP<sup>2</sup> quote to provide competitive execution services to clients and to meet best execution obligations, raising compliance questions and adding complexity (and potential costs) to an already complex best execution environment.

Clearpool therefore recommends that the Commission reexamine the requirements surrounding the inclusion of "manual" and unprotected quotes in the SIP prior to approval of the EDGA proposal and consider the necessary changes to exclude these quotes from the SIP. Such an examination would be timely given calls for examination of other Regulation NMS requirements such as the OPR and will be important for the protection of investors. Excluding these quotes from the broadly disseminated SIP market data also would, in our opinion, allow for this new order type to fit within existing market constructs, would facilitate innovation in the markets, and would avoid the need for a wholesale reform of the current market data system at this time. Clearpool would support the approval of the LP<sup>2</sup> delay mechanism without SIP quote inclusion.

Given the compliance issues that are likely to be raised, at the very least, we recommend that the Commission clarify how broker-dealers and other market participants should interact with unprotected quotes vis-à-vis their best execution responsibilities.<sup>6</sup>

### **III. Conclusion**

The LP<sup>2</sup> delay mechanism proposal raises important issues for investors, market participants, and the markets overall, including several timely and complex market structure issues. We offer our

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<sup>6</sup> If the LP<sup>2</sup> delay mechanism is approved, it will be important that it be subject to robust surveillance and EDGA should monitor the use of the LP<sup>2</sup> to ensure its usage is appropriately tied to the intent of the delay mechanism. We also recommend that EDGA provide regular usage and execution quality reports, not only for the LP<sup>2</sup> but also for all the order types they offer.

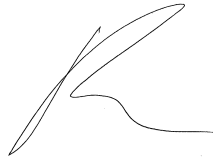
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assistance to the Commission as it examines these issues. If you have any questions on our comment letter, please feel free to contact me directly at [REDACTED] or at [REDACTED].

Sincerely,

A handwritten signature in blue ink, appearing to be 'Ray Ross', written in a cursive style.

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  
David Shillman, Associate Director, Division of Trading & Markets