



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

October 21, 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 order instituting proceedings to approve or disapprove 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 letter to the Commission on the proposed rule change,<sup>2</sup> we support the goals associated with the LP<sup>2</sup> delay mechanism, and the order type in general. This is consistent with Clearpool’s goals of 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. However, as we stated in our previous letter, we believe the LP<sup>2</sup> delay mechanism, as proposed, raises serious and important issues that the Commission must carefully consider and address before any potential approval, particularly concerns surrounding the inclusion of the LP<sup>2</sup> quote in the SIP.

The order requests additional comments on the proposed rule change. While we will not reiterate all of the points made in our previous letter, our comments below focus on the most significant aspects of our prior comments, as well as address some of the Commission’s questions posed in the order.

### **Impact of the SIP Disseminating Manual, Unprotected Quotes**

The order notes that a number of commenters, including Clearpool, expressed concern about the inclusion of EDGA’s quotations to the SIP as manual, unprotected quotes and suggested that EDGA’s quotation should be excluded from the NBBO disseminated by the SIP. To that end, the

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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> Letter from Ray Ross, Chief Technology Officer, Clearpool, to Vanessa Countryman, Secretary, SEC (File No. SR-CboeEDGA-2019-012), dated July 17, 2019.

Commission requested further comment on the impact that the dissemination of an unprotected, manual quote would have on the national market system and whether EDGA's unprotected, manual quote should be disseminated by the SIP.

As we stated in our previous letter, we believe the proposed inclusion of the LP<sup>2</sup> quotes in the SIP market data feed, and therefore in the NBBO, is the most important issue to be considered related to the proposed rule change. We disagree with the Exchange's assertions that eliminating EDGA's quotation from the SIP would only serve to reduce transparency into the best prices available for securities, which would likely result in investor orders being executed at worse prices. As we previously discussed, SIP data and the NBBO remain the vehicles through which investors, particularly retail and individual investors, receive market information to make trading decisions. Clearpool continues to believe that inclusion of the LP<sup>2</sup> quotation in the SIP would adversely impact the market information investors use to make trading decisions, thereby resulting in confusion for investors when trading and eliminating much of the benefits that the proposal could bring to the markets.

We also continue to believe that the proposal, as currently constructed, would have a negative impact on the variety of other purposes in the trading process that the NBBO is used for, such as for determining reference points for midpoint executions, for risk management purposes, and to determine a stock's liquidity when modeling trades. The Exchange noted that broker-dealers would remain free to determine how to use EDGA's manual quotation information, and that firms choosing to ignore EDGA's quotations could continue to identify the PBBO for order routing and trade-through compliance purposes, among others. While this may be the case, it ignores the importance of the NBBO in the trading process and the impact on the NBBO of the inclusion of the LP<sup>2</sup> quotation in SIP data. In our opinion, this does not make for an efficient or sound market structure.

We believe EDGA could disseminate these quotes exclusively through their direct market feeds with little or no impact to the NBBO. 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 and would negatively impact the markets overall.

### **Impact on Best Execution and Broker-Dealer Obligations**

The order notes that several commenters, including Clearpool, expressed concern about the impact of the proposed rule change on a broker-dealer's regulatory obligations, particularly with respect to a broker-dealer's obligation to obtain best execution. The Commission requested further comment on how the dissemination of EDGA's unprotected, manual quote would impact such obligation.

In response to concerns expressed by commenters, the Exchange stated that, among other things, the SEC's guidance related to best execution provided in conjunction with the adoption of Regulation NMS remained relevant, and broker-dealers should continue to be able to determine how to best to route their clients' orders. The Exchange also noted that broker-dealers already account

for different types of execution venues in making best execution decisions, and the majority of these venues are not national securities exchanges and do not publicly disseminate a protected quotation, or display any quotation at all. In addition, the Exchange noted that if the proposal does not yield the intended market quality benefits on EDGA, broker-dealers would be free to route their clients' orders elsewhere according to their analysis of the best market for the security under prevailing market conditions.

We do not agree with the Exchange that the process for broker-dealers will be that easy. As we stated in our previous letter, SIP data and the NBBO is a critical part of the way in which broker dealers measure, and demonstrate to customers and to the public, their best execution obligations. 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. For these reasons, we continue to have concerns regarding the impact of the proposed rule change on a broker-dealer's regulatory obligations and reiterate that much of these concerns would be rectified if the manual LP<sup>2</sup> quotes were not included in the SIP.

### **Impact on Market Participants/Impact on Orders**

The order discusses a number of concerns that commenters expressed regarding the impact of the proposed rule change on market participants and orders. In general, as we stated in our previous letter, we are not convinced, particularly given the inclusion of the LP<sup>2</sup> quote in the SIP, that the proposed rule change would not have some deleterious impact on the markets overall and we continue to believe that the proposal raises unique issues as compared to some of the other speed bumps and delay mechanisms previously approved by the Commission.

As far as some of the specific concerns discussed in the order on the impact of the proposed rule change on the markets, the Exchange stated that commenter concerns related to quote fading were unwarranted. We disagree. In particular, we continue to 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 reiterate our comments in our prior letter, 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. Nevertheless, the LP<sup>2</sup> quotes and any quote fading would directly impact the NBBO that 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; another reason for not including the LP<sup>2</sup> quotes in the SIP and therefore the NBBO.

The Commission also requests comment on the impact on the national market system if other national securities exchanges, with a larger percentage of overall trading volume, adopted a similar

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proposal. We continue to 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 precedent as other exchanges consider and propose similar delay mechanisms, which likely will occur. To that end, we are very concerned that a similar order type could include a randomized delay, which would make it nearly impossible to aggregate all visible liquidity and would effectively institutionalize quote fading. In addition, we share concerns expressed by other commenters that the proposed rule change would enable EDGA to lock and cross automated markets, thereby triggering an increase in locked and crossed markets overall. All this would lead to perpetuating the difficulties presented for investors and other market participants discussed above and in our previous letter, would reduce the importance of the NBBO, and is why the SIP should not disseminate this type of manual quote.

Finally, the Commission asks whether the SIP should disseminate a modifier to indicate that EDGA's quote is manual. While a special identifier may distinguish the LP<sup>2</sup> quote's 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.

## Conclusion

For all these reasons, Clearpool reiterates its recommendation that the Commission reexamine the requirements surrounding the inclusion of manual and unprotected quotes in the SIP prior to any potential approval of the EDGA proposal and consider the necessary changes to exclude these quotes from the SIP. Excluding these quotes from the broadly disseminated SIP market data 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 many aspects of the current market structure at this time.

We continue to offer our 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,



Ray Ross  
Chief Technology Officer

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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