CLEARPOOL

December 16, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: *File No. SR-NYSE-2016-45; File No. SR-NYSEMKT-2016-63; and File No. SR-NYSEArca-2016-89*

Dear Mr. Fields:

The Clearpool Group ("Clearpool")[1] is writing to provide its views on the above referenced filings by the New York Stock Exchange ("NYSE"), NYSE Arca, and NYSE MKT (together, "the Exchanges") to amend the co-location services offered by the Exchanges to add and establish certain access and connectivity fees. 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 fees exchanges charge for access and connectivity services are fair and equitable, and allow for the most orderly, efficient and competitive markets possible.

Consistent with this goal, we commend the Securities and Exchange Commission ("Commission") for examining the critical issues raised by the fees charged by exchanges for access and connectivity, and other market data related services. It is clear that market driven solutions to concerns raised by these issues have not, to date, created a more competitive or equitable environment for the pricing of market data, and do not look to be the answer to addressing issues surrounding market data fees. Clearpool therefore believes the time is ripe for the Commission to thoroughly review the issues around market data and use its authority to ensure that exchanges price such data more competitively and equitably for all market participants.

As discussed further below, the issues raised by the proposals are illustrative of the broader problems raised by the current regime for the provision of market data; problems that are fundamental to the manner in which brokers and investors operate in today's markets, and interact with one another.

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[1] Launched in 2014 and based in New York, Clearpool Group offers advanced electronic trading software and provides independent agency broker-dealer execution services. Clearpool's algorithmic and execution management systems allow market participants to take control of better quality execution by delivering advanced electronic trading solutions for an evolving equity market microstructure and competitive landscape. For further information on the Clearpool Group, see www.clearpoolgroup.com.

In addition, while issues relating to market data fees, including access and connectivity fees, are significant for all broker-dealers, the impact of these costs on smaller and mid-size brokers outside of the so-called "bulge bracket," such as Clearpool and the core constituency which we serve, can be disproportionate and can have a wide ranging impact on not only these brokers, but also the investors who they serve. Clearpool believes that there has not been enough focus on the unique issues that the current regime surrounding market data fees raise for this critical segment of the market.

Issues Surrounding Market Data are Fundamental for the Markets, and Participants in the Markets

The Commission is considering whether the Exchanges' proposed rule changes meet the standards of Sections 6(b)(4), (5) and (8) of the Exchange Act. These proposals raise significant and fundamental issues for all market participants including the equitable allocation of fees, allowing for competition in the markets, the protection of investors, and allowing for free and open markets.[2] As discussed further below, Clearpool shares many of the Commission's concerns regarding whether the Exchanges meet the standards required under the Exchange Act.

There are no Viable Alternatives to Paying the Exchanges' Market Data Fees

The Commission requests comment whether users have viable alternatives to paying the Exchanges a connectivity fee for the NYSE Premium Data Products. Contrary to the NYSE's arguments in response to a previous commenter on the proposal, Clearpool believes that it is not feasible to adopt other strategies and alternatives beyond receiving the information contained in the data products from the Exchanges.

The issue of viable alternatives for market data has become more important in recent years as exchanges have become increasingly reliant on the revenues generated by market data vis-à-vis other revenues such as those generated from trading and listings. In turn, the incentives for exchanges to place their interests ahead of the users of market data thereby increases, as does the disincentives to reign in market data fees. At the same time, brokers, vendors, and investors alike are beholden to the exchanges for this data, as it becomes an ever increasingly important part of the overall trading process.

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[2] Specifically, pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission provides notice of the following grounds for disapproval of the Exchanges' proposals that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers," and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."

The current structure for the availability and accessibility of market data also does not provide viable alternatives for users, particularly as it relates to the choice of obtaining market data information via the Securities Information Processor ("SIP")[3] or exchanges' proprietary data feeds. Exchanges argue that the SIP is available to all market participants, provides access to real-time pricing information, and is less costly than the proprietary feeds they offer, which are "optional" products. The reality is that relying on information from the SIP cannot satisfy the demands on brokers to provide the most optimal services desired by customers. The SIP is slower and therefore introduces concerns related to the latency of market information. The SIP also is less "data rich" than exchanges' proprietary data feeds and therefore does not contain as much information of value to market participants. Increasingly, customers are demanding that routing decisions and order execution be driven by combining the top of book feeds directly from each exchange instead of from the SIP. Brokers therefore do not have an alternative but to purchase these proprietary data feeds from exchanges, at whatever cost, to effectively compete and provide efficient trading products for their customers.

Broker-dealers also must have adequate and current information to meet their best execution requirements and, in turn, cannot risk putting their ability to meet these requirements in jeopardy by not paying whatever fees are demanded for such information. Therefore, market participants are not necessarily voluntarily choosing to purchase the Exchanges' products but, given best execution requirements, are de facto required to use the Exchanges' products. If exchanges are going to charge fees for information over and above what is provided by the SIP, Clearpool believes it must be structured in a manner that is attainable to everyone and that does not create an obstacle for broker-dealers to meet their regulatory obligations.

Market Data Fees Can be an Undue Cost Burden

The lack of viable alternatives to exchanges' market data feeds also creates undue cost burdens on the industry, particularly for smaller and mid-sized broker-dealers such as Clearpool, and the brokers that Clearpool serve. Significantly, excessive market data fees puts pressure on brokers' already squeezed margins.

For these broker-dealers, trading as efficiently as some of the "bulge bracket" firms can prove difficult, as the cumulative fees related to market data puts them at an unfair advantage vis-à-vis their larger competitors, especially as investors seek to limit the number of counterparties with which they interact due to overall pressures to reduce costs.

The impact on other segments of the market also should not be discounted. For example, the high costs of entry to receive market data makes it significantly harder for technology providers to enter the market with new products and services that could benefit both the brokerage community and the end investor. These include innovations relating to order routing, risk management, transaction cost analysis, and overall transparency available to the investing public.

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[3] The Security Information Processor (SIP) links the U.S. markets by processing and consolidating all protected bid/ask quotes and trades from every trading venue into a single consumed data feed.

Issues Surrounding Market Data Fees Should be Examined in the Broader Context of other Market Structure Issues

Issues around market data also cannot be ignored in the context of other market structure issues being considered by the Commission. For example, as the Commission examines recommendations and proposals to improve Rule 605 and 606 reports, and the availability and accessibility of order routing and order execution information in general, it should closely examine the role of, and the cost of using, SIP and proprietary feeds in Rule 605 and 606 reporting.

Significantly, depending on the data that a broker may choose to utilize in measuring certain new data elements anticipated to be required under modifications to Rule 605 and 606 reports, the results may not be as accurate if, for example, SIP data is used given the latency involved in the SIP, as well as the lack of certain information that is only contained in exchanges' proprietary data feeds. This may distort the results contained in Rule 605 and 606 reports for regulatory reporting purposes, as well as impede investors' ability to make appropriate investment decisions if brokers are not using the most robust information available.

Therefore, while Clearpool strongly supports the meaningful initiatives undertaken by the Commission to increase transparency around market information, it is important to consider that these initiatives may bring new burdens to market participants, specifically perpetuating a reliance on the data provided by exchanges on the orders routed to, and executed on, their venues. It will therefore be imperative to ensure that the burdens associated with market data do not jeopardize the advancements made relating to the transparency of market information.

The Different Fee Structures Contemplated by the Proposals Raise Equitable Allocation Concerns

Clearpool shares the Commission's concerns regarding the different fee structures charged by the Exchanges for the various data products contemplated by the proposals. As the Commission states, the Premium NYSE Data Products are similar to the Included Data Products. It is therefore unclear to us why they include different fee structures, as they are the same offering by the Exchanges within the contemplated purpose of co-location.

We therefore question whether the proposed fee structure is an equitable allocation of reasonable dues, fees, and other charges among users, as contemplated by the Exchange Act; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

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Clearpool believes the trend toward higher market data fees could inevitably harm our securities markets. Some smaller and mid-sized broker-dealers will undoubtedly be unable to continue to compete with their counterparts on various levels, including paying the costs of market data, and may be forced to leave the market. This, in turn, will hurt the investors they serve by increasing trading costs, and leaving a less liquid market, particularly for small and mid-size stocks in which these broker-dealers serve a critical function. Similarly, the current market data regime will serve as an impediment for new entrants to the markets.[4]

Clearpool therefore urges the Commission to promptly address issues surrounding market data. We offer our assistance to the Commission as it examines the fees associated with access and connectivity, as well as other fees associated with trading.

If you have any questions on our comment letter, please feel free to contact me directly at [redacted] or at [redacted].

Sincerely,

Joe Wald
Chief Executive Officer

cc: The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading & Markets

[4] While not the focus of this letter, Clearpool also supports changes to the SIP governance structure. We believe that it will be difficult to resolve the important questions posed by market data without also updating and modifying the underlying governance model by, among other things, ensuring adequate representation of broker-dealers.

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