SIG
SUSQUEHANNA
INTERNATIONAL GROUP, LLP
401 CITY AVENUE. SUITE 220. BALA CYNWYD, PA 19004-1188. 610.617.2600. WWW.SIG.COM
BALA CYNWYD BOSTON CHICAGO DUBLIN LOS ANGELES NEW YORK PHILADELPHIA SAN FRANCISCO SHANGHAI STAMFORD SYDNEY

September 7, 2021

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609

Re: Proposed Rule Changes to Amend Multiple Fees
Miami International Securities Exchange LLC:
SR-MIAX-2021-35; Rel. No. 34-92643 – Connectivity (10Gb ULL)
SR-MIAX-2021-37; Rel. No. 34-92661 – MEI Ports

MIAX PEARL, LLC:
SR-PEARL-2021-33; Rel. Nos. 34-92365 and 34-92798 – MEO Ports
SR-PEARL-2021-36; Rel. No. 34-92644 – Connectivity (10Gb ULL)

MIAX Emerald, LLC:

SR-EMERALD-2021-23; Rel. No. 34-92645 – Connectivity (10Gb ULL)
SR-EMERALD-2021-25; Rel. No. 34-92662 – MEI Ports

Dear Ms. Countryman:

Susquehanna International Group, LLP ("SIG") appreciates the opportunity to comment on the above-noted proposed fee increases by the referenced exchanges (respectively, "MIAX", MIAX Pearl", and "MIAX Emerald; and collectively, the "MIAX Exchanges" or "Exchanges"). We also note and appreciate the action taken by the Securities and Exchange Commission ("SEC" or the "Commission") to suspend the Exchanges' respectively proposed Purge Port fee increases and order proceedings to determine whether to approve or disapprove the same, [1] and assert that the same action should be taken with respect to the subject fee changes for the reasons noted below.[2] SIG asserts that the proposed fee increases should be disapproved, as the MIAX Exchanges have not established that they represent the equitable allocation of reasonable, and not unfairly discriminatory, fees among MIAX Exchange members.

---

[1] See, SEC Rel. No. 34-92792; SR-MIAX-2021-29, SR-PEARL-2021-30, and SR-EMERALD-2021-22. As you know, we have previously commented on those rule filings and why they should be disapproved.

[2] We likewise note and appreciate that the Commission has taken the same action with respect to the MIAX Pearl proposed MEO Port fee increase referenced above, at SEC Rel. No. 34-92798. We request that this letter be considered as our commentary pursuant to that order, to recommend the disapproval of that fee proposal.

The subject fee changes regard various connectivity products and constitute what the MIAX Exchanges consider to be "Access Fees". We address these various Access Fees collectively because there is a great deal of commonality among the assertions made by the MIAX Exchanges in support of the respective fees.

As you are aware, Securities Exchange Act (the "Act") section 6(b)(4) requires that the rules of an exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities."[3] Section 6(b)(5) of the Act requires that the rules of an exchange be designed to, *inter alia*, "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest".[4] Section 6(b)(5) also requires that exchange rules "are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers".[5]

Rule 700(b)(3) of the SEC Rules of Practice states that the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder ... is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements ... is not sufficient."[6] It also states that "the description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding."[7] In its review of exchange rule filings, the Commission should critically evaluate the representations made and the conclusions drawn.[8]

SIG asserts that the subject fee increases (1) do not provide for the equitable allocation of reasonable dues, fees, and other charges; (2) do not remove impediments to and perfect the mechanism of a free and open market and a national market system; (3) do not protect investors and the public interest; and (4) permit unfair discrimination between broker-dealers. As such, SIG asserts that the MIAX Exchanges have failed to meet their burden to demonstrate that the proposed fee increases are consistent with the Act and the rules and regulations issued thereunder. We discuss these assertions below.

I. Connectivity Lines (10Gb ULL)

For a fee, each of the MIAX Exchanges provides to their members 10 gigabit ("Gb") ultra-low latency ("ULL") fiber connections to the Exchanges. These lines are critical to Exchange members to be competitive and to provide essential protection from adverse market events. Like every other U.S. options exchange, the MIAX Exchanges have charged a flat monthly fee per connection. In the case of the MIAX Exchanges, this flat fee was $10,000.

The Exchanges have now proposed to convert this flat fee charge to a tiered-pricing structure under which the monthly fee would increase based on the number of 10Gb ULL connections each member or non-member elects to purchase per Exchange. The fee for the first and second lines would be reduced

---

[3] 15 U.S.C. 78f(b)(4)
[4] 15 U.S.C. 78(b)(5).
[5] *Id.*
[6] 17 CFR 201.700(b)(3).
[7] *Id.*
[8] See, *Susquehanna International Group v. SEC*, 866 F. 3d 442 (D.C. Cir. 2017), at 447.

to a monthly rate of $9,000, the fee for the third and fourth lines would be increased to a monthly rate of $11,000, and the fee for the fifth and greater amount of lines would be increased to a monthly rate of $13,000. The MIAX Exchanges claim that the purpose for the tiered fee rate structure is to encourage more efficient connectivity usage.

A. *The 10Gb ULL tiered fee structure does not provide for the equitable allocation of reasonable dues, fees, and other charges.*

The Exchanges offer several bases in support of their assertion that the 10Gb ULL tiered fee structure provides for the equitable allocation of reasonable dues, fees and other charges:

- If the Exchanges were to attempt to establish unreasonable pricing, then no market participant would join or connect to the Exchanges, and existing market participants would disconnect.

- The fees will not result in excessive pricing or supra-competitive profit. Their basis for this claim is that, on an annualized basis, the Exchanges projected that profit margins under the new 10Gb ULL tiered fee structure would be 30% for each of MIAX and MIAX Pearl, and 51% for MIAX Emerald.

SIG submits, however, that each of these bases fails on its face as support for the proposed 10Gb ULL fee structure. The prospect that a market participant may withdraw from the MIAX Exchanges if the participant determines that any of their fees are too high is in no way a basis for claiming that a fee increase is reasonable. Indeed, such an absurd basis, if accepted, would qualify the most outrageously excessive fees imaginable. Further, any such participant departures associated with an excessive fee would occur after the fee has already been implemented. Indeed, the acceptance of such a claim as support for fee increases would set a dangerous precedent for all future exchange fee increases.

Moreover, the Exchanges' claim that a market participant would leave the Exchanges, or any of them, if a given fee was felt to be too high is an unsupported claim. There are many reasons a market participant may join, remain at, or leave an exchange, and it is unlikely that any single fee would have such an outsized decisive impact on such decision, even if such single fee is unreasonable.[9] Even if the MIAX were correct that a member may disconnect because of a single fee, it would only mean that the MIAX Exchanges are willing to sacrifice the interests of the investing public by driving away market participant competition, all in order to maximize the Exchanges' revenues.

With regard to the Exchanges' second claimed basis, that the fees will not result in excessive pricing or supra-competitive profit, the Exchanges put forth their projected profit margins for these fees as noted above. Exchange profit margin, however, provides no support for the claim that a given fee is not excessive. A given fee may or may not be excessive regardless of what the exchange profit margin may be. Here, the Exchanges offer much discussion about their cost assessments for the 10Gb ULL connections, but despite their verbosity, these discussions are high-level, conclusory and do not provide a detailed basis for the Commission to assess the reliability of the assessments and the reasonability of the costs. In connection, unreasonably high costs incurred under Exchange management may result in

[9] The two examples of firm departures cited by the Exchanges, if anything, stand out for their isolation and highlight that many other firms stayed despite people regarding the respective subject fee as being too high. In any event, the question of whether a fee is reasonable or not is distinct from whether it is too high for a given firm to sensibly afford, so those examples provide no support to the Exchanges.

excessive fees even where there is a small profit margin. For example, a 10% profit margin on $100 of direct costs would generate $10 of operating profits, while the same profit margin would generate $30 of operating profits on $300 of direct costs. As such, without a basis for understanding the reasonableness of the Exchanges' underlying costs, it is impossible to conclude whether the fees are appropriate or excessive by reference to the profit margin. Indeed, there is potentially a perverse incentive for an exchange to increase its costs in anticipation of a fee increase proposal in order to increase revenues.

Small profit margins, however, are not the case here. The Exchanges' projected profit margins of 30%, 30%, and 51%, respectively, are very high; and their comparisons of these profit margins to the *2020 overall* operating profit margins of competing exchanges is an unavailing "apples to oranges" comparison. As is widely known, the year 2020 saw unprecedented order and trade volume in the securities markets that, together with the full panoply of other exchange revenue sources, resulted in extraordinarily high profit margins. To compare these overall profit margins, with a litany of various unidentified components, to the profit margin of the MIAX Exchanges' proposed connectivity fee is frankly incredulous.[10]

B. The move to the proposed tiered pricing structure is not reasonable or equitably allocated, and is unfairly discriminatory.

The Exchanges offer several bases in support of their assertion that the move to the proposed progressive tiered pricing structure is reasonable, equitably allocated, and not unfairly discriminatory:

- The Exchanges contend that the proposed structure would encourage firms to be more economical and efficient in the number of connections they purchase. The Exchanges assert that this will enable them to better monitor and provide access to their networks to ensure sufficient capacity and headroom in the System.

- The Exchanges claim that the majority of members and non-members that purchase 10Gb ULL connections will either save money or pay the same amount after the tiered-pricing structure is implemented.

- The Exchanges contend that it benefits overall competition in the marketplace to allow relatively new entrants like the Exchanges to propose fees that may help these new entrants recoup their infrastructure investments.

The first basis, that the Exchanges believe the proposed structure would encourage firms to be more economical and efficient in the number of connections they purchase, is the only affirmative reason given to institute the fee change; and it is without merit. It is simply not credible that the Exchanges have decided to charge a progressively higher rate for its ULL lines as a good will gesture to help save firms from their own economic inefficiencies. The Exchanges have offered no reason to believe that their member firms have not already done thorough analyses to arrive at their most economically efficient connectivity usage, and have provided no basis for asserting that such "encouragement" is needed. Based upon our experience, market makers and other professional market participants operate

---

[10] Notably, the MIAX Exchanges do not compare their own overall operating profit margins to those of the named competing exchanges; nor do they divulge what their profit margins for these connectivity fees have been to date or try to explain why those profit margins are inadequate and should increase.

in a very competitive environment, and regularly assess their connectivity needs in order to minimize costs while operating properly and remaining competitive. There is no case offered by the Exchanges that their members or non-member participants are wasteful when it comes to their exchange connectivity purchases. We submit that the Exchanges are mistaken if they believe otherwise.[11]

Similarly, the Exchanges provide no explanation or basis for their assertion that the tiered fee structure will enable them to better monitor and provide access to their networks to ensure sufficient capacity and headroom in the System; they have demonstrated no nexus between these factors whatsoever. They have not even asserted that their current monitoring and capacity management is inadequate and in need of improvement, let alone explain how a progressive tiered fee structure would facilitate the same. Nor have they even explained how this improvement would take place or how much value it would provide that would warrant implementation of the tiered fee structure.

As noted, the Exchanges claim that the majority of members and non-members that purchase 10Gb ULL connections will either save money or pay the same amount after the tiered-pricing structure is implemented. They note that about 80% of their users will see a decrease in cost and that about 20% of their users will see an increase in cost.[12] Their justification for this is that the firms comprising the 20% engage in advanced trading strategies and typically require multiple connections and, therefore, generate higher costs by utilizing more of the Exchanges' resources.

The Exchanges' characterization that the use of multiple connections generates "higher" costs is misleading. It may be that the greater the number of ULL lines used generates additive incremental costs, for which the Exchanges are already more than compensated by the legacy flat fee, but it is not the case that it results in a *higher rate* of costs per unit to the Exchanges. If anything, it is likely that the opposite is true – once the Exchanges' fixed costs have been met (and variable cost rates do not increase with the more units that are purchased), the more ULL lines purchased by users at the flat rate results in greater Exchange profits.

The Exchanges' conclusory statement that users who purchase more ULL lines generate higher costs does not provide the Commission with any information to assess the accuracy of that claim, as they provide no cost breakdown per unit whatsoever. In sum, they have made no case that their per unit cost increases the more units are purchased, so that cannot be a basis for the proposed progressive fee rate.

The fact that no other exchange has such a tiered fee structure for its connectivity lines further discredits the MIAX Exchanges' proffered need for encouraging economic efficiency. It also supports the point that exchange costs do not rise at a higher rate the more lines a firm purchases. For all these reasons, the tiered fee structure unfairly discriminates between Exchange members without any cogent rationale, burdening 20% of Exchange users with financing the savings of the rest of their users.

The final basis offered by the Exchanges is that they believe that it benefits overall competition in the marketplace to allow relatively new entrants like the Exchanges to propose fees that may help these new entrants recoup their investment in building exchange infrastructure. The Exchanges, however,

---

[11] The Exchanges have also not accounted for why their legacy flat fee does not already encourage economic efficiency.

[12] This claim is a red herring. As discussed *infra*, it appears that the Exchanges' true motivation is to increase profits.

present no nexus between this prospect and the claim that their proposed tiered pricing structure is reasonable, equitably allocated, and not unfairly discriminatory. So, they make no case that this "overall competition benefit" justifies their claim.

Moreover, the Exchanges' argument that the fee change is justified because it may help the Exchanges recoup their investment belies their earlier argument of promoting economic efficiency, which should result in lower fee revenue (by encouraging a reduction in the number of lines used) if that was truly their goal. Indeed, this claim tacitly admits to increasing the burden of the 20% of users to not only finance the savings of the other users, but to additionally increase Exchange profits.[13] In connection, we note that the Exchanges have provided no information on the amount or other details of their cited investment, nor of the extent of recoupment of that investment to date, such that the Commission could evaluate the propriety of this claim as a justification for the proposed fee change. Without this information their claim is hollow.

For these reasons, the 10Gb ULL proposed fee structure should be disapproved.

II. MEI/MEO Port Fees

MIAX and MIAX Emerald each provide Full Service and Limited Service MEI Ports by which participants may send various market maker quote and other messages. Until their current rule filings, these Exchanges provided their market makers with two Full Service MEI Ports and two Limited Service MEI Ports per matching engine for free, and charged a $100 monthly fee for each additional Limited Service Port. The new fee for each of these Exchanges in the subject rule filings is a tiered monthly structure as follows:

- First and second Limited Service MEI Ports per matching engine continue to be free.

- $150 per port for third and fourth additional Limited Service MEI Ports for each matching engine.

- $200 per port for fifth and sixth additional Limited Service MEI Ports for each matching engine.

- $250 per port for seventh and greater additional Limited Service MEI Ports for each matching engine.

MIAX Pearl provides similar functionality through its MEO Ports. It has had in place a monthly tiered structure package fee for up to 24 ports (two ports per matching engine, for up to all twelve of the MIAX Pearl matching engines), and seeks now to increase the fee rates within the structure levels. The legacy fee rates are set out below, together with the new proposed rates in bolded parenthesis at each tier level:

---

[13] This is all the more egregious because, when the MIAX joined the already fragmented options market, it solicited market makers like SIG to provide liquidity on its market and thereby attract order flow. Now that it has garnered a larger share of market volume, it has decided to turn on its market makers by saddling them with discriminatory fees to satisfy its desire for more money without discouraging order flow providers.

Full Service MEO Port – Bulk Fees per member

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000 ***(proposed $5,000)***
(ii) If its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; ***(proposed $7,500)*** and
(iii) If its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000 ***(proposed $10,000)***[14]

Full Service MEO Port – Single Fees per member

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000 ***(proposed $2,500)***
(ii) If its volume falls within the parameters of Tier 2 of the Non-transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; ***(proposed $3,500)*** and
(iii) If its volume falls with the parameters of Tier 3 of the non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750 ***(proposed $4,500)***

The Exchanges make the same general claims as those in their ULL fee filings in support of their assertion that these Port fees are fair and reasonable, equitably allocated, and not unfairly discriminatory. We have addressed these claims above, and, for the same reasons previously discussed, again assert here that they are without merit.

For the reasons noted above, SIG submits that the Commission does not have a basis for finding that the proposed fee changes are consistent with the Act, particularly with sections 6(b)(4) and (5) thereof. Accordingly, SIG requests that the Commission suspend the fee changes and institute proceedings to determine whether to approve or disapprove the subject proposals; and, as discussed, assert that they should be disapproved.

Respectfully,

Richard J. McDonald

[14] Note that MIAX Pearl seeks to double the fee rate at this level, without explanation.