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October 26, 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-2021-41; Rel. No. 34-93165 – Connectivity (10Gb ULL)

SR-MIAX-2021-43; Rel. No. 34-93185 – MEI Ports

MIAX PEARL, LLC:

SR-PEARL-2021-45; Rel. No. 34-93162 – Connectivity (10Gb ULL)

MIAX Emerald, LLC:

SR-EMERALD-2021-29; Rel. No. 34-93166 – Connectivity (10Gb ULL)

SR-EMERALD-2021-31; Rel. No. 34-93188 – 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 (together, the “MIAX Exchanges” or “Exchanges”). As you are aware, SIG submitted (i) a comment letter dated September 7, 2021 opposing these fee changes (the “Initial Letter”) when the proposals were originally filed, and (ii) a letter dated October 1, 2021 protesting the withdrawal of the original rule proposals and re-filing thereof as an inappropriate circumvention of the safeguards contained in Securities Exchange Act of 1934, as amended (the “Exchange Act” or the “Act”) Section 19(b)(3)(C) (the “Re-Filing Protest Letter”).¹ Both of these letters are hereby incorporated in the instant comment letter.

¹ The Initial Letter referenced in pertinent part SR-MIAX-2021-35, SR-MIAX-2021-37, SR-PEARL-2021-36, SR-EMERALD-2021-23, and SR-EMERALD-2021-25. The Re-Filing Protest Letter was in relation to the filing numbers set forth in the reference line of this letter.

The Initial Letter made the points that (1) the prospect that a member may withdraw from the Exchanges if a fee is too costly is not a basis for asserting that the fee is reasonable; (2) profit margin comparisons do not support the Exchanges' claims that they will not realize a supracompetitive profit, the Exchanges' respective profit margins of 30% (for MIAX and Pearl) and 51% (for Emerald) in relation to connectivity fees are high in any event, and comparisons to competing exchanges' *overall* operating profit margins are an inapt "apples-to-oranges" comparison; (3) the Exchanges provide no support for their claim that their proposed tiered pricing structure is needed to encourage efficiency in connectivity usage; (4) the Exchanges provided no support for their claim that the tiered pricing structure allows them to better monitor connectivity usage, nor that this is an appropriate basis for the pricing structure in any event; (5) the Exchanges' claim that firms who purchase more 10Gb ULL lines generate "higher" costs is misleading, and they offered no support for this claim in any event; (6) no other exchange has tiered connectivity pricing; (7) the recoupment of investment for exchange infrastructure has no supporting nexus with the claim that the proposed fees are reasonable, equitably allocated, and not unfairly discriminatory; and (8) the recoupment of investment claim belies the Exchanges' claim of encouraging efficiency in connectivity usage. The Exchanges' re-filings do not attempt to refute any of these points, and do not address most of them at all.²

On May 21, 2019, the Securities and Exchange Commission ("SEC" or the "Commission") Staff issued Staff Guidance on SRO Rule Filings Relating to Fees (the "Staff Guidance").³ In addition to the points raised in SIG's Initial Letter, we note that the MIAX Exchanges' filings fail to meet the requirements of the Staff Guidance in several material respects.

There Are No Reasonable Substitutes For the Exchanges' 10Gb ULL Connectivity

The Staff Guidance notes that for Fee Filings, the staff's analysis of reasonableness under Exchange Act Section 6(b)(4) includes a review of the Fee Filing based on the Commission's market-based approach. In assessing the reasonableness of a fee under this approach, the SEC Staff considers whether the fee is constrained by significant market forces. In this regard, Staff considers, among other things, whether the evidence provided by the SRO demonstrates that there are reasonable substitutes for the product or service that is the subject of the proposed fee.⁴ In connection, the Exchanges argue that market participants may (1) look to access the Exchanges via other means such as through a third party service provider, (2) look to connect to the respective Exchange via a competing exchange's routing services, or (3) disconnect from the Exchange or reduce their number of connections to the Exchange.⁵

For market makers, who we believe subscribe to most if not all of the subject 10Gb ULL connectivity lines in the highest proposed pricing tier, none of these alternatives is a viable option, and there are no reasonable substitutes for the subject lines. The Exchanges well know that market makers must use direct connectivity to the Exchanges to conduct their market making business, and that it is critical for

² For the sake of simplicity, this letter primarily focuses on the 10Gb ULL Connectivity Fee Filings, and afterward incorporates the same arguments with respect to the MEI Port Fee Filings due to the high degree of similarity among the respective filings, including the same Exchange arguments and flaws.

³ <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>

⁴ Staff Guidance, p. 5.

⁵ MIAX 10Gb ULL Filing ("MIAX Filing"), pp. 10-11; Pearl 10GB ULL Filing ("Pearl Filing"), p. 11; Emerald 10Gb ULL Filing ("Emerald Filing"), pp. 9-10.

them to use the 10Gb ULL lines in order to maintain a viable business by both remaining competitive and for protective purposes in today's ultra-fast moving market.

Indeed, the Exchanges observe as an affirmation of their new fees that no member or non-member has altered its use of 10Gb ULL connectivity since the fee changes went into effect on August 1, 2021.⁶ In reality, however, this observation affirms only that there is no reasonable substitute for these lines. This point is demonstrated by SIG's own retention of its 10Gb ULL usage despite its vigorous opposition to the new fees and regard for them as unreasonable, inequitable, and unfairly discriminatory – as market makers, we effectively have no choice.

The Exchanges Do Not Address The Costs To Members Of Withdrawing From The Exchanges

Similarly, the Staff Guidance notes that “[a]n assertion that market participants can shift order flow, or discontinue or reduce use of a certain category of product(s) in response to a fee increase, must be supported with evidence that market participants are in fact able to do so in light of applicable factors, including costs of making a change.”⁷ The Exchanges' dismissive statements that they are “not aware of any reason why market participants could not simply drop their access”, and that “No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange[s]” do not in any way address the costs of disconnecting from the Exchanges.

Market makers like SIG make a considerable investment in building out their market making operations on the Exchanges and thereafter conducting their market maker business on those Exchanges, and it would be costly to withdraw those operations in terms of withdrawal efforts, the waste of abandoning the infrastructure investment itself, and opportunity costs. As we noted in our Initial Letter, the question of staying at or leaving an exchange is much bigger than an individual fee, and does not in any way stand for the proposition that such fee is in any way reasonable. The Exchanges' failure to address the costs of disconnecting or withdrawing from the Exchanges in response to the proposed fee amendments contravenes the Staff Guidance.⁸

The Exchanges Omit Necessary Information To Support Their Claims

The Staff Guidance provides that “If an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.”⁹ It continues that “...the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.”¹⁰

⁶ MIAX Filing, p. 31; Pearl Filing, pp. 31-32; Emerald Filing, p. 30.

⁷ Staff Guidance, p. 6.

⁸ The Exchanges point to two (2) instances of market participants dropping exchange access due to fee increases. (MIAX Filing, pp. 13-14; Pearl Filing, pp. 14-15; Emerald Filing, p. 13.) One was R2G Services LLC leaving the BOX Exchange LLC, and the other was an unidentified member of MIAX Emerald LLC. R2G Services LLC is a vendor providing connectivity services and is not a broker-dealer, let alone a market maker. It is unknown what type of member the unidentified firm was that allegedly left MIAX Emerald LLC as a result of port fee increases.

⁹ Staff Guidance, p.7.

¹⁰ *Id.*

The Exchanges provided no such quantitative baseline information, and no explanation for why their profitability under their legacy fees is now insufficient.¹¹

The Staff Guidance went on to note that “...the SRO should describe, among other things, its methodology for determining the baseline costs and revenues for the product or service, as well as its methodology for estimating the expected costs and revenues for the product or service.”¹² The Exchanges go on for pages to identify the sources of the costs they include in their assessment, but provide no information on how they arrive at the portion of such expenses that they allocate to the subject 10Gb ULL connectivity, either in dollar or percentage terms. Similarly, they provide no data to support their revenue and profitability projections under the proposed fee change.¹³ For both of these metrics, the Exchanges’ conclusory assertions deprive both the Commission and the public of the information needed for a meaningful assessment and instead leave us to simply “trust the process”. As with their above-noted failures, these omissions contravene the Staff Guidance.

In their re-filings, the Exchanges seek to bolster the propriety of their projected 30% profit margins for MIAX and Pearl, and 51% for Emerald, by claiming, “Given that 10Gb ULL purchasers utilize the most resources across the network, the Exchange believes that it is reasonable to operate at a profit margin of approximately 30% [51% for Emerald] for connectivity, inclusive of the Proposed Access Fees and all other connectivity alternatives. Such profit margin should enable the Exchange to continue to invest in its network and systems, maintain its current infrastructure, support future enhancements to network connectivity, and continue to offer enhanced customer reporting and monitoring services.”¹⁴

This claim is mere puffery. It describes no plans to actually perform any of the things that it claims the profit margin “should enable the Exchange” to do, let alone support such claim with any analysis that additional revenue of any given amount is needed to fund such undertakings. This claim does not even represent that any such undertakings exist now or will exist at any time in the foreseeable future.¹⁵ What is more, as previously noted, the Exchanges make no case for whether or not its profitability under its legacy fee structure is insufficient for any such undertakings or other purposes.

While the Exchanges’ re-filings retain their “apples-to-oranges” comparison of their projected access fee profit margin to the overall operating profit margins of competing exchanges, in an apparent concession that these comparisons are inapt, their re-filings include new comparisons of their projected access fee revenue to that of other exchanges. These comparisons likewise fall short, however, as they do not account for the components of the respective exchanges’ access fees and whether or not such components are a match for the MIAX Exchanges, nor any reasons for why the price levels of the respective other exchanges are set where they are that result in such revenue figures; and do not

¹¹ Indeed, they do not even claim that their profitability under the legacy fees actually is in any way insufficient.

¹² *Id.*

¹³ Again, the Exchanges provide no such methodology or other data for their baseline revenues, costs, and profitability before the proposed fee change.

¹⁴ MIAX Filing, p. 28; Pearl Filing, pp. 28-29; Emerald Filing, p. 27. Other than simply announcing this bald and conclusory proposition, the Exchanges draw no nexus between their unsupported assertion that 10Gb ULL purchasers utilize most resources across the network and the reasonability of a 30% profit margin for MIAX and Pearl, and 51% profit margin for Emerald.

¹⁵ The Exchanges likewise assert that their respective 30% and 51% profit margins “will allow” the Exchanges to further invest in their system architecture and matching engine functionality, again, without any analysis or details whatsoever, and without any undertaking to make such investment at any given point. *Id.*

account for the costs of the other exchanges access services and accordingly the profit margins for the same.

The Exchanges Fail To Properly Support Their Tiered Fee Structures

The Staff Guidance provides that “... to the extent the proposed fee results in substantially different effective per share or per unit rates among different types or sizes of market participants, including by different activity levels then the SRO must explain why this disparate treatment is equitable.”¹⁶ Similarly, the Staff Guidance sets out that “... when assessing whether a proposed fee or fee change may be unfairly discriminatory, the staff considers whether any differences in the application of a fee or rebate are based on meaningful distinctions between customers, issuers, brokers or dealers and whether those meaningful distinctions are unfairly discriminatory ...”¹⁷

Our Initial Letter included a discussion to debunk the bases for the Exchanges’ original attempt to assert that the proposed tiered pricing structure is an equitable allocation of reasonable fees that are not unfairly discriminatory. These claimed bases were that (1) the proposed structure would encourage firms to be more economical and efficient, and enable the Exchanges to better monitor and provide access to their networks; (2) the majority of members and non-members that purchase 10Gb ULL connection will either save money or pay the same amount; and (3) it benefits overall competition to allow new entrants like the Exchanges to propose fees that help them recoup their investments. As we pointed out in our Initial Letter, none of these serves as a basis for the unequal treatment of purchasers of 10Gb ULL connections based on their volume of purchases.¹⁸ We also noted how their assertion that the use of multiple connections generates “higher” costs is misleading, and that they provided no cost breakdown to support this assertion in any event (which, like the above-noted informational omissions, contravenes the Staff Guidance).

We also note that the Exchanges’ current Statement on Burden on Competition includes the following:

While total cost may be increased for market participants with larger capacity needs or for business/technical preferences, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed tiered-pricing structure does not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various usage of market participants – lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.¹⁹

¹⁶ Staff Guidance, p. 8.

¹⁷ *Id.*

¹⁸ The Exchanges’ observation that there has been no change in 10Gb ULL usage under the new fee structure undercuts their claim that the proposed tiered pricing structure is supposed to encourage greater efficiency in such usage, and concomitant improvement to the Exchanges’ monitoring ability. Accordingly, in addition to the arguments we raised against those claims in the Initial Letter, those reasons for the proposed fee amendments have been discredited by the Exchanges themselves.

¹⁹ MIAX Filing, p. 34; Pearl Filing, p. 35; Emerald Filing, p. 33.

The notion that market participants who purchase more units of 10Gb ULL connections use more bandwidth than those who purchase less units is a function of the very fact that they have purchased and use more units. This was true under the legacy flat fee of \$10,000 per unit, and market participants who purchased more units accordingly paid more than those who purchased less units under the legacy fee. The prospect that larger purchasers consume more resources and so should pay more was already actualized under the legacy fee, and does not support the charging of a higher *rate per unit*, as the proposed tiered fee structure imposes.²⁰ The Exchanges have provided no meaningful distinctions that would render their unequal treatment to be not unfairly discriminatory.

Moreover, the Exchanges' argument is belied by its admission that its true motivation is the recoupment of infrastructure investments. As we noted in our Initial Letter, it is outrageous that the Exchanges seek to charge purchasers of more 10Gb ULL lines a higher rate in order to finance (1) savings to other purchasers and (2) investment returns to the Exchange investors. As the Exchanges well know, the market makers who we believe comprise the majority of firms who purchase greater amounts of 10Gb ULL are effectively embedded at the Exchanges due to their own investments in setting up at the Exchanges, their business models, and their costs (affirmative and opportunity) of withdrawal. The Exchanges' proposed tier structure seems to exploit this relatively captive audience to pad their coffers without chasing away order routing firms, who may more easily and cheaply leave the exchange and thereby reduce the Exchanges' order flow. This burdensome, disparate treatment is the epitome of unfair discrimination.

Additionally, the Staff Guidance provides that "If a proposed fee includes volume-based tiers or other tiered pricing the SRO should explain why it chose the specific tier levels and the rationale for distinguishing among them, and must explain why that structure represents an equitable allocation of fees."²¹ The Exchanges have provided no such information. There is no cost analysis, nor an analysis of 10Gb ULL usage and its interplay with such cost analysis, to justify the specific levels in the proposed tier structure. Again, they have failed to abide by the Staff Guidance.

The Exchanges' Other Representations Are Unavailing

The Exchanges' re-filings add new assertions that their highest tier in the proposed tiered-pricing structure is lower than the pricing of competing options exchanges with similar market share.²² This new argument is misleading, because it does not account for the amount of units needed on those other exchanges to achieve a similar level of messaging capacity as that utilized on the MIAX Exchanges. At the proposed fee levels, the MIAX Exchanges have risen to become our decisively most expensive exchanges for such connectivity, regardless of market share.

Additionally, the Exchanges' re-filings newly assert that "... the Exchange, and its affiliates justified similar fee changes in the past with similar, if not identical, justifications in previous filings that have been noticed by the Commission for public comment and are currently in effect."²³ Those earlier filings do not have precedential value; and, although we missed the opportunity to comment on said filings at

²⁰ Accordingly, as noted in our Initial Letter, no other exchange has such a tiered fee structure for its connectivity lines.

²¹ Staff Guidance, p. 8.

²² MIAX Filing, pp. 11-12; Pearl Filing, pp. 11-12; Emerald Filing, p. 10-11.

²³ MIAX Filing, p. 35; Pearl Filing p. 36; Emerald Filing, p. 34. A supporting footnote referenced multiple fee filings by the MIAX Exchanges in January and February, 2021.

the time, we would argue that they should not have been approved. While it is now too late to rectify those inappropriate fee increases, it is not too late to prevent these current wrongful attempts.

MEI Port Fees

As with their original filings, the Exchanges make the same general claims as those in their 10Gb ULL filings in support of their assertion that their Port fee proposals are fair and reasonable, equitably allocated, and not unfairly discriminatory. We have addressed these claims in the Initial Letter and the above discussion, and note that these Port fee filings likewise fail to comply with the Staff Guidance in the manners discussed above.

Conclusion

For the reasons noted above as well as in our prior letters, we again assert that the subject fee proposals are without merit. We fervently and respectfully submit that the proposed fee amendments should be immediately suspended and should be disapproved. Thank you for your consideration.

Respectfully,



Richard J. McDonald