



June 6, 2019

Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549

Re: ***SIFMA Comment Letter on the MIAX, Pearl and Emerald Rule Proposals to Increase and Establish Connectivity Fees: File Nos. SR-MIAX-2019-23; SR-PEARL-2019-17; SR-EMERALD-2019-20***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-referenced filings submitted to the U.S. Securities and Exchange Commission (“Commission”) to increase connectivity fees by Miami International Securities Exchange LLC (“MIAX”), MIAX PEARL, LLC (“Pearl”), and MIAX Emerald, LLC (“Emerald”),² (together, “Exchanges”). In determining whether the proposed rule changes are consistent with applicable statutory requirements under the Securities Exchange Act of 1934 (“Exchange Act”),³ the Commission should ensure the proposed fees are (i) reasonable, (ii) equitably allocated, (iii) not unfairly discriminatory, and (iv) not an undue burden on competition. To show the proposed fees are consistent with the Exchange Act, the Exchanges should follow the examples of necessary information set forth in the Commission’s disapproval of similar connectivity fee increases proposed by BOX Exchange LLC (“BOX”)⁴ and the recent Staff Guidance on SRO Rule Filings Relating to Fees.⁵

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Securities Exchange Act Release Nos. 85836, 85837, and 85839 (May 10, 2019), 84 FR 22205 (May 16, 2019).

³ See, e.g., 15 U.S.C. 78f(b)(4); 78f(b)(5); and 78f(b)(8).

⁴ See Securities Exchange Act Release No. 85459; File No. SR-BOX-2019-04 (March 29, 2019), 84 FR 13363 (April 4, 2019) (the “BOX Order”).

⁵ SEC’s Division of Trading and Markets, *Staff Guidance on SRO Rule Filings Relating to Fees* (“Staff Guidance”) (May 21, 2019).

In our view, the Exchanges have not provided enough evidence of competitive constraints to justify the proposed increase in connectivity fees on market forces alone. The Exchanges' proposed fees are not subject to competitive forces because the Exchanges are the exclusive purveyors of connectivity to their exchange systems. The Exchanges argue⁶ that allowing market participants to resell connectivity at exchange determined prices to other market participants demonstrates competition. However, before reselling connectivity services, these market participants must first pay the Exchanges—resulting in revenue for the Exchanges—for these connectivity services. Thus, the Commission should not view these resellers as offering alternative products but rather as a way for broker-dealers to share the cost of connecting to the Exchanges. In addition, providing different connection speeds are not true alternatives promoting competition because the Exchanges remain the only source for connectivity.⁷

As further evidence of the lack of competition, the Exchanges' connectivity fees do not show price elasticity, in part because the trade-through requirements under Regulation NMS⁸ and the Options Order Protection Plan⁹ effectively require broker-dealers to connect to all exchanges. For the options and equities markets, those broker-dealers must pay connectivity fees to each exchange, and as a result cannot avoid paying excessive fees simply by disconnecting from an exchange without potentially violating order protection requirements or sacrificing execution quality. For example, purchasers of the Exchanges' fastest connectivity feed are responsible for approximately 75% of the Exchanges' collective volume.¹⁰ Considering the Exchanges did not experience any noticeable change (increase or decrease) in order flow after a price increase,¹¹ market participants likely are deciding to connect to the exchange for a different reason—for instance, to meet regulatory obligations—than the price of the Exchange's connectivity service offerings compared to competitors.

Given the lack of evidence of competition to restrain connectivity fees, the Exchanges must provide the information on revenues and costs as outlined in the BOX Order and Staff Guidance. In particular, the Exchanges should provide an analysis of baseline (and expected) revenues, costs and profitability before (and following) the proposed fee changes.¹² Similar to the Exchanges providing specific estimates of its increased costs,¹³ the Exchanges should clearly identify the anticipated additional revenue to allow the Commission to determine the Exchanges'

⁶ MIAX Proposal at 12.

⁷ *Contra*, MIAX Proposal at 12.

⁸ 17 CFR 242.611.

⁹ Securities Exchange Act Release No. 60405; File No. 4-546 (July 30, 2009).

¹⁰ MIAX Proposal at 18.

¹¹ *Id.* at 17.

¹² Staff Guidance at 10.

¹³ MIAX Proposal at 21-22.

profitability. The Exchanges should also describe the methodology they use for allocating costs¹⁴ to ensure the increasing connectivity fees only allow the Exchanges to recover costs related to providing connectivity services, rather than general expenses from operating an exchange. These allocation assumptions are even more important when the Exchanges' decide increasing connectivity fees is the only viable option to offset costs because of the "intense level of competition among the options exchanges for order flow through transaction fees."¹⁵

In its consideration of the proposed rule changes, the Commission should consider whether the Exchanges provided the requisite information—illustrated in the Box Order and recent Staff Guidance—for the Commission to determine whether the proposed fees satisfy the Exchange Act. Considering the Commission needs "detailed and specific information to support an affirmative Commission finding,"¹⁶ the Exchanges must provide detailed information on the anticipated revenues and provide the methodology for estimating costs to allow the Commission to determine whether the proposed fees satisfy the applicable requirements of the Exchange Act.

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact T.R. Lazo (at [REDACTED] or [REDACTED]) or Ellen Greene (at [REDACTED] or [REDACTED]).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel



Ellen Greene
Managing Director
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¹⁴ Staff Guidance at 10.

¹⁵ MIAX Proposal at 19.

¹⁶ 17 CFR 201.700(b)(3).