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July 24, 2023

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 ("MIAX"):
SR-MIAX-2023-25; Rel. No. 34-97814

MIAX Pearl, LLC ("PEARL"):
SR-PEARL-2023-28; Rel. No. 34- 97816

MIAX Emerald, LLC ("EMERALD"):
SR-EMERALD-2023-14; Rel. No. 34- 97813

Dear Ms. Countryman:

Susquehanna International Group, LLP ("SIG" or the "Firm") appreciates the opportunity to comment on the above-noted proposed fee increases by the above-referenced exchanges (together, the "Exchanges"). The subject fee filings are essentially re-filings of the Proposed Fee Increases filed on January 10, 2023 that were subsequently withdrawn by the Exchanges, re-filed on March 8, 2023 and again withdrawn, again re-filed on May 2, 2023 and yet again withdrawn; and they are the tenth iteration of unavailing filings by the Exchanges to increase their subject connectivity fees.

Once again, the subject fee filings are, in all material respects, almost verbatim repetitions of the Exchanges' earlier filings. Accordingly, once again, SIG incorporates its prior comment letters, as the Exchanges have largely ignored our clear and valid critiques (as well as those of the Securities and Exchange Commission ("SEC" or the "Commission")), despite the Exchanges' empty protestations to the contrary. Having made fulsome commentary multiple times on the Exchanges' repeatedly inadequate fee filings, and having incorporated the same into this letter as well as trusting that the Commission Staff is quite familiar with SIG's prior comments by this point, we will make only some brief additional remarks. These remarks will apply to all three (3) of the above-referenced fee filings, but will cite only to the MIAX filing ("MIAX Filing") for the sake of convenient reference, as the approaches in all three filings are substantially the same.

We note that the Exchanges once again repeat their meritless complaint of an uneven playing field between so-called "legacy exchanges" and "non-legacy exchanges". In doing so, the Exchanges wholly ignore the Firm's prior comments that not only debunk this claim, but demonstrate that MIAX and PEARL are themselves "legacy exchanges" under their own definition of this made up designation. Such avoidance, together with the wholesale dismissal of any unwanted critique as "ambiguous" or "opaque", characterizes the Exchanges' tactic of repeating their same inadequate approach and each time expecting a different result.[1]

MIAX asserts that its proposed fee increases are to "recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX Pearl as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis."[2] This asserted basis fails for at least two reasons – MIAX provides no discussion of the bifurcation cost it seeks to recoup, and its discussion of ongoing costs repeats the same shortcomings that have been highlighted to the Exchanges by the SEC and SIG many times before.

In describing its proffered, self-styled "cost analysis", MIAX noted that it was comprised of the following:

- meetings among senior management, department heads, and the Finance Team;[3]

- respective department budgets "allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of [listed] factors;[4]

- an Exchange parent company determination of the costs associated with each actual market;[5]

- a determination of "what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service", which "took into account factors similar to those set forth under the first step of the allocation methodology process..."[6]

Once again, the Exchanges' "disclosure" is as clear as mud. For the tenth time, the Exchanges failed to employ, let alone justify, any components of an analysis – identified metrics, parameters, parameter values, method of application of said components, etc. Once again, the Exchanges offer the subjective assessments of its staff, without any precision, to arrive at cost values and expect the SEC and public to simply "trust the process". It strains credulity to think that the Exchanges do not comprehend this fundamental point, and instead write it off as "ambiguous" or "opaque". Once again, we note that if this is the totality of the Exchanges' submission of a purported "methodology" for determining baseline costs and revenues as required by the SEC's "Staff Guidance on SRO Rule Filings Relating to Fees" issued May 21, 2019 (the "Staff Guidance") – and it seems so, after ten (10) such fee filings – it is wholly inadequate for the reasons we have cited in our prior comment letters multiple times before.

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[1] In keeping with their unavailing dismissive approach to any SEC or SIG critique with which they do not wish to contend, the Exchanges offer no clarity or precision as to what specifically they find to be "ambiguous" or "opaque", let alone why they take such view.
[2] MIAX Filing, p. 4.
[3] *Id*, p. 45.
[4] *Id*.
[5] *Id*.
[6] *Id*., p. 46.

What is more, the Exchanges offer no support or discussion whatsoever for their cost projections, which they assert likewise form a basis for the proposed fee increases. Additionally, SIG and the public are deprived of any ability to make any assessment of the Exchanges' vendor costs, as they were provided in a separate and confidential submission to the Commission. This subverts the public comment process, which is the only protection the public has against unreasonable exchange fees.

The Exchanges' lack of valid methodology in arriving at its proposed fee rates is similarly reflected in their comparisons to the fees of selected other exchanges. In an attempt to establish the reasonability of its proposed fees, MIAX presented a table to show "how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share."[7] MIAX compared its per unit fees to the higher per unit fee rates of NASDAQ, NASDAQ ISE LLC, NYSE American LLC ("AMEX"), and NASDAQ GEMX, LLC ("GEMX").

MIAX does not assert whatsoever how market share is an appropriate metric for such rate comparisons, nor does it in the least define what it means by "similar market share". This latter point is curious, given the selection of comparison exchanges that apparently fall within whatever is MIAX's undefined characterization of "similar market share", as discussed below.

According to OCC statistics for trade date July 20, 2023 – a typical representative trade date – MIAX's total options market percentage was 5.6%. Included within its range of exchanges with "similar market share" was GEMX with a low of 2.91%, and AMEX with a high of 6.72%. Exchanges within this range – which MIAX did not select for fee comparison – also included BATS, BOX, C2 and EDGX, whose respective 10Gb connectivity fees ranged from \$5,000 to \$8,500, well below the MIAX legacy fee rate of \$10,000, let alone its proposed increase to \$13,000.[8] MIAX's failure to include these exchanges in its comparison demonstrates the lack of fulsome and coherent analysis that has been characteristic of its approach throughout its ten (10) fee increase attempts.[9]

More fundamentally, as we have observed previously, the Exchanges' comparison of per unit fee rates in no way addresses the overall cost of comparable levels of functional utility across the exchanges. In other words, for example, a \$15,000 per unit connectivity at one exchange is cheaper to exchange members than a \$13,000 per unit cost at MIAX if a member needs more than one unit at MIAX for the same level of functional utility as the other exchange. This again highlights the Exchanges' lack of creditable analysis, as they assert without any precision what they mean by "similar connectivity and port access provided by other options exchanges". In connection, as we have repeatedly noted, the Exchanges' proposed fee increases makes them markedly SIG's highest connectivity costs across all options exchanges. Accordingly, the Exchanges' myopic focus on per unit cost does not establish that its proposed fees are reasonable.

With respect to the proposed MEI port fees, the Exchanges once again breach the Staff Guidance for tiered fees that "[i]f 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

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[7] *Id*, p. 30.

[8] The tiered fee rates for entry ports of these exchanges overall exceed those proposed by MIAX, but in scale these are materially lower than the 10Gb connectivity fees.

[9] Indeed, the 10 Gb connectivity fee for CBOE, with a market share of 19.78%, is only \$7,000. Accordingly, there is no obviously cogent nexus between market share and fee rates, as MIAX seems to infer without support.

must explain why that structure represents an equitable allocation of fees."[10] This guidance is assuredly neither "ambiguous" nor "opaque", yet the Exchanges provide no such information.[11]

Finally, SIG re-asserts its objection to the Exchanges' expected profit margins, which are excessive for utilities such as the Exchanges; and, this is not remedied by the Exchanges' gratuitous characterization of the same as "modest". In connection, the Exchanges have not substantiated the reasonability of such profit margins.

As indicated above, this letter should be considered as a supplement to our prior comment letters regarding the Exchanges' nine (9) previous connectivity fee proposals. For the reasons noted above and in our prior comment letters, SIG respectfully submits that the proposed fee increases should be disapproved. Thank you for your consideration.

Respectfully,

Gerald D. O'Connell

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[10] Staff Guidance, Sec. B.3.

[11] The Exchanges' general discussion that member organizations that use more ports generate more messages does not suffice for this requirement.