SIG SUSQUEHANNA
401 City Avenue
Bala Cynwyd, PA 19004
www.sig.com

June 9, 2022

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-2022-20; Rel. No. 34-94890 – Connectivity (10Gb ULL and MEI Ports)

MIAX Pearl, LLC ("PEARL"):
SR-PEARL-2022-21; Rel. No. 34-94929 – Connectivity (10Gb ULL and MEO Ports)

MIAX Emerald, LLC ("EMERALD"):
SR-EMERALD-2022-19; Rel. No. 34-94889 – Connectivity (10Gb ULL and MEI Ports)

Dear Ms. Countryman:

Susquehanna International Group, LLP ("SIG") appreciates the opportunity to comment on the above-noted proposed fee increases (the "Proposed Fee Increases") by the referenced exchanges (together, the "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,[1] (ii) a letter dated September 28, 2021 regarding the Pearl proposal to Remove Certain Credits and Increase Trading Permit Fees (the "Trading Permit Letter),[2] (iii) a letter dated October 1, 2021 protesting the Exchanges' withdrawal of the original rule proposals and re-filing thereof as an inappropriate circumvention of the safeguards contained in Section 19(b)(3)(C) of the Securities Exchange Act of 1934, as amended (the "Re-Filing Protest Letter"), (iv) a letter dated October 26, 2021 opposing the re-filed Proposed Fee Increases (the "Third Opposition Letter"),[3] a letter dated March 15, 2022 opposing the again re-filed Proposed Fee Increases (the "Fourth Opposition Letter")[4] and a letter dated May 9, 2022 opposing the

---

[1] The Initial Letter referenced SR-MIAX-2021-35 (Rel. No. 34-92643); SR-MIAX-2021-37 (Rel. No. 34-92661); SR-PEARL-2021-33 (Rel. Nos. 34-92365 and 34-92798); SR-PEARL-2021-36 (Rel. No. 34-92644); SR-EMERALD-2021-23 (Rel. No. 34-92645); and SR-EMERALD-2021-25 (Rel. No. 34-92662).
[2] SR-PEARl-2021-32 (Rel. No. 34-92797).
[3] The Re-Filing Protest Letter and Third Opposition Letter each referenced SR-MIAX-2021-43 (Rel. No. 34-93185); SR-MIAX-2021-41 (Rel. No. 34-93165); SR-PEARL-2021-45 (Rel. No. 34-93162); SR-EMERALD-2021-31 (Rel. No. 34-93188); and SR-EMERALD-2021-29 (Rel. No. 34-93166).
[4] The Fourth Opposition Letter referenced SR-MIAX-2022-07 (Rel. No. 34-94256); SR-MIAX-2022-08 (Rel. No. 34-94259); SR-PEARL-2022-03 (Rel. No. 34-94258); SR-PEARL-2022-04 (Rel. No. 34-94286); SR-PEARL-2022-05 (Rel. No. 34-94287); SR-EMERALD-2022-04 (Rel. No. 34-94257); and SR-EMERALD-2022-05 (Rel. No. 34-94260).

yet again re-filed Proposed Fee Increases (the "Fifth Opposition Letter"[5] and, together with the Initial Letter, Trading Permit Letter, Re-Filing Protest Letter, Third Opposition Letter, and Fourth Opposition Letter, the "Prior Comment Letters"). Incredibly, the Exchanges have filed for the Proposed Fee Increases for a sixth time with submissions that, while somewhat augmented, are substantially similar to their predecessors.[6]

As it has with prior iterations of the subject fee filings, the Securities and Exchange Commission (the "Commission") has issued a Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Fee Increases, in which the Commission requested comments on a number of associated issues. In our Prior Comment Letters, SIG responded to the Commission's requests for comments. We once again incorporate our Prior Comment Letters in response to the Proposed Fee Increases, including in response to the Commission's request for comments.

As noted in our Fifth Opposition Letter, for the reasons noted in the then Prior Comment Letters, we reiterate that (1) the Exchanges' motivation for the Proposed Fee Increases is not a proper justification, (2) the Exchanges' have not provided adequate disclosure of data from which one may conclude that its Proposed Fee Increases are reasonable, equitably allocated, and not unfairly discriminatory; (3) the Exchanges have not established that their cost data is reliable; and (4) the Exchanges have not demonstrated that their proffered profit margins are reasonable. In connection, we draw particular attention to our Fourth Opposition Letter.

The Exchanges' current reformulations of their Proposed Fee Increase filings do not remedy these flaws, and SIG accordingly continues to oppose the Proposed Fee Increases in principal and object to the Exchanges' associated procedural inadequacies. Indeed, the instant Exchange filings are largely mere cosmetic changes to their flawed predecessors.

After Six Filings For The Proposed Fee Increases, The Exchange Analyses Are Still Undisclosed

The current filings each combine their respective proposals for 10Gb ULL fees and connectivity port fees, which had previously been filed separately. They also offer more description of certain of the elements that were "considered" in their purported analysis, but their analysis itself remains substantially undisclosed.[7] While the current Exchange filings have tactically dropped the Exchanges' prior

---

[5] The Fifth Opposition Letter referenced SR-MIAX2022-14 (Rel. No. 34-94719); SR-MIAX-2022-16 (Rel. No. 34-94720); SR-PEARL-2022-11 (Rel. No. 34-94721); SR-PEARL-2022-12 (Rel. No. 34-94722); SR-PEARL-2022-09 (Rel. No. 34-94696); SR-EMERALD-2022-13 (Rel. No. 34-94717); and SR-EMERALD-2022-15 (Rel. No. 34-94718).

[6] We noted in our Fifth Opposition Letter that the Exchanges have replaced their previously proposed 10Gb ULL tiered fee structure with a flat 20% increase from a monthly charge of $10,000 per connection per month to $12,000 per connection per month. In connection, we noted that, while SIG's prior arguments specifically regarding tiered pricing, as such, do not apply to the revised 10Gb ULL fee proposals, said proposals still fail for the many remaining reasons we have previously noted.

[7] The three subject fee filings largely mirror each other in language generally, and particularly in the proffered superficial and unavailing descriptions of their collective analysis to arrive at the conclusory assertions made by each Exchange. In view of the mirrored discussions among the respective Proposed Fee Increases, language citations will reference SR-MIAX-2022-20 (Rel. No. 34-94890, the "MIAX Filing").

admissions that they withheld disclosure of their analysis by describing it as a "proprietary process", said process remains materially undisclosed.[8]

In this regard, the Exchanges assert that they conducted "an extensive cost review in which [they] analyzed nearly every expense item in [their] general ledger[s] to determine whether each such expense relates to providing 10Gb ULL connectivity and Limited Service MEI Ports."[9] They continue that they "then sought to narrowly allocate specific costs to 10Gb ULL connectivity and Limited Service MEI Ports to which the proposed fees would apply."[10] To arrive at such allocations, the Exchange department heads held "numerous meetings" among personnel and "determined the expenses that support access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports."[11] They claim that the sum of all such allocated expenses represents the Exchanges' total alleged cost to provide access services associated with 10Gb ULL connectivity and Limited Service MEI Ports.[12] The expense categories that they claim were so reviewed included "(1) external expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with 10Gb ULL connectivity and Limited Service MEI Ports and (3) general shared expenses."[13] The Exchanges assert that said expenses were identified through a "line-by-line cost analysis".[14]

For each noted expense, the Exchanges present the same formulation. For example:

- "The Exchange reviewed its data center footprint and space utilized, ... Based on this review, the [Exchange] determined that 61% of the total applicable data center provider expense for each is applicable to providing 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX."[15]
- "The Exchange reviewed its costs to retain fiber connectivity from a third party, ... Based on this review, the [Exchange] determined that 61% of the total fiber connectivity expense for each was applicable to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 2.6% for Limited Service MEI Ports for MIAX."[16]
- "The Exchange reviewed it *[sic]* costs to retain SFTI and other content service providers, ... Based on this review, the [Exchange] determined that 73.6% of the total applicable SFTI and other service provider expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX."[17]

---

[8] We note that the Exchanges now offer to commit to conduct an annual cost review with respect to fees that are cost justified, but such commitment is hollow in the absence of adequately disclosed methodologies that may be meaningfully assessed by the Commission and the public.
[9] MIAX Filing, p. 15.
[10] *Id.*
[11] *Id.*, pp. 15-16.
[12] *Id.*, p. 16.
[13] *Id.*, p. 19.
[14] *Id.*, p. 22.
[15] *Id.*, p. 25.
[16] *Id.*, p. 27.
[17] *Id.*, p. 29.

So, the proffered support for the Exchanges' conclusory cost allocations is simply that department heads held meetings with Exchange personnel, reviewed expenses to identify relevant expenses, and then allocated portions of those costs. As discussed below, this ambiguous description is unavailing.

As noted in our Fourth Opposition Letter, the Exchanges' reliance on a cost-plus model to support their Proposed Fee Increases naturally entails that the Exchanges provide adequate disclosure about their costs and projected profit margins. In connection, SEC Staff Guidance on SRO Rule Filings relating to Fees ("Staff Guidance" or "Guidance")[18] provides that "specific information, including quantitative information, should be provided."[19] The Guidance 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."[20] (emphasis added)

The Exchanges' general claims that they held meetings, reviewed and identified expenses, and allocated portions thereof falls woefully short of the Staff Guidance. They provide no methodology, metrics, margins of error, etc., let alone any justification for the propriety of any such analytical elements.[21] As we have previously noted, the Staff Guidance entails that "a Fee Filing should fully and fairly describe the operation of the applicable fee (including its effect on market participants) and do so in sufficient detail so that the public can understand the Fee Filing proposal sufficiently to provide meaningful comment and the Commission can determine whether the proposal is consistent with the Exchange Act."[22]

After six iterations of their Proposed Fee Increases, the Exchanges still request that the Commission and the public simply "trust the process" that the Exchange held meetings, reviewed expenses, and allocated costs. All the extraneous language proffered by the Exchanges around these points does not disguise that the core of their methodology presentation is as clear as mud. Worse, it may be that the Exchanges' previously described "proprietary process", still at work in the present filings, is merely the subjective approximations of their staff; which, again, we are asked to simply trust.

---

[18] https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees

[19] *Id.*, p. 7.

[20] *Id.*

[21] The Commission previously pointed out that the Exchanges have not even explained the methodology used to determine how much of an employee's time is devoted to a given activity(ies) that are associated with the subject fees. Indeed, they did not even disclose what relevant activities such employees engaged in nor set out any nexus with the subject fees. In response, the Exchanges now note that "the [Exchanges] generally considered the time spent on various access service projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Teams in the following areas: Technical Operations, Software Engineering, Quality Assurance, and Infrastructure." (MIAX Filing, p. 34.) Merely asserting that they referenced a project management tracking tool provides no critical information about methodology and merely talks around the shortcomings noted by the Commission. The Exchanges do not even describe the tracking tool, whether and how it accounts for employee time spent on the costs associated with the Proposed Fee Increases, the scope and reliability of the data input and the general reliability of Exchange use of such record to support their Proposed Fee Increases; nor how such tool or Exchange methodology may reliably predict future employee time dedicated to the subject Exchange connectivity associated with the Proposed Fee Increases.

[22] Staff Guidance, p. 1.

After Six Filings For The Proposed Fee Increases, The Exchange Profit Margins Are Still Unjustified

The MIAX Filing states that for March 2022, prior to the proposed fees, MIAX and Pearl charged $1,829,387 for 173 10Gb ULL connections and 1,645 Limited Service MEI Ports, for a profit of $45,410 representing a 2.5% profit margin. It continues that for April 2022, if the MIAX and Pearl charged the Proposed Fee Increase rates for the 174 10Gb ULL connections and 1,677 Limited Service MEI Ports they anticipated for that month, they would charge $2,329,450 for that month, resulting in a profit of $545,473 representing a 23.4% profit margin. This would be an astounding twelve-fold increase in profit for these services that translates into over $6.5M in increased profits for these services over the course of a year.

The Exchanges' protestation that they are merely seeking to raise fees to "near market rates" sidesteps the issue of the reasonability of their projected profit margin.[23] Their "near market rate" argument is illusory, as it is based on a per connection comparison and in no way accounts for the number of connections needed at the Exchanges as compared to the number of connections required at other exchanges for the same level of utility. As we have pointed out previously, the Proposed Fee Increases would render the Exchanges to be the decisively highest connectivity charges to our firm across all markets.

The Exchanges also assert that the Proposed Fee Increases are reasonable because they are based on the relative costs to the Exchanges to provide the subject connectivity as well as their objective to make access to its Systems broadly available to market participants.[24] They also add that the Proposed Fee Increases are reasonable because they are designed to generate annual revenue to recoup the Exchanges' costs of providing 10Gb ULL connectivity and Limited Service MEI Ports.[25]

These assertions, however, do not justify the Proposed Fee Increases, because those propositions are just as true at the current alleged profit margin of 2.5% as they would be at the projected profit margin of 23.4%. As we have noted previously, the Exchanges' bald desire for more money is not a meritorious justification for fee increases, let alone for the dramatic level of the Proposed Fee Increases. Moreover, as previously noted, the subject profit margins are based on conclusory expense assertions for which the Exchanges have not adequately disclosed any supporting analyses; and therefore should not be credited. Additionally, such profit margin far exceeds that of the utility model that characterizes the exchange function.

After Six Filings, The Exchanges Have Not Justified The Tiered Port Fee Levels

As noted in the MIAX Filing, the MEI Port fee is proposed to increase from a flat monthly fee of $100 per Port beyond the free first two Ports used for each matching engine, to a tiered pricing structure of (i) the third and fourth Port for each matching engine increasing to $150 per Port; (ii) the fifth and sixth Ports for each matching engine increasing to $200 per Port; and (iii) the seventh and additional Ports increasing to $250 per Port.[26]

---

[23] MIAX Filing, p. 43.

[24] *Id.*, p. 44.

[25] *Id.*

[26] *Id.*, p. 7.

In support of this tiered pricing increase, the Exchanges note that market makers who take the maximum amount of Ports account for "approximately greater than 99% of message traffic over the network".[27] The Exchanges also asserted that, "as the number of connections a market maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (e.g., storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker *likely* result in greater expenditure of Exchange resources and increased cost to the Exchange.[28] (emphasis added)

This argument does not comport with the Staff Guidance. As noted in our Fourth Opposition Letter, the Guidance provides that there should be a disclosure of correlations between cost and fee charges to address whether there is a consistent relationship between them.[29] The Guidance also provides that fee filings for tiered pricing should explain why an exchange chose *the specific tier levels* and the rationale for distinguishing among them.[30] The amorphous assertion that the more connections purchased by a Market Maker *likely* result in greater expenditure and increased cost falls grievously short of this standard, and reflects no underlying methodology.

Conclusion

As discussed above and in our Prior Comment Letters, and for the reasons noted therein, the Exchanges once again have failed to make the required case for their Proposed Fee Increases. The Proposed Fee Increases are not justified as a matter of principle; and, after six attempts to sidestep the requirement to provide appropriate analyses, it has become apparent that such analyses do not exist. Accordingly, the Proposed Fee Increases should be disapproved.

Respectfully,

Brian Sopinsky
General Counsel

---

[27] *Id.*, p. 51.
[28] *Id.*, p. 52.
[29] Fourth Opposition Letter, p. 5.
[30] Staff Guidance, p. 8.