



January 12, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan (Release No. 34-93625; File No. SR-CTA/CQ-2021-03)

Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (Release No. 34-93618; File No. S7-24-89)

Dear Ms. Countryman:

The Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX Pearl”), and MIAX Emerald, LLC (“MIAX Emerald,” and collectively with MIAX and MIAX Pearl, the “MIAX Exchange Group”), appreciates the opportunity to submit this comment letter to the Securities and Exchange Commission (“Commission”) regarding the above-referenced National Market System Plans (“NMS Plans” or “CTA/CQ/UTP Plans”) amendments¹ to establish fees for market data offered pursuant to the Market Data Infrastructure Rule (“MDI Rule”).² MIAX Pearl is a participant in the CTA/CQ/UTP Plans and participates on the operating committee that submitted the Proposals. However, the MIAX Exchange Group does not support the Proposals because we believe they are not consistent with the MDI Rule, would impede access to consolidated market data, and discourage firms from registering as competing consolidators, thereby hindering the MDI Rule’s goal of decentralizing the dissemination of consolidated market data. The MIAX Exchange Group, therefore, urges the Commission to disapprove the Proposals. The MIAX Exchange Group also encourages the Commission to contemplate steps to further mitigate the conflicts of interest that led to the submission of these imperfect Proposals.

¹ See Securities Exchange Act Release Nos. 93625 (November 19, 2021), 86 FR 67517 (November 26, 2021); *and* 93618 (November 19, 2021), 86 FR 67562 (November 26, 2021) (the “Proposals”).

² See Securities Exchange Act Release No. 90610 (December 9, 2020), 86 FR 18596 (April 9, 2021) (File No. S7-03-20) (“MDI Rule Approval Order”).

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1. The Proposed Fee Levels are not Fair and Reasonable or Consistent with the MDI Rule

In sum, the Proposals seek to adopt fees for three categories of data: (i) Core Data which would include Top of Book Quotations, Last Sale Information, and odd-lot information (as defined in Rule 600(b)(59)); (ii) depth of book data (as defined in Rule 600(b)(26)); and (iii) auction information (as defined in Rule 600(b)(5)). The Proposals seek to adopt Non-Display Use Fees, Access Fees, as well as Professional and Non-Professional User Fees for this data. The Proposals also seek to apply the existing Redistribution Fees to Competing Consolidators. While the MIAX Exchange Group opposes the Proposals, we do support limited portions of the Proposals to include odd-lot quotation information for free and charge a low non-professional user fee. However, the remaining portions of the Proposals, namely Redistribution Fees, Access Fees, Non-Display Use Fees, and Professional User Fees are not consistent the MDI Rule, would impede access to consolidated market data, and discourage firms from registering as competing consolidators.

A. Redistribution Fees

Proposing to apply the existing Redistribution Fees to Competing Consolidators is not consistent with the MDI Rule or the statutory standards of being fair and reasonable and not unfairly discriminatory. In the MDI Rule Approval Order, the Commission stated that “imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the statutory standards of being fair and reasonable and not unfairly discriminatory in the *new decentralized model*” (*emphasis added*).³ Rather than abiding by this Commission statement, the Proposals nonetheless included a Redistribution Fee for Competing Consolidators.

The Proposals attempt to justify this fee not under the construct of the new decentralized model, but under the current long standing centralized model that the MDI Rule is meant to replace, which charges such fees to downstream vendors. The Proposals also suggest that the proposed Redistribution Fee is consistent with its “long standing policy that Redistribution Fees are charged to any entity that distributes data externally ...”.⁴ This justification is clearly misplaced. Competing Consolidators are essentially stepping into the role that the SIPs hold today as the primary sources of consolidated market data. To charge a Redistribution Fee on top of the other proposed fees would unquestionably put Competing Consolidators at a further competitive disadvantage as compared to aggregated proprietary data products offered by exchanges. The proposed Redistribution Fee targets Competing Consolidators in an unfair and unreasonable manner.⁵

This fee construct may also further encourage firms to become self-aggregators rather than purchase data from a competing consolidator. The Commission also stated in the MDI Rule

³ See *id.* at 18685, note 1166.

⁴ See the Proposals, *supra* note 1.

⁵ See MDI Rule Approval Order, *supra* note 2 at 18686 (stating that “[a] fee that unduly ‘targets’ competing consolidators in an unfair or unreasonable manner would not satisfy statutory requirements.”).

Approval Order that “fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.”⁶ The MIAX Exchange Group agrees and urges the Commission to find that charging a Redistribution Fee to Competing Consolidators is not fair and reasonable and is unfairly discriminatory.

B. Access Fees, Non-Display Use Fees, and Professional Users Fees

The Exchange believes the proposed Access, Non-Display Use, and Professional User fees are based on a flawed methodology that resulted in excessive fee levels. These excessive fee levels will serve to discourage firms from registering as Competing Consolidators, thereby effectively hindering the formation of the decentralized model the MDI Rule seek to create. The Commission stated in the MDI Rule Approval Order that it “believes there will be downward pressure on the fees for the data content underlying consolidated market data as compared to fees for proprietary data.”⁷ The proposed fee levels do not support that belief as they would require Competing Consolidators to charge fees for their consolidated data products that may be higher than fees charged today for consolidated data to account for their costs of aggregation, connectivity, and distribution.

First, the Proposals do not provide a cost based justification to support that the fees are reasonable despite the Commission directly stating in the MDI Rule Approval Order that any proposed fees must be reasonably related to cost. The Proposals seek to avoid providing a cost analysis by stating that the Exchange Act does not require a showing of costs and that a cost analysis has not been provided in past fee proposals by the CTA/CQ/UTP Plans. However, the Commission issued its *Staff Guidance on SRO Rule Filings Relating to Fees* on May 21, 2019.⁸ In its Guidance, the Commission staff stated that, “[i]f 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

The Proposals state that the Operating Committee “has no knowledge of any costs associated with consolidated market data.” Certain exchange groups sell proprietary data products that include consolidated data from each of their individual exchanges. However, a vast majority of the fees charged by these exchange groups, if not all, were adopted prior to the Commission issuing its *Guidance* and likely did not include a cost based justification.¹⁰ Nonetheless, we believe exchanges are uniquely positioned to understand their costs to produce such data for competing consolidators. Further, the MIAX Exchange Group provided more recent

⁶ See *id.* at 18682, note 1136.

⁷ See *id.* at 18634, note 503.

⁸ See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (the “Guidance”).

⁹ *Id.*

¹⁰ *Id.*

cost based analysis when adopting fees for a market data product.¹¹ In addition, multiple other SROs included cost based analysis in recent market data and access fee filings despite not having done so in the past.¹²

Second, the proposed fee levels are unreasonably high and would discourage firms from registering as competing consolidators hindering the formation of the decentralized model the MDI Rule seeks to create. The Proposals are based on current fees charged for depth of book data by exchanges that have chosen to charge for that data. The fee levels in the Proposals were calculated using a Depth to Top-Of-Book Model whereby a 3.94x ratio was used to calculate the difference between top-of-book and five levels of depth that would be required to be included in consolidated market data under the MDI Rule. Calculating the proposed fee levels based on the prices charged by exchanges for their existing market data products is not the right starting point and inconsistent with the goal of the MDI Rule of expanding access to consolidated data.

The Exchange believes this methodology resulted in fee levels that would likely discourage firms from registering as Competing Consolidators because it would hinder their ability to generate revenues in excess of expenses. In addition to paying exchanges for the consolidated data, Competing Consolidators would be required to also pay each exchange for connectivity to receive such data. In addition, Competing Consolidators would likely incur additional costs to distribute consolidated data such as costs related to performing the aggregation function that is currently conducted by the SIPs. Competing Consolidators would also incur additional administrative and operational costs. The MIAX Exchange Group is concerned that the fee levels under the Proposals would prevent Competing Consolidators from charging fees necessary to recoup their expenses while allowing them to price their offerings competitively compared to other Competing Consolidators as well as other exchanges' proprietary market data products.

The MIAX Exchange Group encourages the Operating Committees to consider proposing fees levels that are designed to encourage firms to register as Competing Consolidators, which would foster the formation of the decentralized model the MDI Rule seeks to achieve. The MIAX Exchange Group also encourages the Operating Committee to consider additional fee models that would promote the dissemination of consolidated data to a broader universe of investors, such as a lower priced tiered enterprise cap for retail investors.

The MIAX Exchange Group believes the Commission should disapprove the Proposals because the proposed fee levels are based on a flawed methodology that resulted in excessive fee levels that are not fair and reasonable and are unfairly discriminatory.

¹¹ See Securities Exchange Act Release Nos. 93808 (December 17, 2021), 86 FR 73011 (December 23, 2021) (SR-MIAX-2021-62); and 93811 (December 17, 2021), 86 FR 73051 (December 23, 2021) (SR-EMERALD-2021-44).

¹² See Securities Exchange Act Release No. 93557 (November 10, 2021), 86 FR 73011 (December 23, 2021) (SR-IEEX-2021-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fee Schedule for Market Data Fees). See also, e.g., SR-BOX-2022-01 (filed January 3, 2022) (proposing to adopt a new monthly Participation Fee); and SR-MEMX-2021-21 (filed December 30, 2021) (proposal to adopt fees applicable to Members and non-Members for physical connectivity to the MEMX and for application sessions).

2. The Proposals are the Result of a Conflicted and Unbalanced Voting Process

The Proposals are the result of a conflicted and unbalanced voting process whereby a majority of the Operating Committee voted against their submission. As noted in footnote 14 of the Proposals, all four independent equities exchanges and the Financial Industry Regulatory Authority (“FINRA”) voted against the Proposals. The Advisory Committee also voiced their displeasure with the Proposals in that same footnote. Nonetheless, the Proposals passed because the current voting structure empowers the three large exchange groups with enough voting power to set pricing despite objections from the four independent exchanges, FINRA, and the Advisory Committee. The MIAX Exchange Group, therefore, agrees with the recommendation made by MEMX LLC (“MEMX”) in its comment letter on the Proposals to place the responsibility to set fees under the Consolidated Tape Plan (“CT Plan”). The CT Plan’s voting structure would better reflect the opinions of the impacted parties, including non-SROs, and alleviate the unbalanced concentration of votes among the three large exchange groups.¹³ The MIAX Exchange Group encourages the Commission to facilitate the transition of fee proposals to the CT Plan¹⁴ should the D.C. Circuit Court uphold the CT Plan prior to Commission action on the Proposals. The MIAX Exchange Group also encourages the Commission to explore other alternative voting structures should the D.C. Circuit Court not rule in their favour.

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¹³ See letter from Adrian Griffiths, Head of Market Structure, MEMX, to Ms. Vanessa Countryman, Secretary, Commission, dated November 8, 2021, at pages 23-24.

¹⁴ The MIAX Exchange Group previously voiced its support of the CT Plan’s allocation of voting rights among unaffiliated SROs and exchange groups. See letter from Christopher Solgan, VP & Senior Counsel, MIAX Exchange Group, to Ms. Vanessa Countryman, Secretary, Commission, dated March 3, 2020.

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The MIAX Exchange Group appreciates the opportunity to comment on the Commission's Proposals and welcomes regulatory action that improves the infrastructure by which consolidated market data is disseminated to market participants. However, the proposed fees do not serve that goal and the MIAX Exchange Group urges the Commission to disapprove the Proposals. Should the Commission or the Staff have any questions, please feel free to contact me at [REDACTED].

Sincerely,



Christopher Solgan
VP, Senior Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester Pierce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Haoxiang Zhu, Director, Division of Trading and Markets
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