November 16, 2021

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

Re: Proposed Rule Changes to Amend Multiple Fees
Miami International Securities Exchange LLC:
SR-MIAX-2021-41; Rel No. 34-93165 – Connectivity (ULL 10Gb)
SR-MIAX-2021-43; Rel. No. 34-93185 – MEI Ports
MIAX PEARL, LLC:
SR-PEARL-2021-45; Rel. No. 34-93162 – Connectivity (ULL 10Gb)
MIAX EMERALD, LLC:
SR-EMERALD-2021-29; Rel. No. 34-93166 – Connectivity (ULL 10Gb)
SR-EMERALD-2021-31; Rel. No. 34-93188 – MEI Ports

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] respectfully submits this letter to the U.S. Securities and Exchange Commission ("Commission" or "SEC") to comment on the above-referenced proposals ("Proposals") filed by Miami International Securities Exchange, LLC ("MIAX"), MIAX Emerald, LLC ("MIAX Emerald), and MIAX PEARL, LLC ("MIAX Pearl") (each an "Exchange" and collectively, the "Exchanges"). Each of the Exchanges has filed a proposal to increase fees for 10 Gb ultra-low latency fiber connections ("Connectivity Proposals"). In addition, MIAX and MIAX Emerald have filed proposals to increase fees for their MIAX Express Interface ("MEI") ports ("MEI Port Proposals"). As described in more detail below, we believe the Commission should disapprove the Proposals because the Exchanges have not met their burden of demonstrating that the Proposals are consistent with the standards under the Securities Exchange Act of 1934 ("Exchange Act") for proposed fee changes.[2]

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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 See Exchange Act Release No. 34-93165 (September 28, 2021), 86 FR 54750 (October 4, 2021); Exchange Act Release No. 34-93185 (September 29, 2021), 86 FR 55093 (October 5, 2021); Exchange Act Release No. 34-93162 (September 28, 2021), 86 FR 54739 (October 4, 2021); Exchange Act Release No. 34-93166 (September 28, 2021), 86 FR 54760 (October 4, 2021); Exchange Act Release No. 34-93188 (September

I. The Proposals

The Exchanges currently offer the ability of members and non-members to connect to the Exchanges through 10 Gb ultra-low latency ("ULL") fiber connections. In the Connectivity Proposals, each Exchange is seeking to change the current flat monthly fee of $10,000 per connection to $9,000 for the first and second connections, $11,000 for the third and fourth connections, and $13,000 for any connections above that.

In addition, MIAX and MIAX Emerald currently allocate each market maker two Full Service MEI Ports and two Limited Service MEI Ports per matching engine through which they connect to the Exchanges.[3] Market makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. In the MEI Port Proposals, MIAX and MIAX Emerald propose to move from a flat monthly fee per additional MEI Port for each matching engine to a tiered-pricing structure per additional MEI Port for each matching engine. Under this new pricing structure, market makers' MEI Port monthly fees would vary depending on the number of additional MEI Ports they elect to purchase at MIAX and MIAX Emerald. For MIAX, the first and second additional MEI Port would be free, the third and fourth would increase from $100 to $150 per port, the fifth and sixth would increase from $100 to $200 per port, and any subsequent ports would increase from $100 to $250 per port. For MIAX Emerald, the first and second additional MEI Port would be free, the third and fourth would increase from $100 to $200 per port, the fifth and sixth would increase from $100 to $300 per port, and any subsequent ports would increase from $100 to $400 per port.

II. Discussion

The Exchanges are required to demonstrate that the Proposals meet the requirements of the Exchange Act and the rules thereunder, including the requirements of Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Exchange Act. Section 6(b)(4) of the Exchange Act requires that the rules of an exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities." Section 6(b)(5) requires, among other things, that the rules of an exchange "are not designed to permit unfair discrimination between customers, issuers, brokers or dealers." Section 6(b)(8) of the Exchange Act requires that the rules of the exchange not "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the Exchange Act. The Exchanges have failed to make these showings with respect to the Proposals.

29, 2021), 86 FR 55052 (October 5, 2021). Capitalized terms used in this letter have the same meaning as they do in the Proposals.

3 Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Both Full Service and Limited Service MEI Ports are also capable of receiving administrative information

A. The Exchanges have failed to Demonstrate that the Proposed Fees are Reasonable

In seeking to demonstrate that the fee increases in the Proposals are reasonable, the Exchanges generally assert that they operate in a highly competitive environment in which exchanges compete for order flow, which constrains the prices they can charge for the products and services subject to the Proposals. The Exchanges note that in such an environment, they must continually adjust their fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchanges assert that the proposed increases appropriately reflect this competitive environment. Similarly, the Exchanges assert that the products and services subject to the Proposals are completely optional, and that market participants can choose not to use them.

The Exchanges' "platform competition" argument that competition for order flow constrains pricing for market data or other products and services exclusively offered by an exchange does not demonstrate that the fees are reasonable. In this regard, Commission staff have stated that the "platform competition" theory is not an adequate basis to conclude that market data prices are competitive. As we have shown several times over the years in connection with exchanges' market data products, an exchange's decision to offer multiple products (trading services and market-data products) does not constrain market data prices.[4] Similarly, it is a stretch for the Exchanges to argue that competition for order flow limits the prices they can charge for the products and services subject to the Proposals, which also are offered exclusively by the Exchanges.

As the Commission has noted, the mere fact that the Exchanges are subject to competition for order flow is not a sufficient justification that the fees charged for the products and services offered by them "provide for the equitable allocation of reasonable dues, fees" as required under Section 6(b)(4) of the Exchange Act. Like proprietary market data products offered by the Exchanges, the products and services subject to the Proposals are unique to the Exchanges and market participants cannot obtain them anywhere else. Thus, order flow competition alone between exchanges does not demonstrate that the fees for the products and services subject to the Proposal are reasonable.

Moreover, given the nature of these products and services, it is difficult to understand how the Exchanges can argue that they must continually adjust the fees to access these products and services (i.e., access fees) as a result of competition from other markets. While exchanges frequently adjust transaction fees in response to market dynamics, our experience is that access fees such as the ones subject to the Proposals are not frequently adjusted because they are fixed costs for market makers and other market participants to gain access to certain products and

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4 See, e.g., Lawrence R. Glosten, "Economics of the Stock Exchange Business: Proprietary Market Data," p.4 (Jan. 2020); Tr. of the Roundtable on Market Data Products, Market Access Services and Their Associated Fees, pp. 62-65 (comments of Brad Katsuyama and Mehmet Kinak) (Oct. 25, 2018) ("Market Data Roundtable").

services offered by exchanges. Frequent adjustment of these fees in response to competition, as the Exchanges suggest occurs, would place market makers and other market participants in the untenable position of constantly having to react to changes in their fixed costs. Thus, this assertion by the Exchanges as a basis for why their proposed fees are reasonable does not reflect marketplace reality.

It also is worth noting that the products and services subject to the Proposals are critical for certain market participants to operate. For market makers operating on the Exchanges, the 10Gb ULL connections are a crucial piece of technology that allows them to meet their quoting obligations while at the same time allowing them to manage their risk associated with providing quotes on the Exchanges.[5] Without the high speed access provided through these connections, market makers could be exposed to tremendous risk if their quotes became "stale" due to price movements in the underlying security. Thus, for market makers, 10Gb ULL connections are an essential technology tool that allows them to provide liquidity on the Exchanges. Similarly, the ability to obtain additional MEI Ports are critical for the market makers to provide liquidity on the Exchanges. Again, the Exchanges' argument that the products and services subject to the Proposals are optional does not reflect marketplace reality, nor does it demonstrate that the proposed fees are reasonable.

B. The Exchanges have failed to Demonstrate that the Proposed Fees are Equitably Allocated and not Unfairly Discriminatory

Taken together, the Proposals will have the most impact on market makers operating on the Exchanges. While the MEI Port Proposals clearly and directly impact market makers, the tiered pricing design of the Connectivity Proposals also has the effect of directly impacting market makers because they will be the ones that subscribe to multiple ULL connections, and thus will be subject to the highest level of connectivity fees. In each of the Proposals, the Exchanges have failed to meet their burden of demonstrating that the proposed fees are equitably allocated and not unfairly discriminatory to this group of market participants.

For example, in support of the Connectivity and MEI Port Proposals, the Exchanges argue that the tiered pricing structure will encourage firms to be more economical and efficient in the number of connections they purchase, allowing the Exchanges to better monitor and provide access to their networks to ensure that they have sufficient capacity and headroom in their systems. The Exchanges, however, provide no concrete support for these arguments. In this regard, we note Exchange market makers operate in a very competitive environment, and therefore already regularly assess their connectivity needs in order to minimize costs while making sure they have appropriate access consistent with their regulatory obligations. The Exchanges' proposals will not change their incentives in this regard. Further, the Exchanges' fail to provide any support for their assertion that the tiered pricing structure would allow the Exchanges to provide sufficient capacity and headroom for market makers trading on the

5 See, e.g., MIAX Options Rules 603, 604 and 605.

Exchanges, including a discussion of why their current capacity needs are constrained under the current pricing structure.

The Exchanges further note in the Connectivity Proposal that most participants will save money or pay the same, stating that 80% of users saw a decrease in costs and that 20% saw an increase in costs. The Exchanges also note that the 20% who saw an increase are engaged in advanced trading strategies that typically require multiple connections, generating higher costs for the Exchanges. However, the Exchanges provide no support for their position that the use of multiple connections generates higher costs. It may be that a greater the number of connections generates additive incremental costs, but it is likely that once the Exchanges' fixed costs associated with providing connections have been met, any additional connections purchased by users will not result in additional costs to the Exchange but rather result in greater Exchange profits.

As the discussion above indicates, the Exchanges have failed to demonstrate that the fees are equitably allocated and not unfairly discriminatory. The burden of the fee increases under the Proposals will fall predominantly on market makers operating on the Exchanges. Other than conclusory statements such as ones to the effect that market makers generate more costs for the Exchanges, the Proposals contain no meaningful discussion of why it is appropriate for market makers to shoulder the majority of the fee increases under the Proposals.

C. The Exchanges' Cost Data Lacks Baseline Information

In further seeking to demonstrate that the Connectivity Proposals and the MEI Port Proposals meet the Exchange Act standards for fee filings, the Exchanges discuss the allocation of certain costs to the products and services subject to these proposals, followed by a discussion of the proposed profit resulting from the fee increases. While we appreciate the additional transparency, we are concerned that the Exchanges have provided no public information on how they derived the cost amounts they determined to allocate to the products and services subject to the Proposals nor any meaningful baseline information regarding the Exchanges' overall costs. For example, MIAX states as a fact that approximately 4.95% of the total applicable Equinix expense is attributable to MIAX's MEI Port services, without a discussion as to how it arrived at that percentage. Such information is needed to allow commenters to judge whether the allocations are supportable, and in turn, whether the proposed fee increases meet the Exchange Act standards for fee filings. Moreover, the Exchanges state in the Proposals that the fees will not result in supra-competitive profits, basing their profit margins on the problematic cost discussions noted above. The discussions surrounding these profit margins are high-level and conclusory, again failing to provide sufficient detail to understand whether or not the fees are reasonable.

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Based on the foregoing, we recommend that the Commission suspend and disapprove the Proposals. We further note that the Exchanges have withdrawn and refiled essentially identical Connectivity Proposals, and for MIAX and MIAX Emerald, identical MEI Port Proposals. This action by the Exchanges has the effect of continuing the fee increases under the Proposals while subverting proper consideration of the Proposals under the process set forth in Section 19(b)(3) of the Exchange Act. As the Commission staff noted in its "Staff Guidance on SRO Filings Related to Fees:"

> If an SRO decides to submit a subsequent Fee Filing addressing the same fee that has been subject to an [order instituting proceedings], the SRO should meaningfully attempt to address issues or questions that have been raised. The staff urges SROs not to make substantially similar immediately effective Fee Filings while the Commission's proceedings are underway. This process can unnecessarily exhaust Commission resources. If necessary, the staff will recommend to the Commission action to address the issue of repeated submissions of substantially similar fee filings.[6]

SIFMA greatly appreciates the Commission's consideration of these comments and would be pleased to discuss them in greater detail. If you have any questions or need any additional information, please contact me at [redacted] or [redacted].

Sincerely,

Ellen Greene

Ellen Greene
Managing Director
Equity and Options Market Structure

cc: David Saltiel, Acting Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Markets
John Roeser, Associate Director, Division of Trading and Markets

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6 See "Staff Guidance on SRO Filings Related to Fees," Division of Trading and Markets, Commission (May 21, 2019), available at (https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees).