



April 18, 2019

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Exchange Act Rel. No. 34-85318; File No. SR-MIAX-2019-10  
Exchange Act Rel. No. 34-85317; File No. SR-PEARL-2019-08  
Exchange Act Rel. No. 34-85316; File No. SR-EMERALD-2019-11

Dear Mr. Fields:

The Healthy Markets Association appreciates the opportunity to comment on the above-referenced immediately effective exchange filings, which seek to increase the connectivity fees to MIAX.

We wish to begin by thanking the Commission and staff for increasingly scrutinizing filings of exchanges, including those that are immediately effective. As the Commission has noted, all exchange filings must provide sufficient information to support a finding by the Commission that the filings:

- are an equitable allocation of reasonable dues, fees, and other charges;
- do not unfairly discriminate between different exchange participants;
- do not impose burdens on competition that are not necessary or appropriate; and
- do not impose impediments to the free and open market system.<sup>1</sup>

While the Commission and staff now clearly believe that the historical status quo on filings is inadequate to establish compliance with the Exchange Act, the Commission is now wrestling with determining what is adequate. It is not entirely clear what that entails. Until recently, the Commission and staff have not generally disapproved data and

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<sup>1</sup> 5 U.S.C. § 78f.

connectivity filings, despite the exchanges generally providing few facts or analyses related to those filings.

However, over the past year or so,<sup>2</sup> the Commission has started to outline what it expects of the exchanges going forward. Just a few weeks ago, the Commission staff issued an order expressly disapproving connectivity fee increases for a MIAX competitor, BOX.<sup>3</sup> In doing so, the Commission staff offered its clearest signal yet as to what it expects exchanges to provide when seeking to establish compliance with the Exchange Act.

Regardless of that ultimate determination, in our view, MIAX's first two attempts to impose heightened connectivity fees clearly did not meet the bar. But unlike BOX, this third attempt by MIAX is remarkably different than its prior iterations. The instant MIAX filings -- along with their April 5th supplement<sup>4</sup> -- provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.

Nevertheless, SIFMA and IEX have asked the Commission to suspend the filings and institute proceedings to approve or disapprove them.<sup>5</sup>

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<sup>2</sup> See, e.g., *Order of Summary Abrogation of the Twenty-Third Charges Amendment to the Second Restatement of the CTA Plan and the Fourteenth Charges Amendment to the Restated CQ Plan*, SEC, Exch. Act Rel. No. 34-83148, May 1, 2018; *Order of Summary Abrogation of the Forty-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*, SEC, Exch. Act Rel. No. 34-83149, May 1, 2018); In the Matter of Bloomberg L.P., SEC, Exch. Act Rel. No. 34-83755, July 31, 2018, available at <https://www.sec.gov/litigation/opinions/2018/34-83755.pdf>.

<sup>3</sup> *Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network*, SEC, Exch. Act Rel. No. 34-85459, Mar. 29, 2019, available at <https://www.sec.gov/rules/sro/box/2019/34-85459.pdf> (order disapproving three separate, but substantively identical connectivity fee filings).

<sup>4</sup> Letter from Joe Ferraro, MIAX, to Vanessa Countryman, SEC, Apr. 5, 2019, available at <https://www.sec.gov/comments/sr-miix-2019-10/srmiix201910-5329048-183970.pdf>.

<sup>5</sup> See Letter from Theodore Lazo, SIFMA, to Vanessa Countryman, SEC, Apr. 10, 2019, available at <https://www.sec.gov/comments/sr-miix-2019-10/srmiix201910-5342882-184035.pdf>; Letter from John Ramsay, IEX, to Vanessa Countryman, Apr. 10, 2019, available at <https://www.sec.gov/comments/sr-pearl-2019-08/srpearl201908-5341526-184030.pdf>.

Ultimately, we believe the Commission should provide greater detail as to what is required of exchanges to satisfy the Exchange Act. Exchanges and other market participants need a clear standard to which the exchanges may be held accountable.

Thank you for the opportunity to offer our thoughts on these MIAX filings. Should you have any questions or seek further information please contact Chris Nagy at [REDACTED].

Sincerely,



Tyler Gellasch  
Executive Director

- Cc: Hon. Jay Clayton, Chairman  
Hon. Hester Peirce, Commissioner  
Hon. Robert J. Jackson, Jr., Commissioner  
Hon. Elad Roisman, Commissioner  
Brett Redfearn, Director of the Division of Trading and Markets  
John Roeser, Associate Director, Division of Trading and Markets