



August 27, 2019

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

Re: ***SIFMA Comment Letter on NYSE, MIAX and Cboe Exchanges' Proposals to Amend the Options Regulatory Fees: File Nos. SR-NYSEAMER-2019-27; SR-NYSEArca-2019-49; SR-MIAX-2019-35; SR-PEARL-2019-23; SR-EMERALD-2019-29; SR-Cboe-2019-040; SR-CboeEDGX-2019-051; SR-C2-2019-018***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-reference filings submitted to the U.S. Securities and Exchange Commission (“Commission”) to amend Options Regulatory Fees (“ORFs”) by NYSE American LLC (“NYSE American”),² NYSE Arca, Inc. (“NYSE Arca”),³ Miami International Securities Exchange, LLC (“MIAX”),⁴ MIAX PEARL, LLC (“MIAX PEARL”),⁵ MIAX Emerald, LLC (“MIAX Emerald”),⁶ Cboe Exchange Inc. (“Cboe”),⁷ Cboe EDGX (“EDGX”),⁸ and Cboe C2 (“C2”)⁹ (together, “Exchanges”). The standards for determining whether the proposed rule changes are consistent with applicable statutory requirements under the Securities Exchange Act of 1934 (“Exchange Act”),¹⁰ are that the proposed fees be (i) reasonable, (ii) equitably allocated, (iii) not unfairly discriminatory, and (iv) not an undue burden on competition. That determination may follow the examples of necessary information set forth in the recent Staff

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 Securities Exchange Act Release No. 86391 (July 16, 2019).

³ See Securities Exchange Act Release No. 86390 (July 16, 2019).

⁴ See Securities Exchange Act Release No. 86608 (Aug. 8, 2019).

⁵ See Securities Exchange Act Release No. 86607 (Aug. 8, 2019).

⁶ See Securities Exchange Act Release No. 86606 (Aug. 8, 2019).

⁷ See Securities Exchange Act Release No. 86604 (Aug. 8, 2019).

⁸ See Securities Exchange Act Release No. 86611 (Aug. 8, 2019).

⁹ See Securities Exchange Act Release No. 86605 (Aug. 8, 2019).

¹⁰ See e.g., 15 U.S.C. 78f(b)(4); 78f(b)(5); and 78f(b)(8).

Guidance on SRO Rule Filings Relating to Fees,¹¹ or through another acceptable means. In our view, the Exchanges have not provided enough information on revenues and cost relating to the ORFs to satisfy the Exchange Act standards.

While we appreciate the Exchanges monitoring to determine that the ORF revenue does not exceed regulatory costs—and decreasing some ORFs in response—the proposed fees should not be based merely on the Exchanges’ assertions that they satisfy the Exchange Act requirements. For that reason, the Exchanges should include quantitative data showing anticipated revenues, costs and profitability—and describe the methodology for estimating the baseline and expected costs and revenues—to support their assertions that the ORFs are fair and reasonable. The Exchanges should also provide supporting evidence that charging ORF fees on transactions cleared in the Customer Range by the OCC meets the Exchange Act requirements that fees be equitably allocated and not unfairly discriminatory against one segment of market participants¹². In our view, the Exchanges provided insufficient evidence for the Commission to independently determine whether the ORFs satisfy the requirements of the Exchange Act.

Furthermore, the Exchanges should not be permitted to charge ORFs for trades occurring on other exchanges because the Exchanges have no duty to surveil trades occurring on other exchanges. To support any assertion to the contrary, each Exchange should first explain the authority to act on activities occurring outside its own market giving reason to surveil all markets. And even if the Exchanges can justify a duty to surveil all markets—and be permitted to charge ORFs on all trade executions to recoup the cost of surveilling trades on all markets—the Exchanges should describe its attempts to mitigate the seemingly excessive cost of each of the 16 options exchanges surveilling activities across all options markets. Without this information, the Commission cannot determine whether the ORFs comply with the Exchange Act requirements of reasonable and not unfairly discriminatory.

* * *

SIFMA greatly appreciates the Commission’s consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact me (at 212-313-1287 or egreene@sifma.org).

¹¹ SEC’s Division of Trading and Markets, *Staff Guidance on SRO Rule Filings Relating to Fees* (“Staff Guidance”) (May 21, 2019).

¹² Transactions at the OCC are segregated into three categories for clearing: Customer, Market Maker and Firm. Only trades which clear in the Customer Range are subject to ORF.

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Sincerely,

A handwritten signature in black ink that reads "Ellen Greene". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Ellen Greene
Managing Director

cc: The Honorable Jay Clayton, Chair
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner

Brett Redfearn, Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets
John Roeser, Associate Director, Division of Trading and Markets
Richard Holley, Assistant Director, Division of Trading and Markets