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Page 1 of \* 36

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 09

Amendment No. (req. for Amendments \*)

Filing by MIAX Emerald, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend the Fee Schedule to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data; (ii) adopt a new fee for ad hoc requests for intra-day data; and (iii) adopt academic discounts for the historical end-of-day and intra-day Open-Close data.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Michael Last Name \* Slade

Title \* AVP, Associate Counsel

E-mail \* mslade@miami-holdings.com

Telephone \* (609) 897-8499 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, MIAX Emerald, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 04/03/2023 (Title \*)

By Michael Slade AVP, Associate Counsel  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

*Michael Slade* Date: 2023.04.03 12:35:02 -04'00'

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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SR-EMERALD-2023-09 - 19b4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-EMERALD-2023-09- Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-EMERALD-2023-09 - Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend the Exchange’s Options Fee Schedule (“Fee Schedule”) to amend fees for historical Open-Close Report data to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the proposed Fee Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the Exchange Board of Directors on February 2, 2023. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Chris Solgan, VP, Senior Counsel, at (609) 897-8494.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### 3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### a. Purpose

The Exchange adopted a new data product for options known as the Open-Close Report,<sup>3</sup> which the Exchange made available for purchase to Exchange Members<sup>4</sup> and non-Members on June 1, 2021.<sup>5</sup> The Open-Close Report is described under Exchange Rule 531(d)(1). The Exchange now proposes to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data. The Exchange previously filed this proposal on March 23, 2023 (SR-EMERALD-2023-07). On April 3, 2023, the Exchange withdrew SR-EMERALD-2023-07 and resubmitted this proposal.

#### General

By way of background, the Exchange offers two versions of the Open-Close Report, an end-of-day summary and intra-day report.<sup>6</sup> The end-of-day version is a volume summary of

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<sup>3</sup> See Securities Exchange Act Release No. 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR-EMERALD-2021-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

<sup>4</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>5</sup> See Securities Exchange Act Release No. 92138 (June 9, 2021), 86 FR 31769 (June 15, 2021) (SR-EMERALD-2021-20) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for the Open-Close Report).

<sup>6</sup> The intraday Open-Close Report provides similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is

trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker<sup>7</sup>), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange notes that Open-Close Report data is not necessary for trading and subscribing to the Open-Close Report is completely optional.

Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange currently assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close Report. For mid-month subscriptions, new subscribers are currently charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed and receive data for each trading day of the calendar month prior to the day on which they subscribe.

#### End-of-Day Ad Hoc Request (Historical Data)

The Exchange currently provides Members and Non-Members who request on an ad hoc basis historical end-of-day Open-Close Report data free of charge. The Exchange initially proposed to provide such data for free because it only recently launched the Open-Close Report and had minimal amount of historical end-of-day data. The Exchange also wanted to support the

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captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

<sup>7</sup> See Exchange Rule 100.

introduction of the new product through such a pricing incentive to attract additional subscribers.

An ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. For example, a market participant may request end-of-day Open-Close Report data for the month of June 2021 or July 2021, or may request such data for both June and July 2021 and would not be currently charged a fee for such request(s). The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their end-of-day data for a fee.<sup>8</sup> Similar to other exchanges, the Exchange now proposes to charge a fee of \$500 per request per month for ad-hoc requests for end-of-day historical data.<sup>9</sup>

The Exchange currently makes the historical end-of-day Open-Close data available fifteen (15) days after the end of the month for which it is requested. The Exchange implemented this delay because historical end-of-day Open-Close Report data was free of charge and the Exchange sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for

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<sup>8</sup> See Price List – U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$400 for historical end-of-day data; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$250 for historical end-of-day data; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$600 per month for historical end-of-day data and \$27,500 for complete history; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$400 for historical end-of-day data. Cboe EDGX Exchange, Inc. (“EDGX”) and Cboe BZX Exchange, Inc. (“BZX”) both assess \$400 for historical end-of-day data per request per month. See the EDGX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/) and the BZX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/options/membership/fee_schedule/bzx/).

<sup>9</sup> Id.

historical end-of-day Open-Close Report data, it believes the fifteen (15) day delay in making the data available is no longer necessary and proposes to remove this language from its Fee Schedule.

#### Intra-Day Ad Hoc Request (Historical Data)

The Exchange now proposes to provide Members and Non-Members who request on an ad hoc basis historical intra-day Open-Close Report data for a fee of \$1,000 per request per month. When the Exchange proposed to provide for ad-hoc requests for end-of day data, it did not also propose to allow for ad hoc requests for intra-day Open-Close Report data.<sup>10</sup> Based on interest from Members and non-Members, the Exchange now proposes to do so for the above proposed fee.

As it currently specifies for historical end-of-day Open-Close data, an ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange will provide historical intra-day Open-Close data for the same time period. The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their intra-day data for a fee.<sup>11</sup>

#### Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

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<sup>10</sup> See Securities Exchange Act Release No. 93023 (September 16, 2021), 86 FR 52731 (September 22, 2021) (SR-EMERALD-2021-28).

<sup>11</sup> See Price List – U.S. Derivatives Data for PHLX, ISE, and GEMX, available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,000 for historical intra-day data; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$1,000 per month for historical intra-day; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$750 for historical end-of-day data. EDGX and BZX both assess \$750 for historical intra-day data per request per month. See the EDGX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/) and the BZX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/options/membership/fee_schedule/bzx/).

The Exchange also proposes to adopt an academic discount for ad-hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request \$1,500 per year for the first year (instead of \$6,000 per year) and \$125 per month thereafter for historical end-of-day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request \$3,000 per year for the first year (instead of \$12,000 per year) and \$250 per month thereafter for historical intra-day Open-Close Report data covering all of the Exchange's securities.

Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (i.e. academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant.



Academic users interested in qualifying will be required to submit a brief application.<sup>12</sup>

Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that competing exchanges currently offer academic discounts for similar data sets on those exchanges.<sup>13</sup> The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical end-of-day Open-Close and intra-day Open-Close data would be educational in use and purpose, and not vocational.

#### Implementation Date

The Exchange intends to implement the proposed fee changes immediately.

#### b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in

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<sup>12</sup> The Exchange notes that it will have an academic user application available on the Exchange's website soon but it has not received any such requests from potential academic users at the time of this filing (or the previous filing).

<sup>13</sup> See supra note 8, BZX, EDGX, and ISE fee schedules; see also Cboe Exchange, Inc. ("Cboe") Options Fee Schedule, Livevol Fees, Open Close Data available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed changes to its Fee Schedule concerning fees for the Open-Close Report is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

series, but also emphasizes such data is not necessary for trading and completely optional. Moreover, other exchanges offer a similar data product.<sup>18</sup> This proposal seeks to provide historical Open-Close Report data to market participants by amending the fees for the Open-Close Report to: (i) add a fee of \$500 per request per month for ad hoc requests for end-of-day historical data; (ii) respond to requests for ad hoc intra-day data and adopt a fee of \$1,000 per request per month for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, for the month of March 2023, no single options exchange had more than approximately 13% of the equity options market share and the Exchange represented only approximately 3.27% of the equity options market share for the month of March 2023.<sup>19</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>20</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-

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<sup>18</sup> See supra notes 8 and 11.

<sup>19</sup> See the Exchange’s “The market at a glance,” available at <https://www.miaxoptions.com/> (last visited April 3, 2023).

<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The Exchange believes its proposal to respond to requests and add fees for ad hoc requests for historical end-of-day and intra-day data and adopt academic discounts for such requests is reasonable as the proposed rates are similar to fees assessed by other exchanges that provide data in response to ad hoc request for their similar data products.<sup>21</sup> The Exchange believes its proposal is reasonable and not unfairly discriminatory because the Exchange now has almost two years of historical Open-Close Report data to provide to market participants that request historical intra-day or end-of-day Open-Close Report data since the Exchange began offering the Open-Close Report in June 2021. Further, the Exchange notes that no competing exchange provides their own historical Open-Close report data free of charge.<sup>22</sup> Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.<sup>23</sup> Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close

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<sup>21</sup> See supra notes 8 and 11.

<sup>22</sup> See id.

<sup>23</sup> The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's historical end-of-day or intra-day Open-Close data as more attractive than the Exchange's historical end-of-day or intra-day Open-Close Report data, then such market participant can merely choose not to request such data from the Exchange and instead purchase another exchange's historical end-of-day or intra-day Open-Close data, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes its proposal is reasonable as it would further support its offer of the Open-Close Report, which is designed to aid investors by providing insight into trading on the Exchange. Providing market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. Subscribers that receive end-of-day Open-Close data, and now intra-day Open-Close data as a result of this proposal, in response to an ad hoc request may use such data to evaluate the usefulness of the Exchange's Open-Close Report and decide, based on that data, whether to subscribe to the Open-Close Report on a monthly basis. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report through this proposal, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposal to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.<sup>24</sup> The Exchange therefore believes that its proposal reflects the competitive environment and would be properly assessed on Member or non-Member subscribers. The Exchange also believes the proposal is equitable and not unfairly discriminatory as it would apply equally to all users who choose to purchase or receive such data.

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<sup>24</sup> See supra notes 8 and 11.

The Exchange believes its proposal is equitably allocated because a wide variety of market participants may choose to request historical Open-Close Report intra-day or end-of-day data, including but not limited to individual customers, buy-side investors and investment banks, all of which will be charged the same rates for the monthly data requests depending on the type of request (i.e., intra-day or end-of-day ad hoc historical requests). The Exchange reiterates that the decision as to whether or not to make an ad hoc request for historical end-of-day or intra-day data Open-Close Report data is entirely optional and available for all market participants. Indeed, no market participant is required to make such ad hoc request for historical end-of-day or intra-day Open-Close Report data, and the Exchange is not required to make historical end-of-day or intra-day Open-Close Report data available to all investors. The Exchange is voluntarily making a subset of existing Open-Close Report data available via ad hoc requests for intra-day and end-of-day data under this proposal at the request of customers, and market participants may choose to receive this data based on their own business needs and for the proposed fees specified herein. Potential purchasers of ad hoc data may request the data at any time if they believe it to be valuable or may decline to subscribe such data.

The Exchange believes it is reasonable to remove the mandatory fifteen (15) day waiting period in order to receive historical ad hoc end-of-day Open-Close data because the Exchange initially implemented this delay because it made historical end-of-day Open-Close Report data free and sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data and because no other options exchange imposes similar delay requirements for the same data, the Exchange believes the fifteen (15) day waiting period is no longer necessary and is reasonable to remove this language from the Fee Schedule.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical end-of-day Open-Close and intra-day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical end-of-day Open-Close and intra-day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

#### **4. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to enhance the value of a data product that is similar to those offered by other competitor options exchanges.<sup>25</sup> The Exchange made historical end-of-day and intra-day Open-Close Report data available in order to keep pace with changes in the industry and evolving

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<sup>25</sup> See supra notes 8 and 11.

customer needs, and believes that providing such data to market participants that make requests for it will continue to contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer historical end-of-day and intra-day Open-Close report data on an ad hoc basis with fees that are substantially similar to the Exchange's proposed fees herein. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price ad hoc requests for end-of-day and intra-day Open-Close Report data is constrained by competition among exchanges that offer similar fees for similar ad hoc requests for end-of-day and intra-day Open-Close report data to their customers. The Exchange notes that there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer similar fees for ad hoc requests for end-of-day and intra-day Open-Close report data that is substantially similar to the fees for ad hoc requests for end-of-day and intra-day Open-Close Report data proposed in this filing, which the Exchange must consider in its pricing discipline in order to compete for the market data.<sup>26</sup> For example, proposing fees that are excessively higher than established fees for similar ad hoc requests for historical end-of-day and intra-day Open-Close Report data on the Exchange would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are

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<sup>26</sup> See, e.g. Cboe Options Fee Schedule, Livevol Fees, Open-Close Data, available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf). See also *supra* note 8, ISE fee schedule.



under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices for ad hoc historical requests to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between requests for ad hoc historical Open-Close Report data, other than for qualifying academic users. The proposal allows any interested Member or non-Member to request on an ad hoc basis historical end-of-day or intra-day Open-Close Report databased on their business needs.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>27</sup> and Rule 19b-4(f)(2) thereunder<sup>28</sup> the

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>28</sup> 17 CFR 240.19b-4.

Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EMERALD-2023-09)

April \_\_\_\_, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC to Amend Its Fee Schedule

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April \_\_\_\_, 2023, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the “Fee Schedule”) to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted a new data product for options known as the Open-Close Report,<sup>3</sup> which the Exchange made available for purchase to Exchange Members<sup>4</sup> and non-Members on June 1, 2021.<sup>5</sup> The Open-Close Report is described under Exchange Rule 531(d)(1). The Exchange now proposes to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data. The Exchange previously filed this proposal on March 23, 2023 (SR-EMERALD-2023-07). On April 3, 2023, the Exchange withdrew SR-EMERALD-2023-07 and resubmitted this proposal.

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<sup>3</sup> See Securities Exchange Act Release No. 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR-EMERALD-2021-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

<sup>4</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>5</sup> See Securities Exchange Act Release No. 92138 (June 9, 2021), 86 FR 31769 (June 15, 2021) (SR-EMERALD-2021-20) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for the Open-Close Report).

### General

By way of background, the Exchange offers two versions of the Open-Close Report, an end-of-day summary and intra-day report.<sup>6</sup> The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker<sup>7</sup>), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange notes that Open-Close Report data is not necessary for trading and subscribing to the Open-Close Report is completely optional.

Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange currently assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close Report. For mid-month subscriptions, new subscribers are currently charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed and receive data for each trading day of the calendar month prior to the day on which they subscribe.

### End-of-Day Ad Hoc Request (Historical Data)

The Exchange currently provides Members and Non-Members who request on an ad hoc

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<sup>6</sup> The intraday Open-Close Report provides similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

<sup>7</sup> See Exchange Rule 100.

basis historical end-of-day Open-Close Report data free of charge. The Exchange initially proposed to provide such data for free because it only recently launched the Open-Close Report and had minimal amount of historical end-of-day data. The Exchange also wanted to support the introduction of the new product through such a pricing incentive to attract additional subscribers.

An ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. For example, a market participant may request end-of-day Open-Close Report data for the month of June 2021 or July 2021, or may request such data for both June and July 2021 and would not be currently charged a fee for such request(s). The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their end-of-day data for a fee.<sup>8</sup> Similar to other exchanges, the Exchange now proposes to charge a fee of \$500 per request per month for ad-hoc requests for end-of-day historical data.<sup>9</sup>

The Exchange currently makes the historical end-of-day Open-Close data available fifteen (15) days after the end of the month for which it is requested. The Exchange implemented this delay because historical end-of-day Open-Close Report data was free of charge

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<sup>8</sup> See Price List – U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$400 for historical end-of-day data; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$250 for historical end-of-day data; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$600 per month for historical end-of-day data and \$27,500 for complete history; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$400 for historical end-of-day data. Cboe EDGX Exchange, Inc. (“EDGX”) and Cboe BZX Exchange, Inc. (“BZX”) both assess \$400 for historical end-of-day data per request per month. See the EDGX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/) and the BZX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/options/membership/fee_schedule/bzx/).

<sup>9</sup> Id.

and the Exchange sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data, it believes the fifteen (15) day delay in making the data available is no longer necessary and proposes to remove this language from its Fee Schedule.

#### Intra-Day Ad Hoc Request (Historical Data)

The Exchange now proposes to provide Members and Non-Members who request on an ad hoc basis historical intra-day Open-Close Report data for a fee of \$1,000 per request per month. When the Exchange proposed to provide for ad-hoc requests for end-of day data, it did not also propose to allow for ad hoc requests for intra-day Open-Close Report data.<sup>10</sup> Based on interest from Members and non-Members, the Exchange now proposes to do so for the above proposed fee.

As it currently specifies for historical end-of-day Open-Close data, an ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange will provide historical intra-day Open-Close data for the same time period. The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their intra-day data for a fee.<sup>11</sup>

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<sup>10</sup> See Securities Exchange Act Release No. 93023 (September 16, 2021), 86 FR 52731 (September 22, 2021) (SR-EMERALD-2021-28).

<sup>11</sup> See Price List – U.S. Derivatives Data for PHLX, ISE, and GEMX, available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,000 for historical intra-day data; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$1,000 per month for historical intra-day; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$750 for historical end-of-day data. EDGX and BZX both assess \$750 for historical intra-day data per request per month. See the EDGX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/) and the BZX fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/options/membership/fee_schedule/bzx/).

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

The Exchange also proposes to adopt an academic discount for ad-hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request \$1,500 per year for the first year (instead of \$6,000 per year) and \$125 per month thereafter for historical end-of-day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request \$3,000 per year for the first year (instead of \$12,000 per year) and \$250 per month thereafter for historical intra-day Open-Close Report data covering all of the Exchange's securities.

Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (i.e. academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant.



Academic users interested in qualifying will be required to submit a brief application.<sup>12</sup>

Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that competing exchanges currently offer academic discounts for similar data sets on those exchanges.<sup>13</sup> The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical end-of-day Open-Close and intra-day Open-Close data would be educational in use and purpose, and not vocational.

#### Implementation Date

The Exchange intends to implement the proposed fee changes immediately.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>12</sup> The Exchange notes that it will have an academic user application available on the Exchange's website soon but it has not received any such requests from potential academic users at the time of this filing (or the previous filing).

<sup>13</sup> See supra note 8, BZX, EDGX, and ISE fee schedules; see also Cboe Exchange, Inc. ("Cboe") Options Fee Schedule, Livevol Fees, Open Close Data available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed changes to its Fee Schedule concerning fees for the Open-Close Report is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and completely optional.

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

Moreover, other exchanges offer a similar data product.<sup>18</sup> This proposal seeks to provide historical Open-Close Report data to market participants by amending the fees for the Open-Close Report to: (i) add a fee of \$500 per request per month for ad hoc requests for end-of-day historical data; (ii) respond to requests for ad hoc intra-day data and adopt a fee of \$1,000 per request per month for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, for the month of March 2023, no single options exchange had more than approximately 13% of the equity options market share and the Exchange represented only approximately 3.27% of the equity options market share for the month of March 2023.<sup>19</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>20</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products.

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<sup>18</sup> See *supra* notes 8 and 11.

<sup>19</sup> See the Exchange’s “The market at a glance,” available at <https://www.miaxoptions.com/> (last visited April 3, 2023).

<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes its proposal to respond to requests and add fees for ad hoc requests for historical end-of-day and intra-day data and adopt academic discounts for such requests is reasonable as the proposed rates are similar to fees assessed by other exchanges that provide data in response to ad hoc request for their similar data products.<sup>21</sup> The Exchange believes its proposal is reasonable and not unfairly discriminatory because the Exchange now has almost two years of historical Open-Close Report data to provide to market participants that request historical intra-day or end-of-day Open-Close Report data since the Exchange began offering the Open-Close Report in June 2021. Further, the Exchange notes that no competing exchange provides their own historical Open-Close report data free of charge.<sup>22</sup> Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.<sup>23</sup> Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's historical end-of-day or

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<sup>21</sup> See supra notes 8 and 11.

<sup>22</sup> See id.

<sup>23</sup> The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

intra-day Open-Close data as more attractive than the Exchange's historical end-of-day or intra-day Open-Close Report data, then such market participant can merely choose not to request such data from the Exchange and instead purchase another exchange's historical end-of-day or intra-day Open-Close data, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes its proposal is reasonable as it would further support its offer of the Open-Close Report, which is designed to aid investors by providing insight into trading on the Exchange. Providing market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. Subscribers that receive end-of-day Open-Close data, and now intra-day Open-Close data as a result of this proposal, in response to an ad hoc request may use such data to evaluate the usefulness of the Exchange's Open-Close Report and decide, based on that data, whether to subscribe to the Open-Close Report on a monthly basis. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report through this proposal, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposal to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.<sup>24</sup> The Exchange therefore believes that its proposal reflects the competitive environment and would be properly assessed on Member or non-Member subscribers. The Exchange also believes the proposal is equitable and not unfairly discriminatory as it would apply equally to all users who choose to purchase or receive such data.

The Exchange believes its proposal is equitably allocated because a wide variety of market participants may choose to request historical Open-Close Report intra-day or end-of-day

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<sup>24</sup> See supra notes 8 and 11.

data, including but not limited to individual customers, buy-side investors and investment banks, all of which will be charged the same rates for the monthly data requests depending on the type of request (i.e., intra-day or end-of-day ad hoc historical requests). The Exchange reiterates that the decision as to whether or not to make an ad hoc request for historical end-of-day or intra-day data Open-Close Report data is entirely optional and available for all market participants.

Indeed, no market participant is required to make such ad hoc request for historical end-of-day or intra-day Open-Close Report data, and the Exchange is not required to make historical end-of-day or intra-day Open-Close Report data available to all investors. The Exchange is voluntarily making a subset of existing Open-Close Report data available via ad hoc requests for intra-day and end-of-day data under this proposal at the request of customers, and market participants may choose to receive this data based on their own business needs and for the proposed fees specified herein. Potential purchasers of ad hoc data may request the data at any time if they believe it to be valuable or may decline to subscribe such data.

The Exchange believes it is reasonable to remove the mandatory fifteen (15) day waiting period in order to receive historical ad hoc end-of-day Open-Close data because the Exchange initially implemented this delay because it made historical end-of-day Open-Close Report data free and sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data and because no other options exchange imposes similar delay requirements for the same data, the Exchange believes the fifteen (15) day waiting period is no longer necessary and is reasonable to remove this language from the Fee Schedule.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical end-of-day Open-Close and intra-day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set.

The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical end-of-day Open-Close and intra-day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to enhance the value of a data product that is similar to those offered by other competitor options exchanges.<sup>25</sup> The Exchange made historical end-of-day and intra-day Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes that providing such data to market participants that make requests for it will continue to contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer historical end-of-day and intra-day Open-Close

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<sup>25</sup> See supra notes 8 and 11.

report data on an ad hoc basis with fees that are substantially similar to the Exchange's proposed fees herein. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price ad hoc requests for end-of-day and intra-day Open-Close Report data is constrained by competition among exchanges that offer similar fees for similar ad hoc requests for end-of-day and intra-day Open-Close report data to their customers. The Exchange notes that there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer similar fees for ad hoc requests for end-of-day and intra-day Open-Close report data that is substantially similar to the fees for ad hoc requests for end-of-day and intra-day Open-Close Report data proposed in this filing, which the Exchange must consider in its pricing discipline in order to compete for the market data.<sup>26</sup> For example, proposing fees that are excessively higher than established fees for similar ad hoc requests for historical end-of-day and intra-day Open-Close Report data on the Exchange would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

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<sup>26</sup> See, e.g. Cboe Options Fee Schedule, Livevol Fees, Open-Close Data, [available at https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf). See also *supra* note 8, ISE fee schedule.



The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices for ad hoc historical requests to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between requests for ad hoc historical Open-Close Report data, other than for qualifying academic users. The proposal allows any interested Member or non-Member to request on an ad hoc basis historical end-of-day or intra-day Open-Close Report databased on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>27</sup> and Rule 19b-4(f)(2)<sup>28</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>28</sup> 17 CFR 240.19b-4(f)(2).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);

or

- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-EMERALD-2023-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EMERALD-2023-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-EMERALD-2023-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Vanessa Countryman  
Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

New text is underlined;  
 Deleted text is in [brackets]

**MIAX Emerald Options Exchange**

**Fee Schedule**

\* \* \* \* \*

**6) Market Data Fees**

\* \* \* \* \*

e) Open-Close Report

End-of-Day Subscription	(No change)
Intra-Day Subscription	(No change)
End-of-Day Ad-hoc Request (historical data)	<del>[\$0.00]</del> <u>500</u> per request per month. An ad-hoc request can be for any number of months beginning with June 2021 for which the data is available.* [Historical monthly data will be available fifteen (15) days after the end of the month for which it is requested.]
<u>Intra-Day Ad-hoc Request (historical data)</u>	<u>\$1,000 per request per month. An ad-hoc request can be for any number of months beginning with June 2021 for which the data is available.**</u>

\*Academic discount applies to End-of-Day Ad-hoc Requests (historical data). Qualifying Academic Purchasers will be charged per request \$1,500 per year for the first year and \$125 per month for each additional month.

\*\* Academic discount applies to Intra-Day Ad-hoc Requests (historical data). Qualifying Academic Purchasers will be charged per request \$3,000 per year for the first year and \$250 per month for each additional month.

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