

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103093; File No. SR-SAPPHIRE-2025-23]

## **Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Sapphire Fee Schedule to Adopt New Fee Categories for the Exchange’s Proprietary Market Data Feeds**

May 20, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2025, MIAX Sapphire, LLC (“MIAX Sapphire” 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 Sapphire Options Exchange Fee Schedule (the “Fee Schedule”) to adopt new fee categories for the Exchange’s proprietary market data feeds: (i) MIAX Sapphire Top of Market (“ToM”) data feed; (ii) MIAX Sapphire Complex Top of Market (“cToM”) data feed; and (iii) MIAX Sapphire Liquidity Feed (“SLF”) (collectively, the “market data feeds”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, at MIAX Sapphire’s principal office, and at the Commission’s Public Reference Room.

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

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

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

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 offers three standard proprietary market data products, ToM, cToM, and SLF. The ToM data feed is a data feed that contains the Exchange’s best bid and offer, with aggregate size, and last sale information, based on order and quoting interest on the Exchange.<sup>3</sup> The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority (“OPRA”). The data for ToM and OPRA leave the System<sup>4</sup> at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the “OPRA Plan”), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA system for inclusion in OPRA’s consolidated dissemination of options information. The cToM data feed includes the same types of information as ToM, but for

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<sup>3</sup> See Securities Exchange Act Release No. 100588 (July 25, 2024), 89 FR 61554 (July 31, 2024) (SR-SAPPHIRE-2024-01).

<sup>4</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

Complex Orders<sup>5</sup> on the Exchange’s Strategy Book.<sup>6</sup> This information includes the Exchange’s best bid and offer for a complex strategy<sup>7</sup>, with aggregate size, based on displayable orders in the complex strategy. The cToM data feed also provides subscribers with the following information: (i) the identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (e.g., halted, open, or resumed). The SLF data feed provides market participants with a direct data feed that allows subscribers to receive real-time updates of options orders, products traded on MIAX Sapphire, MIAX Sapphire System status, and MIAX Sapphire underlying trading status.<sup>8</sup> When an order is received or an order state changes, published order information will be transmitted over SLF, including time stamp, action, product ID, order ID, order side, order type, order price, original order size, open order size, time in force, origin, open or close, and route instruction. For complex orders, complex strategy definition notification and complex order notice are also included. Subscribers to the SLF will get a list of all options symbols and strategies that will be traded and sourced on that feed at the start of every session.

Section 6 of the Fee Schedule, Market Data Fees, provides fees for the ToM, cToM, and

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<sup>5</sup> In sum, a “Complex Order” is “any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ‘legs’ or ‘components’ of the complex order), for the same account ....” See Exchange Rule 518(a)(5).

<sup>6</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(19).

<sup>7</sup> The term “complex strategy” means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. See Exchange Rule 518(a)(6).

<sup>8</sup> The Exchange established the Definitions section of the Fee Schedule in a separate rule filing. See Securities Exchange Act Release No. 100683 (August 9, 2024), 89 FR 66467 (August 15, 2024) (SR-SAPPHIRE-2024-13).

SLF data feeds. The Exchange waived such fees during an Initial Waiver Period,<sup>9</sup> which expired on March 1, 2025.<sup>10</sup> At the expiration of the Initial Waiver Period, the Exchange began to charge monthly fees to both Internal and External Distributors (proposed definitions below) of the ToM, cToM, and SLF data feeds. Specifically, the Exchange started to charge Internal Distributors a monthly fee of \$1,200.00 for the ToM and cToM data feeds, and \$3,000.00 for the SLF data feed. The Exchange also started to charge External Distributors a monthly fee of \$2,000.00 for the ToM and cToM data feeds, and \$3,500.00 for the SLF data feed.

The Exchange now proposes to amend the Fee Schedule to, among other things, adopt new fee categories for the Exchange’s proprietary market data feeds. The primary purpose of this proposal is to adopt per User (defined below) fees as well as fees for Non-Display Usage (also defined below). The Exchange also proposes to add a “Market Data Definitions” section to Section 6 of the Fee Schedule as well as modify how mid-month subscriptions for Distributors are to be handled. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data subscribers that also currently subscribe to market data feeds from the Exchange’s affiliates. Each of these proposed changes are described below.

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The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory,

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<sup>9</sup> The term “Initial Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIA X Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions section of the Fee Schedule.

<sup>10</sup> See Securities Exchange Act Release No. 102321 (February 3, 2025), 90 FR 9173 (February 7, 2025) (SR-SAPPHIRE-2025-04).

and not create an undue burden on competition among Members<sup>11</sup> and markets. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's market data.

Approximately 60% of Members subscribe to one or more market data feeds from the Exchange. Of those Members, approximately 37% subscribe to all four market data feeds, approximately 22% subscribe to three market data feeds, approximately 19% subscribe to two market data feeds, and approximately 22% subscribe to only one market data feed. The Exchange notes that there is no requirement that any Member or market participant subscribe to the ToM, cToM, or SLF data feeds offered by the Exchange. Instead, a Member may choose to maintain subscriptions to the ToM, cToM, or SLF data feeds based on their own business needs and trading models.

### Definitions

The Exchange proposes to include a Definitions section at the beginning of Section 6, Market Data Fees, of the Fee Schedule. The purpose of the Definitions section is to provide market participants greater clarity and transparency regarding the applicability of fees by defining certain terms used in connection with market data feeds within the Fee Schedule in a single location related to the Exchange's market data products. The Exchange notes that it includes similar Definitions in its fee schedule applicable to its own equity trading platform, MIAX Pearl Equities,<sup>12</sup> and that each of the proposed definitions are based on the MIAX Pearl

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<sup>11</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>12</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Fees, and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25). See also Cboe BZX Exchange, Inc. ("Cboe BZX Options") Fee Schedule, Market Data Fees section, and Cboe EDGX Exchange, Inc. ("Cboe EDGX Options") Fee Schedule, Market Data Fees section. See also MEMX LLC ("MEMX Options") Fee Schedule, Market Data Fees section, and Securities Exchange Act Release No.

Equities Fee Schedule and that of other exchanges. The Exchange believes that including a Definitions section for market data products makes the Fee Schedule more user-friendly and comprehensive.

The Exchange proposes to define the following terms in Section 6 of the Fee Schedule:

- **Distributor.** Any entity that receives the Exchange data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.
- **External Distributor.** A Distributor that receives the Exchange data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.
- **Internal Distributor.** A Distributor that receives the Exchange data product and then distributes that data to one or more Users within the Distributor’s own entity.
  - The Exchange notes that it proposes to use the phrase “own entity” in the definition of Internal Distributor and External Distributor because a Distributor would be permitted to share data received from an exchange data product to other legal entities affiliated with the Distributor’s entity that have been disclosed to the Exchange without such distribution being considered external to a third party. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non-broker-dealer affiliate subscribe to an exchange data product and then share the data with other affiliates that have a

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101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40) (“MEMX Options Market Data Fee Proposal”).

need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own entity.

- The Exchange also notes that the explanatory paragraphs under the ToM, cToM, and SLF data feed fee tables includes the following language which defines the terms Distributor, Internal Distributors, and External Distributors:

MIAX Sapphire will assess Market Data Fees applicable to ToM [cToM, AIS or SLF] on Internal and External Distributors in each month the Distributor is credentialed to use ToM [cToM, AIS or SLF] in the production environment. A Distributor of MIAX Sapphire data is any entity that receives a feed or file of data either directly from MIAX Sapphire or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute an Exchange Distributor Agreement.

The Exchange proposes to remove these provisions from the Fee Schedule because they: (i) duplicate the proposed definitions of Distributor, External Distributor, and External Distributor proposed herein with no substantive difference; and (ii) provide details that are included in the Exchange's market data policies that are also not also provided for in the fee schedules of other options

exchanges.<sup>13</sup> Removing these provisions would also harmonize the definition and fee descriptions with the fee schedule applicable to MIAX Pearl Equities.<sup>14</sup>

- Non-Display Usage. Any method of accessing an Exchange data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.
- Non-Professional User. A natural person or qualifying trust that uses Exchange data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

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<sup>13</sup> See Cboe BZX Options Fee Schedule, Market Data Fees section and Cboe EDGX Options, Market Data Fees section, both available at [https://www.cboe.com/us/options/membership/?\\_gl=1\\*19q7zz0\\*\\_up\\*MQ..\\*\\_ga\\*NjY5OTA0NzE4LjE3MzQ1MzQzODk.\\*\\_ga\\_5Q99WB9X71\\*MTczNDUzNzQ0Mi4yLjEuMTczNDUzNzQ5OC4wLjAuMA](https://www.cboe.com/us/options/membership/?_gl=1*19q7zz0*_up*MQ..*_ga*NjY5OTA0NzE4LjE3MzQ1MzQzODk.*_ga_5Q99WB9X71*MTczNDUzNzQ0Mi4yLjEuMTczNDUzNzQ5OC4wLjAuMA). See also MEMX Options Fee Schedule and Securities Exchange Act Release No. 101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40).

<sup>14</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Fees, and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25).

- Professional User. Any User other than a Non-Professional User.
- User. A Professional User or Non-Professional User.

#### Proposed Market Data Pricing

As described above, upon the expiration of the Initial Waiver Period, the Exchange began to charge Internal Distributors a monthly fee of \$1,200.00 for the ToM and cToM data feeds, and \$3,000.00 for the SLF data feed. The Exchange also only currently charges External Distributors a monthly fee of \$2,000.00 for the ToM and cToM data feeds, and \$3,500.00 for the SLF data feed. The Exchange now proposes to charge the below per User fees as well as Non-Display Usage fees for the ToM, cToM, and SLF data feeds, which, the Exchange believes are generally similar to or lower than market data fees charged by other similarly situated options exchanges. The Exchange does not propose to adopt any additional fee categories in this proposal. Each of the below capitalized terms are defined above and would be included under the proposed Definitions section under Section 6, Market Data Fees, of the Fee Schedule.

1. User Fees. For the ToM, cToM, and SLF data feeds, the Exchange proposes to charge a monthly fee of \$20.00 for each Professional User and \$1.00 for each Non-Professional User of each data feed.<sup>15</sup> The proposed User fees would apply to each person that has access to the ToM, cToM, or SLF data feeds that is provided by a Distributor (either Internal or External) for displayed usage. Each Distributor's User count would include every individual that has access to the data regardless of the purpose for which the individual uses the data. The above Professional or Non-Professional User fee would provide the same Professional or

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<sup>15</sup> The Exchange does not propose to adopt an Enterprise Fee at this time and may do so in the future based on feedback from market participants.

Non-Professional User access to all other MIAX Sapphire Market Data feeds for no additional per User charge.<sup>16</sup> In other words, a User would receive access to the ToM, cToM, and SLF data feeds for the applicable single per User fee and not have to pay separate per User fees for each data feed. As such, Distributors should report the number of Users per the Exchange, and not per individual data feed. This would be noted in Section 6 of the Fee Schedule under footnote 1 following the fee tables for the ToM, cToM, and SLF data feeds. Distributors of the ToM, cToM, or SLF data feeds would be required to report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the ToM, cToM, or SLF data feeds, the Distributor must count as one User each unique User that the Distributor is entitled for access to the ToM, cToM, or SLF data feeds.
- Distributors must report each unique individual person who receives access through multiple devices or multiple methods (e.g., a single User has multiple passwords and user identifications) as one User.
- If a Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

2. Non-Display Usage Fees. The Exchange proposes to establish a monthly Non-

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<sup>16</sup> The Exchange notes that similar reporting is required by the Nasdaq options markets, The Nasdaq Stock Market LLC ("Nasdaq Options"), Nasdaq Phlx LLC ("Nasdaq Phlx"), and Nasdaq MRX, LLC ("Nasdaq MRX"). See, e.g., <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions> (providing that "[t]he monthly user fee should be reported once for Nasdaq Options, not once per datafeed").

Display Usage<sup>17</sup> fee of \$1,500.00 for the ToM, cToM, and SLF data feeds.

- The Exchange proposes to provide a discount to those that subscribe to two or more MIAX Sapphire data feeds by capping the Non-Display Usage fee for Subscribers of two or more MIAX Sapphire data feeds at \$3,000.00. This would be noted in Section 6 of the Fee Schedule under footnote 2 following the fee tables for the ToM, cToM, and SLF data feeds.

Lastly, the Exchange proposes to no longer pro-rate fees for Distributors who subscribe or terminate mid-month. The Exchange notes that there were no mid-month subscriptions or terminations over the past twelve (12) months that would have required the monthly fee to be pro-rated. The Exchange also notes that mid-month subscriptions and terminations could place an increased burden on Exchange staff and systems that are in place to pro-rate the monthly fee that are not justified by the little to no mid-month subscriptions and terminations that occurred over the past year on its affiliated options exchanges or that the Exchange anticipates going forward based on its past experience. This portion of the proposal should also encourage subscribers to either begin a new subscription or terminate an existing subscription at the beginning or end of a month, respectively. Lastly, removing these provisions would also harmonize the MIAX Sapphire Fee Schedule with the MIAX Pearl Equities fee schedule, which also does not provide for pro-ration.<sup>18</sup> Also, other exchanges do not provide for the similar pro-

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<sup>17</sup> Non-Display Usage would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

<sup>18</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Fees, and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25).

ration of market data fees.<sup>19</sup> Therefore, the Exchange proposes to remove the following language providing for pro-rated month fees for mid-month subscribers from the explanatory paragraphs under the ToM, cToM, and SLF data feed fee tables:

Market Data Fees for [ToM/cToM/SLF] will be reduced for new Distributors for the first month during which they subscribe to [ToM/cToM/SLF], based on the number of trading days that have been held during the month prior to the date on which they have been credentialed to use [ToM/cToM/SLF] in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use [ToM/cToM/SLF] in the production environment, divided by the total number of trading days in the affected calendar month.

#### Remove Initial Waiver Period Rule Text

The Exchange also proposes to remove the rule text regarding the Initial Waiver Period that is below the table of fees in Sections 6(a) and b) of the Fee Schedule. As noted above, the Exchange established the Initial Waiver Period when it launched operations on August 13, 2024 for a defined period of time. The Initial Waiver Period was in effect for the partial month in which the Fee Schedule was established in August 2024, continuing in effect for six months thereafter. Accordingly, the Initial Waiver Period automatically expired at the end of February 2025. The purpose of this change is to remove text that no longer applies from the Fee Schedule, thereby providing clarity to market participants regarding the Exchange's market data fees.

#### Implementation

The Exchange issued alerts publicly announcing the proposed fees on September 30,

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<sup>19</sup> See Cboe BZX Options Fee Schedule and Cboe EDGX Options Fee Schedule, supra note 13. See also MEMX Options Fee Schedule and Securities Exchange Act Release No. 101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40).

2024 and December 17, 2024.<sup>20</sup> The fees subject to this proposal are immediately effective.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>21</sup> of the Act in general, and furthers the objectives of Section 6(b)(4)<sup>22</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)<sup>23</sup> of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that the ToM, cToM, and SLF data feeds are entirely optional. The Exchange is not required to make the ToM, cToM, and SLF data feeds available to any customers, nor is any customer required to purchase the ToM, cToM, and SLF data feeds.

### **The Proposed Fees are Reasonable and Comparable to the Fees Charged By Other Exchanges for Similar Data Products**

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<sup>20</sup> See Fee Change Alert, MIAX Exchange Group – January 1, 2025 and March 1, 2025 Market Data Fee Changes (dated September 30, 2024), available at <https://www.miaxglobal.com/alert/2024/09/30/miax-exchange-group-options-markets-january-1-2025-and-march-1-2025-market-1?nav=all> and Fee Change Alert, MIAX Exchange Group – Options Markets – Reminder: January 1, 2025 and March 1, 2025 Market Data Fee Changes (dated December 17, 2024), available at <https://www.miaxglobal.com/alert/2024/12/17/miax-exchange-group-options-markets-reminder-january-1-2025-and-march-1-2?nav=all>.

<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(4).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

**Overall.** The proposed fees are comparable to those of other options exchanges. Based on publicly-available information, no single exchange had more than 13.65% equity options market share for all of 2024,<sup>24</sup> and the Exchange compared the fees proposed herein to the fees charged by other options exchanges with similar market share. A more detailed discussion of the comparison follows.

The Exchange assesses the market share for each of the below referenced options markets utilizing total equity options contracts traded in April 2025, as set forth in the following charts:<sup>25</sup>

#### User Fees

The proposed per User fees for the Exchange's market data products are comparable to or lower than those charged by Nasdaq Options, Nasdaq MRX, Cboe BZX Options, and Cboe C2 Exchange, Inc. ("Cboe C2"), as summarized in the table below.

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<sup>24</sup> See the Market Share section of the Exchange's website, U.S. Options, available at <https://www.miaxglobal.com/company/data/market-share> (last visited May 7, 2025). Unlike its affiliate options exchanges that utilized full year 2024 market share numbers for their comparisons to other exchanges in their related market data fee filings, the Exchange chose the most recent full month to compare market share because the Exchange has not yet had a full year of operations.

<sup>25</sup> Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports. Total contracts include both multi-list options and proprietary options products. Proprietary options products are products with intellectual property rights that are not multi-listed.

Exchange	Market Share*	Market Data Product	Monthly Professional User Fee	Monthly Non-Professional User Fee
MIAX Sapphire	3.23%	All	\$20.00 (per Exchange)	\$1.00 (per Exchange)
Nasdaq Options	5.34%	NOM BONO NOM ITTO	\$42.10 (per exchange)	\$1.00 (per exchange)
Nasdaq MRX	2.77%	MRX Top MRX Depth MRX Spread	\$25.25 (per exchange)	\$1.00 (per exchange)
Cboe BZX Options	4.21%	BZX Depth	\$30.00 (per feed)	\$1.00 (per feed)
Cboe C2	2.89%	C2 Depth	\$50.00 (per feed)	\$50.00 (per feed)
		C2 Complex	\$25.00 (per feed)	\$25.00 (per feed)

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\* See supra note 24.

A more detailed discussion of the comparison follows.

Nasdaq Options. Nasdaq Options, with a market share of approximately 5.34% that is only slightly higher than the Exchange, charges higher or comparable Professional and Non-Professional User fees for its top of book and depth of book feeds than proposed by the Exchange. Further, like Nasdaq Options, the Exchange proposes to charge a single per User fee that would provide access to all of its market data products for a single fee.

The Nasdaq Options Best of Nasdaq Options (“BONO”) feed is an options feed that provides Nasdaq Options’ best bid and offer and last sale information.<sup>26</sup> The Nasdaq Options BONO feed is similar to the Exchange’s ToM data feed. The Nasdaq Options ITCH to Trade Options (“ITTO”) feed is an options feed that provides full order and quote depth information for individual orders and quotes and last sale information.<sup>27</sup> ITTO also provides, among other

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<sup>26</sup> See Nasdaq Options Rules, Options 3, Section 23(a)(2).

<sup>27</sup> See Nasdaq Options Rules, Options 3, Section 23(a)(1).

things, product (option series) available for trading on Nasdaq Options, the trading status of such products (i.e., whether the series is available for closing transactions only), and order imbalances on opening/reopenings. The ITTO feed is similar to the Exchange's SLF data feed.<sup>28</sup>

Nasdaq Options charges Professional Users \$42.10 per month and Non-Professional Users \$1.00 per month for the BONO feed and ITTO feed.<sup>29</sup> The Exchange proposes to charge less than Nasdaq Options for Professional Users and the same as Nasdaq Options for Non-Professional Users while also providing access to all of its market data feeds for a single per User fee. Specifically, for both the ToM and SLF data feeds, the Exchange proposes to charge Professional Users \$20.00 per month and Non-Professional Users \$1.00 per month. The Exchange's proposed Professional User fee is lower than Nasdaq Options and its Non-Professional User fee is equal to Nasdaq Options. Despite having only incrementally higher market share than the Exchange, Nasdaq Options charges much higher or comparable per User fees than proposed by the Exchange herein.

Nasdaq MRX. Nasdaq MRX, with a market share of approximately 2.77%, lower than the Exchange, charges higher Professional and Non-Professional User fees for its top of book and depth of book feeds than the fees proposed by the Exchange. Further, like Nasdaq MRX, the Exchange proposes to charge a single per User fee that would provide access to all of its market data products for a single fee.<sup>30</sup>

The Nasdaq MRX Top of Market feed is an options feed that provides Nasdaq MRX's

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<sup>28</sup> The Exchange is not comparing its cToM feed to a comparable Nasdaq Options feed because the Exchange understands Nasdaq Options does not offer such a feed.

<sup>29</sup> See Price List – U.S. Derivatives Data, available at <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions>. See also Securities Exchange Act Release No. 73823 (December 11, 2014), 79 FR 75207 (December 17, 2014) (SR-NASDAQ-2014-119).

<sup>30</sup> The Exchange notes that Nasdaq MRX also offers the Nasdaq MRX Order Feed and Nasdaq MRX Trades Feed, which are included in the Nasdaq MRX per User fees. See Nasdaq MRX Options Rules, Options 7, Pricing Schedule, Section 7, Market Data.

best bid and offer and last sale information.<sup>31</sup> The Nasdaq MRX Top of Market feed is similar to the Exchange's ToM feed. The Nasdaq MRX Depth of Market feed is an options feed that provides full order and quote depth information for individual orders and quotes and last sale information.<sup>32</sup> The Nasdaq MRX Depth of Market feed is similar to the Exchange's SLF feed. The Nasdaq MRX Spread feed is an options feed that provides information for both simple and complex orders.<sup>33</sup> The Nasdaq MRX Spread feed is similar to the Exchange's cToM data feed.

Nasdaq MRX charges Professional Users \$25.25 per month and Non-Professional Users \$1.00 per month for the Nasdaq MRX Top of Market feed, the Nasdaq MRX Depth of Market Feed, and the Nasdaq MRX Spread Feed.<sup>34</sup> The Exchange proposes to charge less than Nasdaq MRX for Professional Users and the same as Nasdaq MRX for Non-Professional Users while also providing access to all of its market data fees for single per User fee. Specifically, for the ToM, cToM, and SLF data feeds, the Exchange proposes to charge Professional Users \$20.00 per month and Non-Professional Users \$1.00 per month. The Exchange's proposed Professional User fee is lower than Nasdaq MRX and its Non-Professional User fee is equal to Nasdaq MRX. Despite having lower market share than the Exchange, Nasdaq MRX charges higher or comparable per User fees than the fees proposed by the Exchange herein.

Cboe BZX Options. Cboe BZX Options, with a market share of approximately 4.21%, which is lower than the Exchange's market share, charges higher Professional and Non-Professional User fees for its depth of book feed than the fees proposed by the Exchange. Further, Cboe BZX Options also charges separate per User fees per data product, whereas the

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<sup>31</sup> See Nasdaq MRX Options Rules, Options 3, Section 23(a)(3).

<sup>32</sup> See Nasdaq MRX Options Rules, Options 3, Section 23(a)(1).

<sup>33</sup> See Nasdaq MRX Options Rules, Options 3, Section 23(a)(2).

<sup>34</sup> See Price List – U.S. Derivatives Data, available at <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions>.

Exchange proposes to charge a single lower per User fee that would provide access to all of its market data products for a single fee.

The Cboe BZX Options Top feed is an options feed that provides top of book quotations and execution information.<sup>35</sup> The Cboe BZX Options Top feed is similar to the Exchange's ToM feed. The Cboe BZX Options Depth feed is an options feed that provides depth of book quotations and execution information. The Cboe BZX Options Depth feed is similar to the Exchange's SLF data feed.

Cboe BZX Options charges Professional Users \$30.00 per month and Non-Professional Users \$1.00 per month for the Cboe BZX Options Depth feed. The Exchange proposes to charge less than Cboe BZX Options and provide access to all of its market data fees for single, and still lower, per User fee. Specifically, for ToM, cToM, and SLF data feeds, the Exchange proposes to charge Professional Users \$20.00 per month and Non-Professional Users \$1.00 per month. The Exchange's proposed Professional User fee is lower than Cboe BZX Options and its Non-Professional User fee is equal to Cboe BZX Options. However, both of the Exchange's proposed fees can be lower than Cboe BZX Options because a User may receive access to each of the Exchange's data feeds for a single per User fee and, unlike Cboe BZX Options, not be required to pay a separate per User fee for each data product.<sup>36</sup>

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<sup>35</sup> For the Cboe BZX Options Top feed, Cboe BZX Option charges Professional Users \$5.00 per month and Non-Professional Users \$0.10 per month. For ToM, cToM and SLF data feeds, the Exchange proposes to charge Professional Users \$20.00 per month and Non-Professional Users \$1.00 per month. Although higher, the Exchange's proposed Professional and Non-Professional User fees are not necessarily comparable to Cboe BZX Options Top fees because a User may receive access to each of the Exchange's three data feeds for a single per User fee and, unlike Cboe BZX Options, not be required to pay a separate per User fee for each data product and Cboe BZX Options only provides two data feeds that provide only Cboe BZX Options data. Cboe BZX Options also offers the Cboe One Options Feed, which provides information for not only Cboe BZX Options, but also its three affiliated options markets, Cboe EDGX Options, Cboe, and Cboe C2. See Cboe BZX Options Rule 21.15 (b)(6).

<sup>36</sup> Id.

Cboe C2. Cboe C2, with a market share of approximately 2.89% that is lower than the Exchange, charges higher Professional and Non-Professional User fees for its C2 Options Depth and C2 COB feed than proposed by the Exchange. Unlike Cboe C2, the Exchange proposes to charge a single per User fee that would provide access to all of its market data products for a single fee.

The Cboe C2 Options Depth feed is an options feed that provides depth of book quotations and execution information. The Cboe C2 Options Depth feed is similar to the Exchange's SLF data feed. The Cboe C2 COB feed is an options data feed that provides information for complex strategies (multi-leg trades, such as spreads, straddles and buy-writes).<sup>37</sup> The Cboe C2 COB feed is similar to the Exchange's cToM data feed.<sup>38</sup> Cboe C2 charges all Users, both Professional Users and Non-Professional Users, \$25.00 per month for the Cboe C2 COB feed and \$50.00 for the Depth feed.<sup>39</sup> The Exchange proposes to charge less than Cboe C2 for Professional Users and Non-Professional Users while also providing access to all of its market data feeds for a single per User fee. Specifically, for the cToM data feed, the Exchange proposes to charge Professional Users \$20.00 per month and Non-Professional Users \$1.00 per month. The Exchange's proposed Professional User and Non-Professional User fees are lower

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<sup>37</sup> See [https://www.cboe.com/market\\_data\\_services/us/options/](https://www.cboe.com/market_data_services/us/options/).

<sup>38</sup> Cboe C2 also provides the Cboe C2 Top feed, which provides top of book quotations and execution information. Cboe C2 Top is similar to the Exchange's ToM feed. Cboe C2 charges Professional Users \$5.00 per month and Non-Professional Users \$0.10 per month. For ToM, cToM and SLF data feeds, the Exchange proposes to charge Professional Users \$20.00 per month and Non-Professional Users \$1.00 per month. Although higher, the Exchange's proposed Professional and Non-Professional User fees are not necessarily comparable to Cboe C2 Top fees because a User may receive access to each of the Exchange's three data feeds for a single per User fee and, unlike Cboe C2, not be required to pay a separate per User fee for each data product and Cboe C2 also provides three data feeds that provide only Cboe C2 data. It is reasonable, however, to compare the Exchange's data feeds to Cboe C2 data feeds with higher per User fees because they charge the higher fee for a single data product whereas the Exchange includes each of its data products for a single fee. Cboe C2 also offers the Cboe One Options Feed, which provides information for not only Cboe C2, but also its three affiliated options markets, Cboe EDGX Options, Cboe, and Cboe BZX Options.

<sup>39</sup> See Cboe C2 Fee Schedule, available at [https://www.cboe.com/us/options/membership/fee\\_schedule/ctwo/](https://www.cboe.com/us/options/membership/fee_schedule/ctwo/).

than the fees for the Cboe C2 COB feed. Despite having slightly higher market share than the Exchange, Cboe C2 charges higher or comparable per User fees than proposed by the Exchange herein.

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Each of the above examples of other exchanges' market data fees support the proposition that the Exchange's proposed User fees are comparable to those of other exchanges and therefore reasonable.

#### Non-Display Usage Fee

The proposed Non-Display Usage fee for the Exchange's market data products is comparable to those charged by Nasdaq Options and Nasdaq MRX, as summarized in below table.

Exchange	Market Share <sup>†</sup>	Market Data Products	Monthly Non-Display Usage Fee
MIAX Sapphire	3.23%	All	\$1,500.00 (per feed (capped at \$3,000.00))
Nasdaq Options	5.34%	NOM BONO NOM ITTO	\$10,530.00 (per exchange)
Nasdaq MRX	2.77%	MRX Top MRX Depth MRX Spread	\$7,575.00 (per exchange)

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<sup>†</sup> See supra note 24.

A more detailed discussion of the comparison follows.

Nasdaq Options. Nasdaq Options, with a market share of approximately 5.34%, which is higher than the Exchange's market share, charges higher Non-Display Usage fees for its top of book and depth of book feeds than proposed by the Exchange. Further, Nasdaq Options also charges the full Non-Display Usage fees to receive all of its data products, whereas the Exchange proposes to cap the Non-Display Usage fee at \$3,000.00, which would provide a discount to

subscribers that choose to subscribe to multiple Exchange data feeds for Non-Display Usage.<sup>40</sup>

As discussed above, the Nasdaq Options BONO feed is an options feed that provides Nasdaq Options' best bid and offer and last sale information.<sup>41</sup> The Nasdaq Options BONO feed is similar to the Exchange's ToM data feed. The Nasdaq Options ITTO feed is an options feed that provides full order and quote depth information for individual orders and quotes and last sale information.<sup>42</sup> Nasdaq Options ITTO also provides, among other things, product (option series) available for trading on Nasdaq Options, the trading status of such products (i.e., whether the series is available for closing transactions only), and order imbalances on opening/reopenings. The Nasdaq Options ITTO feed is similar to the Exchange's SLF data feed.<sup>43</sup>

Nasdaq Options charges a monthly fee of \$10,530.00 for Non-Display Usage of the Nasdaq Options BONO feed and Nasdaq Options ITTO feed.<sup>44</sup> The Exchange proposes to charge less than Nasdaq Options while also proposing to cap the Non-Display Usage fee at \$3,000.00, which would provide a discount to subscribers that choose to subscribe to multiple Exchange data feeds for Non-Display Usage. Specifically, for the ToM, cToM, and SLF data feeds, the Exchange proposes to charge a monthly fee of \$1,500.00 for Non-Display Usage and to cap the Non-Display Usage fee at \$3,000.00 for those that wish to receive two or more of the Exchange's data feeds for Non-Display Usage. This cap would be in lieu of paying the full Non-

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<sup>40</sup> The Exchange notes that not all options exchanges charge non-display fees for options data. For example, Cboe, Cboe C2, Cboe EDGX Options, Cboe BZX Options, BOX, and MEMX Options do not charge non-display fees. Therefore, the Exchange compared its fees to two comparable exchanges, Nasdaq Options and Nasdaq MRX, which charge non-display fees.

<sup>41</sup> See Nasdaq Options Rules, Options 3, Section 23(a)(2).

<sup>42</sup> See Nasdaq Options Rules, Options 3, Section 23(a)(1).

<sup>43</sup> The Exchange proposes to cap the amount of Non-Display Usage fees for those that subscribe to multiple Exchange data feeds.

<sup>44</sup> See Price List – U.S. Derivatives Data, available at <https://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions>. See also Securities Exchange Act Release No. 73823 (December 11, 2014), 79 FR 75207 (December 17, 2014) (SR-NASDAQ-2014-119).

Display Usage Fee for each data product, which would total \$6,000.00 per month. Despite having incrementally lower market share than the Exchange, Nasdaq Options charges higher Non-Display Usage fees than the fees proposed by the Exchange herein.

Nasdaq MRX. Nasdaq MRX, with a market share of approximately 2.77%, which is lower than the Exchange's market share, charges higher Non-Display Usage fees for its top of book, depth of book, and order feeds than the fees proposed by the Exchange. Like the Exchange proposes herein, Nasdaq MRX charges the full single Non-Display Usage fee for access to all of its market data feeds. The Exchange proposes to cap the Non-Display Usage fee at \$3,000.00, which would provide a discount to subscribers that choose to subscribe to multiple Exchange data feeds for Non-Display Usage, similar to Nasdaq MRX.

The Nasdaq MRX Top of Market feed is an options feed that provides Nasdaq MRX's best bid and offer and last sale information.<sup>45</sup> The Nasdaq MRX Top of Market feed is similar to the Exchange's ToM data feed. The Nasdaq MRX Depth of Market feed is an options feed that provides full order and quote depth information for individual orders and quotes and last sale information.<sup>46</sup> The Nasdaq MRX Depth of Market feed is similar to the Exchange's SLF feed. The Nasdaq MRX Spread feed is an options feed that provides information for both simple and complex orders.<sup>47</sup> The Nasdaq MRX Spread feed is similar to the Exchange's cToM data feed.

Nasdaq MRX charges a monthly fee of \$7,575.00 for Non-Display Usage of the Nasdaq MRX Top of Market feed, Nasdaq MRX Depth of Market feed, and Nasdaq MRX Spread feed.<sup>48</sup> The Exchange proposes to charge less than Nasdaq MRX while also proposing to cap the Non-

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<sup>45</sup> See Nasdaq MRX Options Rules, Options 3, Section 23(a)(3).

<sup>46</sup> See Nasdaq MRX Options Rules, Options 3, Section 23(a)(1).

<sup>47</sup> See Nasdaq MRX Options Rules, Options 3, Section 23(a)(2).

<sup>48</sup> See Price List – U.S. Derivatives Data, available at <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions>.

Display Usage fee at \$3,000.00, which would provide a discount to subscribers that choose to subscribe to multiple Exchange data feeds for Non-Display Usage. Specifically, for all of the Exchange's data feeds, the Exchange proposes to charge a monthly fee of \$1,500.00 and to cap the Non-Display Usage fee at \$3,000.00 for those that wish to receive two or more of the Exchange's data feeds for Non-Display Usage. This cap would be in lieu of paying the full Non-Display Usage Fee for each data product, which would total \$6,000.00 per month. Despite having lower market share than the Exchange, Nasdaq MRX charges higher Non-Display Usage fees than the fees proposed by the Exchange herein.

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Each of the above examples of other exchanges' market data fees support the proposition that the Exchange's proposed Non-Display Usage fees lower than those of other exchanges and therefore reasonable.

The below table sets forth each exchanges' distributor fees for each data feed that the Exchange includes in its above comparisons. The below table also includes applicable per User and Non-Display Usage fees that are discussed above.<sup>49</sup>

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<sup>49</sup> The Exchange notes that other exchanges offer an enterprise license fee that provides access to an unlimited number of users for a single price. This fee covers all of the applicable exchange's market data feeds for a single enterprise license fee. The Exchange does not propose to offer an enterprise license fee at this time because customers have not requested it and, at this time, no individual subscriber distributes Exchange market data to a population of individual users that would necessitate purchasing an enterprise license.

Exchange	Market Share <sup>‡</sup>	Market Data Product	Internal Distributors	External Distributors	Pro-User	Non-Pro User	Non-Display Fee
MIAX Sapphire	3.23%	ToM	\$1,200.00	\$2,000.00	\$20.00 (per Exchange)	\$1.00 (per Exchange)	\$1,500.00 (per feed capped at \$3,000.00)
		cToM	\$1,200.00	\$2,000.00			
		SLF	\$3,000.00	\$3,500.00			
Nasdaq Options	5.34%	NOM BONO	\$1,566.00	\$2,089.00	\$42.10 (per exchange)	\$1.00 (per exchange)	(\$10,530.00 (per exchange, no cap)
		NOM ITTO	\$1,566.00	\$2,089.00			
Nasdaq MRX	2.77%	MRX Top	\$1,515.00	\$2,020.00	\$25.25 (per exchange)	\$1.00 (per exchange)	\$7,575.00 (per exchange, no cap)
		MRX Depth	\$1,515.00	\$2,020.00			
		MRX Spread	\$1,010.00	\$1,515.00			
Cboe BZX Options	4.21%	BZX Depth	\$3,000.00	\$2,000.00	\$30.00 (per feed)	\$1.00 (per feed)	N/A
Cboe C2	2.89%	C2 Complex	\$1,000.00	\$1,000.00	\$25.00 (per feed)	\$25.00 (per feed)	N/A
		C2 Depth	\$2,500.00	\$2,500.00	\$50.00 (per feed)	\$50.00 (per feed)	N/A

<sup>‡</sup> See supra note 24.

As illustrated by the above table, while distributor fees may vary across exchanges, and in some instances are higher on the Exchange, the per User fees of other exchanges are generally higher than that proposed by the Exchange and can quickly make up for any difference in distributor fees due to an increased number of Users permissioned to view other exchanges' data feeds when compared to the Users permissioned to view data from the Exchange. In addition, Nasdaq Options and Nasdaq MRX charge materially higher fees for Non-Display Usage. Meanwhile, Cboe BZX Options and Cboe C2 would charge non-display users their applicable distribution fee, which are not capped and are either higher than, or comparable to, the fees proposed by the Exchange. Furthermore, the Exchange proposes to only charge fees to Internal

and External Distributors for the ToM, cToM and SLF feeds, which, when combined with the above proposed fees, result in fee packages that are generally comparable to the fee packages charged by Nasdaq Options, Nasdaq MRX, Cboe BZX Options, and Cboe C2 due to those exchanges charging higher or similar User and Non-Display Usage fees, as set forth above.

Lastly, the proposed discount to charge per User fees at the Exchange level, and not per data feed, as well as capping the monthly Non-Display Usage fee for use of multiple data feeds, is reasonable and cause the Exchange's proposed fees to be even lower for subscribers to multiple Exchange data products.

*Pro-Rata Distribution of Fees.* The Exchange believes its proposal to remove the text that the Exchange will pro-rate mid-month changes to subscriptions is reasonable because the Exchange's affiliates had no mid-month subscriptions or terminations over the past twelve (12) months that would have required the monthly fee to be pro-rated and no other options exchanges provides for the similar pro-ration of market data fees.<sup>50</sup> Also, removing these provisions would harmonize the MIAX Sapphire Fee Schedule with the MIAX Pearl Equities Fee Schedule, which does not provide for pro-ration of market data fees.<sup>51</sup>

### **The Proposed Fees are Equitably Allocated**

*Overall.* The Exchange believes that its proposed fees are reasonable, equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes that the proposed fees for the market data feeds are allocated fairly and equitably among the various categories of users of the data feeds, and any differences among

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<sup>50</sup> See Cboe BZX Fee Schedule, Market Data Fees section and Cboe EDGX Options Fee Schedule, supra note 13. See also MEMX Options Fee Schedule, Market Data Fees section and Securities Exchange Act Release No. 101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40).

<sup>51</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Definitions, and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25).

categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the market data feeds. Any market participant that chooses to subscribe to the market data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more market data feeds is based on objective differences in usage of market data feeds among different Members, which are still ultimately in the control of any particular Member. The Exchange believes the proposed pricing of the market data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants.

Pro-Rata Distribution of Fees. The Exchange believes its proposal to remove the text that the Exchange will pro-rate mid-month changes to subscriptions is equitably allocated because the Exchange's affiliates had no subscriber utilize pro-ration via a mid-month subscription or termination over the past twelve (12) months, nor does it foresee a subscriber doing so in the near future. The Exchange believes it is equitable to remove the text that the Exchange will pro-rate fees for Distributors who subscribe mid-month because other options exchanges do not provide for the similar pro-ration of market data fees.<sup>52</sup> Also, removing these provisions would harmonize the MIAX Sapphire Fee Schedule with the MIAX Pearl Equities Fee Schedule, which does not provide for pro-ration of market data fees.<sup>53</sup>

User Fees. The Exchange believes that the proposed fee, fee levels, and structure that

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<sup>52</sup> See Cboe BZX Options Fee Schedule, Market Data Fees section and Cboe EDGX Options Fee Schedule, Market Data Fees section, supra note 13. See also MEMX Options Fee Schedule, Market Data Fees section and Securities Exchange Act Release No. 101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40).

<sup>53</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Definitions, and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25).

differentiates between Professional User fees from Non-Professional User fees for display use are equitable. This structure has long been used by other exchanges and OPRA to reduce the price of data to Non-Professional Users and make it more broadly available.<sup>54</sup> Offering the market data feeds to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. While Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

Non-Display Usage Fees. The Exchange believes the proposed Non-Display Usage fees are equitably allocated because they would require Distributors to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading and order routing) as well as purposes that do not directly generate revenues (such as risk management and compliance) but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data Distributors that use the market data feeds because all such Distributors would have the ability to use such data for as many non-display uses as they wish for one low fee. As noted above, this structure is comparable to that in place for the exchanges referenced above and several other exchanges charge multiple non-display fees to the same client to the extent they use a data feed in several different trading

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<sup>54</sup> See, e.g., Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

platforms or for several types of non-display use.<sup>55</sup>

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For all of the foregoing reasons, the Exchange believes that the proposed fees for the market data feeds are equitably allocated.

### **The Proposed Fees Are Not Unfairly Discriminatory**

The Exchange believes the proposed fees are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

*Overall.* The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same market data feed(s). Any market participant, including market data vendors, that chooses to subscribe to the market data feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Market participants seeking lower cost options may instead choose to receive data from OPRA or another potentially lower cost option such as a market data vendor. The Exchange notes that market participants can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each market participant has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the importance of that information to market participants. As described

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<sup>55</sup> See Cboe BZX Options Fee Schedule, available at [https://www.cboe.com/us/options/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/options/membership/fee_schedule/bzx/) (providing fees of \$2,000.00 to \$3,000.00 for Distribution, which includes Non-Display use); Cboe C2 Fee Schedule, available at [https://www.cboe.com/us/options/membership/fee\\_schedule/ctwo/](https://www.cboe.com/us/options/membership/fee_schedule/ctwo/) (providing a fee \$2,500.00 for Distribution, which includes Non-Display use); Nasdaq Options Fee Schedule, available at <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions> (providing a fee of \$10,000.00 for Non-Display Use); and the NYSE American fee schedule, available at [https://www.nyse.com/publicdocs/nyse/data/NYSE\\_Market\\_Data\\_Pricing.pdf](https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf) (providing a fee of \$5,000.00 for Non-Display Use).

above, the ToM data feed can be utilized to trade on the Exchange but contains less information than available on the SLF data feed. Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with the same fees being proposed for each data feed coupled with the discounts and caps discussed above.

*Pro-Rata Distribution of Fees.* The Exchange believes that the proposal to remove the text that the Exchange will pro-rate mid-month changes to market data subscriptions is not unfairly discriminatory because the Exchange's affiliates had no mid-month subscriptions or terminations over the past twelve (12) months that would have required the monthly fee to be pro-rated. The Exchange notes that other options exchanges do not provide for the similar pro-ration of market data fees.<sup>56</sup> Also, removing these provisions would harmonize the MIAX Sapphire Fee Schedule with the MIAX Pearl Equities Fee Schedule, which does not provide for pro-ration.<sup>57</sup>

*User Fees.* The Exchange believes that the proposed fee, fee levels, and structure that differentiates between Professional User fees from Non-Professional User fees for display use are not unfairly discriminatory. This structure has long been used by other exchanges and OPRA to reduce the price of data to Non-Professional Users and make it more broadly available. Offering the market data feeds to Non-Professional Users with the same data as is available to Professional Users, albeit at a lower cost, results in greater equity among data recipients. These User fees would be charged uniformly to all individuals that have access to the market data feeds based on the category of User.

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<sup>56</sup> See Cboe BZX Options Fee Schedule, Market Data Fees section and Cboe EDGX Options Fee Schedule, Market Data Fees section, supra note 13. See also MEMX Options Fee Schedule, Market Data Fees section and Securities Exchange Act Release No. 101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40).

<sup>57</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Definitions and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25).

The Exchange also believes the proposed User fees are not unfairly discriminatory, with higher fees for Professional Users than Non-Professional Users, because Non-Professional Users may have less ability to pay for such data than Professional Users as well as less opportunity to profit from their usage of such data.

Non-Display Usage Fees. The Exchange believes that the proposed Non-Display Usage fees are not unfairly discriminatory because they would require Distributors for non-display use to pay fees depending on their use of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions.

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For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange's market data feeds are not unfairly discriminatory.

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Remove Initial Waiver Period Rule Text

The Exchange believes its proposal to remove the rule text regarding the Initial Waiver Period below the table of fees in Sections 6)a) and b) of the Fee Schedule is reasonable, equitable and not unfairly discriminatory because the Initial Waiver Period automatically expired at the end of February 2025. Upon the expiration of the Initial Waiver Period, effective March 1, 2025, the market data fees in Sections 6)a)-b) of the Fee Schedule began to apply to all market participants equally who subscribe to the ToM, cToM, and/or SLF data feeds. This proposed change will also remove impediments to and perfect the mechanism of a free and open market because it will remove text that no longer

apples from the Fee Schedule, thereby providing clarity to market participants regarding the Exchange's market data fees. It is in the public interest for the Fee Schedule to be clear.

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

In accordance with Section 6(b)(8) of the Act,<sup>58</sup> the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant, which are still ultimately in the control of any particular Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes its proposal to no longer pro-rate mid-month changes to market data subscriptions does not place an undue burden on intra-market competition because all market participants will be subject to the same Fee Schedule, regardless of which point in the month they subscribe. As noted above, the Exchange's affiliates had no mid-month subscriptions or terminations over the past twelve (12) months that would have required the monthly fee to be

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<sup>58</sup> 15 U.S.C. 78f(b)(8).

pro-rated. The Exchange notes that other options exchanges do not provide for the similar pro-ration of market data fees.<sup>59</sup> Also, removing these provisions would harmonize the MIAX Sapphire Fee Schedule with the MIAX Pearl Equities Fee Schedule, which does not provide for pro-ration.<sup>60</sup>

### Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to either data feed, as described above. An exchange that overprices its market data products stands a high risk that users may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants. Other options exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process.

The Exchange believes its proposal to remove the rule text regarding the Initial Waiver Period below the table of fees in Sections 6)a) and b) of the Fee Schedule will not impose any burden on competition because the Initial Waiver Period automatically expired at the end of February 2025. Upon the expiration of the Initial Waiver Period, effective March 1, 2025, the market data fees in Sections 6)a)-b) of the Fee Schedule began to apply to all market participants equally who subscribe to the ToM, cToM, and/or SLF data feeds.

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<sup>59</sup> See Cboe BZX Options Fee Schedule, Market Data Fees section and Cboe EDGX Options Fee Schedule, Market Data Fees section. See also MEMX Options Fee Schedule, Market Data Fees section and Securities Exchange Act Release No. 101370 (October 17, 2024), 89 FR 84638 (October 23, 2024) (SR-MEMX-2024-40).

<sup>60</sup> See MIAX Pearl Equities Fee Schedule, Section 3), Market Data Definitions and Securities Exchange Act Release No. 100319 (June 12, 2024), 89 FR 51562 (June 19, 2024) (SR-PEARL-2024-25).

This proposed change is not competitive; rather it is to remove text that no longer applies from the Fee Schedule, thereby providing clarity to market participants regarding the Exchange's market data fees.

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>61</sup> and Rule 19b-4(f)(2)<sup>62</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

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number

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<sup>61</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>62</sup> 17 CFR 240.19b-4(f)(2).

SR-SAPPHIRE-2025-23 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-SAPPHIRE-2025-23. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-SAPPHIRE-2025-23 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>63</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>63</sup> 17 CFR 200.30-3(a)(12).