

**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 MIAX Emerald Options Exchange Fee Schedule (“Fee Schedule”) to establish a fee discount program for the Open-Close Report.

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 January 19, 2024. 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 Michael Slade, AVP, Associate Counsel, at (609) 955-0460.

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

a. Purpose

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

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

The Exchange proposes to amend Section 6)e) of the Fee Schedule for the Open-Close Report to provide a temporary 20% discount on fees assessed to Exchange Members<sup>3</sup> and non-Members that purchase \$20,000 or more in a single order of historical Open-Close Report data, effective January 1, 2025 through June 30, 2025. The proposed discount and its application are substantively similar to the discounts recently provided by competing options exchanges for their open-close data products.<sup>4</sup>

By way of background, the Exchange offers two versions of the Open-Close Report, an end-of-day summary and intra-day report.<sup>5</sup> The End-of-Day Open-Close Report is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer<sup>6</sup>, 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 customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

The Intra-Day Open-Close Report provides similar information to that of the End-of-Day version but is produced and updated every 10 minutes during the trading day. Data is captured in

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<sup>3</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>4</sup> See Securities Exchange Act Release Nos. 99028 (November 28, 2023), 88 FR 84002 (December 1, 2023) (SR-CBOE-2023-061) (establishing the initial 20% discount on fees assessed to Cboe Exchange, Inc. Members and non-Members that purchase \$20,000 or more of historical Open-Close Data, effective November 15, 2023 through December 31, 2023). See also Securities Exchange Act Release Nos. 100370 (June 18, 2024), 89 FR 53148 (June 25, 2024) (SR-CBOE-2024-025); 101509 (November 4, 2024), 89 FR 88845 (November 8, 2024) (SR-CBOE-2024-049); 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR-CboeBZX-2023-094); 100371 (June 18, 2024), 89 FR 53140 (June 25, 2024) (SR-CboeBZX-2024-047); 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR-C2-2023-023); 100427 (June 25, 2023 [sic]), 89 FR 54552 (June 25, 2023 [sic]) (SR-C2-2024-012); 99026 (November 28, 2023), 88 FR 84023 (December 1, 2023) (SR-CboeEDGX-2023-070); and 100352 (June 17, 2024), 89 FR 52521 (June 24, 2024) (SR-CboeEDGX-2024-033).

<sup>5</sup> See Exchange Rule 531(d)(1).

<sup>6</sup> See Exchange Rule 100.

<sup>7</sup> Id.

“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. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.” The Intra-Day Open-Close data provides 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), side of the market (buy or sell), and transaction type (opening or closing). All volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

Both versions of the Open-Close Report contain proprietary Exchange trade data and do not include trade data from any other exchange. The Intra-Day and End-of-Day Open-Close Report data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so. The Open-Close Report is also a historical data product and not a real-time data feed.

The Exchange makes the Open-Close Report available for purchase to Members and non-Members.<sup>8</sup> Customers may currently purchase the Open-Close Report on a subscription basis (monthly) or by ad hoc request for a specified month or number of months. The Exchange assesses 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.<sup>9</sup> The Exchange also assesses a fee of \$500 per request per month for ad-hoc requests for historical End-of-Day Open-Close data.<sup>10</sup> An ad-hoc request for historical End-of-Day Open-Close data

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<sup>8</sup> See Fee Schedule, Section 6)e).

<sup>9</sup> Id.

<sup>10</sup> Id.

can be for any number of months beginning with June 2021 for which the data is available.<sup>11</sup>

The Exchange also assesses a fee of \$1,000 per request per month for ad-hoc requests for historical Intra-Day Open-Close data.<sup>12</sup> An ad-hoc request for historical Intra-Day Open-Close data can be for any number of months beginning with March 2019 for which the data is available.<sup>13</sup> The Exchange also provides discounts in Section 6)e) of the Fee Schedule for customers who request multiple subscriptions or who are Qualifying Academic Purchasers.<sup>14</sup>

Open-Close Report data is subject to direct competition from similar end-of-day and intra-day options trading summaries offered by several other options exchanges.<sup>15</sup> All of these

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> 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). See Securities Exchange Act Release No. 97307 (April 13, 2024), 88 FR 24217 (April 19, 2023) (SR-EMERALD-2023-09).

<sup>15</sup> These substitute products are as follows: Open-Close Data products from Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), Cboe EDGX Exchange, Inc. (“EDGX Options”), and Cboe BZX Exchange, Inc. (“BZX Options”); Nasdaq PHLX LLC (“PHLX”) Options Trade Outline, The Nasdaq Stock Market LLC (“Nasdaq”) Options Trade Outline, Nasdaq ISE, LLC (“ISE”) Open/Close Trade Profile, and Nasdaq GEMX, LLC (“GEMX”) Open/Close Trade Profile; and NYSE Options Open-Close Volume Summary for each of NYSE Arca, Inc. (“NYSE Arca”) and NYSE American LLC (“NYSE American”). See e.g., Cboe Fee Schedule, Livevol Fees, Open-Close Data, Page 10, available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf) (last visited December 9, 2024); BZX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees, Open-Close Data, available at [https://www.cboe.com/us/options/membership/fee\\_schedule/bzx/?\\_gl=1\\*\\_ync049\\*\\_up\\*MQ..\\*\\_ga\\*MTc4NDUwMDg0Ny4xNzMzYwNzEw\\*\\_ga\\_5Q99WB9X71\\*MTczMzc2MDcwOS4xLjEuMTczMzc2MTM3MS4wLjAuMA](https://www.cboe.com/us/options/membership/fee_schedule/bzx/?_gl=1*_ync049*_up*MQ..*_ga*MTc4NDUwMDg0Ny4xNzMzYwNzEw*_ga_5Q99WB9X71*MTczMzc2MDcwOS4xLjEuMTczMzc2MTM3MS4wLjAuMA) (last visited December 9, 2024); PHLX Options Rules, Options 7 Pricing Schedule, Section 10. Proprietary Data Feed Fees, PHLX Options Trade Outline (“PHOTO”), available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (last visited December 9, 2024); ISE Options Rules, Options 7: Pricing Schedule, Sections 10.A.-C., available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited December 9, 2024); GEMX Options Rules, Options 7: Pricing Schedule, Sections 7.D.-F., available at <https://listingcenter.nasdaq.com/rulebook/gemx/rules/GEMX%20Options%207> (last visited December 9, 2024); and NYSE Arca Options Proprietary Market Data Fees, NYSE Options Open-Close Volume Summary, page 2, available at [https://www.nyse.com/publicdocs/nyse/data/NYSE\\_Arca\\_Options\\_Proprietary\\_Data\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf) (last visited December 9, 2024).

exchanges offer essentially the same end-of-day and intra-day options trading summary information for trading activity on those exchanges.

The Exchange now proposes to amend Section 6)e) of the Fee Schedule to provide a temporary pricing incentive program in which Members and non-Members that purchase historical Open-Close Report data will receive a percentage fee discount when a specific purchase threshold is met. Specifically, the Exchange proposes to establish new footnote “e.” below the table of fees for the Open-Close Report in Section 6)e) of the Fee Schedule, which will apply to the rows for “End-of-Day Ad-hoc Request (historical data)” and “Intra-Day Ad-hoc Request (historical data)”. Proposed footnote “e.” will provide a 20% discount for ad-hoc purchases of historical Open-Close Report data of \$20,000 or more.<sup>16</sup> To encourage the purchase of monthly subscriptions to Open-Close Report data, the Exchange proposes to provide the proposed discount to only existing subscribers<sup>17</sup> who purchase the same category of historical data for which they have a monthly Intra-Day or an End-of-Day subscription. The proposed discount cannot be combined with any other discounts offered by the Exchange, including the academic discount provided for Qualifying Academic Purchasers<sup>18</sup> of historical Open-Close Report data.

#### Implementation Date

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<sup>16</sup> The discount will apply on an order-by-order basis. To qualify for the discount, an order must contain End-of-Day Ad-hoc Requests (historical data) and/or Intra-Day Ad-hoc Requests (historical data) and must total \$20,000 or more. The Exchange will not aggregate purchases made throughout a billing cycle for purposes of the incentive program. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000). This is in line with the similar discount programs offered by the Cboe exchanges for their open-close data products. See supra note 4.

<sup>17</sup> The Exchange notes that this differs from the Cboe exchanges’ discount program for their open-close data product, which discount applies to all market participants irrespective of whether the market participant is a new or current purchaser. See, e.g., Securities Exchange Act Release No. 101509 (November 4, 2024), 89 FR 88845 (November 8, 2024) (SR-CBOE-2024-049).

<sup>18</sup> See supra note 14.

The Exchange intends to introduce the discount program beginning January 1, 2025, with the program remaining in effect through June 30, 2025.<sup>19</sup>

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>21</sup> in particular, in 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>22</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>23</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. options market data

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<sup>19</sup> The Exchange notes that at the end of this period, the proposed discount program will expire unless the Exchange files another 19b-4 Rule Filing with the Securities and Exchange Commission (“SEC”) to amend the terms or extend the discount program.

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

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

<sup>23</sup> 15 U.S.C. 78f(b)(4).

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. Moreover, several other exchanges offer similar data products which offer the same type of data content through end-of-day or intra-day reports.<sup>24</sup>

The Exchange operates in a highly competitive environment. Indeed, there are currently 18 registered options exchanges that trade options. Based on publicly available information, no single options exchange had more than approximately 13-14% of the equity options market share for the month of November 2024 and the Exchange represented only approximately 5.25% of the equity options market share for the month of November 2024.<sup>25</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

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<sup>24</sup> See supra note 15.

<sup>25</sup> See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/>.

investors and listed companies.”<sup>26</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. The proposed fee discount for historical Open-Close Report data is a result of this competitive environment, as the Exchange seeks to attract subscribers of historical Open-Close Report data and make such data more widely accessible.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Open-Close Report data is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Open-Close Report data. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Open-Close Report data at a discounted rate and will therefore encourage and promote users to purchase the historical Open-Close Report data. Specifically, the proposed discount is similar to discounts provided for a similar data product by other options exchanges.<sup>27</sup> Further, the proposed discount is intended to promote increased use of the Exchange’s historical Open-Close Report data by defraying some of the costs a purchaser would ordinarily have to expend. Further, providing the proposed discount to only existing subscribers of a monthly Intra-Day or an End-of-Day subscription is designed to encourage the purchase of monthly subscriptions to Open-Close Report data.

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<sup>26</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>27</sup> See *supra* note 4. Again, the Exchange notes that this differs from the Cboe exchanges’ discount program for their open-close data product, which discount applies to all market participants irrespective of whether the market participant is a new or current purchaser. See, e.g., Securities Exchange Act Release No. 101509 (November 4, 2024), 89 FR 88845 (November 8, 2024) (SR-CBOE-2024-049).

The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who are existing subscribers of Open-Close Report data and chose to also purchase historical Open-Close Report data. Providing the proposed discount to only existing subscribers of a monthly Intra-Day or an End-of-Day subscription is not unfairly discriminatory because it is a reasonable means to encourage the purchase of monthly subscriptions to Open-Close Report data. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Open-Close Report data, and the Exchange is not required to make the historical Open-Close Report data available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above, Open-Close Report data is subject to direct competition from several other options exchanges that offer substantively similar substitutes to the Exchange's Open-Close Report, albeit for trading data on those exchanges.<sup>28</sup> Moreover, purchase of historical Open-Close Report data is entirely optional. It is

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See supra note 15.

designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. 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. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Open-Close Report data.

**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>29</sup> and Rule 19b-4(f)(2) thereunder<sup>30</sup> the 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**

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>30</sup> 17 CFR 240.19b-4.

The proposed rule change and discount program are based on substantively similar discount programs in place at competing exchanges for their open-close data products.<sup>31</sup>

**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.

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<sup>31</sup> See supra note 4.