

1. Text of the Proposed Rule Change

(a) MIAX Sapphire, LLC (“MIAX Sapphire” or the “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX Sapphire Options Exchange Fee Schedule (the “Fee Schedule”) to establish fees 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”).

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) Inapplicable.

(c) Inapplicable.

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’s Board of Directors on July 23, 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, Assistant Vice President, Associate Counsel, at (609) 955-0460.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

a. Purpose

On July 19, 2024, the Exchange filed a proposal to establish the ToM, cToM and SLF data feeds (collectively, the “market data feeds”)³ for MIAX Sapphire. The Exchange now proposes to amend the Fee Schedule to establish fees for each of these market data feeds.⁴ The Exchange also proposes to waive such fees during an Initial Waiver Period,⁵ which would run for six full calendar months from the initial effective date (August 12, 2024) of the proposed fees to incentivize market participants to subscribe and make the Exchange’s proprietary market data more widely available. The Exchange initially filed this proposal on August 8, 2024 (SR-SAPPHIRE-2024-18).⁶ The Exchange withdrew the Initial Proposal on October 3, 2024 and resubmitted its proposal (SR-SAPPHIRE-2024-31).⁷ The Exchange withdrew the Second Proposal on November 25, 2024 and resubmitted its proposal (SR-SAPPHIRE-2024-39).⁸ The Exchange withdrew the Third Proposal on January 23, 2025 and resubmitted this proposal (SR-SAPPHIRE-2025-04).

The ToM data feed contains top of book quotations based on options orders⁹ and quotes¹⁰ resting on the Exchange’s Simple Order Book¹¹ as well as administrative messages, such as other

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

⁴ 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).

⁵ The term “Initial Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX 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.

⁶ See Securities Exchange Act Release No. 100806 (August 22, 2024), 89 FR 68964 (August 28, 2024) (SR-SAPPHIRE-2024-18) (the “Initial Proposal”).

⁷ See Securities Exchange Act Release No. 101368 (October 17, 2024), 89 FR 84646 (October 23, 2024) (SR-SAPPHIRE-2024-31) (the “Second Proposal”).

⁸ See Securities Exchange Act Release No. 101843 (December 9, 2024), 89 FR 101069 (December 13, 2024) (SR-SAPPHIRE-2024-39) (the “Third Proposal”).

⁹ The term “order” means a firm commitment to buy or sell option contracts. See Exchange Rule 100.

real-time Exchange System¹² functions.¹³ The cToM data feed includes the same types of information as ToM, but for Complex Orders¹⁴ on the Exchange's Strategy Book.¹⁵ This information includes the Exchange's best bid and offer for a complex strategy¹⁶, 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). ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

The Exchange notes that there is no requirement that any Member¹⁷ or market participant subscribe to the ToM, cToM, or SLF data feeds. Instead, a Member may choose to maintain

¹⁰ The term "quote" or "quotation" The term "quote" or "quotation" means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any. When the term order is used in the Exchange's Rules and a bid or offer is entered by the Market Maker in the option series to which such Market Maker is registered, such order shall, as applicable, constitute a quote or quotation for purposes of the Exchange's Rules. See Exchange Rule 100.

¹¹ The "Simple Order Book" is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 100.

¹² The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹³ See MIAx Sapphire Options Exchange User Manual, Version 1.0.0, Section 5.06, dated December 11, 2023, available at https://www.miaxglobal.com/miax_sapphire_user_manual.pdf (last visited July 24, 2024).

¹⁴ 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).

¹⁵ The "Strategy Book" is the Exchange's electronic book of complex orders. See Exchange Rule 100.

¹⁶ 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).

¹⁷ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

subscriptions to ToM, cToM, or SLF based on their trading strategies and individual business decisions. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information¹⁸ from the Options Price Reporting Authority (“OPRA”) for the same classes or series of options that are included in the proprietary data feed (including for exclusively listed products), and proprietary data feeds cannot be used to meet that particular requirement. The proposed fees described below would not apply differently based upon the size or type of firm, but rather based upon the type of subscription a firm has to ToM, cToM, or SLF and their use thereof, which are based upon factors deemed relevant by each firm.

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. 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.

¹⁸ The term “consolidated Options Information” means “consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA...” Access to consolidated Options Information is deemed “equivalent” if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (“OPRA Plan”), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

Each of the proposed fees are described below. Again, the Exchange proposes to not charge the proposed fees during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

ToM

The Exchange proposes to charge a monthly fee of \$1,200 to Internal Distributors¹⁹ and \$2,000 to External Distributors for the ToM data feed after the expiration of the Initial Waiver Period. The proposed fees are intended to cover the Exchange's costs with compiling and producing the ToM data feed described in the Exchange's cost analysis detailed below. The Exchange proposes to assess Internal Distributors fees that are less than the fees assessed for External Distributors because External Distributors may monetize their receipt of the ToM data feed by charging their customers fees for receipt of the Exchange's data. Internal Distributors do not have the same ability. The Exchange does not propose to charge any additional fees based on a Distributor's use of the ToM data feed (e.g., displayed versus non-displayed use), redistribution fees, or individual per user fees.

cToM

The Exchange proposes to charge a monthly fee of \$1,200 to Internal Distributors and \$2,000 to External Distributors for the cToM data feed after the expiration of the Initial Waiver Period. The proposed fees are intended to cover the Exchange's costs with compiling and

¹⁹ 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 Data Agreement. See Fee Schedule, proposed Section 6)a).

producing the cToM data feed described in the Exchange's cost analysis detailed below. The Exchange proposes to assess Internal Distributors fees that are less than the fees assessed for External Distributors because External Distributors may monetize their receipt of the cToM data feed by charging their customers fees for receipt of the Exchange's data. Internal Distributors do not have the same ability. The Exchange does not propose to charge any additional fees based on a Distributor's use of the cToM data feed (e.g., displayed versus non-displayed use), redistribution fees, or individual per user fees.

SLF

The Exchange proposes to charge a monthly fee of \$3,000 to Internal Distributors and \$3,500 to External Distributors for the SLF data feed after the expiration of the Initial Waiver Period. The proposed fees are intended to cover the Exchange's costs with compiling and producing the SLF data feed described in the Exchange's Cost Analysis detailed below. The Exchange proposes to assess Internal Distributors fees that are less than the fees assessed for External Distributors because External Distributors may monetize their receipt of the SLF data feed by charging their customers fees for receipt of the Exchange's data. Internal Distributors do not have the same ability. The Exchange does not propose to charge any additional fees based on a Distributor's use of the SLF data feed (e.g., displayed versus non-displayed use), redistribution fees, or individual per user fees.

* * * * *

The Exchange proposes that each Distributor would be charged for each month it is credentialed to receive ToM, cToM, and/or SLF in the Exchange's production environment. Fees for each of the market data feeds will be reduced for new Distributors who subscribe to a market data feed mid-month for the first month they subscribe following the expiration of the

Initial Waiver Period, as described above. New Distributors who subscribe mid-month for each market data feed would be assessed a pro-rata percentage of the applicable Distribution fee based on the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been first credentialed to receive each of the market data feeds in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes the proposed fees will allow the Exchange to offset the expenses the Exchange has and will continue to incur associated with compiling and disseminating the market data feeds. Further, the Exchange believes it provided sufficient transparency in the Cost Analysis provided below, which provides a basis for how the Exchange determined to charge such fees.

The Exchange issued an alert publicly announcing the proposed fees on July 23, 2024.²⁰ The proposed fees are immediately effective.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)²¹ of the Act in general, and furthers the objectives of Section 6(b)(4)²² 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)²³

²⁰ See Fee Change Alert, MIAX Sapphire Options Exchange – Summary of Proposed Non-Transaction Fees (July 23, 2024), available at <https://www.miaxglobal.com/alert/2024/07/23/miax-sapphire-options-exchange-summary-proposed-non-transaction-fees?nav=all>.

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(4).

²³ 15 U.S.C. 78f(b)(5).

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.

In 2019, Commission staff published guidance suggesting the types of information that self-regulatory organizations (“SROs”) may use to demonstrate that their fee filings comply with the standards of the Exchange Act (the “Staff Guidance”).²⁴ While the Exchange understands that the Staff Guidance does not create new legal obligations on SROs, the Staff Guidance is consistent with the Exchange’s view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. The Staff Guidance provides that in assessing the reasonableness of a fee, the Staff would consider whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, the Staff Guidance further provides that the Staff would consider whether the evidence provided by an SRO in a fee filing proposal demonstrates (i) that there are reasonable substitutes for the product or service that is the subject of a proposed fee; (ii) that “platform” competition constrains the fee; and/or (iii) that the revenue and cost analysis provided by the SRO otherwise demonstrates that the proposed fee would not result in the SRO taking supra-competitive profits.²⁵ The Exchange provides sufficient evidence below to support the findings that the proposed fees are reasonable

²⁴ See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), [available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees](https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees).

²⁵ Id.

because the projected revenue and cost analysis contained herein demonstrates that the proposed fees would not result in the Exchange taking supra-competitive profits.

Cost Analysis

In general, 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, and not create an undue burden on competition among Members 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. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange included a cost analysis below in connection with the proposed market data fees and the costs associated with compiling and providing the ToM, cToM, and SLF feeds (the "Cost Analysis").

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members – both generally and in relation to other Members – to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are consistent with the Act based on the Exchange's Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section

19(b)(1) under the Act,²⁶ and Rule 19b-4 thereunder,²⁷ with respect to the types of information SROs should provide when filing fee changes, and Section 6(b) of the Act,²⁸ which requires, among other things, that exchange fees be reasonable and equitably allocated,²⁹ not designed to permit unfair discrimination,³⁰ and that they do not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.³¹ This proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.

The Exchange's affiliates³² previously completed a study of their aggregate costs to produce market data and provide connectivity and port services, defined above as its Cost Analysis.³³ Personnel began to plan for and develop the Exchange beginning in early 2023, and costs included in this Cost Analysis are related to the development and buildout of the Exchange since that time. During the Exchange's development and buildout that occurred throughout 2023 and continues to today, the Exchange routinely studied its aggregate costs to produce and disseminate Exchange market data, which were used to determine the proposed pricing for the market data feeds as part of the Exchange's Cost Analysis. The Cost Analysis required a

²⁶ 15 U.S.C. 78s(b)(1).

²⁷ 17 CFR 240.19b-4.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(4).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78f(b)(8).

³² The affiliated markets include Miami International Securities Exchange, LLC ("MIAX"); separately, the options and equities markets of MIAX PEARL, LLC ("MIAX Pearl"); and MIAX Emerald, LLC ("MIAX Emerald").

³³ See Securities Exchange Act Release Nos. 100041 (April 26, 2024), 89 FR 35868 (May 2, 2024) (SR-MIAX-2024-25); 100319 (June 12, 2024), 89 FR 51562 (June 18, 2024) (SR-PEARL-2024-25); 100042 (April 26, 2024), 89 FR 35879 (May 2, 2024) (SR-EMERALD-2024-15). The Exchange frequently updates its Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity (once live trading begins) changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

detailed analysis of the Exchange’s aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange – transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (i.e., personnel), and certain general and administrative expenses (“cost drivers”).

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets for each cost driver as part of the Exchange’s 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a “bottom up” budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (e.g., price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,³⁴ storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the

³⁴ For example, MIAX Sapphire maintains 8 matching engines, MIAX maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

Exchange and its affiliated markets, i.e., the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates five separate and distinct marketplaces,³⁵ the Exchange must determine the costs associated with each actual market – as opposed to the Exchange's parent company simply concluding that all cost drivers are the same at each individual marketplace and dividing total cost by five (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across each exchange for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process. For the 2024 budget process for MIAX Sapphire, only costs and anticipated revenues associated with the electronic exchange were considered. While MIAX Sapphire plans on opening its trading floor in 2025 costs and anticipated revenues from the trading floor were not included as part of any analysis for MIAX Sapphire for 2024.³⁶

The next step involves determining what portion of the cost allocated to the Exchange

³⁵ MIAX Options Exchange, MIAX Pearl Options Exchange, MIAX Pearl Equities Exchange, MIAX Emerald Exchange, and the MIAX Sapphire Exchange.

³⁶ Additionally, while MIAX Sapphire received approval as a national securities exchange on July 15, 2024, start-up costs associated with the launch of MIAX Sapphire were not included in the costs used for the 2024 electronic exchange projections.

pursuant to the above methodology is to be allocated to each core service, e.g., market data, connectivity, ports, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (e.g., message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (for example, 62% of the data center total expense amount is allocated to all provisions of connectivity), with smaller allocations to ToM, cToM and SLF (2.0% combined), and the remainder to the provision of ports, transaction execution, and membership services (36%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that it has five primary sources of revenue that it can potentially use to fund its operations:

transaction fees, connectivity and port service fees, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; some Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of the market data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the market data feeds, and thus bears a relationship that is, "in nature and closeness," directly related to the market data feeds. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports,

while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide ToM, cToM, and SLF data feeds is \$59,161 (the Exchange divided the annual cost for each of ToM, cToM, and SLF by 12 months, then added all three numbers together), as further detailed below.

Costs Related to Offering ToM, cToM, and SLF Data Feeds³⁷

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the ToM, cToM, and SLF data feeds to its Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for such area (e.g., as set forth below, the Exchange allocated approximately 6.2% of its overall Human Resources cost to offering ToM, cToM, and SLF data feeds).

COST DRIVERS	ALLOCATED ANNUAL COST^a	ALLOCATED MONTHLY COST^b	% OF ALL
Human Resources	\$631,203	\$52,600	6.2%
Connectivity (external fees, cabling, switches, etc.)	\$511	\$43	2.0%
Internet Services and External Market Data	\$0.00	\$0.00	0.0%
Data Center	\$12,298	\$1,025	2.0%
Hardware and Software Maintenance &	\$9,933	\$828	2.0%

³⁷

The Exchange notes that in recent non-transaction fee filings by the Exchange's affiliated markets, those exchanges included a comparison and explanation where certain cost driver allocations and expense amounts materially differed for the same cost driver among the affiliated markets. See, e.g., Securities Exchange Act Release No. 100041 (April 26, 2024), 89 FR 35868 (May 2, 2024) (SR-MIAX-2024-25). The Exchange believes a similar comparison and explanation is not appropriate here because, at the time the Exchange initially filed for the proposed fees, the Exchange had yet to commence operations and the allocations provided herein may change over time as the Exchange matures and its operations adjust based on its trading volumes and number of market data subscribers. In contrast, MIAX and MIAX Emerald are more mature markets with a steady market data subscriber base and a clearer estimation of their costs associated with producing and disseminating their market data feeds. Further, as a new exchange, MIAX Sapphire proposes to waive the fees for the market data feeds for a specified period of time in order to build market share, which in turn, should attract more market data subscribers. If the Exchange does not attract as many market data subscribers as currently projected for the Cost Analysis, the Exchange may need to reduce its market data fees or waive the fees for a longer period of time. Accordingly, the Exchange believes it is reasonable to not provide a similar comparison of cost driver allocations until the Exchange has time to build its subscriber base for the market data feeds.

Licenses			
Depreciation	\$13,656	\$1,138	1.1%
Allocated Shared Expenses	\$42,326	\$3,527	1.5%
TOTAL	\$709,927	\$59,161	4.6%
a. The Annual Cost includes figures rounded to the nearest dollar. b. The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.			

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering the market data feeds.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (“MIH”), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market’s individual Human Resources expense. Then, managers and department heads assign a percentage of each employee’s time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining the market data feeds and performance thereof (primarily the Exchange’s network infrastructure team, which spends a portion of their time performing functions necessary to provide market data). As

described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to the market data feeds. From that portion allocated to the Exchange that applied to the market data feeds, the Exchange then allocated a weighted average of 7.3% of each employee's time from the above group to the market data feeds (which excludes an allocation for the recently hired Head of Data Services for the Exchange and its affiliates).

The Exchange also allocated Human Resources costs to provide the market data feeds to a limited subset of personnel with ancillary functions related to establishing and maintaining such market data feeds (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (i.e., only including those personnel who support functions related to providing market data feeds) and then applied a smaller allocation to such employees' time to the market data feeds (4.9%, which includes an allocation for the Head of Data Services). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to providing the market data feeds, whether it is a sales person selling a market data feed, finance personnel billing for market data feeds or providing budget analysis, or information security ensuring that such market data feeds are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing market data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing the market data feeds: Business Systems Development, Trading Systems Development, Systems

Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 7.3% of each of their employee's time assigned to the Exchange for the market data feeds, as stated above. Employees from these departments perform numerous functions to support the market data feeds, such as the configuration and maintenance of the hardware necessary to support the market data feeds. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting the market data feeds and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support the market data feeds, but illustrates the breadth of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the market data feeds related Human Resources costs to the extent that they are involved in overseeing tasks related to providing market data. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (external fees, cabling, switches, etc.)

The Connectivity cost driver includes cabling and switches required to generate and disseminate the market data feeds and operate the Exchange. The Connectivity cost driver is

more narrowly focused on technology used to complete Member subscriptions to the market data feeds and the servers used at the Exchange's primary and back-up data centers specifically for the market data feeds. Further, as certain servers are only partially utilized to generate and disseminate the market data feeds, only the percentage of such servers devoted to generating and disseminating the market data feeds was included (i.e., the capacity of such servers allocated to the ToM, cToM, and SLF data feeds).³⁸

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange did not allocate any costs associated with internet services or external market data to the ToM, cToM or SLF data feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the market data feeds in the third-party data centers where the Exchange maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties. As the Data Center costs are primarily for space, power, and cooling of servers,

³⁸ The Exchange understands that the Investors Exchange, Inc. ("IEX") and MEMX LLC ("MEMX") both allocated a percentage of their servers to the production and dissemination of market data to support market data fee proposals in 2022 and 2023. See Securities Exchange Act Release Nos. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR-IEX-2022-02) and 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04). The Exchange does not have insight into either IEX's or MEMX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its Connectivity cost driver to market data based on a percentage of overall cost, not on a per server basis.

the Exchange allocated 2.0% to the applicable Data Center costs to the market data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of the Connectivity cost driver.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the market data feeds. Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 2.0% of its costs for Hardware and Software Maintenance and Licenses to the market data feeds.

Depreciation

All physical assets, software, and hardware used to provide the market data feeds, which also includes assets used for testing and monitoring of Exchange infrastructure to provide market data, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The vast majority of the software the Exchange uses for its operations to generate and disseminate the market data feeds has been developed in-house over an extended period. This software development also requires quality assurance and thorough testing to ensure the software works as intended. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the market data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the market data feeds. As noted above, the Exchange allocated

1.1% of its allocated depreciation costs to providing the market data feeds.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to the provision of the market data feeds. These general shared costs are integral to exchange operations, including its ability to provide the market data feeds. Costs included in general shared expenses include office space and office expenses (e.g., occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.³⁹ These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to the market data feeds pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including market data. Then, these costs were further allocated to sub-categories within the final categories, i.e., ToM, cToM, and SLF, as sub-categories of market data. In determining the percentage of general shared expenses allocated to market data that ultimately apply to the market data feeds, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also

³⁹ The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors in a similar non-transaction fee filing. See Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04). The Exchange does not calculate its expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to the market data feeds. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as ToM, cToM and SLF.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all market data products offered by the Exchange. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 1.5% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to the market data feeds also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster market data feeds than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance market data services, of which ToM, cToM, and SLF are main contributors.

* * * * *

Approximate Cost for ToM, cToM, and SLF Per Month

After determining the approximate allocated monthly cost related to the market data feeds combined, the total monthly cost for the market data feeds of \$59,161 was divided by the total

number of projected subscribers⁴⁰ to ToM, cToM and SLF that the Exchange anticipates will maintain market data subscriptions following the expiration of the waiver periods for each respective market data feed (29 Internal Distributors + 4 External Distributors = 33 total Distributors), to arrive at a cost of approximately \$1,793 per month per subscription (rounded to the nearest dollar). Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, i.e., projected number of ToM, cToM, and SLF subscribers.

Cost Analysis – Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service (including market data) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal. For instance, in calculating the Human Resources expenses to be allocated to market data based upon the above described methodology, the Exchange allocated a higher percentage of dedicated network infrastructure personnel (7.3%) due to their focus on functions necessary to provide market data. The remaining 92.7% of the Human Resources expense was then allocated to connectivity services, port services, transaction services, and membership services. The Exchange did not allocate any other Human Resources expense for providing market data to any other employee group, outside of a smaller allocation of 4.9% for costs associated with certain specified personnel who work closely with and support network infrastructure personnel.

In total, the Exchange allocated 6.2% of its personnel costs (Human Resources) to

⁴⁰ The methodology used by the Exchange to project the number of subscribers for each of the market data feeds once the Initial Waiver Period expires can be found under the section titled “Projected Revenue”, below.

providing the market data feeds. In turn, the Exchange allocated the remaining 93.8% of its Human Resources expense to membership services, transaction services, connectivity services, and port services. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including market data, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide the market data feeds to its Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the market data feeds, but instead allocated approximately 1.1% of the Exchange's overall depreciation and amortization expense to the market data feeds combined. The Exchange allocated the remaining depreciation and amortization expense (98.9%) toward the cost of providing transaction services, membership services, connectivity services, and port services.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The revenue estimates are based upon the Exchange's projected number of Internal and External Distributors for each of the ToM, cToM, and SLF data feeds upon the expiration of the fee waiver periods for each market data feed and then annualized. The

Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the market data feeds, the Exchange will have to be successful in attracting customers to a new exchange and then successfully retain those customers that wish to maintain subscriptions to the market data feeds or obtain new customers that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections, which will only be for part of the year. It is possible, however, that actual costs may be higher or lower. The proposed fee waivers for the market data feeds mean that the Exchange will receive no revenue from market data distribution in 2024. To the extent the Exchange sees growth in use of market data services in 2025, following the expiration of the Initial Waiver Period, it will begin to receive revenue to offset future cost increases. However, if use of market data services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees and expiration of the fee waivers. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (e.g., to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to

increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue⁴¹

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by establishing fees for market data subscribers. Subscribers to the ToM, cToM and SLF data feeds expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, connectivity service fees, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide the market data feeds

⁴¹ For purposes of calculating projected annualized revenue for the market data feeds, the Exchange used projected monthly revenues for the market data feeds once the Initial Waiver Period expires.

will equal \$709,927. Based on projected ToM, cToM and SLF subscribers once the waiver periods expire for the market data feeds, the Exchange projects to generate annual revenue of approximately \$726,000 for the market data feeds combined. The Exchange believes this represents a modest profit of 2.2% when compared to the cost of providing the market data feeds on an annualized basis once the waiver periods expire, which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). To determine the projected number of Distributors for each of the market data feeds, the Exchange reviewed its anticipated Distributor population from July 2024 based on Distributor on-boarding documents the Exchange received that showed interest in the market data products in the month preceding when the Exchange filed its proposal to implement the proposed fees, and assumed a 5% attrition rate. The 5% attrition rate is based upon the Exchange's experience on its affiliate exchanges where it has been observed that a percentage of subscribers do not continue their market data subscriptions after the expiration of fee waivers.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing the market data feeds versus the total projected revenue of the Exchange associated with the market data feeds.

The Exchange's affiliated markets, MIAX and MIAX Emerald, charge similar or higher

rates for their respective ToM, cToM and MOR data feeds.⁴² The Exchange’s proposed fees for its market data feeds are also comparable to, or lower than, the fees for similar products charged by competing options exchanges. For example, for Internal Distributors of ToM and cToM, the Exchange proposes a lower fee than the fees charged by Nasdaq ISE, LLC (“ISE”) for ISE’s Top Quote Feed⁴³ and NYSE Arca, Inc. (“Arca”) for Arca’s Top Datafeed⁴⁴ and Complex Order Book data feed.⁴⁵ Additionally, Nasdaq PHLX LLC (“PHLX”) assesses the same fees for the PHLX Orders data feed as proposed by the Exchange for its SLF data feed.⁴⁶

Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange’s affiliated markets leads to slightly different profit margins due to factors outside of the Exchange’s control (i.e., more subscribers to ToM, cToM, and/or SLF).

⁴² See MIAX Fee Schedule, Sections 6)a) and c); and MIAX Emerald Fee Schedule, Sections 6)a) and c).

⁴³ See ISE Options 7: Pricing Schedule, Section 10, Market Data, Section H. Nasdaq ISE Top Quote Feed, available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited June 13, 2024) (assessing Professional internal and external distributors \$3,000 per month, plus \$20 per month per controlled device).

⁴⁴ See NYSE Proprietary Market Data Pricing Guide, Section 6.3, NYSE Arca Options (dated May 4, 2022), available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf (last visited June 13, 2024). Fees for the NYSE Arca Options Top Datafeed, which is the comparable product to ToM, are \$3,000 per month for access (internal use) and an additional \$2,000 per month for redistribution (external distribution), compared to the Exchange’s proposed fees of \$1,200 and \$2,000 for Internal and External Distributors, respectively. In addition, for its NYSE Arca Options Top Datafeed, NYSE Arca charges for three different categories of non-display usage, and user fees, both of which the Exchange does not propose to charge, causing the overall cost of NYSE Arca Options Top Datafeed to far exceed the Exchange’s proposed rates.

⁴⁵ See NYSE Proprietary Market Data Pricing Guide, Section 6.4, NYSE Arca Options Complex Order Book (dated May 4, 2022), available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf (last visited June 13, 2024) (assessing an access fee of \$1,500 per month, plus a \$1,000 redistribution fee, \$1,000 non-display fee, and \$20 fee per professional user).

⁴⁶ See PHLX Options 7: Pricing Schedule, Section 10. Proprietary Data Feed Fees, PHLX Orders, available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (last visited June 13, 2024) (assessing internal distributors \$3,000 per month and external distributors \$3,500 per month for the PHLX Orders data feed).

The Exchange also reiterates that it proposes to waive the fees for the market data feeds for a defined period of time. The Exchange is owned by a holding company that is the parent company of five exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, IEX, which currently operates only one exchange, in its recent non-transaction fee filing allocated the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms.⁴⁷ The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff should consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit

⁴⁷

The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. See Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR-IEX-2022-02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. See, e.g., supra notes 38 and 39. The Exchange does not believe a similar analysis would be useful here because it is part of a holding company that operates five different markets.

margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone are used to justify fees increases.

Accordingly, while the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning – or seeking to earn – supra-competitive profits, the standard set forth in the Staff Guidance. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the exchange making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the exchange has

demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) “platform” competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the exchange taking supra-competitive profits. If the exchange demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee’s terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the exchange must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange’s understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange’s aggregate costs of offering the market data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange’s annual costs of providing the market data feeds with a reasonable mark-up. As discussed above, the Exchange estimates this fee filing will result in annual revenue of approximately \$726,000 once the fee waivers expire for the market data feeds, representing a potential mark-up of just 2.2% over the cost of providing the market data feeds. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup all of its expenses for providing the market data feeds (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return).

The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the market data products are reasonable when compared to fees for comparable products, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the market data feeds.

Internal Distribution Fees. The Exchange believes it is reasonable to charge Internal Distribution fees because such data assists Internal Distributors in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees for ToM, cToM, and SLF are reasonable as they are similar to the amounts charged by at least one other exchange of comparable size for comparable data products, and lower than the fees charged by other exchanges for comparable data products.⁴⁸

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the market data feeds because vendors receive enumeration from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any ToM, cToM, or SLF data feeds, regardless of the number of customers to which that vendor redistributes the data.

⁴⁸ See supra notes 45 and 46.

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

Equitable Allocation and Not Unfairly Discriminatory

Overall. The Exchange believes that its proposed fees are reasonable, equitable, and not unfairly discriminatory because they are designed to align the proposed fees with services provided. The Exchange believes the proposed fees for the market data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among 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 subscriber or vendor 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 of the ToM, cToM or SLF data feeds is based on objective differences in usage of each market data feed 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.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the market data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the market data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the market data feeds are equitably allocated and not unfairly

discriminatory because they would be charged on an equal basis to all data recipients that receive the market data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing ToM, cToM, and/or SLF data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the ToM, cToM and SLF data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that decide to receive any market data feed of the Exchange (or its affiliates, MIAX, MIAX Pearl and MIAX Emerald), must first execute, among other things, the MIAX Exchange Group Data Agreement (the “Exchange Data Agreement”).⁴⁹ Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the “internal use” of any market data they receive. This means that Internal Distributors may only distribute the Exchange’s market data to the recipient’s officers and employees and its affiliates.⁵⁰ External Distributors may distribute the Exchange’s market data to persons who are not officers, employees or affiliates of the External Distributor,⁵¹ and may charge their own fees

⁴⁹ See Exchange Data Agreement, available at <https://www.miaxglobal.com/markets/us-options/all-options/market-data-vendor-agreements>.

⁵⁰ See *id.*

⁵¹ See *id.*

for the redistribution of such market data. External Distributors may monetize their receipt of the ToM, cToM and SLF data feeds by charging their customers fees for receipt of the Exchange's market data. Internal Distributors do not have the same ability to monetize the Exchange's market data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange believes it is reasonable and equitable to charge different fees for different market data products. While the ToM and cToM feeds provide top of market data for the Simple Order Book and Strategy Book, respectively, and have identical fees, the SLF provides a different data set and is thus priced accordingly. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the importance of that information to market participants. The ToM and cToM data feeds can be utilized to trade on the Exchange but contain less information than the information that is available via the SLF data feed. Thus, the Exchange believes it is reasonable, equitable and not unfairly discriminatory for the products to be priced as proposed, with ToM and cToM having a lower price as compared to the SLF proposed pricing.

The Exchange also believes the proposed pricing is reasonable and not unfairly discriminatory because the Exchange proposes to assess fees for its market data products that are comparable to, or lower than, the comparable products offered by other exchanges.⁵²

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that

⁵² See supra note 46.

Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.⁵³ Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing market data in compliance with the Exchange Data Agreement and Market Data Policies.

The Exchange believes the proposed market data fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of any of the market data feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees are equitably allocated and not unfairly discriminatory.

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

In accordance with Section 6(b)(8) of the Act,⁵⁴ 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.

⁵³ See Section 6 of the Exchange's Market Data Policies, [available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf](https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf).

⁵⁴ 15 U.S.C. 78f(b)(8).

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 based on whether the market participant internally or externally distributes the Exchange data, 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.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other exchanges that is not necessary or appropriate. In particular, market participants are not forced to subscribe to any of the market data feeds. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.⁵⁵ The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees (as the Exchange proposes here for all three of its market data feeds) for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

⁵⁵

See supra notes 45 and 46.

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

The Exchange neither solicited nor received written comments on the proposed rule change.

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,⁵⁶ and Rule 19b-4(f)(2) thereunder⁵⁷ 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 SRO, which renders the proposed rule change effective upon filing.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. **Exhibits**

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

⁵⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁷ 17 CFR 240.19b-4.