

Required fields are shown with yellow backgrounds and asterisks.

Filing by MIAX Emerald, LLC  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>
Section 806(e)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
 Adopt a New Historical Market Data Product to be Known as the Open-Close Report

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

First Name \* Chris      Last Name \* Solgan  
 Title \* Vice President, Senior Counsel  
 E-mail \* csolgan@miami-holdings.com  
 Telephone \* (609) 897-8494      Fax

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date 05/10/2021      Vice President, Senior Counsel  
 By Chris Solgan      csolgan@miami-holdings.com  
 (Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

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

(a) MIAX Emerald, LLC (“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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt a new historical market data product to be known as the Open-Close Report.

Notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change 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 MIAX Emerald Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

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

**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 adopt a new historical market data product to be known as the Open-Close Report, which will be available to all Members and Non-Members.<sup>3</sup> The proposed Open-Close Report would be described in Exchange Rule 531(b)(1) and is based on market data products currently available on most other options exchanges.<sup>4</sup>

The Exchange proposes to offer the Open-Close Report, which will be a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker<sup>5</sup>), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Report is proprietary Exchange trade data and does not include trade data from any

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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. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019) (SR-CBOE-2019-026); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR-C2-2020-010); 89596 (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR-C2-2020-012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); and 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42).

<sup>5</sup> See Exchange Rule 100 for the definitions of the terms Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker.

other exchange. It is also a historical data product and not a real-time data feed. The Open-Close Report would be described under proposed Exchange Rule 531(b)(1).<sup>6</sup>

Specifically, the Open-Close Report would include the following data:

- Aggregate number of buy and sell transactions in the affected series;
- Aggregate volume traded electronically on the Exchange in the affected series;
- Aggregate number of trades effected on the Exchange to open a position;<sup>7</sup>
- Aggregate number of trades effected on the Exchange to close a position;<sup>8</sup>
- Origin of the orders and quotes involved in trades on the Exchange in the affected series during a particular trading session, specifically aggregated in the following categories of participants: Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker.

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and

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<sup>6</sup> The Exchange also proposes to amend the title of Exchange Rule 531 to include “Market Data Products.”

<sup>7</sup> The Open-Close Report would provide subscribers with the aggregate number of “opening purchase transactions” in the affected series. An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. The Open-Close Report would also provide subscribers with the aggregate number of “opening writing transactions.” An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.

<sup>8</sup> The Open-Close Report will provide subscribers with the aggregate number of “closing purchase transactions” in the affected series. A closing purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. The Open-Close Report would also provide subscribers with the aggregate number of “closing sale transactions.” A closing sale transaction is an Exchange options transaction an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.

investment banks. The Open-Close Report would provide subscribers data that should enhance their ability to analyze option trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes that Open-Close Report will be a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular option series. The proposed report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange will establish a monthly subscriber fee for the Open-Close Report by way of a separate proposed rule change, which the Exchange will submit prior to the launch of the Open-Close Report.

The Exchange proposes to offer two versions of the Open-Close Report. One will contain historical data from the previous trading day and will be available after the end of the trading day, generally on a T+1 basis. The other version will include “snapshots” taken every 10 minutes throughout the trading day and would be available within five minutes of the conclusion of each 10 minute period.

#### End of Day Report

The end of day product would include the aggregate data described above representing the entire trading session. It would be calculated during an overnight process after the close of trading on the Exchange and would be available to subscribers for download the following morning at approximately 7:00 a.m., ET.

#### Intra-Day Report

The Exchange also proposed to offer an intraday Open-Close Report that would also include aggregated data described above, but would be produced and updated every 10 minutes during the trading day. Data would be captured in "snapshots" taken every 10 minutes

throughout the trading day and would be available to subscribers within five minutes of the conclusion of each 10 minute period. For example, subscribers to the intraday product would receive the first calculation of intraday data no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided aggregated with data captured up to 9:50 a.m., and so forth. Each update will represent combined data captured from the current “snapshot” and all previous “snapshots” and thus will provide open-close data on an aggregate basis. The intraday Open-Close Report will provide 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 will be further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

The Exchange believes the proposed intraday Open-Close Report may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security.

b. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report’s data. The proposed rule change would benefit investors by providing access to the Open-Close Report, which may promote better informed trading throughout the trading day. 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

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).



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.

Moreover, other exchanges also offer a substantially identical data product.<sup>11</sup> Specifically, NASDAQ OMX PHLX (“PHLX”) and the NASDAQ Stock Market LLC (“NASDAQ”) offer the PHLX Options Trade Outline (“PHOTO”) and NASDAQ Options Trade Outline (“NOTO”), respectively. The Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), Cboe BZX Exchange, Inc. (“BZX”), and Cboe EDGX Exchange, Inc. (“EDGX”) all offer the market data products called the End of Day and Intraday Open-Close Data. The Phlx, Nasdaq, Cboe, C2, BZX, and EDGX products provide substantially the same information as that included in the proposed Open-Close Report. Like the proposed product, the data is provided to subscribers in the other exchange’s market data products after the end of the trading and cumulatively every 10 minutes and provided within five minutes of the conclusion of each 10 minute period.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product similar to those offered by other competitor options exchanges.<sup>12</sup> The Exchange is proposing to introduce the Open-Close Report in order to keep pace with changes in the industry and evolving customer needs, and believes this proposed rule change would contribute to robust competition among national securities exchanges. As noted, most other

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<sup>11</sup> See supra note 4.

<sup>12</sup> Id.

options exchanges offer a market data product that is similar to the Open-Close Report.<sup>13</sup> As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Therefore, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received 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) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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<sup>13</sup> Id.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. Accordingly, the Exchange believes that the proposed rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>17</sup> because the proposed rule change would not significantly affect investors or the public interest. Specifically, the Exchange believes the Open-Close Report will further promote increased transparency in trading activity and may promote better informed trading on the Exchange throughout the trading day. The proposed rule change will not impose any significant burden on competition, but rather the Exchange believes will promote competition by offering a similar product that is offered by other exchanges.<sup>18</sup> Specifically, the proposed product is substantially identical to the data products offered on Phlx, Nasdaq, Cboe, C2, BZX, and EDGX. Given that the proposed rule change is substantially identical as similar products offered by other exchanges, the proposed rule change presents no new novel issues. Based on the foregoing, the Exchange has designated this rule filing as noncontroversial under Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Waiver of the 30-day operative delay would benefit investors by enabling the Exchange to

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> See supra note 4.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 21 17 CFR 240.19b-4(f)(6).

implement the proposed rule change on June 1, 2021, the anticipated date upon which the Exchange expects to offer the Open-Close Report. As discussed above, the Exchange believes the proposed data product will promote competition by offering a similar product to that offered by other exchanges during the operative delay period. The Exchange also notes that because other exchanges offer a substantially identical data product, the proposed rule change presents no new or novel issues. Waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

The proposed text of Exchange Rule 531(b)(1) is based on the text of BZX Rule 21.15(b)(5) and EDGX Rule 21.15(b)(6).. The Exchange notes that the proposed Open-Close Report is identical to that offered by EDGX and BZX. However, the proposed text of Exchange Rule 531(b)(1) differs from EDGX Rule 21.15(b)(6) and BZX Rule 21.15(b)(5) in two areas to better describe the proposed Open-Close Report in the Exchange's rules. These differences are in rule text only and the content and substance of the proposed Exchange Open-Close Report and that of BZX and EDGX remain consistent. First, BZX Rule 21.15(b)(5) and EDGX Rule 21.15(b)(6) reference "original order size", whereas proposed Exchange Rule 531(b)(1) references "trade size." While BZX Rule 21.15(b)(5) and EDGX Rule 21.15(b)(6) reference "original order size", both BZX and EDGX reference "trade size" in their most recent filings

concerning their respective reports<sup>21</sup> and in the description of their report on their website and in their technical specifications.<sup>22</sup> The Exchange believes this difference in rule text is immaterial because the proposed text of Exchange Rule 531(b)(1) would more accurately describe the content of the proposed Open-Close Report and is aligned with the true contents of the BZX and EDGX reports as described on their website and in their technical specifications. Second, the Exchange proposes to reference Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker orders and quotes within Rule 531(b)(1) while EDGX and BZX only reference customer and firm orders. The Exchange notes that both EDGX and BZX provide this level of detail regarding origin type not in their rules, but rather in the description of their proposed report on their websites and technical specifications.<sup>23</sup> This difference in rule text is also immaterial because it simply provides additional specificity by referencing each of its origin

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<sup>21</sup> See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); and 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36) (stating that “[t]he customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts)”).

<sup>22</sup> See the description of the BZX Open-Close report available at <https://datashop.cboe.com/open-close-cboe-bzx-exchange> (stating that “[t]he customer and professional customer volume are further broken down into trade size buckets (fewer than 100 contracts, 100-199 contracts, greater than 199 contracts). See also the Open-Close Cboe BZX, C2, EDGX exchange EOD Specification available at <https://datashop.cboe.com/Themes/Livevol/Content/static/OpenCloseSpecification.pdf> (providing for trade size buckets).

<sup>23</sup> See the description of the BZX Open-Close report available at <https://datashop.cboe.com/open-close-cboe-bzx-exchange> (stating that “[o]pen-Close data is a volume summary file for trading activity on the BZX exchange. Available in 10-minute summary intervals or as an end-of-day summary, it aggregates and buckets the volume by origin (customer, professional customer, broker-dealer, and market maker), buying/selling, and opening/closing criteria”). See also the Open-Close Cboe BZX, C2, EDGX exchange EOD Specification available at <https://datashop.cboe.com/Themes/Livevol/Content/static/OpenCloseSpecification.pdf> (providing for the following origin types (customer, professional customer, broker-dealer, and market maker)).

categories within proposed Exchange rule 531(b)(1). This difference is in rule text only and the content and origin types the proposed Exchange Open-Close Report and that of BZX and EDGX remain consistent.

**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. Notice of proposed rule for publication in the Federal Register.

5. Text of proposed rule change.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EMERALD-2021-18)

May \_\_, 2021

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC to Adopt a New Historical Market Data Product to be Known as the Open-Close Report

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 10, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt a new historical market data product to be known as the Open-Close Report.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on

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

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

the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to adopt a new historical market data product to be known as the Open-Close Report, which will be available to all Members and Non-Members.<sup>3</sup> The proposed Open-Close Report would be described in Exchange Rule 531(b)(1) and is based on market data products currently available on most other options exchanges.<sup>4</sup>

The Exchange proposes to offer the Open-Close Report, which will be a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker<sup>5</sup>), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-

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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. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019) (SR-CBOE-2019-026); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR-C2-2020-010); 89596 (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR-C2-2020-012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); and 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42).

<sup>5</sup> See Exchange Rule 100 for the definitions of the terms Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker.



Priority Customer, Firm, Broker-Dealer, and Market Maker volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Report is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Open-Close Report would be described under proposed Exchange Rule 531(b)(1).<sup>6</sup>

Specifically, the Open-Close Report would include the following data:

- Aggregate number of buy and sell transactions in the affected series;
- Aggregate volume traded electronically on the Exchange in the affected series;
- Aggregate number of trades effected on the Exchange to open a position;<sup>7</sup>
- Aggregate number of trades effected on the Exchange to close a position;<sup>8</sup>
- Origin of the orders and quotes involved in trades on the Exchange in the affected series during a particular trading session, specifically aggregated in the following

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<sup>6</sup> The Exchange also proposes to amend the title of Exchange Rule 531 to include “Market Data Products.”

<sup>7</sup> The Open-Close Report would provide subscribers with the aggregate number of “opening purchase transactions” in the affected series. An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. The Open-Close Report would also provide subscribers with the aggregate number of “opening writing transactions.” An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.

<sup>8</sup> The Open-Close Report will provide subscribers with the aggregate number of “closing purchase transactions” in the affected series. A closing purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. The Open-Close Report would also provide subscribers with the aggregate number of “closing sale transactions.” A closing sale transaction is an Exchange options transaction an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.

categories of participants: Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker.

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Open-Close Report would provide subscribers data that should enhance their ability to analyze option trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes that Open-Close Report will be a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular option series. The proposed report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange will establish a monthly subscriber fee for the Open-Close Report by way of a separate proposed rule change, which the Exchange will submit prior to the launch of the Open-Close Report.

The Exchange proposes to offer two versions of the Open-Close Report. One will contain historical data from the previous trading day and will be available after the end of the trading day, generally on a T+1 basis. The other version will include “snapshots” taken every 10 minutes throughout the trading day and would be available within five minutes of the conclusion of each 10 minute period.

#### End of Day Report

The end of day product would include the aggregate data described above representing the entire trading session. It would be calculated during an overnight process after the close of trading on the Exchange and would be available to subscribers for download the following morning at approximately 7:00 a.m., ET.

### Intra-Day Report

The Exchange also proposed to offer an intraday Open-Close Report that would also include aggregated data described above, but would be produced and updated every 10 minutes during the trading day. Data would be captured in "snapshots" taken every 10 minutes throughout the trading day and would be available to subscribers within five minutes of the conclusion of each 10 minute period. For example, subscribers to the intraday product would receive the first calculation of intraday data no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided aggregated with data captured up to 9:50 a.m., and so forth. Each update will represent combined data captured from the current "snapshot" and all previous "snapshots" and thus will provide open-close data on an aggregate basis. The intraday Open-Close Report will provide 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 will be further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

The Exchange believes the proposed intraday Open-Close Report may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report’s data. The proposed rule change would benefit investors by providing access to the Open-Close Report, which may promote better informed trading throughout the trading day. 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

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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.

Moreover, other exchanges also offer a substantially identical data product.<sup>11</sup> Specifically, NASDAQ OMX PHLX (“PHLX”) and the NASDAQ Stock Market LLC (“NASDAQ”) offer the PHLX Options Trade Outline (“PHOTO”) and NASDAQ Options Trade Outline (“NOTO”), respectively. The Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), Cboe BZX Exchange, Inc. (“BZX”), and Cboe EDGX Exchange, Inc. (“EDGX”) all offer the market data products called the End of Day and Intraday Open-Close Data. The Phlx, Nasdaq, Cboe, C2, BZX, and EDGX products provide substantially the same information as that included in the proposed Open-Close Report. Like the proposed product, the data is provided to subscribers in the other exchange’s market data products after the end of the trading and cumulatively every 10 minutes and provided within five minutes of the conclusion of each 10 minute period.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product similar to those offered by other competitor options exchanges.<sup>12</sup> The Exchange is proposing to introduce the Open-Close Report in order to keep pace with changes in the industry and evolving customer needs, and believes this proposed rule change would contribute to robust competition among national securities exchanges. As noted, most other options exchanges offer a market data product that is similar to the Open-Close Report.<sup>13</sup> As a

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<sup>11</sup> See supra note 4.

<sup>12</sup> Id.

<sup>13</sup> Id.

result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Therefore, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

Comments may be submitted by any of the following methods:

Electronic comments:

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

or

- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-EMERALD-2021-18 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-EMERALD-2021-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

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

All submissions should refer to File Number SR-EMERALD-2021-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Vanessa Countryman  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

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

**MIAX Emerald, LLC Rules**

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**Rule 530. (No change).**

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**Rule 531. Reports and Market Data Products**

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**(b) Market Data Products**

(1) Open-Close Report. The Open-Close Report is a data product that summarizes volume (contracts traded on MIAX) by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), trade size and the opening or closing position of the order. Open-Close Data is available on an end-of-day and intraday basis.

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**CHAPTER VI. MARKET MAKERS**

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