

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 36

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

File No. \* SR 2022 - \* 08

Amendment No. (req. for Amendments \*)

Filing by MIAX Emerald, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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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 \*).

Proposal to amend the Fee Schedule to adopt fees for the Liquidity Taker Event Report - Complex Orders.

**Contact Information**

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

First Name \* Michael    Last Name \* Slade

Title \* AVP, Associate Counsel

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

Telephone \* (609) 897-8499    Fax

**Signature**

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

Date 02/25/2022    (Title \*)

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

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

Michael Slade    Date: 2022.02.25 09:22:53 -05'00'

Required fields are shown with yellow backgrounds and astericks.

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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SR-EMERALD-2022-08 - 19b4 (2-10-2

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

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

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SR-EMERALD-2022-08 - Exhibit 1.do

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

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

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

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

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

Exhibit Sent As Paper Document

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

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

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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SR-EMERALD-2022-08 - Exhibit 5 (2-9

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

**Partial Amendment**

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

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

(a) MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend the Exchange’s Fee Schedule (“Fee Schedule”) to adopt fees for a new data product known as the Liquidity Taker Event Report – Complex Orders.<sup>3</sup>

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

(b) Not applicable.

(c) Not applicable.

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

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the 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 Michael Slade, Assistant Vice President, Associate Counsel, at (609) 897-8499.

## 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.

<sup>3</sup> See, generally, Exchange Rule 531(b).

The Exchange recently established a new data product known as the Liquidity Taker Event Report – Complex Orders (the “Complex Order Report”),<sup>4</sup> which will be available for purchase by Exchange Members<sup>5</sup> on a voluntary basis. The Exchange now proposes to adopt fees for the Complex Order Report, which is described under Exchange Rule 531(b).<sup>6</sup> The Complex Order Report is an optional product available to Members. The Exchange notes that the proposed fees for the Complex Order Report are identical to the fees the Exchange recently established for subscribers to a similar report known as the Liquidity Taker Event Report – Simple Orders (the “Simple Order Report”).<sup>7</sup> As further described below, the Exchange proposes to also offer a discounted combined fee for Members who purchase annual subscriptions to both the Simple Order Report and Complex Order Report.

By way of background, the Complex Order Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of a Complex Order resting on the Strategy Book,<sup>8</sup> where that Recipient Member attempted to

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<sup>4</sup> See Securities Exchange Act Release No. 94136 (February 2, 2022), 87 FR 7223 (February 8, 2022) (SR-EMERALD-2022-02).

<sup>5</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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>6</sup> See Exchange Rule 531(b).

<sup>7</sup> See Securities Exchange Act Release Nos. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New “Liquidity Taker Event Report”); 92028 (May 26, 2021), 86 FR 29608 (June 2, 2021) (SR-EMERALD-2021-19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report). See Exchange Rule 531(a) for the rule text of the Simple Order Report. See also Fee Schedule, Section 7), Reports, for the fees for the Simple Order Report.

<sup>8</sup> The term “Strategy Book” means the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

execute against such resting Complex Order<sup>9</sup> within a certain timeframe. It is important to note that the content of the Complex Order Report is specific to the Recipient Member and the Complex Order Report will not include any information related to any Member other than the Recipient Member.

The following information is included in the Complex Order Report regarding the resting order: (A) the time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new Complex Order at the time of receipt; (D) whether the Recipient Member is an Affiliate<sup>10</sup> of the Member that entered the resting order<sup>11</sup>; (E) origin type (e.g., Priority Customer,<sup>12</sup> Market Maker<sup>13</sup>); (F) side (buy or sell); and (G) displayed price and size of the resting order.<sup>14</sup>

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<sup>9</sup> Only displayed orders will be included in the Complex Order Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

<sup>10</sup> The term “affiliate” of or person “affiliated with” another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

<sup>11</sup> The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>12</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>13</sup> The term “Market Maker” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>14</sup> This is the same type of information included in the Simple Order Report, with the only difference being the information is for Complex Orders on the Strategy Book. The Exchange notes that the displayed price and size are also disseminated via the Exchange’s proprietary data feeds The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

The following information is included in the Complex Order Report regarding the execution of the resting order: (A) the Complex EBBO<sup>15</sup> at the time of execution;<sup>16</sup> (B) the Complex ABBO<sup>17</sup> at the time of execution;<sup>18</sup> (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;<sup>19</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>20</sup> and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the Complex EBBO and Complex ABBO at the time of the execution against the first response will be included.

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<sup>15</sup> The term “EBBO” means the Exchange’s best bid or offer. See Exchange Rule 100. The Complex EBBO is calculated using the Implied Complex MIAX Emerald Best Bid or Offer (“icEBBO”) combined with the best price currently available on the Strategy Book to establish the Exchange’s best net bid and offer for a Complex Strategy. The icEBBO is calculated using the best price from the Simple Order Book for each component of a Complex Strategy including displayed and non-displayed trading interest. For stock-option orders, the icEBBO for a Complex Strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(12).

<sup>16</sup> Exchange Rule 531(b)(1)(ii)(A) provides that if the resting order executes against multiple contra-side responses, only the Complex EBBO at the time of the execution against the first response will be included.

<sup>17</sup> The term “ABBO” or “Away Best Bid or Offer” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (“OPRA”). See Exchange Rule 100. The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the best net bid and offer for a Complex Strategy.

<sup>18</sup> Exchange Rule 531(b)(1)(ii)(B) further provides that if the resting order executes against multiple contra-side responses, only the Complex ABBO at the time of the execution against the first response will be included.

<sup>19</sup> The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange’s network, which is before the time the response would be received by the System.

<sup>20</sup> The time difference would be provided in nanoseconds.

The following information is included in the Complex Order Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each Complex Order sent by the Recipient Member, regardless of whether it executed or not;<sup>21</sup> (C) size and type of each Complex Order submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

The Complex Order Report includes the data set for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Complex Order Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Complex Order Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Complex Order Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Complex Order Report will increase transparency and democratize information so that all firms that subscribe to the Complex Order Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

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<sup>21</sup> For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

Members generally would use a liquidity accessing Complex Order if there is a high probability that it will execute against an order resting on the Exchange's Strategy Book. The Complex Order Report identifies by how much time an order that may have been marketable missed an execution. The Complex Order Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The Complex Order Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Strategy Book.

The Exchange proposes to provide the Complex Order Report in response to Member demand for data concerning the timeliness of their incoming Complex Orders and executions against resting Complex Orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Strategy Book. The purpose of the Complex Order Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Complex Order Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Complex Order Report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to the Complex Order Report or not.



The Exchange proposes to assess the same fees that it currently charges for Members that subscribe to the similar Simple Order Report. As such, the Exchange proposes to amend Section 7), Reports, of the Fee Schedule to provide that Members may purchase the Complex Order Report on a monthly or annual (12 month) basis. In particular, the Exchange proposes to assess Members a fee of \$4,000 per month or \$24,000 per year for a 12 month subscription to the Complex Order Report. Members may cancel their subscription at any time. Just as it does for the Simple Order Report, the Exchange proposes to specify that for mid-month subscriptions to the Complex Order Report, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Complex Order Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange also proposes to provide a discounted rate of \$40,000 per year to Members that purchase 12 month annual subscriptions to both the Simple and Complex Order Reports (as compared to the 12 month subscription rate of \$24,000 for each report on an individual subscription basis). The Exchange also proposes to pro-rate the discounted 12 month subscription fee for Members that seek to add either their Simple Order Report or the Complex Order Report to an existing subscription. In particular, the Exchange proposes that for those Members with an existing 12 month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12 month subscription. In such case, the fee for the added report will be pro-rated based on the \$40,000 combined rate for the 12 month subscription discount for the remainder of the subscriber's current 12 month subscription, and the number of months remaining in the existing subscription until the Member's renewal date. Members would then receive the 12 month discount (\$40,000 annually) for subscribing to both reports on the

renewal date of their original subscription. For example, assume “Member A” previously subscribed to the Simple Order Report on September 1, 2021 and paid \$24,000 for a 12 month subscription to the Simple Order Report. “Member A’s” current subscription expires on August 31, 2022 for the Simple Order Report. Before “Member A’s” subscription to the Simple Order Report expires, “Member A” decides to subscribe to the Complex Order Report, beginning March 1, 2022. Rather than being immediately charged \$40,000 for the 12 month subscription discount for subscribing to both reports (“Member A” already paid \$24,000 upfront for the Simple Order Report 12 month subscription), “Member A” would only be charged an additional \$8,000 to add the Complex Order Report for the remaining months of “Member A’s” current 12 month subscription to the Simple Order Report. On September 1, 2022, assuming “Member A” decided to keep both reports, “Member A” would then be charged the 12 month discounted rate of \$40,000 for both reports for the next year.

The Exchange proposes to determine the pro-rated fee described above as follows: on the date that “Member A” wanted to begin subscribing to the Complex Order Report (March 1, 2022), there were six months remaining on “Member A’s” existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be calculated as  $((6 \text{ months remaining} / 12 \text{ months total}) * (\$40,000 \text{ discounted annual subscription for both reports} - \$24,000 \text{ for annual subscription to each report individually})) = \$8,000$  for remaining 6 months. Beginning September 1, 2022 (the original renewal date for the Simple Order Report), “Member A” would then be charged the discounted 12 month subscription rate of \$40,000, assuming “Member A” renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange intends to begin to offer the Complex Order Report and charge the proposed fees on March 1, 2022.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Complex Order Report is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>25</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Complex Order Report also promotes increased transparency through the dissemination of the Complex Order Report.

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

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

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(4).

Particularly, the Complex Order Report will benefit investors by facilitating their prompt access to the value added information that is included in the Complex Order Report. The Complex Order Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 12-13% of the equity options market share and currently the Exchange represents only approximately 4.23% of the market share.<sup>26</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>27</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Complex Order Report.

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<sup>26</sup> See “The Market at a Glance,” (last visited January 11, 2022), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

<sup>27</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and identical to the fees assessed by the Exchange for its substantially similar Simple Order Report.<sup>28</sup> Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange's offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Complex Order Report and instead purchase another exchange's similar data product, which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Complex Order Report. A lower annual subscription fee would also incentivize Members to subscribe to the Complex Order Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Complex Order Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes it provides an identical annual subscription for its Simple Order Report data and that other exchanges provide annual subscriptions for reports concerning their data product offerings.<sup>29</sup>

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<sup>28</sup> See supra note 7.

<sup>29</sup> Cboe Exchange, Inc. ("Cboe") assesses a \$24,000 annual fee for an intra-day subscription to Open-Close Data. See <https://datashop.cboe.com/options-summary-subscription>.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against a Complex Order resting on the Exchange's Strategy Book. The Complex Order Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Strategy Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Complex Order Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Complex Order Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data. The Exchange therefore believes that the proposed fees for the Complex Order Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Complex Order Report. The Exchange's proposed fees would not differentiate between subscribers that purchase the Complex Order Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Complex Order Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Complex Order Report, and the Exchange is not required to make the

Complex Order Report available to all investors. It is entirely a business decision of each Member to subscribe to the Complex Order Report. The Exchange offers the Complex Order Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Complex Order Report may discontinue receiving the Complex Order Report at any time if that Member determines that the information contained in the Complex Order Report is no longer useful.

The Exchange also believes providing a 12 month discounted fee for subscribers of both the Simple and Complex Order Reports is equitable and reasonable because it would enable the Exchange to gauge long-term interest in both reports. The Exchange believes that a lower annual combined subscription fee may incentivize Members to subscribe to both reports on a long-term basis, thereby allowing the Exchange to better gauge demand for both reports over a longer period of time. Doing so will enable the Exchange to better predict the future demand for both reports. This will allow the Exchange to better prepare and adjust resources for the production and delivery of both reports to Members, improving the efficiency by which the Exchange may deliver both reports over a prolonged and set period of time. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer a 12 month discounted fee for Members that subscribe to both reports because all Members may subscribe to both reports and receive the discounted rate.

#### **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. The Exchange made the Complex Order Report available in order to keep pace with changes in the

industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange believes the proposed fees would not cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Complex Order Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also believes that the proposed fees do not cause any unnecessary or inappropriate burden on intermarket competition because the latency information that would be provided in the Complex Order Report would enhance competition between exchanges that offer complex order functionality. Members that subscribe to the Complex Order Report could use the information in the report to recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide latency related data in an effort to improve their



own market quality for complex orders.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Complex Order Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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

No written comments were either solicited or received.

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

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>30</sup> and Rule 19b-4(f)(2) thereunder<sup>31</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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**

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>31</sup> 17 CFR 240.19b-4.

Not applicable.

**11. Exhibits**

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EMERALD-2022-08)

February \_\_, 2022

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC to Amend Its Fee Schedule to Adopt Fees for a New Data Product the Liquidity Taker Event Report – Complex Orders

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 February \_\_, 2022, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the “Fee Schedule”) to adopt fees for a new data product known as the Liquidity Taker Event Report – Complex Orders.<sup>3</sup>

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

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

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

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

<sup>3</sup> See, generally, Exchange Rule 531(b).

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

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

1. Purpose

The Exchange recently established a new data product known as the Liquidity Taker Event Report – Complex Orders (the “Complex Order Report”),<sup>4</sup> which will be available for purchase by Exchange Members<sup>5</sup> on a voluntary basis. The Exchange now proposes to adopt fees for the Complex Order Report, which is described under Exchange Rule 531(b).<sup>6</sup> The Complex Order Report is an optional product available to Members. The Exchange notes that the proposed fees for the Complex Order Report are identical to the fees the Exchange recently established for subscribers to a similar report known as the Liquidity Taker Event Report – Simple Orders (the “Simple Order Report”).<sup>7</sup> As further described below, the Exchange

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<sup>4</sup> See Securities Exchange Act Release No. 94136 (February 2, 2022), 87 FR 7223 (February 8, 2022) (SR-EMERALD-2022-02).

<sup>5</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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>6</sup> See Exchange Rule 531(b).

<sup>7</sup> See Securities Exchange Act Release Nos. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New “Liquidity Taker Event Report”); 92028 (May 26, 2021), 86 FR 29608 (June 2, 2021) (SR-EMERALD-2021-19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report). See Exchange Rule 531(a) for the rule text of the Simple Order Report. See also Fee Schedule, Section 7), Reports, for the fees for the Simple Order Report.

proposes to also offer a discounted combined fee for Members who purchase annual subscriptions to both the Simple Order Report and Complex Order Report.

By way of background, the Complex Order Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of a Complex Order resting on the Strategy Book,<sup>8</sup> where that Recipient Member attempted to execute against such resting Complex Order<sup>9</sup> within a certain timeframe. It is important to note that the content of the Complex Order Report is specific to the Recipient Member and the Complex Order Report will not include any information related to any Member other than the Recipient Member.

The following information is included in the Complex Order Report regarding the resting order: (A) the time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new Complex Order at the time of receipt; (D) whether the Recipient Member is an Affiliate<sup>10</sup> of the Member that entered

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<sup>8</sup> The term “Strategy Book” means the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>9</sup> Only displayed orders will be included in the Complex Order Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

<sup>10</sup> The term “affiliate” of or person “affiliated with” another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

the resting order<sup>11</sup>; (E) origin type (e.g., Priority Customer,<sup>12</sup> Market Maker<sup>13</sup>); (F) side (buy or sell); and (G) displayed price and size of the resting order.<sup>14</sup>

The following information is included in the Complex Order Report regarding the execution of the resting order: (A) the Complex EBBO<sup>15</sup> at the time of execution;<sup>16</sup> (B) the

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<sup>11</sup> The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>12</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>13</sup> The term “Market Maker” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>14</sup> This is the same type of information included in the Simple Order Report, with the only difference being the information is for Complex Orders on the Strategy Book. The Exchange notes that the displayed price and size are also disseminated via the Exchange’s proprietary data feeds. The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

<sup>15</sup> The term “EBBO” means the Exchange’s best bid or offer. See Exchange Rule 100. The Complex EBBO is calculated using the Implied Complex MIAAX Emerald Best Bid or Offer (“icEBBO”) combined with the best price currently available on the Strategy Book to establish the Exchange’s best net bid and offer for a Complex Strategy. The icEBBO is calculated using the best price from the Simple Order Book for each component of a Complex Strategy including displayed and non-displayed trading interest. For stock-option orders, the icEBBO for a Complex Strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(12).

<sup>16</sup> Exchange Rule 531(b)(1)(ii)(A) provides that if the resting order executes against multiple contra-side responses, only the Complex EBBO at the time of the execution against the first response will be included.

Complex ABBO<sup>17</sup> at the time of execution;<sup>18</sup> (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;<sup>19</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>20</sup> and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the Complex EBBO and Complex ABBO at the time of the execution against the first response will be included.

The following information is included in the Complex Order Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each Complex Order sent by the Recipient Member, regardless of whether it executed or not;<sup>21</sup> (C) size and type of each Complex Order submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the

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<sup>17</sup> The term “ABBO” or “Away Best Bid or Offer” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (“OPRA”). See Exchange Rule 100. The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the best net bid and offer for a Complex Strategy.

<sup>18</sup> Exchange Rule 531(b)(1)(ii)(B) further provides that if the resting order executes against multiple contra-side responses, only the Complex ABBO at the time of the execution against the first response will be included.

<sup>19</sup> The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange’s network, which is before the time the response would be received by the System.

<sup>20</sup> The time difference would be provided in nanoseconds.

<sup>21</sup> For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member’s response(s) is received by the Exchange’s network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

response by the Recipient Member.

The Complex Order Report includes the data set for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Complex Order Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Complex Order Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Complex Order Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Complex Order Report will increase transparency and democratize information so that all firms that subscribe to the Complex Order Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing Complex Order if there is a high probability that it will execute against an order resting on the Exchange's Strategy Book. The Complex Order Report identifies by how much time an order that may have been marketable missed an execution. The Complex Order Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The Complex Order Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the



Exchange's Strategy Book.

The Exchange proposes to provide the Complex Order Report in response to Member demand for data concerning the timeliness of their incoming Complex Orders and executions against resting Complex Orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Strategy Book. The purpose of the Complex Order Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Complex Order Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Complex Order Report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to the Complex Order Report or not.

The Exchange proposes to assess the same fees that it currently charges for Members that subscribe to the similar Simple Order Report. As such, the Exchange proposes to amend Section 7), Reports, of the Fee Schedule to provide that Members may purchase the Complex Order Report on a monthly or annual (12 month) basis. In particular, the Exchange proposes to assess Members a fee of \$4,000 per month or \$24,000 per year for a 12 month subscription to the Complex Order Report. Members may cancel their subscription at any time. Just as it does for the Simple Order Report, the Exchange proposes to specify that for mid-month subscriptions to the Complex Order Report, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Complex Order Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange also proposes to provide a discounted rate of \$40,000 per year to Members that purchase 12 month annual subscriptions to both the Simple and Complex Order Reports (as compared to the 12 month subscription rate of \$24,000 for each report on an individual subscription basis). The Exchange also proposes to pro-rate the discounted 12 month subscription fee for Members that seek to add either their Simple Order Report or the Complex Order Report to an existing subscription. In particular, the Exchange proposes that for those Members with an existing 12 month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12 month subscription. In such case, the fee for the added report will be pro-rated based on the \$40,000 combined rate for the 12 month subscription discount for the remainder of the subscriber's current 12 month subscription, and the number of months remaining in the existing subscription until the Member's renewal date. Members would then receive the 12 month discount (\$40,000 annually) for subscribing to both reports on the renewal date of their original subscription. For example, assume "Member A" previously subscribed to the Simple Order Report on September 1, 2021 and paid \$24,000 for a 12 month subscription to the Simple Order Report. "Member A's" current subscription expires on August 31, 2022 for the Simple Order Report. Before "Member A's" subscription to the Simple Order Report expires, "Member A" decides to subscribe to the Complex Order Report, beginning March 1, 2022. Rather than being immediately charged \$40,000 for the 12 month subscription discount for subscribing to both reports ("Member A" already paid \$24,000 upfront for the Simple Order Report 12 month subscription), "Member A" would only be charged an additional \$8,000 to add the Complex Order Report for the remaining months of "Member A's" current 12 month subscription to the Simple Order Report. On September 1, 2022, assuming "Member A"

decided to keep both reports, “Member A” would then be charged the 12 month discounted rate of \$40,000 for both reports for the next year.

The Exchange proposes to determine the pro-rated fee described above as follows: on the date that “Member A” wanted to begin subscribing to the Complex Order Report (March 1, 2022), there were six months remaining on “Member A’s” existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be calculated as  $((6 \text{ months remaining} / 12 \text{ months total}) * (\$40,000 \text{ discounted annual subscription for both reports} - \$24,000 \text{ for annual subscription to each report individually})) = \$8,000$  for remaining 6 months. Beginning September 1, 2022 (the original renewal date for the Simple Order Report), “Member A” would then be charged the discounted 12 month subscription rate of \$40,000, assuming “Member A” renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange intends to begin to offer the Complex Order Report and charge the proposed fees on March 1, 2022.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The

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

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

Exchange also believes that its proposal to adopt fees for the Complex Order Report is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>25</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Complex Order Report also promotes increased transparency through the dissemination of the Complex Order Report. Particularly, the Complex Order Report will benefit investors by facilitating their prompt access to the value added information that is included in the Complex Order Report. The Complex Order Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 12-13% of the equity options market share and currently the Exchange represents only approximately 4.23% of the market share.<sup>26</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining

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<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(4).

<sup>26</sup> See “The Market at a Glance,” (last visited January 11, 2022), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>27</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Complex Order Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and identical to the fees assessed by the Exchange for its substantially similar Simple Order Report.<sup>28</sup> Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange’s offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange’s potential report as more attractive, then such market participant can merely choose not to purchase the Exchange’s

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<sup>27</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>28</sup> See supra note 7.

Complex Order Report and instead purchase another exchange's similar data product, which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Complex Order Report. A lower annual subscription fee would also incentivize Members to subscribe to the Complex Order Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Complex Order Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes it provides an identical annual subscription for its Simple Order Report data and that other exchanges provide annual subscriptions for reports concerning their data product offerings.<sup>29</sup>

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against a Complex Order resting on the Exchange's Strategy Book. The Complex Order Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Strategy Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Complex Order Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Complex Order Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable,

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<sup>29</sup> Cboe Exchange, Inc. ("Cboe") assesses a \$24,000 annual fee for an intra-day subscription to Open-Close Data. See <https://datashop.cboe.com/options-summary-subscription>.

firms can diminish or discontinue their use of the data. The Exchange therefore believes that the proposed fees for the Complex Order Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Complex Order Report. The Exchange's proposed fees would not differentiate between subscribers that purchase the Complex Order Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Complex Order Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Complex Order Report, and the Exchange is not required to make the Complex Order Report available to all investors. It is entirely a business decision of each Member to subscribe to the Complex Order Report. The Exchange offers the Complex Order Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Complex Order Report may discontinue receiving the Complex Order Report at any time if that Member determines that the information contained in the Complex Order Report is no longer useful.

The Exchange also believes providing a 12 month discounted fee for subscribers of both the Simple and Complex Order Reports is equitable and reasonable because it would enable the Exchange to gauge long-term interest in both reports. The Exchange believes that a lower annual combined subscription fee may incentivize Members to subscribe to both reports on a long-term basis, thereby allowing the Exchange to better gauge demand for both reports over a longer period of time. Doing so will enable the Exchange to better predict the future demand for both

reports. This will allow the Exchange to better prepare and adjust resources for the production and delivery of both reports to Members, improving the efficiency by which the Exchange may deliver both reports over a prolonged and set period of time. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer a 12 month discounted fee for Members that subscribe to both reports because all Members may subscribe to both reports and receive the discounted rate.

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. The Exchange made the Complex Order Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange believes the proposed fees would not cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Complex Order Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to



satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also believes that the proposed fees do not cause any unnecessary or inappropriate burden on intermarket competition because the latency information that would be provided in the Complex Order Report would enhance competition between exchanges that offer complex order functionality. Members that subscribe to the Complex Order Report could use the information in the report to recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide latency related data in an effort to improve their own market quality for complex orders.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Complex Order Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>30</sup> and Rule 19b-4(f)(2)<sup>31</sup> thereunder. At any time within 60 days<sup>31</sup> of the filing of the

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>31</sup> 17 CFR 240.19b-4(f)(2).

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

#### IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<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-2022-08 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-2022-08. 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-2022-08 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>32</sup>

Vanessa Countryman  
Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

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

**MIAX Emerald Options Exchange Fee Schedule**

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**7) Reports**

<b>Report</b>	<b>Fee</b>
Liquidity Taker Event Report – <u>Simple Orders</u> (“ <u>Simple Order Report</u> ”)	\$4,000 per month \$24,000 per year (12 month subscription)
<u>Liquidity Taker Event Report – Complex Orders</u> (“ <u>Complex Order Report</u> ”)	<u>\$4,000 per month</u> <u>\$24,000 per year (12 month subscription)</u>

Mid-Month Subscriptions. New subscribers will be charged for the full calendar month for which they subscribe and will be provided Liquidity Taker Event Report (Simple and/or Complex) data for each trading day of the calendar month prior to the day on which they subscribed.

12 Month Subscription Discount. Subscribers will be charged a discounted fee of \$40,000 per year when they purchase 12 month subscriptions to both the Simple Order Report and Complex Order Report.

Subscribers with an existing 12 month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12 month subscription. In such case, the fee for the added report will be pro-rated for the remainder of the subscriber’s current 12 month subscription based on the amount of the 12 month subscription discount. Subscribers would then receive the 12 month subscription discount for subscribing to both reports on the renewal date of their original subscription.

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