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Page 1 of * 36

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

File No. * SR 2024 - * 09

Amendment No. (req. for Amendments *)

Filing by MIAX Sapphire, LLC

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

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|---|--------------------------------------|-------------------------------------|---|---|--|
| 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"/> |
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Rule

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| <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) |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the Fee Schedule to establish fees for 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 * Michael Last Name * Slade

Title * AVP, Associate Counsel

E-mail * mslade@miaxglobal.com

Telephone * (609) 955-0460 Fax

Signature

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

Date 08/06/2024 (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: 2024.08.06 14:49:41 -04'00'

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-SAPPHIRE-2024-09 - 19b4 (Open

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-SAPPHIRE-2024-09 - Exhibit 1.doc

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-SAPPHIRE-2024-09 - Exhibit 5 (O

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 Proposed Rule Change**

(a) MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX Sapphire Options Exchange Fee Schedule (“Fee Schedule”) to adopt fees for a data product known as the Open-Close Report.³

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 12, 2024.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. A copy of the applicable section of the 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 duly appointed designee pursuant to authority delegated by the MIAX Sapphire Board of Directors on July 23, 2024. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Michael Slade, Assistant Vice President and Associate Counsel, at (609) 955-0460.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 531(d)(1).

a. Purpose

The Exchange currently plans to offer a data product known as the Open-Close Report, which will be available for purchase to Exchange Members⁴ and non-Members.⁵ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(d)(1).

By way of background, the Exchange plans to offer two versions of the Open-Close Report, an End-of-Day summary and Intra-Day report.⁶ Members and non-Members may request, on an ad hoc basis, historical End-of-Day and/or Intra-Day Open-Close Report data. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available.

The Exchange proposes to establish Section 6) of the Fee Schedule, titled “Market Data Fees.” The Exchange proposes that Sections 6)a)-b) will be marked as “Reserved” for other market data fees that the Exchange plans to establish. Proposed Section 6)c) will be titled “Open-Close Report” and provide the fees described below.

End-of-Day Subscription

The Exchange proposes to assess a fee of \$600 per month for subscribing to the End-of-Day summary Open-Close Report. The End-of-Day summary is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁵ See Securities Exchange Act Release No. 100539 (July 15, 2024) (File No. 10-240) (In the Matter of the Application of MIA X Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁶ The Intra-Day Open-Close Report provides similar information to that of End-of-Day Open-Close Report, but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

Customer, Firm, Broker-Dealer, and Market Maker⁷), 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 data is proprietary Exchange trade data and does not include trade data from any other exchange. It is a historical data product and not a real-time data feed. The Exchange notes that its affiliated markets offer similar data products that may be purchased on a monthly basis for the same prices as proposed herein.⁸ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁹

Intra-Day Subscription

The Exchange proposes to assess a monthly fee of \$2,000 for subscribing to the Intra-Day Open-Close Report. The Exchange also proposes that subscribers who purchase an Intra-Day subscription may request an End-of-Day subscription for no additional charge. The Intra-Day Open-Close Report provides similar information to the End-of-Day summary Open-Close Report but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the Intra-Day Open-Close Report receive the first calculation of intra-day data by

⁷ See Exchange Rule 100.

⁸ See Miami International Securities Exchange, LLC (“MIAX”) Fee Schedule, Section 6)e); MIAX PEARL, LLC (“MIAX Pearl”) Options Fee Schedule, Section 6)d); and MIAX Emerald, LLC (“MIAX Emerald”) Fee Schedule, Section 6)e).

⁹ See Nasdaq PHLX, LLC (“PHLX”) Options Pricing Schedule, Section 10; The Nasdaq Stock Market, LLC (“Nasdaq”) Options Pricing Schedule, Section 4; Nasdaq ISE, LLC (“ISE”) Options Pricing Schedule, Section 10; Nasdaq GEMX, LLC (“GEMX”) Options Pricing Schedule, Section 7; Cboe EDGX Exchange, Inc. (“EDGX”) Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section; and Cboe BZX Exchange, Inc. (“BZX”) Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section.

no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.” The Intra-Day Open-Close Report data provides a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Exchange notes that its affiliated markets offer similar Intra-Day Open-Close Reports for their market data, which may be purchased on a monthly basis for the same price as proposed herein.¹⁰ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.¹¹

End-of-Day Ad-hoc Request (historical data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical End-of-Day Open-Close Report data for a fee of \$500 per request per month. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. The Exchange notes that its affiliated markets offer similar historical End-of-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹² Further, other exchanges that provide similar data products allow for ad hoc requests of their End-of-Day

¹⁰ See supra note 8.

¹¹ See supra note 9.

¹² See supra note 8.

data for a fee¹³ and, like the Exchange proposes herein, allow for ad hoc requests back to a certain month.¹⁴

Intra-Day Ad-hoc Request (historical data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical Intra-Day Open-Close Report data for a fee of \$1,000 per request per month. The Exchange also proposes that subscribers who purchase an Intra-Day Ad-hoc Request (historical data) may submit an End-of-Day Ad-hoc Request (historical data) for the same date or date range for no additional charge. As it specifies for historical End-of-Day Open-Close Report data, an ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange provides historical Intra-Day Open-Close Report data for the same time period. The Exchange notes that its affiliated markets offer similar historical Intra-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹⁵ Further, other exchanges that provide similar data products allow for ad hoc requests of their Intra-Day data for a fee.¹⁶

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

The Exchange also proposes to adopt an academic discount for ad hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request \$1,500 per year for the first year (instead of \$6,000 per year)

¹³ See supra note 9.

¹⁴ See EDGX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section, and BZX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section. (Both EDGX and BZX allow for ad-hoc requests to be for any number of months beginning with January 2018 for which the data is available.)

¹⁵ See supra note 8.

¹⁶ See supra note 14.

and \$125 per month thereafter for historical End-of-Day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request \$3,000 per year for the first year (instead of \$12,000 per year) and \$250 per month thereafter for historical Intra-Day Open-Close Report data covering all of the Exchange's securities.

The Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options markets. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fees for qualifying academic purchasers of historical End-of-Day Open-Close Report data and Intra-Day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (i.e. academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. Academic users interested in qualifying will be required to submit a brief application.¹⁷ Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

¹⁷ The Exchange notes that it will have an academic user application available on the Exchange's website.

The Exchange notes that its affiliates – MIAX, MIAX Pearl Options, and MIAX Emerald¹⁸ – as well as competing exchanges currently offer academic discounts for similar data sets on those exchanges.¹⁹ The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical End-of-Day Open-Close Report data and Intra-Day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical End-of-Day Open-Close and Intra-Day Open-Close Report data would be educational in use and purpose, and not vocational.

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 Exchange believes the 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, Intra-Day Open-Close Report data may allow a market participant to identify new interest or possible risks throughout the trading day, while End-of-Day Open-Close Report data may allow a market participant to identify fading interests in a security. The Open-Close 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

¹⁸ See supra note 8.

¹⁹ See supra note 9 (ISE offers academic discounts for Open/Close Trade Profile End of Day and Open/Close Trade Profile Intraday; EDGX and BZX also offer academic discounts for Open-Close Data).

choose to do so. The Exchange notes that its affiliates – MIAX, MIAX Pearl Options, and MIAX Emerald – as well as competing exchanges offer similar data products.²⁰

The Exchange proposes to waive the Open-Close Report fees for the Initial Waiver Period.²¹ Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month prior to the day on which they subscribed. The proposed fees will apply both to Members and non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.²²

The Exchange intends to begin to offer the Open-Close Report on August 12, 2024.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in

²⁰ See supra notes 8 and 9.

²¹ The term “Initial Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions Section of the Fee Schedule.

²² See supra note 9.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the reports is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁶ in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. 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. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4).

series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.²⁷

The Exchange operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. For the month of June 2024, based on publicly available information, no single options exchange had more than approximately 14-15% of the equity options market share.²⁸ 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.”²⁹ 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 Open-Close Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are identical to the fees charged for the Open-Close Report by the Exchange’s affiliates, MIAX, MIAX Pearl Options, and MIAX Emerald.³⁰ In addition, the Exchange believes the proposed

²⁷ See supra note 9.

²⁸ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/>.

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

³⁰ See supra note 8.

fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.³¹ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data products, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close Report data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.³² Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close Report data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Open-Close Report data as more attractive than the Exchange's Open-Close Report, then such market participant can merely choose not to purchase the Exchange's Open-Close Report and instead purchase another exchange's Open-Close Report data product, which offers similar data points, albeit based on that market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on the Exchange. The recently adopted Open-Close Report would provide options market participants with valuable information about opening and closing transactions executed

³¹ See supra note 9.

³² The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical End-of-Day Open-Close and Intra-Day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical End-of-Day Open-Close and Intra-Day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

Selling market data, such as the Open-Close 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 Open-Close 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 and/or avail themselves of similar products offered by other exchanges.³³ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member and non-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. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, 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 Exchange reiterates that the decision as to whether or not to purchase the Open-Close Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Report, and the Exchange is not required to make the Open-Close Report available to all investors. Rather, the Exchange is voluntarily making the Open-Close Report available, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

The Exchange proposes to waive the fees for the proposed Open-Close Reports for the Initial Waiver Period in order to encourage market participants to subscribe to the reports. The Exchange believes it is reasonable to waive the fees for the reports for the Initial Waiver Period in order for market participants and academic users to determine whether they realize value from

³³ See supra note 9.

the reports prior to the expiration of the Initial Waiver Period. The believes that it is reasonable to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period. The Exchange believes the proposed fee waiver is equitable and not unfairly discriminatory because all subscribers to the Open-Close Reports will receive the fee waiver throughout the defined period of time of the Initial Waiver 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 sell a data product similar to those offered by other competitor options exchanges.³⁴ The Exchange will make Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least six other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report.³⁵ As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products

³⁴ Id.

³⁵ See supra notes 8 and 9.

available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.³⁶ For example, proposing fees that are excessively higher than established fees for 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. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. 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 it does not differentiate between subscribers that purchase the Open-Close Report, other than for qualifying academic users. The proposed fees are set at a modest level that would allow any interested Member or non-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

³⁶ See id.

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,³⁷ and Rule 19b-4(f)(2) thereunder³⁸ 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

The proposed rule change is based on substantively identical rules (and fees) in place at MIAX, MIAX Pearl Options, MIAX Emerald, PHLX, Nasdaq, ISE, GEMX, BZX, and EDGX.³⁹

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

Not applicable.

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

Not applicable.

11. Exhibits

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

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 17 CFR 240.19b-4.

³⁹ See supra notes 8 and 9.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-SAPPHIRE-2024-09)

August _____, 2024

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Sapphire, LLC to Adopt Fees for a Data Product Known as the Open-Close Report

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August _____, 2024, MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the MIAX Sapphire Options Exchange Fee Schedule (“Fee Schedule”) to adopt fees for a data product known as the Open-Close Report.³

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 12, 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings>, at the Exchange’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 531(d)(1).

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 currently plans to offer a data product known as the Open-Close Report, which will be available for purchase to Exchange Members⁴ and non-Members.⁵ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(d)(1).

By way of background, the Exchange plans to offer two versions of the Open-Close Report, an End-of-Day summary and Intra-Day report.⁶ Members and non-Members may request, on an ad hoc basis, historical End-of-Day and/or Intra-Day Open-Close Report data. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available.

The Exchange proposes to establish Section 6) of the Fee Schedule, titled “Market Data Fees.” The Exchange proposes that Sections 6)a)-b) will be marked as “Reserved” for other

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁵ See Securities Exchange Act Release No. 100539 (July 15, 2024) (File No. 10-240) (In the Matter of the Application of MIA X Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁶ The Intra-Day Open-Close Report provides similar information to that of End-of-Day Open-Close Report, but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

market data fees that the Exchange plans to establish. Proposed Section 6)c) will be titled “Open-Close Report” and provide the fees described below.

End-of-Day Subscription

The Exchange proposes to assess a fee of \$600 per month for subscribing to the End-of-Day summary Open-Close Report. The End-of-Day summary is 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 Maker⁷), 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 data is proprietary Exchange trade data and does not include trade data from any other exchange. It is a historical data product and not a real-time data feed. The Exchange notes that its affiliated markets offer similar data products that may be purchased on a monthly basis for the same prices as proposed herein.⁸ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁹

Intra-Day Subscription

The Exchange proposes to assess a monthly fee of \$2,000 for subscribing to the Intra-Day Open-Close Report. The Exchange also proposes that subscribers who purchase an Intra-Day subscription may request an End-of-Day subscription for no additional charge. The Intra-

⁷ See Exchange Rule 100.

⁸ See Miami International Securities Exchange, LLC (“MIAX”) Fee Schedule, Section 6)e); MIAX PEARL, LLC (“MIAX Pearl”) Options Fee Schedule, Section 6)d); and MIAX Emerald, LLC (“MIAX Emerald”) Fee Schedule, Section 6)e).

⁹ See Nasdaq PHLX, LLC (“PHLX”) Options Pricing Schedule, Section 10; The Nasdaq Stock Market, LLC (“Nasdaq”) Options Pricing Schedule, Section 4; Nasdaq ISE, LLC (“ISE”) Options Pricing Schedule, Section 10; Nasdaq GEMX, LLC (“GEMX”) Options Pricing Schedule, Section 7; Cboe EDGX Exchange, Inc. (“EDGX”) Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section; and Cboe BZX Exchange, Inc. (“BZX”) Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section.

Day Open-Close Report provides similar information to the End-of-Day summary Open-Close Report but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the Intra-Day Open-Close Report receive the first calculation of intra-day data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.” The Intra-Day Open-Close Report data provides a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Exchange notes that its affiliated markets offer similar Intra-Day Open-Close Reports for their market data, which may be purchased on a monthly basis for the same price as proposed herein.¹⁰ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.¹¹

End-of-Day Ad-hoc Request (historical data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical End-of-Day Open-Close Report data for a fee of \$500 per request per month. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. The Exchange notes that its affiliated

¹⁰ See supra note 8.

¹¹ See supra note 9.

markets offer similar historical End-of-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹² Further, other exchanges that provide similar data products allow for ad hoc requests of their End-of-Day data for a fee¹³ and, like the Exchange proposes herein, allow for ad hoc requests back to a certain month.¹⁴

Intra-Day Ad-hoc Request (historical data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical Intra-Day Open-Close Report data for a fee of \$1,000 per request per month. The Exchange also proposes that subscribers who purchase an Intra-Day Ad-hoc Request (historical data) may submit an End-of-Day Ad-hoc Request (historical data) for the same date or date range for no additional charge. As it specifies for historical End-of-Day Open-Close Report data, an ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange provides historical Intra-Day Open-Close Report data for the same time period. The Exchange notes that its affiliated markets offer similar historical Intra-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹⁵ Further, other exchanges that provide similar data products allow for ad hoc requests of their Intra-Day data for a fee.¹⁶

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

¹² See supra note 8.

¹³ See supra note 9.

¹⁴ See EDGX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section, and BZX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section. (Both EDGX and BZX allow for ad-hoc requests to be for any number of months beginning with January 2018 for which the data is available.)

¹⁵ See supra note 8.

¹⁶ See supra note 14.

The Exchange also proposes to adopt an academic discount for ad hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request \$1,500 per year for the first year (instead of \$6,000 per year) and \$125 per month thereafter for historical End-of-Day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request \$3,000 per year for the first year (instead of \$12,000 per year) and \$250 per month thereafter for historical Intra-Day Open-Close Report data covering all of the Exchange's securities.

The Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options markets. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fees for qualifying academic purchasers of historical End-of-Day Open-Close Report data and Intra-Day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (i.e. academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. Academic users interested in qualifying will be required to submit a brief application.¹⁷

¹⁷ The Exchange notes that it will have an academic user application available on the Exchange's website.

Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that its affiliates – MIAAX, MIAAX Pearl Options, and MIAAX Emerald¹⁸ – as well as competing exchanges currently offer academic discounts for similar data sets on those exchanges.¹⁹ The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical End-of-Day Open-Close Report data and Intra-Day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical End-of-Day Open-Close and Intra-Day Open-Close Report data would be educational in use and purpose, and not vocational.

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 Exchange believes the 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, Intra-Day Open-Close Report data may allow a market participant to identify new interest or possible risks throughout the trading day, while End-of-Day Open-Close Report data may allow a market participant to identify fading interests in a security. The Open-Close Report

¹⁸ See supra note 8.

¹⁹ See supra note 9 (ISE offers academic discounts for Open/Close Trade Profile End of Day and Open/Close Trade Profile Intraday; EDGX and BZX also offer academic discounts for Open-Close Data).

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 notes that its affiliates – MIAX, MIAX Pearl Options, and MIAX Emerald – as well as competing exchanges offer similar data products.²⁰

The Exchange proposes to waive the Open-Close Report fees for the Initial Waiver Period.²¹ Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month prior to the day on which they subscribed. The proposed fees will apply both to Members and non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.²²

The Exchange intends to begin to offer the Open-Close Report on August 12, 2024.

2. Statutory Basis

²⁰ See supra notes 8 and 9.

²¹ The term “Initial Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions Section of the Fee Schedule.

²² See supra note 9.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the reports is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁶ in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. 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. 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

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4).

enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.²⁷

The Exchange operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. For the month of June 2024, based on publicly available information, no single options exchange had more than approximately 14-15% of the equity options market share.²⁸ 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.”²⁹ 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 Open-Close Report.

²⁷ See supra note 9.

²⁸ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/>.

²⁹ 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 identical to the fees charged for the Open-Close Report by the Exchange's affiliates, MIAX, MIAX Pearl Options, and MIAX Emerald.³⁰ In addition, the Exchange believes the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.³¹ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data products, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close Report data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.³² Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close Report data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Open-Close Report data as more attractive than the Exchange's Open-Close Report, then such market participant can merely choose not to purchase the Exchange's Open-Close Report and instead purchase another exchange's Open-Close Report data product, which offers similar data points, albeit based on that market's trading activity.

³⁰ See supra note 8.

³¹ See supra note 9.

³² The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on the Exchange. The recently adopted Open-Close Report would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical End-of-Day Open-Close and Intra-Day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical End-of-Day Open-Close and Intra-Day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

Selling market data, such as the Open-Close 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 Open-Close 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 and/or avail themselves of similar products offered by other exchanges.³³ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member and non-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. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, 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 Exchange reiterates that the decision as to whether or not to purchase the Open-Close Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Report, and the Exchange is not required to make the Open-Close Report available to all investors. Rather, the Exchange is voluntarily making the Open-Close Report available, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

³³ See supra note 9.

The Exchange proposes to waive the fees for the proposed Open-Close Reports for the Initial Waiver Period in order to encourage market participants to subscribe to the reports. The Exchange believes it is reasonable to waive the fees for the reports for the Initial Waiver Period in order for market participants and academic users to determine whether they realize value from the reports prior to the expiration of the Initial Waiver Period. The Exchange believes that it is reasonable to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period. The Exchange believes the proposed fee waiver is equitable and not unfairly discriminatory because all subscribers to the Open-Close Reports will receive the fee waiver throughout the defined period of time of the Initial Waiver 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 sell a data product similar to those offered by other competitor options exchanges.³⁴ The Exchange will make Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least six other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report.³⁵ As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

³⁴ Id.

³⁵ See supra notes 8 and 9.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.³⁶ For example, proposing fees that are excessively higher than established fees for 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. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. 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 it does not differentiate between subscribers that purchase the Open-Close Report, other than for qualifying academic users. The proposed fees

³⁶ See id.

are set at a modest level that would allow any interested Member or non-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

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2024-09 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-SAPPHIRE-2024-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-SAPPHIRE-2024-09 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,

Assistant Secretary.

³⁷

17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Sapphire Options Exchange Fee Schedule

* * * * *

6) Market Data Fees

- a) Reserved.
- b) Reserved.
- c) Open-Close Report

| <u>Report</u> | <u>Fee</u> |
|--|---|
| <u>End-of-Day Subscription</u> | <u>\$600 per month</u> |
| <u>Intra-Day Subscription</u> | <u>\$2,000 per month^a</u> |
| <u>End-of-Day Ad-hoc Request (historical data)</u> | <u>\$500 per request per month. An ad-hoc request can be for any number of months beginning with August 2024 for which the data is available.^c</u> |
| <u>Intra-Day Ad-hoc Request (historical data)</u> | <u>\$1,000 per request per month. An ad-hoc request can be for any number of months beginning with August 2024 for which the data is available.^{b,d}</u> |

Open-Close Report Fees will be waived during the Initial Waiver Period.

- a. Subscribers who purchase an Intra-Day subscription may request an End-of-Day subscription for no additional charge.
- b. Subscribers who purchase an Intra-Day Ad-hoc Request (historical data) may submit an End-of-Day Ad-hoc Request (historical data) for the same date or date range for no additional charge.
- c. Academic discount applies to End-of-Day Ad-hoc Requests (historical data). Qualifying Academic Purchasers will be charged per request \$1,500 per year for the first year and \$125 per month for each additional month.
- d. Academic discount applies to Intra-Day Ad-hoc Requests (historical data). Qualifying Academic Purchasers will be charged per request \$3,000 per year for the first year and \$250 per month for each additional month.

Mid-Month Subscriptions. New subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month prior to the day on which they subscribed.

* * * * *