

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 20

Amendment No. (req. for Amendments *)

Filing by MIAX Sapphire, 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"/>
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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)

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: 1) one-time membership application fees; 2) trading permit fees; 3) API testing and certification fees; and 4) network connectivity testing and certification fees.

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 08/08/2024

(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: 2024.08.08 14:44:10 -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 EDFS website.

Form 19b-4 Information *

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SR-SAPPHIRE-2024-20 - 19b4 (Mem

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-2024-20 - 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-2024-20 - Exhibit 5 (M

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 Sapphire, LLC (“MIAX Sapphire” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX Sapphire Options Exchange Fee Schedule³ (the “Fee Schedule”) to establish: (1) one-time membership application fees for new MIAX Sapphire Members⁴; (2) monthly Trading Permit⁵ fees for Members; (3) per-instance Application Programming Interface (“API”) testing and certification fees for Members and non-Members; and (4) per-instance network connectivity testing and certification fees for Members and non-Members.

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, and a copy of the applicable section of the proposed Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange previously submitted a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)) and Rule 19b-4(f)(2) (17 CFR 240.19b-4(f)(2)) thereunder to establish, among other things, the initial structure of the Fee Schedule, including a section for Definitions of terms used throughout the Fee Schedule, which the Exchange cites to in this filing for certain capitalized terms. See SR-SAPPHIRE-2024-13 (not yet noticed by the Commission at the time of this filing).

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange 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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the Exchange Board of Directors on 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.

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

a. Purpose

The Exchange proposes to amend the Fee Schedule to establish: (1) one-time membership application fees for new Members; (2) monthly Trading Permit fees for Members; (3) per-instance API testing and certification fees for Members and non-Members; and (4) per-instance network connectivity testing and certification fees for Members and non-Members. The Exchange proposes to waive all of the above-mentioned fees during the Initial Waiver Period,⁶ which will be stated in the respective sections for each proposed fee in the Fee Schedule.

On July 15, 2024, the Commission approved the Exchange's Form 1 application and corresponding rules for registration as a national securities exchange under Section 6 of the Act.⁷ MIAX Sapphire then issued an alert that it intended to commence electronic trading in equity options on August 12, 2024.⁸ The Exchange issued an alert publicly announcing the proposed

⁶ 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.

⁷ See Securities Exchange Act Release No. 100539 (July 15, 2024) (File No. 10-240) (In the Matter of the Application of MIAX Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁸ See Press Release, Miami International Holdings Announces SEC Approval of MIAX Sapphire Exchange (July 17, 2024), available at https://www.miaxglobal.com/sites/default/files/press_release-

fees on July 23, 2024.⁹

Membership Fees

One-Time Membership Application Fee

The Exchange proposes to establish Section 3) of the Fee Schedule, Membership Fees, pursuant to which the Exchange will have separate subheadings for different types of membership fees. First, the Exchange proposes to establish Section 3)a), Application for MIAX Sapphire Membership (One-Time Fee), in order to assess a one-time membership application fee based upon the applicant's status as either an Electronic Exchange Member ("EEM")¹⁰ or Market Maker.¹¹ The Exchange proposes that applicants for MIAX Sapphire membership as an EEM will be assessed a one-time application fee of \$500 and applicants for MIAX Sapphire membership as a Market Maker will be assessed a one-time application fee of \$1,000.

The Exchange proposes to state in the Fee Schedule that MIAX Sapphire will assess the one-time membership application fee to prospective Members on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX Sapphire membership is finally denied. The difference in the proposed one-time membership application fee to be charged to EEMs and Market Makers is because of the anticipated additional review and

[files/MIAX_Press_Release_07172024.pdf](#).

⁹ See Fee Change Alert, MIAX Sapphire Options Exchange – Summary of Proposed Non-Transaction Fees (July 23, 2024), available at <https://www.miaxglobal.com/alert/2024/07/23/miax-sapphire-options-exchange-summary-proposed-non-transaction-fees?nav=all>.

¹⁰ The term "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

¹¹ The term "Market Maker" or "MM" means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules. See Exchange Rule 100. The Exchange offers one type of Market Maker membership. See, generally, Chapter VI of the Exchange's Rules.

resources involved in processing a Market Maker's application, as Market Makers will have greater and more complex obligations with respect to doing business on the Exchange.¹²

The Exchange proposes to waive the one-time membership application fee for EEMs and Market Makers during the Initial Waiver Period.¹³ The Exchange believes that this will provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, which should result in increased potential order flow and liquidity as MIA X Sapphire begins electronic trading. Waiving certain fees is how exchanges have historically attracted membership and competed for order flow soon after launching operations.¹⁴ 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. MIA X Sapphire's proposed one-time membership application fees for EEMs and Market Makers are lower than, or similar to, the one-time application fees in place at

¹² See generally, Chapter VI of the Exchange's Rules.

¹³ See *supra* note 6. Upon the expiration of the defined term of the Initial Waiver Period, which depends upon the month in which the Exchange commences operations, the Exchange will submit separate rule filings to remove the waiver language from the Fee Schedule for each applicable fee that was waived during the Initial Waiver Period.

¹⁴ See, e.g., Securities Exchange Act Release Nos. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (waiving one-time membership application fees, trading permit fees, and testing and certification fees, among others, for an initial waiver period in order to attract membership and order flow upon launching operations) and 97893 (July 13, 2023), 88 FR 46285 (July 19, 2023) (SR-MEMX-2023-13) (waiving membership fees for an initial waiver period of approximately six months upon launch of MEMX's options exchange).

the Exchange's affiliates¹⁵ and other competing equity options exchanges.¹⁶

Trading Permit Fees

Next, the Exchange proposes to establish Section 3)b), Monthly Trading Permit Fees, which confer the ability to transact on MIAX Sapphire. Trading Permits will be issued to EEMs and Market Makers. The Exchange proposes that Members receiving Trading Permits during a particular calendar month will be assessed monthly Trading Permit fees as set forth in the Fee Schedule.

The Exchange proposes to assess a monthly Trading Permit fee to EEMs (other than clearing firms) in any month the EEM is certified in the membership system and the EEM is credentialed to use one or more FIX Ports¹⁷ in the production environment. Further, the Exchange proposes that monthly Trading Permit fees will be assessed with respect to EEM Clearing Firms¹⁸ in any month the clearing firm is certified in the membership system to clear transactions on the

¹⁵ See Miami International Securities Exchange, LLC ("MIAX") Fee Schedule, Section 3)a) (assessing a one-time membership application fee of \$2,500 for an EEM and \$3,000 for a MIAX Market Maker); MIAX Emerald, LLC ("MIAX Emerald") Fee Schedule, Section 3)a) (assessing a one-time membership application fee of \$2,500 for an EEM and \$3,000 for a MIAX Emerald Market Maker); and MIAX PEARL, LLC ("MIAX Pearl") Fee Schedule, Section 3)a) (assessing a one-time membership application fee of \$500 for an EEM and \$1,500 for a MIAX Pearl Options Market Maker). All references to "MIAX Pearl" in this filing are to the options trading facility of MIAX Pearl.

¹⁶ See Cboe Exchange, Inc. ("Cboe") Options Fee Schedule, Trading Permit Holder Application Fees section, page 12 (assessing an application fee of \$3,000 for an individual trading permit holder and \$5,000 for an organization); BOX Exchange LLC ("BOX") Fee Schedule, Section I. Participant Fees, A. Initiation Fee (assessing new members a one-time fee of \$2,500); and Nasdaq ISE, LLC ("Nasdaq ISE"), Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application (assessing an application fee of \$7,500 per firm for a primary market maker, \$5,500 per firm for a competitive market maker, and \$3,500 per firm for an electronic access member).

¹⁷ The term "FIX Port" means a FIX port that allows Members to send orders and other messages using the FIX protocol. See the Definitions section of the Fee Schedule. The term "FIX Interface" means the Financial Information Exchange interface used for submitting certain order types (as set forth in Rule 516) to the MIAX Sapphire System. See Exchange Rule 100.

¹⁸ The term "EEM Clearing Firm" means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. See the Definitions section of the Fee Schedule.

Exchange. The Exchange proposes to assess EEMs a monthly Trading Permit fee of \$500. The Exchange notes that its affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge Trading Permit fees to their Members. The Exchange's proposed Trading Permit fee structure for EEMs is based on the flat rate structure currently in place for MIAX and MIAX Emerald, and MIAX Sapphire's proposed Trading Permit fee for EEMs is lower than that of MIAX and MIAX Emerald.¹⁹

The Exchange proposes that monthly Trading Permit fees will be assessed with respect to Market Makers in any month the Market Maker is certified in the membership system, is credentialed to use one or more MEO²⁰ Ports in the production environment and is registered to quote in one or more classes. Notwithstanding the foregoing, the Exchange proposes that the calculation of the monthly Trading Permit fees for EEMs and Market Makers will be pro-rated based on the number of trading days during which the Trading Permit was in effect divided by the total number of trading days in that particular month multiplied by the monthly rate.

For the calculation of the monthly Market Maker Trading Permits fees, the Exchange proposes that the applicable fee rate will be the lesser of either the per class basis or percentage of total national average daily volume ("ADV") measurement. The amount of the monthly Market Maker Trading Permit fee will be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages set forth in the table in proposed Section 3)b) of the Fee Schedule. A Market Maker

¹⁹ See MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

²⁰ The term "MEO Interface" means a binary order interface used for submitting certain order types (as set forth in Rule 516 and Rule 518) to the MIAX Sapphire System. See the Definitions Section of the Fee Schedule and Exchange Rule 100. Market Makers may connect to the System via the MEO Interface using a proprietary binary protocol (i.e., MEO Port) for the transmission of orders and other messages to and from the Exchange. See MIAX Sapphire Options Exchange User Manual, Section 5.01, Architecture, available at https://www.miaxglobal.com/sites/default/files/job-files/MIAX_Sapphire_User_Manual_v1.0.0_2024_06_18.pdf.

will be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.²¹ The Exchange proposes to assess Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Sapphire that the Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national ADV in classes listed on MIAX Sapphire in the prior calendar quarter. Newly listed option classes will be excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange proposes to adopt the following monthly Trading Permit fees for Market Makers: (i) \$2,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) \$4,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) \$6,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) \$8,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Sapphire.²² The Exchange notes that the proposed monthly Market Maker Trading Permit fee structure is the same as the Trading Permit fee structures in place at MIAX, MIAX Pearl and MIAX Emerald, and MIAX Sapphire's proposed Trading Permit fees are lower than the comparable Trading Permit fees by class or national ADV in place at the Exchange's

²¹ Market Makers self-select the series of options classes to make markets in each trading day. The Exchange does not appoint Market Makers to specific series of options classes. See Exchange Rule 602(a)-(b).

²² For example, if "Market Maker 1" elects to quote the top 40 option classes which consist of 58% of the total national ADV in the prior calendar quarter, the Exchange would assess \$4,000 to "Market Maker 1" for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Sapphire.

affiliates.²³ The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation in classes on that exchange (as described in the table below), and, as such, this concept is not new or novel.

The Exchange also proposes to adopt an alternative lower monthly Trading Permit fee for Market Makers who fall within the 3rd and 4th levels of the Market Maker Trading Permit fee table, which would apply to: (i) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (ii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Sapphire. In particular, the Exchange proposes to adopt footnote "a" following the Market Maker Trading Permit fee table for these monthly Trading Permit levels. Proposed footnote "a" will provide that if the Market Maker's total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by the Options Clearing Corporation ("OCC") in the Market Maker account type for MIAX Sapphire-listed option classes for that month, then the monthly Trading Permit fee will be \$5,000 instead of the fee otherwise applicable to such level (i.e., \$6,000 or \$8,000).

The purpose of the alternative lower fee designated in proposed footnote "a" is to provide a lower fixed cost to those Market Makers who are quoting the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes registered or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which

²³ See MIAX Fee Schedule, Section 3)b) (assessing monthly market maker trading permit fees of \$7,000 up to \$22,000); MIAX Pearl Fee Schedule, Section 3)b) (assessing monthly market maker trading permit fees of \$3,000 up to \$9,000); and MIAX Emerald Fee Schedule, Section 3)b) (assessing monthly market maker trading permit fees of \$7,000 up to \$22,000).

are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, also provide lower Trading Permit fees for Market Makers who quote the entire markets of those exchanges (or substantial amount of those markets), as objectively measured by either number of classes assigned/registered or national ADV, but who do not otherwise execute a significant amount of volume on MIAX, MIAX Pearl, or MIAX Emerald.²⁴

As illustrated by the table below, the Exchange's proposed Trading Permit fees are comparable to, or less than, the similar trading permit and monthly membership fees charged by competing options exchanges to their members. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly Membership/Trading Permit Fee
MIAX Sapphire (as proposed)	Market Maker Trading Permit fees: <ul style="list-style-type: none"> - Tier1: \$2,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV - Tier 2: \$4,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV - Tier 3: \$6,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV - Tier 4: \$8,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes

²⁴ See MIAX Fee Schedule, Section 3)b), note “*”; MIAX Pearl Options Fee Schedule, Section 3)b), note “**”; and MIAX Emerald Fee Schedule, Section 3)b), note “■”.

	<p>listed on MIAX Sapphire</p> <ul style="list-style-type: none"> - Alternative lower rate of \$5,000 for Tiers 3 and 4 if the Market Maker's total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX Sapphire-listed option classes
BOX Options Exchange LLC ("BOX") ^a	<p>Electronic Market Maker Trading Permit Fees:</p> <ul style="list-style-type: none"> - Up to and including 10 classes: \$4,000 - Up to and including 40 classes: \$6,000 - Up to and including 100 classes: \$8,000 - Over 100 classes: \$10,000
NYSE Arca, Inc. ("NYSE Arca") ^b	<p>Options Trading Permits ("OTP") for Market Makers:</p> <ul style="list-style-type: none"> - 1st OTP: \$8,000 for up to 60 option issues plus the bottom 45% of option issues - 2nd OTP: additional \$6,000 for up to 150 option issues plus the bottom 45% of option issues - 3rd OTP: additional \$5,000 for up to 500 option issues plus the bottom 45% of option issues - 4th OTP: additional \$4,000 for up to 1,100 option issues plus the bottom 45% of option issues - 5th OTP: additional \$3,000 for all option issues - 6th – 9th OTP: additional \$2,000 for all option issues - 10th or more OTPs: \$500 for all options issues
NYSE American, LLC ("NYSE American") ^c	<p>ATP Trading Permits for Market Makers:</p> <ul style="list-style-type: none"> - 1st ATP: \$8,000 for up to 60 option issues plus the bottom 45% of option issues - 2nd ATP: additional \$6,000 for up to 150 option issues plus the bottom 45% of option issues - 3rd ATP: additional \$5,000 for up to 500 option issues plus the bottom 45% of option issues - 4th ATP: additional \$4,000 for up to 1,100 option issues plus the bottom 45% of option issues - 5th ATP: additional \$3,000 for all option issues - 6th – 9th ATP: additional \$2,000 for all option issues - 10th or more ATPs: additional \$500 for all option issues <p>Order Flow Provider ATP fee: \$1,000 Clearing Member ATP fee: \$1,000</p>
Nasdaq PHLX LLC ("Nasdaq PHLX") ^d	<p>Streaming Quote Trader Permit Fees:</p> <ul style="list-style-type: none"> - Tier 1 (up to 200 option classes): \$0.00 - Tier 2 (up to 400 option classes): \$2,200 - Tier 3 (up to 600 option classes): \$3,200 - Tier 4 (up to 800 option classes): \$4,200 - Tier 5 (up to 1,000 option classes): \$5,200

	<ul style="list-style-type: none"> - Tier 6 (up to 1,200 option classes): \$6,200 - Tier 7 (all option classes): \$7,200 <p>Remote Market Maker Organization Permit Fees:</p> <ul style="list-style-type: none"> - Tier 1 (less than 100 option classes): \$5,000 - Tier 2 (more than 100 and less than 999 option classes): \$8,000 - Tier 3 (1,000 or more option classes): \$11,000
<p>a. <u>See</u> BOX Fee Schedule, Section 1.C., Electronic Market Maker Trading Permit Fees.</p> <p>b. <u>See</u> NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1. Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE Arca Options.</p> <p>c. <u>See</u> NYSE American Options Fee Schedule, Section III.A., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23. Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE American Options.</p> <p>d. <u>See</u> Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, B-C, Streaming Quote Trader (“SQT”) and Remote Market Maker Organization Fees.</p>	

The Exchange proposes to waive all monthly Trading Permit fees for EEMs and Market Makers during the Initial Waiver Period. The Exchange believes that this will provide an incentive for market participants to become Members of the Exchange sooner, which should result in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that 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.

Testing and Certification Fees

Next, the Exchange proposes to establish Section 4), Testing and Certification Fees, applicable to Members and non-Members.

API Testing and Certification Fees – Members

The Exchange proposes to establish Section 4)a), Member Application Programming Interface (“API”) Testing and Certification Fee, pursuant to which the Exchange proposes to assess an API testing and certification fee to all Members. An API makes it possible for a Member’s

software to communicate with MIAX Sapphire software applications, and is subject to Member testing with, and certification by, MIAX Sapphire. The Exchange proposes to offer four types of ports: (i) the FIX Port²⁵; (ii) the MEO Port²⁶; (iii) the FIX Drop Copy (“FXD”) Port²⁷; and (iv) the Clearing Trade Drop (“CTD”) Port.²⁸

The Exchange proposes to assess API testing and certification fees for EEMs (other than clearing firms) (i) initially per API for FIX, FXD and CTD in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange proposes to assess API testing and certification fees for EEM Clearing Firms (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification. The Exchange proposes to assess API testing and certification fees for Market Makers (i) initially per API for CTD and MEO in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been registered to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification.

²⁵ See supra note 17.

²⁶ See supra note 20.

²⁷ The term “FXD” or “FIX Drop Copy Port” means a messaging interface that provides a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. See the Definitions Section of the Fee Schedule.

²⁸ A “CTD Port” or “Clearing Trade Drop Port” provides an Exchange Member with a real-time clearing trade updates. The updates include the Member’s clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. See the Definitions Section of the Fee Schedule.

In particular, the Exchange proposes to assess EEMs a per-instance API testing and certification fee of \$1,000 and Market Makers a per-instance API testing and certification fee of \$2,500. The proposed fees represent anticipated costs to be incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX Sapphire's interfaces.

The proposed API testing and certification fees for Members are the same as the API testing and certification fees for Members of the Exchange's affiliates, MIAX and MIAX Emerald, including the Exchange's proposed amounts for EEMs and Market Makers and the structure of the proposed fees.²⁹ In order to provide an incentive to prospective Members to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the API testing and certification fees assessable to Members for all ports during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that 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.

API Testing and Certification Fees – Non-Members

The Exchange proposes to establish Section 4)b), Non-Member API Testing and Certification Fee, pursuant to which the Exchange proposes to assess an API testing and

²⁹ See MIAX Fee Schedule, Section 4)a) and MIAX Emerald Fee Schedule, Section 4)a).

certification fee to all non-Members, including Third Party Vendors,³⁰ Service Bureaus,³¹ and Extranet Providers,³² whose software interfaces with MIAX Sapphire software. As with Members, an API makes it possible for the software of Third Party Vendors, Service Bureaus, Extranet Providers and other non-Members to communicate with MIAX Sapphire software applications, and is subject to testing with, and certification by, MIAX Sapphire.

The Exchange proposes to assess API testing and certification fees for all non-Members: (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a non-Member initiates a change to its system that requires testing and certification. The Exchange proposes that API testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. In particular, the Exchange proposes to assess all non-Members a per-instance API testing and certification fee of \$1,200. The proposed fee represents anticipated costs to be incurred by the Exchange as it works with each non-Member for testing and certifying that the non-Member's software systems communicate properly with MIAX Sapphire's interfaces.

The proposed API testing and certification fee for non-Members is the same as the API testing and certification fee for non-Members of the Exchange's affiliates, MIAX and MIAX Emerald, including the proposed amount and the structure of the proposed fee.³³ In order to

³⁰ The term "Third Party Vendor" means a subscriber of MIAX Sapphire's market and other data feeds, which they in turn use for redistribution purposes. See the Definitions Section of the Fee Schedule.

³¹ The term "Service Bureau" means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. See the Definitions Section of the Fee Schedule.

³² The term "Extranet Provider" means a technology provider that connects with MIAX Sapphire systems and in turn provides such connectivity to MIAX Sapphire participants that do not connect directly with MIAX Sapphire. See the Definitions Section of the Fee Schedule.

³³ See MIAX Fee Schedule, Section 4)b) and MIAX Emerald Fee Schedule, Section 4)b).

provide an incentive to prospective non-Members to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the API testing and certification fee assessable to non-Members for all ports during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fee by outlining the structure and amount in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fee upon expiration of the defined term of the Initial Waiver Period.

The Exchange believes it is necessary to charge an API testing and certification fee to Members and non-Members because of the anticipated time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction. The price differential in API testing and certification fees for EEMs and non-Members is because, in the experience of the Exchange's affiliates, EEM testing takes less time than non-Member testing as EEMs have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Likewise, the price differential in API testing and certification fees for Market Makers compared to EEMs and non-Members is because, in the experience of the Exchange's affiliates, testing and certification of APIs for Market Makers requires more Exchange resources as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.³⁴

Network Connectivity Testing and Certification Fee – Members

The Exchange proposes to establish Section 4)c), Member Network Connectivity Testing and Certification Fee, pursuant to which MIAX Sapphire will assess a fee for Members to establish

³⁴ See supra note 12.

electronic connections with the Exchange. The Exchange proposes to assess Members a network connectivity testing and certification fee: (i) initially per connection in the month the Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection; and (ii) each time a Member initiates a change to its system that requires network connectivity testing and certification. The Exchange proposes that network connectivity testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange also proposes that Member network connectivity testing and certification fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery facility. The Exchange notes that Members utilizing a single, shared 1 Gigabit ("Gb") cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange proposes to assess Members a network connectivity testing and certification fee of \$1,000 per Member per 1Gb connection tested and \$4,000 per Member per 10Gb ultra-low latency ("ULL") connection tested.

The proposed fee amounts are the same as the fees currently assessed for the same services at the Exchanges' affiliates, MIAX, MIAX Pearl, and MIAX Emerald.³⁵ In order to provide an incentive to prospective Members to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible,

³⁵ See MIAX Fee Schedule, Section 4)c); MIAX Pearl Options Fee Schedule, Section 4)c); and MIAX Emerald Fee Schedule, Section 4)c).

the Exchange proposes to waive the network connectivity testing and certification fees assessable to Members for all connections during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee 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.

Network Connectivity Testing and Certification Fee – Non-Members

The Exchange proposes to establish Section 4)d), Non-Member Network Connectivity Testing and Certification Fee, pursuant to which MIAX will assess a fee for non-Members to establish electronic connections with the Exchange. The Exchange proposes to assess non-Member network connectivity testing and certification fees: (i) initially per connection in the month the non-Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection; and (ii) each time a non-Member initiates a change to its system that requires network connectivity testing and certification. The Exchange proposes that network connectivity testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange also proposes that non-Member network connectivity testing and certification fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery facility. The Exchange notes that non-Members utilizing a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing

and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange proposes to assess non-Members a network connectivity testing and certification fee of \$1,200 per non-Member per 1Gb connection tested and \$4,200 per non-Member per 10Gb ULL connection tested.

The proposed fee amounts are the same as the fees currently assessed for the same services at the Exchanges' affiliates, MIAX, MIAX Pearl, and MIAX Emerald.³⁶ In order to provide an incentive to prospective non-Members to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the network connectivity testing and certification fees assessable to non-Members for all connections during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fee 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 Member and non-Member network connectivity testing and certification fees represent expected installation and support costs to be incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Sapphire. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.³⁷ The

³⁶ See MIAX Fee Schedule, Section 4)d); MIAX Pearl Fee Schedule, Section 4)d); and MIAX Emerald Fee Schedule, Section 4)d).

³⁷ See supra notes 35 and 36.

Exchange proposes to assess a higher network connectivity testing and certification fee to non-Members than to Members, similar to how MIAX, MIAX Pearl, and MIAX Emerald assess such fees to their Members and non-Members. The proposed higher fees charged to non-Members reflects the anticipated greater amount of time to be spent by MIAX Sapphire employees testing and certifying non-Members. In the experience of the Exchange's affiliates, Member network connectivity testing and certification takes less time than non-Member network connectivity testing and certification because Members have more experience testing these systems with exchanges and generally have fewer questions and issues arise during the testing and certification process.

b. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act³⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act³⁹ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to 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, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Membership Application Fees (One-Time Fee)

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers are consistent with the provisions of Section 6 of the Act,⁴⁰ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁴¹ in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using its facilities and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as further discussed below.

The Exchange believes the proposed one-time membership application fees are reasonable, equitable and not unfairly discriminatory because they are one-time fees that are reasonably related to (and designed to recover) the Exchange's anticipated cost associated with reviewing and approving membership applications, which consists primarily of the time and resources of Exchange personnel to process the membership application and conduct the new Member on-boarding process. The Exchange's process for reviewing and approving potential new Members will involve several steps and participation from personnel in multiple Exchange departments, as follows: (i) reviewing prospective Member information provided in various membership forms, including, when necessary, consulting with the Financial Industry Regulatory Authority ("FINRA") pursuant to the Exchange's regulatory services agreement;⁴² (ii) the on-boarding process, where Exchange personnel contacts the firm for an introductory meeting with the Exchange's Business Team to discuss goals, answer questions and schedule the technical on-boarding meeting; (iii) the technical on-boarding meeting, where the Exchange's on-boarding team and Trading Operations Team guides the firm through the on-boarding process

⁴⁰ 15 U.S.C. 78f.

⁴¹ 15 U.S.C. 78f(b)(4) and (5).

⁴² See Securities Exchange Act Release No. 98746 (October 13, 2023), 88 FR 72116 (October 19, 2023) (File No. 10-240), Exhibit L (describing the Exchange's proposed regulatory program, including regulatory services agreement with FINRA).

with Exchange personnel available to discuss network connectivity, APIs, Exchange functionality and operational issues; and (iv) follow-ups with the Trading Operations Team to coordinate testing, as necessary, until the firm is active in the Exchange's live trading environment.⁴³

As a self-regulatory organization, MIAX Sapphire's Membership Team will review applicants to ensure that each applicant for membership meets the Exchange's qualification criteria prior to approval. The Membership Team, in conjunction with the regulatory department, reviews the registration and qualification of an applicant's associated persons, the applicant's financial health, the validity of its clearing relationship, and its disciplinary history. The Membership Team also provides ongoing support to Members with respect to membership changes, registration, and other questions that commonly arise from Members regarding such matters. The Exchange believes that it is consistent with the Act to charge the one-time membership application fees to EEMs and Market Makers as it is reasonable to cover anticipated costs of administering its membership program.

The Exchange believes that competitive forces constrain what the Exchange can charge as one-time membership application fees because if the Exchange proposes to charge a membership application fee that market participants deem to be excessive, market participants would simply not become Members of the Exchange. The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers are reasonable because the

⁴³ See, generally, the Exchange's Membership and Technical Onboarding process and forms, available at <https://www.miaxglobal.com/markets/us-options/sapphire-options/membership>.

proposed fees are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates⁴⁴ and other competing equity options exchanges.⁴⁵

The Exchange believes the difference in the proposed one-time membership application fee to be charged to EEMs and Market Makers is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act⁴⁶ because of the anticipated additional review and resources involved in processing a Market Maker's application as opposed to an EEM's application, as Market Makers will have greater and more complex obligations with respect to doing business on the Exchange.⁴⁷

The Exchange believes it is reasonable to waive the one-time membership application fees for EEMs and Market Makers for the Initial Waiver Period to provide an incentive for market participants to apply for Exchange membership in connection with the launch of MIAX Sapphire. The Exchange believes waiving the one-time membership application fee is reasonable, equitable and not unfairly discriminatory because the waiver will apply uniformly to all new Members of the Exchange.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to waive all one-time membership application fees during the Initial Waiver Period in order to provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, which should result in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading.

At launch and for a limited time, the Exchange anticipates having a smaller number of

⁴⁴ See supra note 15.

⁴⁵ See supra note 16.

⁴⁶ 15 U.S.C. 78f(b)(4).

⁴⁷ See supra note 12.

market participants than the Exchange's affiliated markets, which are more established having launched years ago, as well as several competing options exchanges.⁴⁸ The Exchange also notes that it will not seek to recoup any of the actual costs associated with reviewing membership applications that will take place from the launch of operations through the expiration of the Initial Waiver Period, which will be in excess of six months. By the completion of the Initial Waiver Period, the Exchange anticipates the majority of market participants will have already completed their membership applications and on-boarding as new Members of the Exchange, all of whom will not pay the one-time membership application fee.⁴⁹ This means that the Exchange will likely not collect the majority of membership application fees for its Members. The Exchange believes it will assume approximately 100% of the anticipated costs associated with processing membership applications for the majority of Member firms approved by the Exchange (similar to MIAX, MIAX Pearl, and MIAX Emerald).⁵⁰ Accordingly, the Exchange

⁴⁸ See, e.g., MIAX Membership Directory (last visited July 15, 2024), [available at https://www.miaxglobal.com/miax_options_exchange_members.pdf](https://www.miaxglobal.com/miax_options_exchange_members.pdf) (providing a list of 47 MIAX members); MIAX Emerald Membership Director (last visited July 15, 2024), [available at https://www.miaxglobal.com/miax_emerald_options_exchange_members.pdf](https://www.miaxglobal.com/miax_emerald_options_exchange_members.pdf) (providing a list of 37 MIAX Emerald members); MIAX Pearl Membership Directory (last visited July 15, 2024), [available at https://www.miaxglobal.com/miax_pearl_options_exchange_members.pdf](https://www.miaxglobal.com/miax_pearl_options_exchange_members.pdf) (providing a list of 41 MIAX Pearl members); NYSE American Options Membership Directory (last visited July 15, 2024), [available at https://www.nyse.com/markets/american-options/membership#directory](https://www.nyse.com/markets/american-options/membership#directory) (providing a list of 74 NYSE American members); and Nasdaq ISE Membership (last visited July 15, 2024), [available at https://www.nasdaqtrader.com/Trader.aspx?id=Membership](https://www.nasdaqtrader.com/Trader.aspx?id=Membership) (providing a list of 76 Nasdaq ISE members).

⁴⁹ As noted by the Exchange's affiliate when it filed to introduce a one-time membership application fee, MIAX Emerald had 35 members that became members during the period of time that the one-time membership application fee was waived, which are fees MIAX Emerald will not be able to recoup. See Securities Exchange Act Release No. 91030 (February 1, 2021), 86 FR 8465 (February 5, 2021) (SR-EMERALD-2021-01) (“[MIAX Emerald] currently has 35 Members, all of whom did not pay the one-time membership application fee, as it was waived for the Waiver Period when these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL one-time membership application fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with processing membership applications for the majority of Member firms approved by the Exchange, MIAX, and MIAX PEARL.”) (footnote omitted).

⁵⁰ See *id.*

believes that it is reasonable, equitable, and not unfairly discriminatory to waive the one-time membership application fees during the Initial Waiver Period to attract market participants to the Exchange. The proposed one-time membership application fees are not designed to be a profit center for the Exchange; rather, the proposed fees are simply to recover some of the anticipated costs and employee time with reviewing new member applications for EEMs and Market Makers once the Exchange has already on-boarded the majority of its anticipated Members.

Although the Exchange proposes to waive the one-time membership application fees for the Initial Waiver Period, the Exchange proposes to include the proposed fee structure and amounts in the Fee Schedule in order to communicate its intent to charge the one-time membership application fee to EEMs and Market Makers upon the expiration of the defined term of the Initial Waiver Period. As a new exchange entrant, the Exchange chooses not to charge for new Members to join the Exchange until the expiration of the Initial Waiver Period to encourage market participants to trade on the Exchange and experience the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later, once there is sufficient depth and breadth of liquidity, amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives, before establishing membership fees, encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without membership fees serving as a potential barrier to attracting memberships and order flow. The waiver is also a protection to new Members. If new Members join the Exchange in order to participate on MIAX

Sapphire and subsequently decide that they do not want to continue trading on MIAX Sapphire prior to expiration of the Initial Waiver Period, they can cancel their membership without incurring the one-time membership application fee.

Trading Permit Fees

The Exchange plans to commence operations on August 12, 2024⁵¹ and waive monthly Trading Permit fees for Market Makers and EEMs to trade on the Exchange during the Initial Waiver Period.⁵² Although the Exchange proposes to waive the Trading Permit fees during the Initial Waiver Period, the Exchange proposes to establish an initial fee structure to communicate the Exchange's intent to charge Trading Permit fees upon the expiration of the Initial Waiver Period. As a new exchange entrant, the Exchange chooses to offer Trading Permits for free to encourage market participants to trade on the Exchange and experience, among other things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships and trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing certain fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.⁵³

⁵¹ See supra note 8.

⁵² See supra note 6.

⁵³ See e.g., Securities Exchange Act Release Nos. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (stating, "[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of

The Exchange believes its proposed Trading Permit fees are reasonable and not unfairly discriminatory because the proposed Trading Permit fees are lower than comparable membership/trading permit fees assessed by competing options exchanges.⁵⁴ Further, the Exchange believes that the proposal is reasonably designed to compete with other options exchanges by incentivizing market participants to register as Market Makers and EEMs on the Exchange in a manner that enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants upon launch. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the anticipated costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of class registrations will be subject to the same Market Maker Trading Permit fee. As proposed, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class. Exchange Rule 602(a) provides that a Member that has qualified as a Market Maker may register to make markets in individual series of options. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its

BOX...”) and 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR-MEMX-2020-10) (“MEMX Membership Fee Proposal”) (proposing to adopt the initial fee schedule and stating that “[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.”). MEMX has seen its market share increase and subsequently proposed to adopt a membership fee and fees for connectivity. See Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposing to adopt membership fees); and 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR-MEMX-2022-17) (proposing to adopt fees for connectivity). See also, e.g., Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05).

⁵⁴ See supra “Monthly Membership/Trading Permit Fee” table.

proposal is fair and reasonable because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee.

The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry marketplace. Since these smaller Market Makers typically utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fee, designated in proposed footnote "a." following the proposed Market Maker Trading Permit fee table. The Exchange also notes that the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, provide lower Trading Permit fees for Market Makers who quote the entire markets of those exchanges (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX, MIAX Pearl, or MIAX Emerald,⁵⁵ and, as such, this concept is not new or novel.

The Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable because Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month or upon certain class volume percentages of national ADV. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange's system requires increased

⁵⁵ See supra note 24.

performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, more classes that are actively quoted on the Exchange by a Market Maker will require increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and not unfairly discriminatory when taking into account how the increased number of quoted classes directly impacts the costs and resources required for the Exchange to operate.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. As noted above, the Exchange anticipates a smaller number of market participants will become Members of the Exchange from launch through the end of the Initial Waiver Period, which will constitute the majority of the Exchange's membership. A competing options exchange noted in a similar proposal to amend their own trading permit fees that, at the time of that filing in 2022, of the 62 market making firms that were registered as Market Makers across Cboe, MIAX, and BOX, 42 firms accessed only one of the three exchanges.⁵⁶ In addition, the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, have a total of 48 Members (as of July 15, 2024). Of those 48 total members, 36 are members of all three exchanges, four are members of only two exchanges, and eight are members of only one exchange. Of the members that are currently Market Makers at the

⁵⁶ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

Exchange's affiliates, five are not registered as Market Makers on MIAX Emerald, five are not registered as Market Makers on MIAX Pearl, and one is not registered as a Market Maker on MIAX.⁵⁷ The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there no regulatory requirement to connect to every options exchange, the Exchange believes there is also no "de facto" or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange membership exists when it comes to purchasing a Trading Permit and, as evidenced by the data provided below, prior fee proposals have resulted in Members terminating their memberships. As an example, one Market Maker terminated their MIAX Pearl membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes proposed by MIAX Pearl. As another example, two Market Makers terminated their MIAX Emerald memberships effective February 1, 2024, as a direct result of the proposed non-transaction fee changes proposed by MIAX Emerald. Other exchanges have also experienced termination of memberships if their members deem fees to be unreasonable or excessive. The Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.⁵⁸ The

⁵⁷ See supra note 48.

⁵⁸ According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. See Securities Exchange Act Release No.

absence of new memberships coupled with the termination of memberships on the Exchange's affiliates, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, shows that elasticity of demand exists.

The Exchange notes that there are material anticipated costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange expects to incur technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the anticipated expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the anticipated cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the anticipated costs to the Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange notes that while Market Makers will account for a vast majority of the system usage placed on the Exchange, Market Makers are valuable market participants on the

94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate Trading Permit fees for Market Makers that are more aligned with the anticipated costs and resources that Market Makers may place on the Exchange and its systems.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the fact that such fees are comparable to, and lower than, the costs of similar membership and trading permit fees at other exchanges.⁵⁹ The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.⁶⁰ The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to register in options classes while also equitably allocating the fees in a reasonable manner amongst Market Maker registrations to account for trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange

⁵⁹ See supra note 54.

⁶⁰ The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

believes that the proposed changes reflect this competitive environment.

The Exchange is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange.

In sum, the Exchange believes the proposed Trading Permit fees are reasonable and reflect a competitive environment, as the Exchange seeks to establish Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the anticipated costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

API Testing and Certification Fees

The Exchange believes it is reasonable to assess the proposed API testing and certification fees to Members and non-Members because of the anticipated time and resources to be spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction before firms use APIs in the production environment. The Exchange will not assess the proposed API testing and certification fees in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification; rather, the Exchange proposes to only assess such fee when a Member or non-Member has been credentialed to use one or more of the respective ports in the production environment and each time a Member initiates a change to its system that requires testing and certification.

The Exchange believes its proposed API testing and certification fees for Members and non-Members are reasonable, equitable, and not unfairly discriminatory because they are

reasonably related to (and designed to recover) the Exchange's expected cost associated with conducting API testing and certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction.

Further, the Exchange believes the price differential in API testing and certification fees for Members and non-Members is not unfairly discriminatory because, in the experience of the Exchange's affiliates, Member testing utilizes less resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are likely to be more numerous and complex than those tested and certified for Members. The Exchange believes its proposed API testing and certification fees are reasonable because they are priced at the same rates as those charged by Exchange's affiliates, MIAX and MIAX Emerald, for the same services for Members and non-Members.⁶¹

The Exchange believes its proposal to waive API testing and certification fees for Members and non-Members during the Initial Waiver Period is reasonable, equitable and not unfairly discriminatory because it will provide an incentive to market participants to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible. The proposed fee waiver will apply equally to all firms during the Initial Waiver Period. Even though the Exchange proposes to waive these

⁶¹ See supra note 29.

particular fees during the Initial Waiver Period, the Exchange believes that is reasonable to provide market participants with the overall structure of the proposed 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.

Network Connectivity Testing and Certification Fees

The Exchange believes it is reasonable to assess the proposed network connectivity testing and certification fees to Members and non-Members because of the anticipated time and resources to be spent to ensure that Members and non-Members are able to successfully establish electronic connections to the Exchange. The Exchange will not assess the proposed network connectivity testing and certification fees in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification; rather, the Exchange proposes to only assess such fee initially per connection in the month the Member or non-Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection and each time a Member or non-Member initiates a change to its system that requires network connectivity testing and certification.

The Exchange further believes the proposed fees are reasonable because a Member or non-Member that utilizes a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange believes the proposed network connectivity testing and certification fees are reasonable because they represent expected installation and support costs to be incurred by

the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Sapphire. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.⁶² Additionally, the Exchange believes its proposed network connectivity testing and certification fees are reasonable, equitable, and not unfairly discriminatory because they are reasonably related to (and designed to recover) the Exchange's anticipated cost associated with conducting network connectivity testing and certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member connectivity function correctly to prevent any system malfunction.

Further, the Exchange believes the price differential in network connectivity testing and certification fees for Members and non-Members is not unfairly discriminatory because, in the experience of the Exchange's affiliates, Member testing utilizes less resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

The Exchange believes the difference in the proposed 1Gb and 10Gb ULL network connectivity testing and certification fees is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act⁶³ because of the anticipated additional review and resources involved in testing and certifying a 10Gb ULL connection as opposed to a 1Gb connection, as 10Gb ULL connections offer vastly greater products and services which require significantly more time to test, including Market Maker quoting systems. The Exchange

⁶² See supra notes 35 and 36.

⁶³ 15 U.S.C. 78f(b)(4).

believes its proposed network connectivity testing and certification fees are reasonable because the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.⁶⁴

The Exchange believes its proposal to waive network connectivity testing and certification fees for Members and non-Members during the Initial Waiver Period is reasonable, equitable and not unfairly discriminatory because it will provide an incentive to market participants to apply early for membership and to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible. The proposed fee waiver will apply equally to all firms during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that is reasonable to provide market participants with the overall structure of the proposed 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

One-Time Membership Application Fees

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers do not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed

⁶⁴ See supra notes 35 and 36.

one-time membership application fees for EEMs and Market Makers are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates⁶⁵ and other competing equity options exchanges.⁶⁶ Further, the Exchange proposes to waive the one-time membership application fee for EEMs and Market Makers for the Initial Waiver Period, which the Exchange believes will provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, resulting in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. In turn, the Exchange believes its lower one-time membership application fees may stimulate intra-market competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. As discussed above, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see fewer than anticipated firms become Members of the Exchange as a result.

Trading Permit Fees

The Exchange believes that the proposed Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intra-market competition because, when these fees are viewed in the

⁶⁵ See supra note 15.

⁶⁶ See supra note 16.

context of the overall expected activity on the Exchange, Market Makers will: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand will likely come from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, other Member types, i.e. EEMs, take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intra-market competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intra-market competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

API and Network Connectivity Testing and Certification Fees

The Exchange believes that the proposed API and network connectivity testing and certification fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply to all new Exchange Members and those firms looking to establish APIs and network connectivity in the same manner. Market participants may not only choose whether to become Exchange Members at all, but may choose to become members at competing options exchanges instead.

The Exchange further believes the proposed fees do not place any market participant at a disadvantage compared to other market participants because the proposed API testing and certification and network connectivity testing and certification fees are intended to cover the situations where a Member or non-Member firm makes changes to its own system for its own business purpose (i.e., instances where a firm is trying to improve its quoting engine), which requires the Exchange to test those re-architected systems. This testing requires the time of Exchange personnel in several departments (Trading Operations, Business, On-Boarding, Membership), and occurs primarily outside of normal business hours, often over the course of the weekend. The proposed fees are a way for the Exchange to recoup its anticipated costs associated with this testing. When the Exchange determines to make upgrades to its own system which requires mandatory testing and certification by Members, the Exchange does not charge any fees.

The Exchange believes that the proposed fees do not dampen innovation because the majority of Exchange's anticipated Members are members of most, if not all, of the other 17 options exchanges. Those exchanges also require testing and certification any time their members make changes to their systems at those exchanges, and also charge a fee to recoup the anticipated costs associated with testing and certifying members. Without some sort of testing

and certification fee, the Exchange believes that Members and non-Members might be less efficient in testing their systems, potentially resulting in excessive time being consumed by the Exchange re-testing and re-certifying Members and non-Members, to the detriment of all market participants as Exchange resources are diverted away from other trading operations.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that various market participants are charged different fees for per-instance API and network connectivity testing, those distinctions are not unfairly discriminatory and do not unfairly burden one set of market participants over another. The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent that will likely be spent by the Exchange's employees testing and certifying non-Members. It has been the experience of the Exchange's affiliates that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus will be redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The proposed higher fee for network connectivity testing and certification to be charged to non-Members reflects the likely greater amount of time to be spent by MIA X Sapphire employees testing and certifying non-Members. It has been the experience of the Exchange's affiliates that that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with

exchanges as generally fewer questions and issues arise during the testing and certification process. The proposed higher fee for testing and certifying 10Gb ULL connections versus 1Gb ULL connections reflects the likely greater amount of time to be spent by MIAX Sapphire employees testing and certifying 10Gb ULL connections. MIAX Sapphire's proposed per-instance API and network connectivity testing and certification fees are set at the same levels for the same services provided by the Exchanges affiliates.⁶⁷

The Exchange believes that the proposed API and network connectivity testing and certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for the time and resource necessary for API testing and certification and network connectivity testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines). Accordingly, the proposed API and network connectivity testing and certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposed fees do not place an undue burden on competition on other SROs that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 17 other options exchanges where market participants

⁶⁷ See supra notes 29 and 33.

can become members.

One-Time Membership Application Fee

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers do not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will apply to all EEMs and Market Makers equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

Trading Permit Fees

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal would promote inter-market competition because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee. This could improve the Exchange's market quality by encouraging Market Makers to quote more series within an options class without it impacting its Trading Permit fee.

Market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it anticipates having far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market

makers that are participants of other options exchange but may not become Members of the Exchange. The Exchange is also unaware of any assertion that its proposed fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange or not become a Member at all.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange had more than approximately 14-15% of the equity options market share for the month of June 2024.⁶⁸ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund (“ETF”) options order flow. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

API and Network Connectivity Testing and Certification Fees

The Exchange believes the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange believes that the proposed fees

⁶⁸ See the “Market Share” section of the Exchange’s website, [available at www.miaxoptions.com](http://www.miaxoptions.com) (last visited July 24, 2024).

do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 17 other options exchanges where market participants can become members.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

Not applicable.

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,⁶⁹ and Rule 19b-4(f)(2) thereunder⁷⁰ 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 not based on the rules of another exchange or of the Commission.

⁶⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷⁰ 17 CFR 240.19b-4.

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 sections of the Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-SAPPHIRE-2024-20)

August ___, 2024

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Sapphire, LLC to Amend Its Fee Schedule

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 Schedule³ (the “Fee Schedule”) to establish: (1) one-time membership application fees for new MIAX Sapphire Members⁴; (2) monthly Trading Permit⁵ fees for Members; (3) per-instance Application Programming Interface (“API”) testing and certification fees for Members and non-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange previously submitted a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)) and Rule 19b-4(f)(2) (17 CFR 240.19b-4(f)(2)) thereunder to establish, among other things, the initial structure of the Fee Schedule, including a section for Definitions of terms used throughout the Fee Schedule, which the Exchange cites to in this filing for certain capitalized terms. See SR-SAPPHIRE-2024-13 (not yet noticed by the Commission at the time of this filing).

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange 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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

Members; and (4) per-instance network connectivity testing and certification fees for Members and non-Members.

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-options/rule-filings>, at MIAX Sapphire's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish: (1) one-time membership application fees for new Members; (2) monthly Trading Permit fees for Members; (3) per-instance API testing and certification fees for Members and non-Members; and (4) per-instance network connectivity testing and certification fees for Members and non-Members. The Exchange proposes to waive all of the above-mentioned fees during the Initial Waiver Period,⁶ which will be stated in the respective sections for each proposed fee in the Fee Schedule.

⁶ 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.

On July 15, 2024, the Commission approved the Exchange's Form 1 application and corresponding rules for registration as a national securities exchange under Section 6 of the Act.⁷ MIAX Sapphire then issued an alert that it intended to commence electronic trading in equity options on August 12, 2024.⁸ The Exchange issued an alert publicly announcing the proposed fees on July 23, 2024.⁹

Membership Fees

One-Time Membership Application Fee

The Exchange proposes to establish Section 3) of the Fee Schedule, Membership Fees, pursuant to which the Exchange will have separate subheadings for different types of membership fees. First, the Exchange proposes to establish Section 3)a), Application for MIAX Sapphire Membership (One-Time Fee), in order to assess a one-time membership application fee based upon the applicant's status as either an Electronic Exchange Member ("EEM")¹⁰ or Market Maker.¹¹ The Exchange proposes that applicants for MIAX Sapphire membership as an EEM will be assessed a one-time application fee of \$500 and applicants for MIAX Sapphire membership as a Market Maker will be assessed a one-time application fee of \$1,000.

⁷ See Securities Exchange Act Release No. 100539 (July 15, 2024) (File No. 10-240) (In the Matter of the Application of MIAX Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁸ See Press Release, Miami International Holdings Announces SEC Approval of MIAX Sapphire Exchange (July 17, 2024), available at https://www.miaxglobal.com/sites/default/files/press_release-files/MIAX_Press_Release_07172024.pdf.

⁹ See Fee Change Alert, MIAX Sapphire Options Exchange – Summary of Proposed Non-Transaction Fees (July 23, 2024), available at <https://www.miaxglobal.com/alert/2024/07/23/miax-sapphire-options-exchange-summary-proposed-non-transaction-fees?nav=all>.

¹⁰ The term "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

¹¹ The term "Market Maker" or "MM" means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules. See Exchange Rule 100. The Exchange offers one type of Market Maker membership. See, generally, Chapter VI of the Exchange's Rules.

The Exchange proposes to state in the Fee Schedule that MIAX Sapphire will assess the one-time membership application fee to prospective Members on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX Sapphire membership is finally denied. The difference in the proposed one-time membership application fee to be charged to EEMs and Market Makers is because of the anticipated additional review and resources involved in processing a Market Maker's application, as Market Makers will have greater and more complex obligations with respect to doing business on the Exchange.¹²

The Exchange proposes to waive the one-time membership application fee for EEMs and Market Makers during the Initial Waiver Period.¹³ The Exchange believes that this will provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, which should result in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. Waiving certain fees is how exchanges have historically attracted membership and competed for order flow soon after launching operations.¹⁴ 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. MIAX Sapphire's proposed one-time membership application fees for

¹² See generally, Chapter VI of the Exchange's Rules.

¹³ See supra note 6. Upon the expiration of the defined term of the Initial Waiver Period, which depends upon the month in which the Exchange commences operations, the Exchange will submit separate rule filings to remove the waiver language from the Fee Schedule for each applicable fee that was waived during the Initial Waiver Period.

¹⁴ See, e.g., Securities Exchange Act Release Nos. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (waiving one-time membership application fees, trading permit fees, and testing and certification fees, among others, for an initial waiver period in order to attract membership and order flow upon launching operations) and 97893 (July 13, 2023), 88 FR 46285 (July 19, 2023) (SR-MEMX-2023-13) (waiving membership fees for an initial waiver period of approximately six months upon launch of MEMX's options exchange).

EEMs and Market Makers are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates¹⁵ and other competing equity options exchanges.¹⁶

Trading Permit Fees

Next, the Exchange proposes to establish Section 3)b), Monthly Trading Permit Fees, which confer the ability to transact on MIAX Sapphire. Trading Permits will be issued to EEMs and Market Makers. The Exchange proposes that Members receiving Trading Permits during a particular calendar month will be assessed monthly Trading Permit fees as set forth in the Fee Schedule.

The Exchange proposes to assess a monthly Trading Permit fee to EEMs (other than clearing firms) in any month the EEM is certified in the membership system and the EEM is credentialed to use one or more FIX Ports¹⁷ in the production environment. Further, the Exchange proposes that monthly Trading Permit fees will be assessed with respect to EEM Clearing Firms¹⁸ in any month the clearing firm is certified in the membership system to clear transactions on the

¹⁵ See Miami International Securities Exchange, LLC ("MIAX") Fee Schedule, Section 3)a) (assessing a one-time membership application fee of \$2,500 for an EEM and \$3,000 for a MIAX Market Maker); MIAX Emerald, LLC ("MIAX Emerald") Fee Schedule, Section 3)a) (assessing a one-time membership application fee of \$2,500 for an EEM and \$3,000 for a MIAX Emerald Market Maker); and MIAX PEARL, LLC ("MIAX Pearl") Fee Schedule, Section 3)a) (assessing a one-time membership application fee of \$500 for an EEM and \$1,500 for a MIAX Pearl Options Market Maker). All references to "MIAX Pearl" in this filing are to the options trading facility of MIAX Pearl.

¹⁶ See Cboe Exchange, Inc. ("Cboe") Options Fee Schedule, Trading Permit Holder Application Fees section, page 12 (assessing an application fee of \$3,000 for an individual trading permit holder and \$5,000 for an organization); BOX Exchange LLC ("BOX") Fee Schedule, Section I. Participant Fees, A. Initiation Fee (assessing new members a one-time fee of \$2,500); and Nasdaq ISE, LLC ("Nasdaq ISE"), Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application (assessing an application fee of \$7,500 per firm for a primary market maker, \$5,500 per firm for a competitive market maker, and \$3,500 per firm for an electronic access member).

¹⁷ The term "FIX Port" means a FIX port that allows Members to send orders and other messages using the FIX protocol. See the Definitions section of the Fee Schedule. The term "FIX Interface" means the Financial Information Exchange interface used for submitting certain order types (as set forth in Rule 516) to the MIAX Sapphire System. See Exchange Rule 100.

¹⁸ The term "EEM Clearing Firm" means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. See the Definitions section of the Fee Schedule.

Exchange. The Exchange proposes to assess EEMs a monthly Trading Permit fee of \$500. The Exchange notes that its affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge Trading Permit fees to their Members. The Exchange's proposed Trading Permit fee structure for EEMs is based on the flat rate structure currently in place for MIAX and MIAX Emerald, and MIAX Sapphire's proposed Trading Permit fee for EEMs is lower than that of MIAX and MIAX Emerald.¹⁹

The Exchange proposes that monthly Trading Permit fees will be assessed with respect to Market Makers in any month the Market Maker is certified in the membership system, is credentialed to use one or more MEO²⁰ Ports in the production environment and is registered to quote in one or more classes. Notwithstanding the foregoing, the Exchange proposes that the calculation of the monthly Trading Permit fees for EEMs and Market Makers will be pro-rated based on the number of trading days during which the Trading Permit was in effect divided by the total number of trading days in that particular month multiplied by the monthly rate.

For the calculation of the monthly Market Maker Trading Permits fees, the Exchange proposes that the applicable fee rate will be the lesser of either the per class basis or percentage of total national average daily volume ("ADV") measurement. The amount of the monthly Market Maker Trading Permit fee will be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages set forth in the table in proposed Section 3)b) of the Fee Schedule. A Market Maker will be determined to be registered in a class if that Market Maker has been registered in one or

¹⁹ See MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

²⁰ The term "MEO Interface" means a binary order interface used for submitting certain order types (as set forth in Rule 516 and Rule 518) to the MIAX Sapphire System. See the Definitions Section of the Fee Schedule and Exchange Rule 100. Market Makers may connect to the System via the MEO Interface using a proprietary binary protocol (i.e., MEO Port) for the transmission of orders and other messages to and from the Exchange. See MIAX Sapphire Options Exchange User Manual, Section 5.01, Architecture, available at https://www.miaxglobal.com/sites/default/files/job-files/MIAX_Sapphire_User_Manual_v1.0.0_2024_06_18.pdf.

more series in that class.²¹ The Exchange proposes to assess Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Sapphire that the Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national ADV in classes listed on MIAX Sapphire in the prior calendar quarter. Newly listed option classes will be excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange proposes to adopt the following monthly Trading Permit fees for Market Makers: (i) \$2,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) \$4,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) \$6,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) \$8,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Sapphire.²² The Exchange notes that the proposed monthly Market Maker Trading Permit fee structure is the same as the Trading Permit fee structures in place at MIAX, MIAX Pearl and MIAX Emerald, and MIAX Sapphire's proposed Trading Permit fees are lower than the comparable Trading Permit fees by class or national ADV in place at the Exchange's affiliates.²³ The Exchange also notes that other options exchanges assess certain of their

²¹ Market Makers self-select the series of options classes to make markets in each trading day. The Exchange does not appoint Market Makers to specific series of options classes. See Exchange Rule 602(a)-(b).

²² For example, if "Market Maker 1" elects to quote the top 40 option classes which consist of 58% of the total national ADV in the prior calendar quarter, the Exchange would assess \$4,000 to "Market Maker 1" for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Sapphire.

²³ See MIAX Fee Schedule, Section 3)b) (assessing monthly market maker trading permit fees of \$7,000 up to \$22,000); MIAX Pearl Fee Schedule, Section 3)b) (assessing monthly market maker trading permit fees

membership fees at different rates, based upon a member's participation in classes on that exchange (as described in the table below), and, as such, this concept is not new or novel.

The Exchange also proposes to adopt an alternative lower monthly Trading Permit fee for Market Makers who fall within the 3rd and 4th levels of the Market Maker Trading Permit fee table, which would apply to: (i) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (ii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Sapphire. In particular, the Exchange proposes to adopt footnote "a" following the Market Maker Trading Permit fee table for these monthly Trading Permit levels. Proposed footnote "a" will provide that if the Market Maker's total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by the Options Clearing Corporation ("OCC") in the Market Maker account type for MIAX Sapphire-listed option classes for that month, then the monthly Trading Permit fee will be \$5,000 instead of the fee otherwise applicable to such level (i.e., \$6,000 or \$8,000).

The purpose of the alternative lower fee designated in proposed footnote "a" is to provide a lower fixed cost to those Market Makers who are quoting the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes registered or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these

of \$3,000 up to \$9,000); and MIAX Emerald Fee Schedule, Section 3)b) (assessing monthly market maker trading permit fees of \$7,000 up to \$22,000).

smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange’s affiliates, MIAX, MIAX Pearl, and MIAX Emerald, also provide lower Trading Permit fees for Market Makers who quote the entire markets of those exchanges (or substantial amount of those markets), as objectively measured by either number of classes assigned/registered or national ADV, but who do not otherwise execute a significant amount of volume on MIAX, MIAX Pearl, or MIAX Emerald.²⁴

As illustrated by the table below, the Exchange’s proposed Trading Permit fees are comparable to, or less than, the similar trading permit and monthly membership fees charged by competing options exchanges to their members. The Exchange believes other exchanges’ membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange’s proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly Membership/Trading Permit Fee
MIAX Sapphire (as proposed)	Market Maker Trading Permit fees: <ul style="list-style-type: none"> - Tier1: \$2,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV - Tier 2: \$4,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV - Tier 3: \$6,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV - Tier 4: \$8,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Sapphire - Alternative lower rate of \$5,000 for Tiers 3 and 4 if the Market Maker’s total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX Sapphire-listed option classes

²⁴ See MIAX Fee Schedule, Section 3)b), note “*”; MIAX Pearl Options Fee Schedule, Section 3)b), note “**”; and MIAX Emerald Fee Schedule, Section 3)b), note “■”.

<p>BOX Options Exchange LLC (“BOX”)^a</p>	<p>Electronic Market Maker Trading Permit Fees:</p> <ul style="list-style-type: none"> - Up to and including 10 classes: \$4,000 - Up to and including 40 classes: \$6,000 - Up to and including 100 classes: \$8,000 - Over 100 classes: \$10,000
<p>NYSE Arca, Inc. (“NYSE Arca”)^b</p>	<p>Options Trading Permits (“OTP”) for Market Makers:</p> <ul style="list-style-type: none"> - 1st OTP: \$8,000 for up to 60 option issues plus the bottom 45% of option issues - 2nd OTP: additional \$6,000 for up to 150 option issues plus the bottom 45% of option issues - 3rd OTP: additional \$5,000 for up to 500 option issues plus the bottom 45% of option issues - 4th OTP: additional \$4,000 for up to 1,100 option issues plus the bottom 45% of option issues - 5th OTP: additional \$3,000 for all option issues - 6th – 9th OTP: additional \$2,000 for all option issues - 10th or more OTPs: \$500 for all options issues
<p>NYSE American, LLC (“NYSE American”)^c</p>	<p>ATP Trading Permits for Market Makers:</p> <ul style="list-style-type: none"> - 1st ATP: \$8,000 for up to 60 option issues plus the bottom 45% of option issues - 2nd ATP: additional \$6,000 for up to 150 option issues plus the bottom 45% of option issues - 3rd ATP: additional \$5,000 for up to 500 option issues plus the bottom 45% of option issues - 4th ATP: additional \$4,000 for up to 1,100 option issues plus the bottom 45% of option issues - 5th ATP: additional \$3,000 for all option issues - 6th – 9th ATP: additional \$2,000 for all option issues - 10th or more ATPs: additional \$500 for all option issues <p>Order Flow Provider ATP fee: \$1,000 Clearing Member ATP fee: \$1,000</p>
<p>Nasdaq PHLX LLC (“Nasdaq PHLX”)^d</p>	<p>Streaming Quote Trader Permit Fees:</p> <ul style="list-style-type: none"> - Tier 1 (up to 200 option classes): \$0.00 - Tier 2 (up to 400 option classes): \$2,200 - Tier 3 (up to 600 option classes): \$3,200 - Tier 4 (up to 800 option classes): \$4,200 - Tier 5 (up to 1,000 option classes): \$5,200 - Tier 6 (up to 1,200 option classes): \$6,200 - Tier 7 (all option classes): \$7,200 <p>Remote Market Maker Organization Permit Fees:</p> <ul style="list-style-type: none"> - Tier 1 (less than 100 option classes): \$5,000 - Tier 2 (more than 100 and less than 999 option classes): \$8,000 - Tier 3 (1,000 or more option classes): \$11,000

	<p>a. <u>See</u> BOX Fee Schedule, Section 1.C., Electronic Market Maker Trading Permit Fees.</p> <p>b. <u>See</u> NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1. Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE Arca Options.</p> <p>c. <u>See</u> NYSE American Options Fee Schedule, Section III.A., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23. Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE American Options.</p> <p>d. <u>See</u> Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, B-C, Streaming Quote Trader (“SQT”) and Remote Market Maker Organization Fees.</p>

The Exchange proposes to waive all monthly Trading Permit fees for EEMs and Market Makers during the Initial Waiver Period. The Exchange believes that this will provide an incentive for market participants to become Members of the Exchange sooner, which should result in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that 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.

Testing and Certification Fees

Next, the Exchange proposes to establish Section 4), Testing and Certification Fees, applicable to Members and non-Members.

API Testing and Certification Fees – Members

The Exchange proposes to establish Section 4)a), Member Application Programming Interface (“API”) Testing and Certification Fee, pursuant to which the Exchange proposes to assess an API testing and certification fee to all Members. An API makes it possible for a Member’s software to communicate with MIAX Sapphire software applications, and is subject to Member

testing with, and certification by, MIAX Sapphire. The Exchange proposes to offer four types of ports: (i) the FIX Port²⁵; (ii) the MEO Port²⁶; (iii) the FIX Drop Copy (“FXD”) Port²⁷; and (iv) the Clearing Trade Drop (“CTD”) Port.²⁸

The Exchange proposes to assess API testing and certification fees for EEMs (other than clearing firms) (i) initially per API for FIX, FXD and CTD in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange proposes to assess API testing and certification fees for EEM Clearing Firms (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification. The Exchange proposes to assess API testing and certification fees for Market Makers (i) initially per API for CTD and MEO in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been registered to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification.

²⁵ See supra note 17.

²⁶ See supra note 20.

²⁷ The term “FXD” or “FIX Drop Copy Port” means a messaging interface that provides a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. See the Definitions Section of the Fee Schedule.

²⁸ A “CTD Port” or “Clearing Trade Drop Port” provides an Exchange Member with a real-time clearing trade updates. The updates include the Member’s clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member’s connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. See the Definitions Section of the Fee Schedule.

In particular, the Exchange proposes to assess EEMs a per-instance API testing and certification fee of \$1,000 and Market Makers a per-instance API testing and certification fee of \$2,500. The proposed fees represent anticipated costs to be incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX Sapphire's interfaces.

The proposed API testing and certification fees for Members are the same as the API testing and certification fees for Members of the Exchange's affiliates, MIAX and MIAX Emerald, including the Exchange's proposed amounts for EEMs and Market Makers and the structure of the proposed fees.²⁹ In order to provide an incentive to prospective Members to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the API testing and certification fees assessable to Members for all ports during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that 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.

API Testing and Certification Fees – Non-Members

The Exchange proposes to establish Section 4)b), Non-Member API Testing and Certification Fee, pursuant to which the Exchange proposes to assess an API testing and

²⁹ See MIAX Fee Schedule, Section 4)a) and MIAX Emerald Fee Schedule, Section 4)a).

certification fee to all non-Members, including Third Party Vendors,³⁰ Service Bureaus,³¹ and Extranet Providers,³² whose software interfaces with MIAX Sapphire software. As with Members, an API makes it possible for the software of Third Party Vendors, Service Bureaus, Extranet Providers and other non-Members to communicate with MIAX Sapphire software applications, and is subject to testing with, and certification by, MIAX Sapphire.

The Exchange proposes to assess API testing and certification fees for all non-Members: (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a non-Member initiates a change to its system that requires testing and certification. The Exchange proposes that API testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. In particular, the Exchange proposes to assess all non-Members a per-instance API testing and certification fee of \$1,200. The proposed fee represents anticipated costs to be incurred by the Exchange as it works with each non-Member for testing and certifying that the non-Member's software systems communicate properly with MIAX Sapphire's interfaces.

The proposed API testing and certification fee for non-Members is the same as the API testing and certification fee for non-Members of the Exchange's affiliates, MIAX and MIAX Emerald, including the proposed amount and the structure of the proposed fee.³³ In order to

³⁰ The term "Third Party Vendor" means a subscriber of MIAX Sapphire's market and other data feeds, which they in turn use for redistribution purposes. See the Definitions Section of the Fee Schedule.

³¹ The term "Service Bureau" means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. See the Definitions Section of the Fee Schedule.

³² The term "Extranet Provider" means a technology provider that connects with MIAX Sapphire systems and in turn provides such connectivity to MIAX Sapphire participants that do not connect directly with MIAX Sapphire. See the Definitions Section of the Fee Schedule.

³³ See MIAX Fee Schedule, Section 4)b) and MIAX Emerald Fee Schedule, Section 4)b).

provide an incentive to prospective non-Members to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the API testing and certification fee assessable to non-Members for all ports during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fee by outlining the structure and amount in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fee upon expiration of the defined term of the Initial Waiver Period.

The Exchange believes it is necessary to charge an API testing and certification fee to Members and non-Members because of the anticipated time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction. The price differential in API testing and certification fees for EEMs and non-Members is because, in the experience of the Exchange's affiliates, EEM testing takes less time than non-Member testing as EEMs have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Likewise, the price differential in API testing and certification fees for Market Makers compared to EEMs and non-Members is because, in the experience of the Exchange's affiliates, testing and certification of APIs for Market Makers requires more Exchange resources as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.³⁴

Network Connectivity Testing and Certification Fee – Members

The Exchange proposes to establish Section 4)c), Member Network Connectivity Testing and Certification Fee, pursuant to which MIAX Sapphire will assess a fee for Members to establish

³⁴ See supra note 12.

electronic connections with the Exchange. The Exchange proposes to assess Members a network connectivity testing and certification fee: (i) initially per connection in the month the Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection; and (ii) each time a Member initiates a change to its system that requires network connectivity testing and certification. The Exchange proposes that network connectivity testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange also proposes that Member network connectivity testing and certification fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery facility. The Exchange notes that Members utilizing a single, shared 1 Gigabit ("Gb") cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange proposes to assess Members a network connectivity testing and certification fee of \$1,000 per Member per 1Gb connection tested and \$4,000 per Member per 10Gb ultra-low latency ("ULL") connection tested.

The proposed fee amounts are the same as the fees currently assessed for the same services at the Exchanges' affiliates, MIAX, MIAX Pearl, and MIAX Emerald.³⁵ In order to provide an incentive to prospective Members to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the network connectivity testing and certification fees assessable

³⁵ See MIAX Fee Schedule, Section 4)c); MIAX Pearl Options Fee Schedule, Section 4)c); and MIAX Emerald Fee Schedule, Section 4)c).

to Members for all connections during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee 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.

Network Connectivity Testing and Certification Fee – Non-Members

The Exchange proposes to establish Section 4)d), Non-Member Network Connectivity Testing and Certification Fee, pursuant to which MIAX will assess a fee for non-Members to establish electronic connections with the Exchange. The Exchange proposes to assess non-Member network connectivity testing and certification fees: (i) initially per connection in the month the non-Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection; and (ii) each time a non-Member initiates a change to its system that requires network connectivity testing and certification. The Exchange proposes that network connectivity testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange also proposes that non-Member network connectivity testing and certification fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery facility. The Exchange notes that non-Members utilizing a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The

Exchange proposes to assess non-Members a network connectivity testing and certification fee of \$1,200 per non-Member per 1Gb connection tested and \$4,200 per non-Member per 10Gb ULL connection tested.

The proposed fee amounts are the same as the fees currently assessed for the same services at the Exchanges' affiliates, MIAX, MIAX Pearl, and MIAX Emerald.³⁶ In order to provide an incentive to prospective non-Members to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the network connectivity testing and certification fees assessable to non-Members for all connections during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fee 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 Member and non-Member network connectivity testing and certification fees represent expected installation and support costs to be incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Sapphire. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.³⁷ The Exchange proposes to assess a higher network connectivity testing and certification fee to non-Members than to Members, similar to how MIAX, MIAX Pearl, and MIAX Emerald assess such

³⁶ See MIAX Fee Schedule, Section 4)d); MIAX Pearl Fee Schedule, Section 4)d); and MIAX Emerald Fee Schedule, Section 4)d).

³⁷ See supra notes 35 and 36.

fees to their Members and non-Members. The proposed higher fees charged to non-Members reflects the anticipated greater amount of time to be spent by MIAX Sapphire employees testing and certifying non-Members. In the experience of the Exchange's affiliates, Member network connectivity testing and certification takes less time than non-Member network connectivity testing and certification because Members have more experience testing these systems with exchanges and generally have fewer questions and issues arise during the testing and certification process.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act³⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act³⁹ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to 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, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Membership Application Fees (One-Time Fee)

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers are consistent with the provisions of Section 6 of the Act,⁴⁰ in general,

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(4) and (5).

⁴⁰ 15 U.S.C. 78f.

and with Sections 6(b)(4) and 6(b)(5) of the Act,⁴¹ in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using its facilities and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as further discussed below.

The Exchange believes the proposed one-time membership application fees are reasonable, equitable and not unfairly discriminatory because they are one-time fees that are reasonably related to (and designed to recover) the Exchange's anticipated cost associated with reviewing and approving membership applications, which consists primarily of the time and resources of Exchange personnel to process the membership application and conduct the new Member on-boarding process. The Exchange's process for reviewing and approving potential new Members will involve several steps and participation from personnel in multiple Exchange departments, as follows: (i) reviewing prospective Member information provided in various membership forms, including, when necessary, consulting with the Financial Industry Regulatory Authority ("FINRA") pursuant to the Exchange's regulatory services agreement;⁴² (ii) the on-boarding process, where Exchange personnel contacts the firm for an introductory meeting with the Exchange's Business Team to discuss goals, answer questions and schedule the technical on-boarding meeting; (iii) the technical on-boarding meeting, where the Exchange's on-boarding team and Trading Operations Team guides the firm through the on-boarding process with Exchange personnel available to discuss network connectivity, APIs, Exchange functionality and operational issues; and (iv) follow-ups with the Trading Operations Team to

⁴¹ 15 U.S.C. 78f(b)(4) and (5).

⁴² See Securities Exchange Act Release No. 98746 (October 13, 2023), 88 FR 72116 (October 19, 2012) (File No. 10-240), Exhibit L (describing the Exchange's proposed regulatory program, including regulatory services agreement with FINRA).

coordinate testing, as necessary, until the firm is active in the Exchange's live trading environment.⁴³

As a self-regulatory organization, MIAX Sapphire's Membership Team will review applicants to ensure that each applicant for membership meets the Exchange's qualification criteria prior to approval. The Membership Team, in conjunction with the regulatory department, reviews the registration and qualification of an applicant's associated persons, the applicant's financial health, the validity of its clearing relationship, and its disciplinary history. The Membership Team also provides ongoing support to Members with respect to membership changes, registration, and other questions that commonly arise from Members regarding such matters. The Exchange believes that it is consistent with the Act to charge the one-time membership application fees to EEMs and Market Makers as it is reasonable to cover anticipated costs of administering its membership program.

The Exchange believes that competitive forces constrain what the Exchange can charge as one-time membership application fees because if the Exchange proposes to charge a membership application fee that market participants deem to be excessive, market participants would simply not become Members of the Exchange. The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers are reasonable because the proposed fees are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates⁴⁴ and other competing equity options exchanges.⁴⁵

The Exchange believes the difference in the proposed one-time membership application fee to be charged to EEMs and Market Makers is an equitable allocation of reasonable dues and

⁴³ See, generally, the Exchange's Membership and Technical Onboarding process and forms, available at <https://www.miaxglobal.com/markets/us-options/sapphire-options/membership>.

⁴⁴ See *supra* note 15.

⁴⁵ See *supra* note 16.

fees pursuant to Section 6(b)(4) of the Act⁴⁶ because of the anticipated additional review and resources involved in processing a Market Maker's application as opposed to an EEM's application, as Market Makers will have greater and more complex obligations with respect to doing business on the Exchange.⁴⁷

The Exchange believes it is reasonable to waive the one-time membership application fees for EEMs and Market Makers for the Initial Waiver Period to provide an incentive for market participants to apply for Exchange membership in connection with the launch of MIAX Sapphire. The Exchange believes waiving the one-time membership application fee is reasonable, equitable and not unfairly discriminatory because the waiver will apply uniformly to all new Members of the Exchange.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to waive all one-time membership application fees during the Initial Waiver Period in order to provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, which should result in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading.

At launch and for a limited time, the Exchange anticipates having a smaller number of market participants than the Exchange's affiliated markets, which are more established having launched years ago, as well as several competing options exchanges.⁴⁸ The Exchange also notes

⁴⁶ 15 U.S.C. 78f(b)(4).

⁴⁷ See supra note 12.

⁴⁸ See, e.g., MIAX Membership Directory (last visited July 15, 2024), available at https://www.miaxglobal.com/miax_options_exchange_members.pdf (providing a list of 47 MIAX members); MIAX Emerald Membership Director (last visited July 15, 2024), available at https://www.miaxglobal.com/miax_emerald_options_exchange_members.pdf (providing a list of 37 MIAX Emerald members); MIAX Pearl Membership Directory (last visited July 15, 2024), available at https://www.miaxglobal.com/miax_pearl_options_exchange_members.pdf (providing a list of 41 MIAX Pearl members); NYSE American Options Membership Directory (last visited July 15, 2024), available at <https://www.nyse.com/markets/american-options/membership#directory> (providing a list of 74 NYSE

that it will not seek to recoup any of the actual costs associated with reviewing membership applications that will take place from the launch of operations through the expiration of the Initial Waiver Period, which will be in excess of six months. By the completion of the Initial Waiver Period, the Exchange anticipates the majority of market participants will have already completed their membership applications and on-boarding as new Members of the Exchange, all of whom will not pay the one-time membership application fee.⁴⁹ This means that the Exchange will likely not collect the majority of membership application fees for its Members. The Exchange believes it will assume approximately 100% of the anticipated costs associated with processing membership applications for the majority of Member firms approved by the Exchange (similar to MIAX, MIAX Pearl, and MIAX Emerald).⁵⁰ Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to waive the one-time membership application fees during the Initial Waiver Period to attract market participants to the Exchange. The proposed one-time membership application fees are not designed to be a profit center for the Exchange; rather, the proposed fees are simply to recover some of the anticipated costs and employee time with reviewing new member applications for EEMs and Market Makers once the Exchange has already on-boarded the majority of its anticipated Members.

American members); and Nasdaq ISE Membership (last visited July 15, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=Membership> (providing a list of 76 Nasdaq ISE members).

⁴⁹ As noted by the Exchange's affiliate when it filed to introduce a one-time membership application fee, MIAX Emerald had 35 members that became members during the period of time that the one-time membership application fee was waived, which are fees MIAX Emerald will not be able to recoup. See Securities Exchange Act Release No. 91030 (February 1, 2021), 86 FR 8465 (February 5, 2021) (SR-EMERALD-2021-01) (“[MIAX Emerald] currently has 35 Members, all of whom did not pay the one-time membership application fee, as it was waived for the Waiver Period when these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL one-time membership application fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with processing membership applications for the majority of Member firms approved by the Exchange, MIAX, and MIAX PEARL.”) (footnote omitted).

⁵⁰ See id.

Although the Exchange proposes to waive the one-time membership application fees for the Initial Waiver Period, the Exchange proposes to include the proposed fee structure and amounts in the Fee Schedule in order to communicate its intent to charge the one-time membership application fee to EEMs and Market Makers upon the expiration of the defined term of the Initial Waiver Period. As a new exchange entrant, the Exchange chooses not to charge for new Members to join the Exchange until the expiration of the Initial Waiver Period to encourage market participants to trade on the Exchange and experience the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later, once there is sufficient depth and breadth of liquidity, amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives, before establishing membership fees, encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without membership fees serving as a potential barrier to attracting memberships and order flow. The waiver is also a protection to new Members. If new Members join the Exchange in order to participate on MIAX Sapphire and subsequently decide that they do not want to continue trading on MIAX Sapphire prior to expiration of the Initial Waiver Period, they can cancel their membership without incurring the one-time membership application fee.

Trading Permit Fees

The Exchange plans to commence operations on August 12, 2024⁵¹ and waive monthly

⁵¹ See supra note 8.

Trading Permit fees for Market Makers and EEMs to trade on the Exchange during the Initial Waiver Period.⁵² Although the Exchange proposes to waive the Trading Permit fees during the Initial Waiver Period, the Exchange proposes to establish an initial fee structure to communicate the Exchange's intent to charge Trading Permit fees upon the expiration of the Initial Waiver Period. As a new exchange entrant, the Exchange chooses to offer Trading Permits for free to encourage market participants to trade on the Exchange and experience, among other things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships and trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing certain fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.⁵³

The Exchange believes its proposed Trading Permit fees are reasonable and not unfairly discriminatory because the proposed Trading Permit fees are lower than comparable

⁵² See supra note 6.

⁵³ See e.g., Securities Exchange Act Release Nos. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (stating, “[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX...”); and 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR-MEMX-2020-10) (“MEMX Membership Fee Proposal”) (proposing to adopt the initial fee schedule and stating that “[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.”). MEMX has seen its market share increase and subsequently proposed to adopt a membership fee and fees for connectivity. See Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposing to adopt membership fees); and 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR-MEMX-2022-17) (proposing to adopt fees for connectivity). See also, e.g., Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05).

membership/trading permit fees assessed by competing options exchanges.⁵⁴ Further, the Exchange believes that the proposal is reasonably designed to compete with other options exchanges by incentivizing market participants to register as Market Makers and EEMs on the Exchange in a manner that enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants upon launch. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the anticipated costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of class registrations will be subject to the same Market Maker Trading Permit fee. As proposed, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class. Exchange Rule 602(a) provides that a Member that has qualified as a Market Maker may register to make markets in individual series of options. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal is fair and reasonable because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee.

The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry

⁵⁴ See supra "Monthly Membership/Trading Permit Fee" table.

marketplace. Since these smaller Market Makers typically utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fee, designated in proposed footnote “a.” following the proposed Market Maker Trading Permit fee table. The Exchange also notes that the Exchange’s affiliates, MIAX, MIAX Pearl, and MIAX Emerald, provide lower Trading Permit fees for Market Makers who quote the entire markets of those exchanges (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX, MIAX Pearl, or MIAX Emerald,⁵⁵ and, as such, this concept is not new or novel.

The Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable because Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month or upon certain class volume percentages of national ADV. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange’s system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, more classes that are actively quoted on the Exchange by a Market Maker will require increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and not unfairly discriminatory when taking into account how the increased number of quoted classes directly impacts the costs

⁵⁵ See supra note 24.

and resources required for the Exchange to operate.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. As noted above, the Exchange anticipates a smaller number of market participants will become Members of the Exchange from launch through the end of the Initial Waiver Period, which will constitute the majority of the Exchange's membership. A competing options exchange noted in a similar proposal to amend their own trading permit fees that, at the time of that filing in 2022, of the 62 market making firms that were registered as Market Makers across Cboe, MIAX, and BOX, 42 firms accessed only one of the three exchanges.⁵⁶ In addition, the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, have a total of 48 Members (as of July 15, 2024). Of those 48 total members, 36 are members of all three exchanges, four are members of only two exchanges, and eight are members of only one exchange. Of the members that are currently Market Makers at the Exchange's affiliates, five are not registered as Market Makers on MIAX Emerald, five are not registered as Market Makers on MIAX Pearl, and one is not registered as a Market Maker on MIAX.⁵⁷ The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there no regulatory requirement to connect to every options exchange, the Exchange believes there is also no "de facto" or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Market

⁵⁶ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

⁵⁷ See supra note 48.

Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange membership exists when it comes to purchasing a Trading Permit and, as evidenced by the data provided below, prior fee proposals have resulted in Members terminating their memberships. As an example, one Market Maker terminated their MIAX Pearl membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes proposed by MIAX Pearl. As another example, two Market Makers terminated their MIAX Emerald memberships effective February 1, 2024, as a direct result of the proposed non-transaction fee changes proposed by MIAX Emerald. Other exchanges have also experienced termination of memberships if their members deem fees to be unreasonable or excessive. The Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.⁵⁸ The absence of new memberships coupled with the termination of memberships on the Exchange's affiliates, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, shows that elasticity of demand exists.

The Exchange notes that there are material anticipated costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange expects to incur technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology.

⁵⁸ According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

While some of the anticipated expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the anticipated cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the anticipated costs to the Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange notes that while Market Makers will account for a vast majority of the system usage placed on the Exchange, Market Makers are valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate Trading Permit fees for Market Makers that are more aligned with the anticipated costs and resources that Market Makers may place on the Exchange and its systems.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the fact that such fees are comparable to, and lower than, the costs of similar membership and trading permit fees at other exchanges.⁵⁹ The Exchange notes these fees were similarly filed with the Commission and neither suspended

⁵⁹ See supra note 54.

nor disapproved.⁶⁰ The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to register in options classes while also equitably allocating the fees in a reasonable manner amongst Market Maker registrations to account for trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange.

In sum, the Exchange believes the proposed Trading Permit fees are reasonable and reflect a competitive environment, as the Exchange seeks to establish Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the anticipated costs to which Market Makers cost the

⁶⁰ The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

API Testing and Certification Fees

The Exchange believes it is reasonable to assess the proposed API testing and certification fees to Members and non-Members because of the anticipated time and resources to be spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction before firms use APIs in the production environment. The Exchange will not assess the proposed API testing and certification fees in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification; rather, the Exchange proposes to only assess such fee when a Member or non-Member has been credentialed to use one or more of the respective ports in the production environment and each time a Member initiates a change to its system that requires testing and certification.

The Exchange believes its proposed API testing and certification fees for Members and non-Members are reasonable, equitable, and not unfairly discriminatory because they are reasonably related to (and designed to recover) the Exchange's expected cost associated with conducting API testing and certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction.

Further, the Exchange believes the price differential in API testing and certification fees for Members and non-Members is not unfairly discriminatory because, in the experience of the Exchange's affiliates, Member testing utilizes less resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and

Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are likely to be more numerous and complex than those tested and certified for Members. The Exchange believes its proposed API testing and certification fees are reasonable because they are priced at the same rates as those charged by Exchange's affiliates, MIAX and MIAX Emerald, for the same services for Members and non-Members.⁶¹

The Exchange believes its proposal to waive API testing and certification fees for Members and non-Members during the Initial Waiver Period is reasonable, equitable and not unfairly discriminatory because it will provide an incentive to market participants to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible. The proposed fee waiver will apply equally to all firms during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that is reasonable to provide market participants with the overall structure of the proposed 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.

Network Connectivity Testing and Certification Fees

The Exchange believes it is reasonable to assess the proposed network connectivity testing and certification fees to Members and non-Members because of the anticipated time and resources to be spent to ensure that Members and non-Members are able to successfully establish electronic connections to the Exchange. The Exchange will not assess the proposed network connectivity testing and certification fees in situations where the Exchange initiates a mandatory

⁶¹ See supra note 29.

change to the Exchange's system that requires testing and certification; rather, the Exchange proposes to only assess such fee initially per connection in the month the Member or non-Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection and each time a Member or non-Member initiates a change to its system that requires network connectivity testing and certification.

The Exchange further believes the proposed fees are reasonable because a Member or non-Member that utilizes a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange believes the proposed network connectivity testing and certification fees are reasonable because they represent expected installation and support costs to be incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Sapphire. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.⁶² Additionally, the Exchange believes its proposed network connectivity testing and certification fees are reasonable, equitable, and not unfairly discriminatory because they are reasonably related to (and designed to recover) the Exchange's anticipated cost associated with conducting network connectivity testing and certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member connectivity function correctly to prevent any system malfunction.

⁶² See supra notes 35 and 36.

Further, the Exchange believes the price differential in network connectivity testing and certification fees for Members and non-Members is not unfairly discriminatory because, in the experience of the Exchange's affiliates, Member testing utilizes less resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

The Exchange believes the difference in the proposed 1Gb and 10Gb ULL network connectivity testing and certification fees is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act⁶³ because of the anticipated additional review and resources involved in testing and certifying a 10Gb ULL connection as opposed to a 1Gb connection, as 10Gb ULL connections offer vastly greater products and services which require significantly more time to test, including Market Maker quoting systems. The Exchange believes its proposed network connectivity testing and certification fees are reasonable because the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.⁶⁴

The Exchange believes its proposal to waive network connectivity testing and certification fees for Members and non-Members during the Initial Waiver Period is reasonable, equitable and not unfairly discriminatory because it will provide an incentive to market participants to apply early for membership and to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible. The proposed fee waiver will apply equally to all firms during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the

⁶³ 15 U.S.C. 78f(b)(4).

⁶⁴ See supra notes 35 and 36.

Exchange believes that is reasonable to provide market participants with the overall structure of the proposed 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

One-Time Membership Application Fees

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers do not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed one-time membership application fees for EEMs and Market Makers are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates⁶⁵ and other competing equity options exchanges.⁶⁶ Further, the Exchange proposes to waive the one-time membership application fee for EEMs and Market Makers for the Initial Waiver Period, which the Exchange believes will provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, resulting in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. In turn, the Exchange believes its lower one-time membership application fees may stimulate intra-market competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. As discussed above, membership fees are subject to competition

⁶⁵ See supra note 15.

⁶⁶ See supra note 16.

from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see fewer than anticipated firms become Members of the Exchange as a result.

Trading Permit Fees

The Exchange believes that the proposed Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intra-market competition because, when these fees are viewed in the context of the overall expected activity on the Exchange, Market Makers will: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand will likely come from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, other Member types, i.e. EEMs, take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intra-market competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intra-market competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed

herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

API and Network Connectivity Testing and Certification Fees

The Exchange believes that the proposed API and network connectivity testing and certification fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply to all new Exchange Members and those firms looking to establish APIs and network connectivity in the same manner. Market participants may not only choose whether to become Exchange Members at all, but may choose to become members at competing options exchanges instead.

The Exchange further believes the proposed fees do not place any market participant at a disadvantage compared to other market participants because the proposed API testing and certification and network connectivity testing and certification fees are intended to cover the situations where a Member or non-Member firm makes changes to its own system for its own business purpose (i.e., instances where a firm is trying to improve its quoting engine), which requires the Exchange to test those re-architected systems. This testing requires the time of Exchange personnel in several departments (Trading Operations, Business, On-Boarding, Membership), and occurs primarily outside of normal business hours, often over the course of

the weekend. The proposed fees are a way for the Exchange to recoup its anticipated costs associated with this testing. When the Exchange determines to make upgrades to its own system which requires mandatory testing and certification by Members, the Exchange does not charge any fees.

The Exchange believes that the proposed fees do not dampen innovation because the majority of Exchange's anticipated Members are members of most, if not all, of the other 17 options exchanges. Those exchanges also require testing and certification any time their members make changes to their systems at those exchanges, and also charge a fee to recoup the anticipated costs associated with testing and certifying members. Without some sort of testing and certification fee, the Exchange believes that Members and non-Members might be less efficient in testing their systems, potentially resulting in excessive time being consumed by the Exchange re-testing and re-certifying Members and non-Members, to the detriment of all market participants as Exchange resources are diverted away from other trading operations.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that various market participants are charged different fees for per-instance API and network connectivity testing, those distinctions are not unfairly discriminatory and do not unfairly burden one set of market participants over another. The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent that will likely be spent by the Exchange's employees testing and certifying non-Members. It has been the experience of the Exchange's affiliates that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus will be

redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The proposed higher fee for network connectivity testing and certification to be charged to non-Members reflects the likely greater amount of time to be spent by MIAX Sapphire employees testing and certifying non-Members. It has been the experience of the Exchange's affiliates that that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process. The proposed higher fee for testing and certifying 10Gb ULL connections versus 1Gb ULL connections reflects the likely greater amount of time to be spent by MIAX Sapphire employees testing and certifying 10Gb ULL connections. MIAX Sapphire's proposed per-instance API and network connectivity testing and certification fees are set at the same levels for the same services provided by the Exchanges affiliates.⁶⁷

The Exchange believes that the proposed API and network connectivity testing and certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for the time and resource necessary for API testing and certification and network connectivity testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote throughput, quote management and cancellation, Aggregate Risk

⁶⁷ See supra notes 29 and 33.

Manager settings and triggers, and confirmation of quotes within the trading engines).

Accordingly, the proposed API and network connectivity testing and certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposed fees do not place an undue burden on competition on other SROs that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 17 other options exchanges where market participants can become members.

One-Time Membership Application Fee

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers do not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will apply to all EEMs and Market Makers equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

Trading Permit Fees

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal would promote inter-market competition because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each

additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee. This could improve the Exchange's market quality by encouraging Market Makers to quote more series within an options class without it impacting its Trading Permit fee.

Market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it anticipates having far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but may not become Members of the Exchange. The Exchange is also unaware of any assertion that its proposed fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange or not become a Member at all.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange had more than approximately 14-15% of the equity options market share for the month of June 2024.⁶⁸ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund ("ETF") options order flow. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the

⁶⁸ See the "Market Share" section of the Exchange's website, available at www.miaxoptions.com (last visited July 24, 2024).

Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

API and Network Connectivity Testing and Certification Fees

The Exchange believes the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 17 other options exchanges where market participants can become members.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. 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.

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,⁶⁹ and Rule 19b-4(f)(2)⁷⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission

⁶⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷⁰ 17 CFR 240.19b-4(f)(2).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2024-20 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- SAPPHERE-2024-20. 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-2024-20 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.⁷¹

Sherry R. Haywood,

Assistant Secretary.

⁷¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

MIAX Sapphire Options Exchange Fee Schedule

* * * * *

3) Membership Fees

a) Application for MIAX Sapphire Membership (One-Time Fee)

<u>Type of Membership</u>	<u>Application Fee</u>
<u>Electronic Exchange Member</u>	<u>\$500.00</u>
<u>Market Maker</u>	<u>\$1,000.00</u>

One-time Membership Application Fees will be waived during the Initial Waiver Period.

MIAX Sapphire will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX Sapphire membership is finally denied.

b) Monthly Trading Permit Fees

Monthly Trading Permit Fees will be waived during the Initial Waiver Period.

MIAX Sapphire will issue Trading Permits to Members that confer the ability to transact on MIAX Sapphire. (For a complete description of MIAX Sapphire Trading Permits, see MIAX Sapphire Rule 200.) Members receiving Trading Permits during a particular calendar month will be assessed Trading Permit Fees according to the tables below.

<u>Type of Trading Permit</u>	<u>Monthly Fee</u>
<u>Electronic Exchange Member</u>	<u>\$500.00</u>

Monthly Trading Permit Fees will be assessed with respect to EEMs (other than Clearing Firms) in any month the EEM is certified in the membership system and the EEM is credentialed to use one or more FIX Ports in the production environment.

Monthly Trading Permit Fees will be assessed with respect to EEM Clearing Firms in any month the Clearing Firm is certified in the membership system to clear transactions on the Exchange.

Monthly Trading Permit Fees will be assessed with respect to Market Makers in any month the Market Maker is certified in the membership system, is credentialed to use one or more MEO Ports in the production environment and is assigned to quote in one or more classes.

Notwithstanding the foregoing, the calculation of the Trading Permit Fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days on

which the Trading Permit was in effect divided by the total number of trading days in that month multiplied by the monthly rate.

<u>Type of Trading Permit</u>	<u>Monthly Fee</u>	<u>Market Maker Registrations</u> <u>(the lesser of the applicable measurements below)</u>	
		<u>Per Class</u>	<u>% of National Average Daily Volume</u>
Market Maker	\$2,000.00	Up to 10 Classes	Up to 20% of Classes by volume
	\$4,000.00	Up to 40 Classes	Up to 35% of Classes by volume
	\$6,000.00 ^a	Up to 100 Classes	Up to 50% of Classes by volume
	\$8,000.00 ^a	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIA X Sapphire Options

a. For these Monthly MIA X Sapphire Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by OCC in the Market Maker account type for MIA X Sapphire-listed option classes for that month, then the fee will be \$5,000 instead of the fee otherwise applicable to such level.

For the calculation of the monthly Market Maker Trading Permits, the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. The amount of monthly Market Maker Trading Permit Fee will be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages set forth in the above table. A Market Maker is determined to be registered in a class if that Market Maker has been registered in one or more series in that class. The Exchange will assess MIA X Sapphire Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIA X Sapphire that the MIA X Sapphire Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national average daily volume in classes listed on MIA X Sapphire in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

* * * * *

4) Testing and Certification Fees

a) Member Application Programming Interface ("API") Testing and Certification Fee

<u>Type of Member</u>	<u>API Testing and Certification Fee</u>
<u>Electronic Exchange Member</u>	<u>\$1,000.00</u>
<u>Market Maker</u>	<u>\$2,500.00</u>

Member Application Programming Interface ("API") Testing and Certification Fees will be waived during the Initial Waiver Period.

API Testing and Certification Fees for EEMs (other than clearing firms) will be assessed (i) initially per API for FIX, FXD and CTD in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification.

API Testing and Certification Fees for EEM Clearing Firms will be assessed (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification.

API Testing and Certification Fees for Market Makers will be assessed (i) initially per API for CTD and MEO in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been registered to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification.

API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

b) Non-Member API Testing and Certification Fee

<u>Non-Member</u>	<u>API Testing and Certification Fee</u>
<u>Third Party Vendor/Service Bureau/Extranet Provider and other Non-Members</u>	<u>\$1,200.00</u>

Non-Member API Testing and Certification Fees will be waived during the Initial Waiver Period.

API Testing and Certification Fees for Third Party Vendors, Service Bureaus, Extranet Providers and other non-Members will be assessed (i) initially per API for FIX, FXD, CTD and MEO in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

c) Member Network Connectivity Testing and Certification Fee

<u>Type of Member</u>	<u>1 Gigabit ULL Fee Per Connection</u>	<u>10 Gigabit ULL Fee Per Connection</u>
<u>Market Maker and EEM</u>	<u>\$1,000.00</u>	<u>\$4,000.00</u>

Member Network Connectivity Testing and Certification Fees will be waived during the Initial Waiver Period.

Member Network Connectivity Testing and Certification Fees will be assessed (i) initially per connection in the month the Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection, and (ii) each time a Member initiates a change to its system that requires network connectivity testing and certification.

Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange’s system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange’s Disaster Recovery Facility.

Members utilizing a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl Options, and MIAX Emerald will only be assessed one Network Connectivity Testing and Certification Fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

d) Non-Member Network Connectivity Testing and Certification Fee

<u>Non-Member</u>	<u>1 Gigabit ULL Fee Per Connection</u>	<u>10 Gigabit ULL Fee Per Connection</u>
<u>Service Bureau/Extranet Provider and other Non-Members</u>	<u>\$1,200.00</u>	<u>\$4,200.00</u>

Non-Member Network Connectivity Testing and Certification Fees will be waived during the Initial Waiver Period.

Non-Member Network Connectivity Testing and Certification fees will be assessed (i) initially per connection in the month the Service Bureau, Extranet Provider or other non-Member has been credentialed to use any API or market data feeds in the production environment using the tested network connection, and (ii) each time a Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires network connectivity testing and certification.

Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange’s system that requires testing and certification. Non-Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity with the Exchange’s Disaster Recovery Facility.

Non-Members utilizing a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl Options, and MIAX Emerald will only be assessed one Network Connectivity Testing and Certification Fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

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