

Required fields are shown with yellow backgrounds and asterisks.

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

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

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

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

Proposal to amend the Fee Schedule to adopt fees for the Open-Close Report.

Contact Information

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

First Name * Michael	Last Name * Slade
Title * AVP, Associate Counsel	
E-mail * mslade@miami-holdings.com	
Telephone * (609) 897-8499	Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 05/28/2021	AVP, Associate Counsel
By Michael Slade	
(Name *)	

mslade@miami-holdings.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the MIAX Emerald Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

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

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

a. Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange recently adopted a new data product known as the Open-Close Report, which will be available for purchase to Exchange Members³ and non-Members.⁴ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(b)(1).

By way of background, the Exchange will offer two versions of the Open-Close Report, an end of day summary and intra-day report. The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁵), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The intraday Open-Close Report will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by no later than 9:45 a.m. ET,

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR-EMERALD-2021-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

⁵ See Exchange Rule 100.

which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” The intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume will be further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Open-Close Report product may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.⁶

⁶ See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019)

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange proposes to assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close Report. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed. The proposed monthly fees will apply both to Members or non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁷

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

⁷ See Price List – U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$750 per month for an intra-day subscription and \$500 per month for end of day subscription; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,000 per month for an intra-day subscription and \$750 per month for end of day subscription; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription. Cboe EDGX Exchange, Inc. (“EDGX”) assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription and Cboe BZX Exchange, Inc. (“BZX”) assess \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription. See the EDGX fee schedule available at

The Exchange intends to begin to offer the Open-Close Report and charge the proposed fees on June 1, 2021.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Open-Close Report is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

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

http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and the BZX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release nos. 89879 (August 17, 2020), 85 FR 51796 (August 21, 2020) (SR-CboeEDGX-2020-040); and 89583 (August 17, 2020), 85 FR 51825 (August 21, 2020) (SR-CboeBZX-2020-063).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.¹²

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 3.13% of the market share.¹³ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to

¹² See supra note 6.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 26, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

investors and listed companies.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹⁵ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Like the Exchange’s Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁶ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See supra note 7.

¹⁶ The exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

exchange's Open-Close data as more attractive than its proposed Open-Close Report, then such market participant can merely choose not to purchase the Exchange's Open-Close Report and instead purchase another exchange's Open-Close data product, which offer similar data points, albeit based on that other market's trading activity.

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

Selling market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁷ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to

¹⁷ See supra note 6.

purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.¹⁸ The Exchange made Open-Close Data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report. As a result,

¹⁸

Id.

the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁹ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that

¹⁹ See, e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

purchase the Open-Close Report. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁰ and Rule 19b-4(f)(2) thereunder²¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

5. Copy of the applicable section of the Fee Schedule.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4.

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EMERALD-2021-20)

May __, 2021

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, 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 May ____, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the Exchange’s Fee Schedule (“Fee Schedule”) to adopt fees for a new data product to be known as the Open-Close Report.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange recently adopted a new data product known as the Open-Close Report, which will be available for purchase to Exchange Members³ and non-Members.⁴ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(b)(1).

By way of background, the Exchange will offer two versions of the Open-Close Report, an end of day summary and intra-day report. The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁵), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR-EMERALD-2021-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

⁵ See Exchange Rule 100.

The intraday Open-Close Report will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” The intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume will be further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

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data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.⁶

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange proposes to assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close Report. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed. The proposed monthly fees will apply both to Members or non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁷

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

⁷ See Price List – U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$750 per month for an intra-day subscription and \$500 per month for end of day subscription; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,000 per month for an intra-day subscription and \$750 per month for end of day subscription; and GEMX offers the

The Exchange intends to begin to offer the Open-Close Report and charge the proposed fees on June 1, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Open-Close Report is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

“Nasdaq GEMX Open/Close Trade Profile” and assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription. Cboe EDGX Exchange, Inc. (“EDGX”) assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription and Cboe BZX Exchange, Inc. (“BZX”) assess \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription. See the EDGX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and the BZX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release nos. 89879 (August 17, 2020), 85 FR 51796 (August 21, 2020) (SR-CboeEDGX-2020-040); and 89583 (August 17, 2020), 85 FR 51825 (August 21, 2020) (SR-CboeBZX-2020-063).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.¹²

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 3.13% of the market share.¹³ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the

¹² See supra note 6.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 26, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹⁵ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Like the Exchange’s Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁶ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See supra note 7.

¹⁶ The exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Open-Close data as more attractive than its proposed Open-Close Report, then such market participant can merely choose not to purchase the Exchange's Open-Close Report and instead purchase another exchange's Open-Close data product, which offer similar data points, albeit based on that other market's trading activity.

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

Selling market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁷ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed

¹⁷ See supra note 6.

on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.¹⁸ The Exchange made Open-Close Data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust

¹⁸

Id.

competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁹ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that

¹⁹ See, e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

purchase the Open-Close Report. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁰ and Rule 19b-4(f)(2)²¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic comments:

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

or

- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-

EMERALD-2021-20 on the subject line.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

Paper comments:

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

All submissions should refer to File Number SR-EMERALD-2021-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-EMERALD-2021-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Vanessa Countryman
Secretary

²² 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Emerald Options Exchange

Fee Schedule

* * * * *

6) Market Data Fees

d) Historical Market Data

* * * * *

e) Open-Close Report

<u>End-of-Day Subscription</u>	<u>\$600 per month</u>
<u>Intra-Day Subscription</u>	<u>\$2,000 per month</u>

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