

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99555; File No. SR-EMERALD-2024-06)

February 16, 2024

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule Regarding the Open-Close Report Data

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 February 5, 2024, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) regarding the Open-Close Report to allow subscribers who purchase Intra-Day Open Close data the ability to request End-of-Day Open-Close data for no additional charge.

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 the Exchange’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 offers a data product known as the Open-Close Report that is available for purchase by Exchange Members³ and non-Members. The Open-Close Report is described under Exchange Rule 531(d)(1). The data contained in the Open-Close Report is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange now proposes to amend fees for the Open-Close Report to allow subscribers who purchase Intra-Day Open Close data the ability to request End-of-Day Open-Close data for no additional charge.

By way of background, the Exchange offers 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 Customer⁴, 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).

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 Exchange Rule 100.

⁵ Id.

The Intra-Day Open-Close Report provides similar information to that of the End-of-Day version but is 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. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.” The Intra-Day Open-Close data provides a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

The Exchange assesses 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 assesses a fee of \$500 per request per month for ad-hoc requests for historical End-of-Day Open-Close data. An ad-hoc request for historical End-of-Day Open-Close data can be for any number of months beginning with June 2021 for which the data is available. The Exchange also assesses a fee of \$1,000 per request per month for ad-hoc requests for historical Intra-Day Open-Close data. An ad-hoc request for historical Intra-Day Open-Close data can be for any number of months beginning with March 2019 for which the data is available.

The Exchange now proposes to amend fees for the Open-Close Report to allow subscribers who purchase Intra-Day Open Close data the ability to request End-of-Day Open-Close data for no additional charge. This proposal is akin to a fee break for subscribers because it would decrease the cost to purchase a broader scope of Open-Close Report data from the Exchange by allowing Intra-Day subscribers to request End-of-Day data for no additional charge

Specifically, the Exchange proposes to allow subscribers who purchase an Intra-Day monthly subscription to request an End-of-Day monthly subscription for no additional charge. Similarly, the Exchange proposes to also allow subscribers who purchase an Intra-Day Ad-hoc Request (historical data) to submit an End-of-Day Ad-hoc Request (historical data) for the same date or date range for no additional charge upon request. The Exchange proposes to codify these proposed changes under new footnotes a. and b. under Section 6 of its Fee Schedule.⁶

The Open-Close Report remains a completely voluntary product. The Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.⁷

Implementation Date

The proposed changes are immediately effective.

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

⁶ The Exchange also proposes to renumber existing footnotes “*” as “c.” and “**” as “d.” to account for the new footnotes proposed herein. The Exchange does not propose to amend the substance of these existing footnotes.

⁷ See, e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data; Nasdaq ISE, LLC (“ISE”) Options 7 Pricing Schedule, Section 10.A; Nasdaq PHLX, LLC (“PHLX”) Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline (“PHOTO”); Cboe EDGX Exchange, Inc. (“EDGX”) fee schedule [available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/); and the Cboe BZX Exchange, Inc. (“BZX”) fee schedule [available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/](http://markets.cboe.com/us/options/membership/fee_schedule/bzx/).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed changes to its Fee Schedule concerning 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. 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 and completely optional. Moreover, other exchanges offer a similar data product.¹²

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² See supra note 7.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. As of January 30, 2024, based on publicly available information, no single options exchange has more than approximately 14-15% of the equity options market share and currently the Exchange represents only approximately 3.59% of the equity options market share for the month of January 2024.¹³ 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 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 Exchange believes its proposal proposes to amend fees for the Open-Close Report to allow subscribers who purchase Intra-Day Open Close data the ability to request End-of-Day Open-Close data for no additional charge promotes just and equitable principles of trade because it enables subscribers to request additional Open-Close data for no additional charge. The End-of-Day version is a volume summary of trading activity on the Exchange, and essentially contains the same data as is provided in the final Intra-Day version at the end of the trading day and it is, therefore, reasonable and equitable to provide that data to Intra-Day subscribers for no

¹³ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/>.

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

additional charge. The Exchange believes the proposal is reasonable as the Exchange is simply making additional Open-Close data available for no additional charge, and fees for the Open-Close Report continue to be both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹⁵ The Exchange is not aware that any other U.S. options exchange offers portions of their Open-Close Report data for no additional charge, including as proposed herein. Nonetheless, should it propose to assess fees in a different manner or at a significantly higher rate than established fees for similar data products of other exchanges 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 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.

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.

Lastly, the Exchange believes the proposal is not unfairly discriminatory as it would apply equally to all users who choose to purchase or receive 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 enhance the value of a data product that is similar to those offered by other competitor options exchanges.¹⁷ The Exchange proposes to allow subscribers who purchase Intra-Day Open Close data the ability to request End-of-Day Open-Close data for no additional charge to keep pace with evolving customer needs, and believes that providing such data to market participants that make requests for it will continue to contribute to robust competition among national securities exchanges. Multiple other U.S. options exchanges offer end-of-day and intra-day Open-Close report data with fees that are substantially similar to the Exchange's fees. 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 Open-Close Report data is constrained by competition among exchanges that offer Open-Close report data to their customers. The Exchange notes that there are currently a number of similar products available to market participants and investors. Multiple other U.S. options exchanges offer Open-Close report data, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁸ The Exchange notes that this proposal is akin to a fee break for subscribers because it would decrease the cost to purchase a broader scope

¹⁷ See supra note 7.

¹⁸ Id.

of Open-Close Report data from the Exchange by allowing Intra-Day subscribers to request End-of-Day data for no additional charge. Further, the Exchange is not aware that any other U.S. options exchange offers portions of their Open-Close Report data for no additional charge, including as proposed herein. Nonetheless, should the Exchange propose fees that are excessively higher than established fees for Open-Close Report data 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 proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices for Open-Close Report data 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 proposal would apply uniformly to any market participant. The proposal allows any interested Member or non-Member to request Open-Close Report 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

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,¹⁹ and Rule 19b-4(f)(2)²⁰ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2024-06 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-EMERALD-2024-06. 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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

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-EMERALD-2024-06 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.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).