

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100749; File No. SR-SAPPHIRE-2024-08)

August 16, 2024

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees for the Liquidity Taker Event Report – Simple Orders, the Liquidity Taker Event Report – Complex Orders, and the Liquidity Taker Event Report – Resting Simple Orders

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 6, 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 is filing a proposal to adopt fees for three data products: (i) the Liquidity Taker Event Report – Simple Orders; (ii) Liquidity Taker Event Report – Complex Orders; and (iii) Liquidity Taker Event Report – Resting Simple Orders.<sup>3</sup>

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

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

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

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

<sup>3</sup> See Exchange Rules 531(a)-(c).

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 offers three Member<sup>4</sup>-specific reports: (1) the Liquidity Taker Event Report – Simple Orders (referred to herein as the “Simple Order Report”); (2) the Liquidity Taker Event Report – Complex Orders (the “Complex Order Report”); and (3) the Liquidity Taker Event Report – Resting Simple Orders (the “Resting Simple Order Report”), which are available for purchase by Exchange Members on a voluntary basis.

The Exchange proposes to adopt fees for these three reports. The Exchange reports are described under Exchange Rules 531(a)-(c).<sup>5</sup> The reports are optional products available to Members. As further described below, the Exchange also proposes to offer a discounted combined fee for Members who purchase annual subscriptions to both the Simple Order Report and Complex Order Report. The Exchange notes that the proposed fees and proposed discount are identical to the fees and discounts currently provided by the Exchange’s affiliated options

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

<sup>5</sup> See supra note 3; see also Securities Exchange Act Release Nos. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) and 100642 (August 2, 2024) (SR-SAPPHIRE-2024-05).

exchanges, Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX Pearl”)<sup>6</sup>, and MIAX Emerald, LLC (“MIAX Emerald”), for the same liquidity taker event reports available on those exchanges.<sup>7</sup> The proposed fees are also identical to the fees charged by a competing options exchange, BOX Exchange, LLC (“BOX”), for BOX’s version of the Simple Order Report and Complex Order Report.<sup>8</sup>

By way of background, the reports are daily reports that provide a Member (“Recipient Member”) with its liquidity response time details for executions of an order (or complex order,<sup>9</sup> as the case may be) resting on the Electronic Book,<sup>10</sup> where that Recipient Member attempted to execute against such resting order<sup>11</sup> within a certain timeframe. It is important to note that the content of each report is specific to the Recipient Member and each report will not include any information related to any Member other than the Recipient Member.

### Report Content

The content of the Simple Order Report, Complex Order Report, and Resting Simple Order Report are substantially similar to one another. The following paragraphs explain the content of three reports by delineating which information would be provided regarding the

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<sup>6</sup> All references to “MIAX Pearl” in this filing are to the options trading facility of MIAX Pearl, and not the equities trading facility, which is referred to as “MIAX Pearl Equities.”

<sup>7</sup> See MIAX Fee Schedule, Section 7); MIAX Pearl Fee Schedule, Section 7); and MIAX Emerald Fee Schedule, Section 7). The Exchange notes that MIAX Pearl does not offer complex order functionality; accordingly, it only offers its version of the Simple Order Report and Resting Simple Order Report.

<sup>8</sup> See BOX Fee Schedule, Section III.C.2. At the time of this filing, BOX does not offer a version of the Resting Simple Order Report.

<sup>9</sup> In sum, a “complex order” is “any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ‘legs’ or ‘components’ of the complex order), for the same account, in a conforming or non-conforming ratio....” See Exchange Rule 518(a).

<sup>10</sup> The term “Electronic Book” means the Exchange’s Simple Order Book and Strategy Book. See Exchange Rule 100. The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. Id. The “Strategy Book” is the Exchange’s electronic book of complex orders. Id.

<sup>11</sup> Only displayed orders will be included in the reports. The Exchange notes that it does not currently offer any non-displayed orders.

resting order, the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order.

*Resting Order Information.* The following information is included in the Simple Order Report, Complex Order Report, and Resting Simple Order Report regarding the resting order: (A) the time the resting order was received by the Exchange;<sup>12</sup> (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an affiliate<sup>13</sup> of the Member that entered the resting order<sup>14</sup>; (E) origin type (e.g., Priority Customer,<sup>15</sup> Market Maker<sup>16</sup>); (F) side (buy or sell); and (G) displayed price and size of the resting order.<sup>17</sup> The Simple Order Report and Resting Simple Order Report include the same information about incoming orders seeking to remove resting orders from the Simple Order Book. Meanwhile, the content of the Complex Order Report includes the same information about incoming complex orders that seek to remove liquidity from

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<sup>12</sup> The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System. The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>13</sup> The term "affiliate" or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

<sup>14</sup> Each report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and will not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>15</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>16</sup> 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.

<sup>17</sup> The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

the Exchange's Strategy Book.<sup>18</sup>

*Execution Information.* The following information is included in the Simple Order Report regarding the execution of the resting order: (A) the SBBO<sup>19</sup> at the time of execution;<sup>20</sup> (B) the ABBO<sup>21</sup> at the time of execution;<sup>22</sup> (C) the time the first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;<sup>23</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>24</sup> and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the SBBO and ABBO at the time of the execution against the first response will be included.

The Simple Order Report and Resting Simple Order Report include the SBBO, which is the Exchange's best bid or offer, and the ABBO, which is the best bid or offer of away exchanges. The content of the Complex Order Report is identical to the content of the Simple

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<sup>18</sup> The term "complex strategy" means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. See Exchange Rule 518(a). The Strategy Book is organized by complex strategy in that individual orders for a defined complex strategy are organized together in a book that is separate from the orders for a different complex strategy.

<sup>19</sup> The term "SBBO" means the best bid or offer on the Simple Order Book of the Exchange. See Exchange Rule 100.

<sup>20</sup> Exchange Rule 531(a)(1)(ii)(B) [sic] provides that if the resting order executes against multiple contra-side responses, only the ABBO [sic] at the time of the execution against the first response will be included.

<sup>21</sup> The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

<sup>22</sup> Exchange Rule 531(a)(1)(ii)(A) [sic] further provides that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

<sup>23</sup> The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

<sup>24</sup> The time difference would be provided in nanoseconds.

Order Report with three minor differences. The Complex Order Report includes the Complex SBBO<sup>25</sup> in place of the SBBO and Complex ABBO<sup>26</sup> in place of the ABBO. The Complex SBBO is calculated using the SBBO for each component of a complex strategy to establish the Exchange's best net bid or offer for a complex strategy. The Complex SBBO is calculated using the icSBBO combined with the best price currently available on the Strategy Book to establish the Exchange's best net bid or offer for a complex strategy.<sup>27</sup> The Complex ABBO is calculated using the ABBO for each component of a complex strategy to establish the away markets' best net bid or offer for a complex strategy using OPRA data. The Exchange is providing the Complex SBBO and Complex ABBO because both are relevant and tailored to a Member that is entering a complex order to remove liquidity as part of a complex strategy and, therefore, more germane to the purpose of the Complex Order Report. The third difference is that the Complex Order Report includes the data listed in Exchange Rule 531(b)(1) for executions and contra-side responses that occurred within 400 microseconds of the time the resting order was received by the Exchange, rather than 200 microseconds, which is the timeframe utilized by the Simple Order Report.

But for the timeframe and one difference described below, the Resting Simple Order Report would include the same data as the Simple Order Report currently described under

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<sup>25</sup> The Complex SBBO for a particular complex strategy is calculated using the Implied Complex Sapphire Best Bid or Offer ("icSBBO") combined with the best price currently available for that particular complex strategy on the Strategy Book to establish the Exchange's best net bid or offer for that complex strategy. The icSBBO is calculated using the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icSBBO for a Complex Strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a). The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

<sup>26</sup> The Complex ABBO is calculated using the ABBO for each component of a complex strategy to establish the away markets' best net bid or offer for a complex strategy.

<sup>27</sup> See supra note 25.

Exchange Rule 531(a), except that the Resting Simple Order Report will focus on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange and within 200 microseconds of receipt of any Member's first attempt to execute against the resting order after the initial 200 microsecond time period under subparagraph (c)(2)(i) of Exchange Rule 531 has expired. The Simple Order Report includes the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange. The Resting Simple Order Report does not include the same information because that timeframe could be for an extended period of time since the proposed Resting Simple Order Report focuses on orders that have been resting on the Simple Order Book for longer than 200 microseconds and, therefore, the Exchange believes is less likely to be valuable to the Recipient Member. The Simple Order Report and Resting Simple Order Report focus on 200 microsecond windows with the Simple Order Report's window starting at the time of receipt of the resting order and the Resting Simple Order Report's window starting with the first attempt to execute against the resting order after the order was resting on the Simple Order Book for at least 200 microseconds.

*Recipient Member's Response Information.* The following information is included in the Simple Order Report, Complex Order Report, and Resting Simple Order Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not;<sup>28</sup> (C) size and type of each response submitted by Recipient Member;

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<sup>28</sup> For purposes of calculating this duration of time, the Exchange will use the time the first response that executes against the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

#### Timeframe

The Simple Order Report provides data for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Complex Order Report provides data for executions and contra-side responses that occurred within 400 microseconds of the time the resting order was received by the Exchange. The minor difference in timeframes for the Simple Order Report and Complex Order Report is to allow sufficient time for the System to develop new complex strategies, which generally takes longer than 200 microseconds. Accordingly, the Complex Order Report provides for a timeframe of 400 microseconds to allow for the intended information to be captured by the Complex Order Report.

The Resting Simple Order Report includes the same data as the Simple Order Report and Complex Order Report but focuses on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange, and within 200 microseconds of receipt of any Member's first attempt to execute against the resting order after the initial 200 microsecond time period has expired. More specifically, the resting order must rest on the Simple Order Book for at least 200 microseconds and once that initial 200 microsecond period has passed, a Member must then submit an order to attempt to execute against that resting order. This event starts a second 200 microsecond period within which the Resting Simple Order Report would include data on executions and contra-side responses submitted by the Recipient Member to execute against that resting order.

#### Scope of Data Included in the Reports

The Simple Order Report, Complex Order Report, and Resting Simple Order Report



include trading data related to the Recipient Member and subject to the historical data requirement described below, and do not include information related to any other Member's trading data other than resting order information and execution information described above.

#### Historical Data

The Simple Order Report, Complex Order Report, and Resting Simple Order Report contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. These reports do not include real-time data.

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

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

The Simple Order Report, Complex Order Report, and Resting Simple Order Report will

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

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

The Exchange proposes to adopt new Section 7), Reports, in its Fee Schedule, which will provide that Members may purchase each report on a monthly or annual (12-month) basis. The Exchange proposes to assess a monthly fee of \$4,000 per month and a fee of \$24,000 per year for a 12-month subscription for each of the Simple Order Report and Complex Order Report. The Exchange proposes to assess a monthly fee of \$2,000 per month and a fee of \$12,000 per year for a 12-month subscription for the Resting Simple Order Report. The proposed fees are identical to the fees currently charged by the Exchange's affiliates, MIAX, MIAX Pearl (for the Simple Order Report and Resting Simple Order Report), and MIAX Emerald, for the same reports available on those exchanges.<sup>29</sup> The proposed fees for the Simple Order Report and Complex Order Report are identical to the fees charged by a competing options exchange, BOX, for its version of the Simple Order Report and Complex Order Report.<sup>30</sup>

Members may cancel their subscription to any report at any time. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full

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<sup>29</sup> See supra note 7.

<sup>30</sup> See supra note 8. At the time of this filing, BOX does not offer a version of the Resting Simple Order Report.

calendar month for which they subscribe and will be provided report data for each trading day of the calendar month prior to the day on which they subscribed to any of the reports. The Exchange proposes to waive the monthly fees for the Simple Order Report, Complex Order Report and Resting Simple Order Report for the Initial Waiver Period.<sup>31</sup> Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

The Exchange also proposes to provide a discounted rate of \$40,000 per year to Members that purchase 12-month subscriptions to both the Simple Order Report and Complex Order Report (as compared to a total of \$48,000 for each 12-month subscription at a rate of \$24,000 for each report on an individual subscription basis). The Exchange also proposes to prorate the discounted 12-month subscription fee for Members that seek to add either their Simple Order Report or the Complex Order Report to an existing subscription. In particular, the Exchange proposes that for those Members with an existing 12-month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12-month subscription. In such case, the fee for the added report will be prorated based on the \$40,000 combined rate for the 12-month subscription discount for the remainder of the subscriber's current 12-month subscription, and the number of months remaining in the existing subscription until the Member's renewal

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<sup>31</sup> 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.

date. Members would then receive the 12-month discount (\$40,000 annually) for subscribing to both reports on the renewal date of their original subscription.

For example, assume “Member A” previously subscribed to the Simple Order Report on September 1, 2024, and paid \$24,000 for a 12 month subscription to the Simple Order Report. “Member A’s” current subscription expires on August 31, 2025, for the Simple Order Report. Before “Member A’s” subscription to the Simple Order Report expires, “Member A” decides to subscribe to the Complex Order Report, beginning March 1, 2025. Rather than being immediately charged \$40,000 for the 12 month subscription discount for subscribing to both reports (“Member A” already paid \$24,000 upfront for the Simple Order Report 12 month subscription), “Member A” would only be charged an additional \$8,000 to add the Complex Order Report for the remaining months of “Member A’s” current 12 month subscription to the Simple Order Report. On September 1, 2025, assuming “Member A” decided to keep both reports, “Member A” would then be charged the 12 month discounted rate of \$40,000 for both reports for the next year.

The Exchange proposes to determine the prorated fee described above as follows: on the date that “Member A” wanted to begin subscribing to the Complex Order Report (March 1, 2025), there were six months remaining on “Member A’s” existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be calculated as  $((6 \text{ months remaining} / 12 \text{ months total}) * (\$40,000 \text{ discounted annual subscription for both reports} - \$24,000 \text{ for annual subscription to each report individually})) = \$8,000$  for remaining 6 months. Beginning September 1, 2025 (the original renewal date for the Simple Order Report), “Member A” would then be charged the discounted 12 month subscription rate of \$40,000, assuming “Member A” renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange intends to begin to offer the reports on August 12, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>32</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>33</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the reports is consistent with Section 6(b) of the Act<sup>34</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>35</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the reports further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The reports also promote increased transparency through the dissemination of the data contained in each report. Particularly, the reports will benefit investors by facilitating their prompt access to the value added information

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<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 15 U.S.C. 78f(b).

<sup>35</sup> 15 U.S.C. 78f(b)(4).

that is included in each report. The reports will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, with the launch of MIAX Sapphire, there are 17 registered exchanges that trade options. For the month of June 2024, based on publicly available information, no single options exchange had more than approximately 14-15% of the equity options market share.<sup>36</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>37</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced reports.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and identical to fees charged by MIAX, MIAX Pearl, and MIAX Emerald for similar

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<sup>36</sup> See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited July 25, 2024).

<sup>37</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

reports.<sup>38</sup> Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's data products, which as noted, are entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange's offerings.<sup>39</sup> As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in each of the reports. A lower annual subscription fee would also incentivize Members to subscribe to the reports on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the reports by doing so on a regular basis over a prolonged and set period of time.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of new market data products to Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's Simple Order Book or Strategy Book, as the case may be. The reports accomplish this by providing those Members data to analyze by how much time their order may have missed

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<sup>38</sup> See supra note 7. See MIA X Rules 531(a)-(c) and MIA X Emerald Rules 531(a)-(c).

<sup>39</sup> This is supported by BOX introducing two nearly identical reports. See supra note 8; see also Securities Exchange Act Release Nos. 94563 (March 31, 2022), 87 FR 19985 (April 6, 2022) (SR-BOX-2022-10); and 94920 (May 16, 2022), 87 FR 31013 (May 20, 2022) (SR-BOX-2022-18).

an execution against a contra-side order resting on the Simple Order Book or Strategy Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as one of the reports, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the reports, 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 decrease or discontinue their use of the data and/or avail themselves of similar products that may be offered by other exchanges.<sup>40</sup> The Exchange, therefore, believes that the proposed fees for the reports reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase any of the reports. The Exchange's proposed fees would not differentiate between subscribers that purchase the reports and are set at modest levels that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the reports is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the reports, and the Exchange is not required to make the reports available to all investors. It is entirely a business decision of each Member to subscribe to the reports. The Exchange offers the reports as a convenience to Members to provide them with additional

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<sup>40</sup> See supra note 8.



information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the reports may discontinue receiving the reports at any time if that Member determines that the information contained in the reports is no longer useful.

Further, the Exchange proposes to waive the fees for the reports for the Initial Waiver Period in order to encourage market participants to subscribe to the reports. The Exchange believes it is reasonable to waive the fees for the reports for the Initial Waiver Period in order for Members to determine whether they realize value from the reports prior to the expiration of the Initial Waiver Period. The Exchange believes that it is reasonable to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange proposes to make the reports available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the reports will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The

Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, 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 does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the reports. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>41</sup> and Rule 19b-4(f)(2)<sup>42</sup> 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

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<sup>41</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>42</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-SAPPHIRE-2024-08 on the subject line.

##### Paper Comments:

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

All submissions should refer to file number SR-SAPPHIRE-2024-08. 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-2024-08 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.<sup>43</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>43</sup> 17 CFR 200.30-3(a)(12).