

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100751; File No. SR-SAPPHIRE-2024-09]

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

August 16, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 6, 2024, MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

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

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

1. Purpose

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

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

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

End-of-Day Subscription

The Exchange proposes to assess a fee of \$600 per month for subscribing to the End-of-Day summary Open-Close Report. The End-of-Day summary is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁷), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker volume is further broken

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

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

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

⁷ See Exchange Rule 100.

down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is a historical data product and not a real-time data feed. The Exchange notes that its affiliated markets offer similar data products that may be purchased on a monthly basis for the same prices as proposed herein.⁸ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁹

Intra-Day Subscription

The Exchange proposes to assess a monthly fee of \$2,000 for subscribing to the Intra-Day Open-Close Report. The Exchange also proposes that subscribers who purchase an Intra-Day subscription may request an End-of-Day subscription for no additional charge. The Intra-Day Open-Close Report provides similar information to the End-of-Day summary Open-Close Report but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the Intra-Day Open-Close Report receive the first calculation of intra-day data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.” The Intra-Day Open-Close Report data provides a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume is further broken down into

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 531(d)(1).

trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Exchange notes that its affiliated markets offer similar Intra-Day Open-Close Reports for their market data, which may be purchased on a monthly basis for the same price as proposed herein.¹⁰ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.¹¹

End-of-Day Ad-Hoc Request (Historical Data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical End-of-Day Open-Close Report data for a fee of \$500 per request per month. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. The Exchange notes that its affiliated markets offer similar historical End-of-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹² Further, other exchanges that provide similar data products allow for ad hoc requests of their End-of-Day data for a fee¹³ and, like the Exchange proposes herein, allow for ad hoc requests back to a certain month.¹⁴

Intra-Day Ad-Hoc Request (Historical Data)

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

Intra-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹⁵ Further, other exchanges that provide similar data products allow for ad hoc requests of their Intra-Day data for a fee.¹⁶

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

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

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

to submit a brief application.¹⁷ Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

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

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

¹⁰ See *supra* note 8.

¹¹ See *supra* note 9.

¹² See *supra* note 8.

¹³ See *supra* note 9.

¹⁴ See EDGX Options Fee Schedule, Cboe

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

¹⁵ See *supra* note 8.

¹⁶ See *supra* note 14.

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

¹⁸ See *supra* note 8.

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

Emerald—as well as competing exchanges offer similar data products.²⁰

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

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

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

2. Statutory Basis

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

charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.²⁷

The Exchange operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. For the month of June 2024, based on publicly available information, no single options exchange had more than approximately 14–15% of the equity options market share.²⁸ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁹ Making similar data products available to market participants fosters

competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Report.

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

The Exchange also believes the proposed fees are reasonable as they

²⁰ See *supra* notes 8 and 9.

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

²² See *supra* note 9.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4).

²⁷ See *supra* note 9.

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

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

³⁰ See *supra* note 8.

³¹ See *supra* note 9.

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

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

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

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

products offered by other exchanges.³³ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member and non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

The Exchange proposes to waive the fees for the proposed Open-Close Reports for the Initial Waiver Period in order to encourage market participants to subscribe to the reports. The Exchange believes it is reasonable to waive the fees for the reports for the Initial Waiver Period in order for market participants and academic users to determine whether they realize value from the reports prior to the expiration of the Initial Waiver Period. The Exchange believes that it is reasonable to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period. The Exchange believes the proposed fee waiver is equitable and not unfairly discriminatory because all subscribers to the Open-Close Reports will receive the fee waiver throughout the defined period of time of the Initial Waiver Period.

³³ See *supra* note 9.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.³⁴ The Exchange will make Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least six other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report.³⁵ As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.³⁶ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other

³⁴ *Id.*

³⁵ See *supra* notes 8 and 9.

³⁶ See *id.*

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

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,³⁷ and Rule 19b-4(f)(2)³⁸ 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-SAPPHIRE-2024-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-SAPPHIRE-2024-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-SAPPHIRE-2024-09 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100743; File No. SR-ISE-2024-39]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend Complex Order Risk Protections

August 16, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 9, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the 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 to amend Options 3, Section 16, Complex Order Risk Protections.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Options 3, Section 16, Complex Order Risk Protections. Specifically, the Exchange proposes to amend Options 3, Section 16(b), Strategy Protections, to provide that the protections in Options 3, Section 16(b) would not apply to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg.

The Exchange received approval to permit the listing and trading of p.m.-settled Nasdaq-100 Index® options³ with a third-Friday-of-the-month

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq-100 Index options trade under the symbol (“NDX”).

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 17 CFR 240.19b-4(f)(2).

³⁹ 17 CFR 200.30-3(a)(12).