

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100683; File No. SR-SAPPHIRE-2024-13)

August 9, 2024

Self-Regulatory Organizations; MIAX Sapphire LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a Fee Schedule

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, 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 establish a Fee Schedule (the “Fee Schedule”) for fees and rebates applicable to participants trading options on and/or using services provided by MIAX Sapphire. MIAX Sapphire will commence operations as a national securities exchange registered under Section 6 of the Act³ on August 12, 2024.⁴

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f.

⁴ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order approving application of MIAX Sapphire, LLC for registration as a national securities exchange).

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

Definitions

The Exchange has included a Definitions section at the beginning of its Fee Schedule. The purpose of the Definitions section is to streamline the Fee Schedule by placing many of the defined terms used in the Fee Schedule in one location at the beginning of the Fee Schedule. Many of the defined terms are also defined in the Exchange Rules, particularly in Exchange Rule 100. Any defined terms that are also defined or otherwise explained in the Exchange Rules contain a cross reference to the relevant Exchange Rule. The Exchange notes that other exchanges have Definitions sections in their respective fee schedules,⁵ and the Exchange believes that including a Definitions section in the front of the Exchange's Fee Schedule makes the Fee Schedule more user-friendly. The Exchange notes that the proposed definitions to be included in the Definitions section of the Exchange's Fee Schedule are substantially similar to

⁵ See Securities Exchange Act Release Nos. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013)(SR-Topaz-2013-10); 76453 (November 17, 2015), 80 FR 72999 (November 23, 2015)(SR-EDGX-2015-56); 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017)(SR-PEARL-2017-10); and 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019)(SR-EMERALD-2019-15).

those definitions found in the Fee Schedule of the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), with the following few exceptions.

The MIAX Sapphire term “Full Service MEO Port” is defined in the same fashion as the term “Full Service MEO Port – Bulk” is defined in the Definitions section of the MIAX Pearl Options Fee Schedule.

The MIAX Sapphire term “‘Dedicated’ cross-connect” is integrated into the definition of “cross connect” in the Definitions section of the MIAX Sapphire Fee Schedule and is identical to the definition of “‘Dedicated’ cross-connect” used in the Definitions section of the Fee Schedule of the Exchange’s affiliate, MIAX Emerald, LLC (“MIAX Emerald”).

The MIAX Sapphire term “MENI” described in the Definitions section of the MIAX Sapphire Fee Schedule provides a more fulsome description of the MIAX Express Network Interconnect than the definition provided in the MIAX Pearl Options Fee Schedule.

The MIAX Sapphire term “Purge Ports” is defined in the same fashion as the term “MEO Purge Ports” is defined in the Definitions section of the MIAX Pearl Options Fee Schedule.

These minor deviations from the established definitions of like terms in the MIAX Pearl Options Fee Schedule are de minimis in nature and not reflective of new functionality being introduced on the MIAX Sapphire Exchange.

Routing Fees

MIAX Sapphire proposes to assess Routing Fees in order to recoup costs incurred by MIAX Sapphire when routing orders to various away markets. The Exchange notes that the proposed fees are substantially similar to those of the Exchange’s affiliates, Miami International Securities Exchange LLC (“MIAX”), MIAX Pearl, and MIAX Emerald.⁶ The amount of the

⁶ See MIAX Fee Schedule, Section 1) c), Fees for Customer Orders Routed to Another Options Exchange, MIAX Pearl Options Fee Schedule, Section 1) b), Fees for Customer Orders Routed to Another Options

applicable fee is based upon (i) the Origin type of the order, (ii) whether it is an order for an option in a Penny or Non-Penny class (or other explicitly identified classes) and (iii) to which away market it is being routed, according to the following table:⁷

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX (except SPY), Nasdaq MRX	\$0.15
Routed, Priority Customer, Penny Program, to: BOX	\$0.30
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Pearl, MIAX Emerald, Nasdaq BX Options, MEMX	\$0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX, Nasdaq MRX	\$0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, NOM, MIAX Pearl, MIAX Emerald, Nasdaq BX Options, Nasdaq ISE, MEMX	\$1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX, MIAX Pearl, MIAX Emerald, NOM, Nasdaq PHLX, Nasdaq BX Options, MEMX	\$0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE American, MIAX, Cboe, Nasdaq PHLX, Cboe EDGX Options, NOM	\$1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX	\$1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Pearl, MIAX Emerald, MEMX	\$1.25
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, Nasdaq ISE, Nasdaq BX Options	\$1.40

In determining its proposed Routing Fees, the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing, administrative, regulatory, and technical costs associated with routing

Exchange, and MIAX Emerald Options Fee Schedule, Section 1) b), Fees for Customer Orders Routed to Another Options Exchange.

⁷ This is similar to the methodologies utilized by the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald in assessing Routing Fees. See id.

orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule. These fees are substantially similar to the Exchange's affiliates.⁸ Additionally, this Routing Fees structure is substantially similar to the Exchange's affiliates as well,⁹ and is also comparable to the fee structure in place on at least one other options exchange, Cboe BZX Options.¹⁰

The Exchange is proposing to have ten different exchange groupings, based on the exchange, order type, and option class. The Exchange believes that having these groupings will allow the Exchange to approximate its costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute that corresponding contract at that corresponding exchange. For example, to execute a Priority Customer order in a Penny Pilot symbol at NYSE American costs the Exchange approximately \$0.15 a contract. Since this is also the approximate cost to execute that same order at Cboe, the Exchange is able to group NYSE American and Cboe together in the same grouping. The Exchange notes that in determining the appropriate groupings, the Exchange considered the transaction fees and rebates assessed by away markets, and grouped exchanges together that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the

⁸ See supra note 6.

⁹ See supra note 7.

¹⁰ See Cboe U.S. Options Fee Schedules, BZX Options, Fee Codes and Associated Fees, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Cboe BZX fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny Pilot class. For example, Cboe BZX fee code RQ covers routed customer orders in Penny classes to NYSE Arca Options, Cboe C2, Nasdaq ISE, Nasdaq GEMX, MIAX Emerald, MIAX Pearl, NOM or MEMX, with a single fee of \$0.85 per contract.

proposed Routing Fees table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, those members which are also Members¹¹ of the Exchange, will be assessed Routing Fees in the same amount and manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the four exchanges. The Exchange notes that this proposal is identical to the structure of the routing fee table and the fees assessed by the Exchange's affiliates.¹²

2. Statutory Basis

The Exchange believes that its proposal to establish its Fee Schedule is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁵ in that it is designed 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, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. Additionally, the Exchange believes the proposal is consistent with Section

¹¹ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAX Sapphire 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.

¹² See supra note 7.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5) [sic].

¹⁵ 15 U.S.C 78f(b)(5).

6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Definitions

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁷ in that it is designed 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, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes providing a Definitions section in its Fee Schedule protects investors and the public interest by clarifying terms and locating them in a dedicated section of the Fee Schedule for ease of reference, thereby reducing the chance of confusion. Additionally, the Exchange notes that the proposed definitions are substantially similar to those of the Exchange's affiliate, MIAX Pearl Options, and are intended to ensure that the Fee Schedule is clear and unambiguous.

Routing Fees

The Exchange believes the proposal to establish routing fees and a routing fee structure of groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is an equitable allocation of reasonable fees and not unfairly discriminatory because all Members that are subject to routing fees are treated in a uniform manner.

The Exchange believes the proposed routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles

¹⁶ Id.

¹⁷ 15 U.S.C 78f(b)(5).

of trade and is not unfairly discriminatory as the proposal change seeks to recoup costs that are incurred by the Exchange when routing Priority and Public Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees and therefore is not discriminatory and furthers just and equitable principles of trade. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing, administrative, regulatory and technical costs.

The Exchange believes that the proposed Routing Fees are reasonable, equitable and not unfairly discriminatory because they seek to recoup costs incurred by MIAX Sapphire when routing orders to various away markets. In determining its proposed Routing Fees, the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule. This Routing Fees structure is not only similar to the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald,¹⁸ but is also comparable to the structure in place on at least one other options exchange, Cboe BZX Options.¹⁹ The Exchange believes that having ten groupings for its proposed routing fees is reasonable, equitable and not unfairly discriminatory because the Exchange will be able to better approximate its costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in

¹⁸ See supra note 7.

¹⁹ See supra note 10.

cost (plus an additional, non-material amount) to execute that corresponding contract at that corresponding exchange. The Exchange notes that in determining the appropriate groupings, the Exchange considered the transaction fees and rebates assessed by away markets, and grouped exchanges together that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the proposed Routing Fees table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, those members which are also Members of the Exchange will be assessed Routing Fees in the same manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the four exchanges. This proposal is identical to the routing fee tables of the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald.²⁰

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. MIAX Sapphire's proposed fees, as described herein, are comparable to fees charged by its affiliates, MIAX, MIAX Pearl, and MIAX Emerald,²¹ for the same service.

Definitions

The Exchange does not believe that its proposal to adopt a Definitions section to its Fee Schedule imposes any unnecessary burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed definitions are designed to improve the clarity and precision of the Exchange's Fee Schedule and are not competitive in nature.

²⁰ See supra note 7.

²¹ See supra note 6.

Routing Fees

The Exchange does not believe that its proposal to adopt a Routing Fees imposes any unnecessary burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's Routing Fees reflect the costs and fees incurred by the Exchange when routing orders to away markets on behalf of Members and are applied in a uniform manner to all similarly situated Members. Additionally, the Exchange notes that at least one other options exchange employs a similar routing fee structure.²²

The Exchange does not believe that the proposal will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that at least one other options exchange approximates its routing costs in a manner similar to that of the Exchange.²³ Additionally, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 16 other options exchanges. Based on publicly available information, no single options exchange has more than 16% of the market share.²⁴ Therefore, no exchange possesses significant pricing power in the execution of option order flow.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in

²² See supra note 10.

²³ See supra note 10.

²⁴ See "Market Share/MTD AVERAGE", available at <https://www.miaxglobal.com/> (data as of 7/1/2024 – 7/12/2024).

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.”²⁵ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchanges possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”²⁶ Accordingly, the Exchange does not believe that its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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,²⁷ and Rule 19b-4(f)(2)²⁸ 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

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

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-2024-13 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-2024-13. 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-2024-13 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.²⁹

Vanessa A. Countryman,
Secretary.

²⁹ 17 CFR 200.30-3(a)(12).