

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101281; File No. SR-SAPPHIRE-2024-30)

October 8, 2024

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the 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 September 27, 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 amend the MIAX Sapphire Fee Schedule (the “Fee Schedule”) to waive transaction rebates/fees applicable to transactions executed during the opening and transactions that uncross the Away Best Bid or Offer (“ABBO”).³

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “ABBO” or “Away Best Bid or Offer” means the best bid(s) or offer(s) disseminated by other Eligible Exchange (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchanges from OPRA. See Exchange Rule 100.

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 purpose of this proposed rule change is to amend the Exchange's Fee Schedule to waive transaction rebates/fees applicable to executions that occur as part of the Exchange's Opening Process⁴ as described in Rule 503 ("Openings on the Exchange") or that uncross the ABBO, as described in Rule 515 ("Execution of Orders").

Under Rule 503, Openings on the Exchange, the Exchange will accept orders for queuing prior to the opening of trading in that series of options.⁵ While orders are queued prior to the Opening Process it is not possible to identify the order as either Maker or Taker, therefore the Exchange now proposes to add additional detail to its Fee Schedule by adopting new note (2), to clarify that, the per contract transaction rebates and fees shall be waived for transactions executed

⁴ "Opening Process" shall mean the process for opening or resuming trading pursuant to Exchange Rule 503 and shall include the process for determining the price at which Eligible Interest shall be executed at the open of trading for the day, or the open of trading for a halted option, and the process for executing that Eligible Interest. See Exchange Rule 503(a)(1).

⁵ See Exchange Rule 503(a)(2).

during the opening and for transactions that uncross the ABBO.⁶ Additionally, the Exchange notes other competing option exchanges do not assess transaction rebates/fees at the open.⁷

Implementation

The proposed change will become effective on October 1, 2024.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable dues, 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 Act¹⁰ 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 proposal provides that executions that occur as part of the Exchange's Opening Process will not incur any fees or receive any rebates. The Exchange believes that its proposal to waive transaction rebates/fees that occur as part of the Exchange's Opening Process is reasonable,

⁶ The Exchange notes that its affiliate exchanges, MIAX Pearl Options and MIAX Emerald, have similar language in their fee schedules.

⁷ See Cboe U.S. Options Fee Schedules, C2 Options, Transaction Fees, Trades at the Open, available online at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/; and EDGX Options, Transaction Fees, Fee Codes and Associated Fees, Fee Code "OO," available online at https://www.cboe.com/us/options/membership/fee_schedule/edgx/.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

fair and equitable because it will incentivize Members¹¹ to send order flow to the Exchange, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs occurring as part of the Exchange's Opening Process. Lastly, the Exchange also believes that the proposed pricing for executions occurring as part of the Opening on the Exchange is nondiscriminatory because it will apply equally to all Members.

The proposal further provides that executions that uncross the ABBO will not be assessed any fees or receive any rebates. The Exchange believes that its proposal to waive transaction rebates/fees that uncross the ABBO is reasonable, fair and equitable because it will incentivize Members to send greater order flow to the Exchange in this scenario, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs across all trades which uncross the ABBO. Lastly, the Exchange also believes that the proposed pricing for executions occurring in this scenario is nondiscriminatory because it will apply equally to all Members.

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.

Intra-Market Competition

The proposal does not impose an undue burden on intra-market competition as transaction rebates and fees will be waived for transactions executed during the opening and for

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

transactions that uncross the ABBO uniformly for all Members. The Exchange believes its proposal will encourage Members to submit orders to the Exchange which will increase liquidity and benefit all market participants by providing more trading opportunities and better execution prices. Accordingly, the Exchange believes that the proposed changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage order flow, which provides greater volume and liquidity, benefiting all market participants by providing more trading opportunities and better execution prices.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice on where to route their orders for execution. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 18 registered options exchanges competing for order flow. For the month of August 2024, based on publicly-available information, and excluding index-based options, no single exchange exceeded approximately 14 -15% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options.¹² Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. In such an environment, the Exchange must propose transaction fees and rebates to be competitive with other exchanges and to attract order flow. The Exchange believes that the

¹² See “Market Share, MTD Average” on the Exchange’s website, available at <https://www.miaxglobal.com/>.

Exchange's proposal reflects this competitive environment, to the extent this is achieved, all of the Exchange's market participants should benefit from the quality of the Exchange's market.

The Exchange notes that this rule change is being proposed at a time when other options exchanges are offering similar pricing for similar market scenarios.¹³ As a result of the competitive environment, Members will have various pricing and execution models to choose from in making determinations on where to enter orders prior to the opening of trading or which may potentially uncross the ABBO. The Exchange notes that it operates in a highly competitive market in which Members can readily direct order flow to competing venues if they deem fee levels to be excessive.

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,¹⁴ and Rule 19b-4(f)(2)¹⁵ 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.

¹³ See *supra* note 7.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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-2024-30 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-2024-30. 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-2024-30 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.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).