

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101589; File No. SR-SAPPHIRE-2024-35)

November 12, 2024

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Sapphire LLC to Extend the Sunset Provision Relating to the Options Regulatory Fee (ORF)

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 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 Options Exchange Fee Schedule (the “Fee Schedule”) relating to the Options Regulatory Fee (“ORF”) to extend the current sunset date of October 31, 2024 to May 31, 2025.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, at MIAX Sapphire’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its Fee Schedule related to the ORF to extend the current sunset date of October 31, 2024 to May 31, 2025, and thus continue charging the previously established ORF in the amount of \$0.0013 per contract side through May 31, 2025. As discussed herein, the ORF sunset date of October 31, 2024 was initially proposed to provide time for the Exchange to inform its approach to ORF and discuss alternative ORF models with market participants, so that it may compete on equal footing with each of the other option exchanges that charge similar regulatory fees. However, those discussions have made clear that there is not yet consensus among market participants on a path forward that would address industry concerns in a manner that would effect change broadly across all U.S. options exchanges. Thus, the Exchange proposes to extend the automatic sunset date of October 31, 2024 until May 31, 2025 in order to provide it additional time to inform its approach to the ORF after the sunset date while continuing to fund a portion of its regulatory program via ORF so that it may operate on equal footing with each of the seventeen (17) other options exchanges that charge similar regulatory fees in amounts that far exceed the relatively modest amounts collected by the Exchange.

As background, on August 7, 2024 the Exchange initially filed this proposal to establish an ORF in the amount of \$0.0013 per contract side that would automatically sunset on October 31, 2024 (SR-SAPPHIRE-2024-14). The Exchange withdrew SR-SAPPHIRE-2024-14, and on

August 21, 2024 replaced it with SR-SAPPHIRE-2024-25 (the “Initial ORF Filing”).³ The Initial ORF Filing was published for comment in the Federal Register on September 3, 2024.⁴ To date, the Securities and Exchange Commission (the “Commission”) received no comments on the Initial ORF Filing.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members’⁵ customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange’s other regulatory fees and fines, will cover a material portion, but not all, of the Exchange’s regulatory costs. Currently, all other registered options exchanges impose ORF on their members, and those exchanges also charge ORF for executions occurring on the Exchange cleared by their customers.⁶

³ See Securities Exchange Act Release No. 100824 (August 27, 2024), 89 FR 71496 (September 3, 2024) (SR-SAPPHIRE-2024-25).

⁴ See Supra note 3.

⁵ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAAX 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.

⁶ See Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR-CBOE-2008-05) (notice of filing and immediate effectiveness of Cboe adopting an ORF applicable to transactions across all options exchanges); 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100) (notice of filing and immediate effectiveness of Phlx adopting an ORF applicable to transactions across all options exchanges); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105) (notice of filing and immediate effectiveness of ISE adopting an ORF applicable to transactions across all options exchanges); 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR-BX-2010-001) (notice of filing and immediate effectiveness of Nasdaq OMX BX, Inc. (“BX”) adopting an ORF applicable to transactions across all options exchanges); 70200 (August 14, 2013) 78 FR 51242 (August 20, 2013)(SR- Topaz-2013-01)) (notice of filing and immediate effectiveness of GEMX, formerly known as ISE Gemini and Topaz Exchange, adopting an ORF applicable to transactions across all options exchanges); 64400 (May 4, 2011), 76 FR 27118 (May 10, 2011) (SR-NYSEAmex-2011-27) (notice of filing and immediate effectiveness of NYSE AMEX adopting an ORF applicable to transactions across all options exchanges); 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR-NYSEArca-2011-20) (notice of filing and immediate effectiveness of NYSE Arca adopting an ORF applicable to transactions across all options exchanges); 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR-NASDAQ-2011-163) (notice of filing and immediate effectiveness of Nasdaq Options Market (“NOM”) adopting an ORF applicable to transactions across all options exchanges); 66979 (May 14, 2012), 77 FR 29740 (May 18,

The Exchange recognizes that in 2019, the Commission issued suspensions of and orders instituting proceedings to determine whether to approve or disapprove a proposed rule change to modify the Options Regulatory Fee of NYSE American, NYSE Arca, MIAX Options, MIAX PEARL, MIAX Emerald, Cboe, Cboe EDGX Options, and C2.⁷ Each of those exchanges had filed to increase their ORF, and the Commission indicated that each of those filings lacked detail and specificity, signaling that more information was needed to speak to whether the proposed increased ORFs were reasonable, equitably allocated and not unfairly discriminatory, particularly given that the ORF is assessed on transactions that clear in the “customer” range and regardless of the exchange on which the transaction occurs. The Commission also noted that the filings provided only broad general statements regarding options transaction volume and did not provide any information on those exchanges’ historic or projected options regulatory costs (including the

2012) (SR-BOX-2012-002) (notice of filing and immediate effectiveness of BOX adopting an ORF applicable to transactions across all options exchanges); 67596 (August 6, 2012), 77 FR 47902 (August 10, 2012) (SR-C2-2012-023) (notice of filing and immediate effectiveness of C2 Options Exchange, Inc. (“C2”) adopting an ORF applicable to transactions across all options exchanges); 68711 (January 23, 2013) 78 FR 6155 (January 29, 2013) (SR-MIAX-2013-01) (notice of filing and immediate effectiveness of MIAX Options adopting an ORF applicable to transactions across all options exchanges); 74214 (February 5, 2015), 80 FR 7665 (February 11, 2015) (SR-BATS-2015-08) (notice of filing and immediate effectiveness of BZX formerly known as BATS, adopting an ORF applicable to transactions across all options exchanges); 80025 (February 13, 2017) 82 FR 11081 (February 17, 2017) (SR-BatsEDGX-2017-04) (notice of filing and immediate effectiveness of EDGX formerly known as Bats EDGX Exchange, Inc., adopting an ORF applicable to transactions across all options exchanges); 80875 (June 7, 2017) 82 FR 27096 (June 13, 2017) (SR-PEARL-2017-26) (notice of filing and immediate effectiveness of MIAX PEARL adopting an ORF applicable to transactions across all options exchanges); 85127 (February 13, 2019) 84 FR 5173 (February 20, 2019) (SR-MRX-2019-03) (notice of filing and immediate effectiveness of Nasdaq MRX, LLC (“MRX”) adopting an ORF applicable to transactions across all options exchanges); 85251 (March 6, 2019) 84 FR 8931 (March 12, 2019) (SR-EMERALD-2019-01) (notice of filing and immediate effectiveness of MIAX Emerald adopting an ORF applicable to transactions across all options exchanges).

⁷ See Securities Exchange Act Release No. 87168 (September 30, 2019), 84 FR 53210 (October 4, 2019) (SR-Emerald-2019-29); Securities Exchange Act Release No. 87167 (September 30, 2019), 84 FR 53189 (October 4, 2019) (SR-PEARL-2019-23); Securities Exchange Act Release No. 87169 (September 30, 2019), 84 FR 53195 (October 4, 2019) (SR-MIAX-2019-35); Securities Exchange Act Release No. 87170 (September 30, 2019), 84 FR 53213 (October 4, 2019) (SRCBOE- 2019-040); Securities Exchange Act Release No. 87172 (September 30, 2019) 84 FR 53192 (October 4, 2019) (SR-CboeEDGX-2019-051); Securities Exchange Act Release No 87171 (September 30, 2019), 84 FR 53200 (October 4, 2019) (SR-C2-2019-018); Securities Exchange Act Release No. 86832 (August 30, 2019), 84 FR 46980 (September 6, 2019) (SR-NYSEArca-2019-49); Securities Exchange Act Release No. 86833 (August 30, 2019) 84 FR 47029 (September 6, 2019) (SR-NYSEAMER-2019-27).

costs of regulating activity that cleared in the “customer” range and the costs of regulating activity that occurred off exchange), the amount of regulatory revenue they had generated and expected to generate from the ORF as well as other sources, or the “material portion” of options regulatory expenses that they sought to recover from the ORF. Each of those exchanges withdrew their filings, but continue charging ORF today as discussed above. The Exchange would be at an unfair competitive disadvantage if it were not allowed to charge the ORF to recover a material portion, but not all, of the Exchange’s regulatory costs for the supervision and regulation of activity of its Members which as noted above, is charged by all currently operating options exchanges.

The Exchange recognizes that an alternative model is being pursued among industry participants but that a consensus has not yet been reached. As such, the Exchange proposes additional time to work towards a permanent ORF solution by gathering relevant data internally as well from other industry participants, while continuing to charge as other options exchanges currently do, until May 31, 2025, at which time its ORF will automatically sunset.

The Exchange notes that if, during the proposed sunset period of October 31, 2024 through May 31, 2025, a viable alternative methodology for the ORF presents itself, the Exchange would endeavor to implement said alternative prior to the proposed sunset date. In other words, the existence of the sunset date of May 31, 2025 to the Exchange’s current ORF would not preclude it from filing to modify its ORF methodology prior to that date, if applicable. As a new exchange, not having the opportunity to fund its regulatory program through the same regulatory fee charged by every other options exchange would place an undue competitive disadvantage upon the Exchange’s regulatory program and options business as a whole. Further, the Exchange emphasizes that other exchanges will be charging ORF for transactions occurring on MIAX Sapphire, and as such, it follows that the exchange that is primarily responsible for

monitoring those transactions should also be able to charge the ORF for activity occurring on its own market, as well as transactions it surveils on away markets. Again, the Exchange is committed to facilitating and joining efforts to revamp the ORF, however, it must be afforded additional time to do so while recouping a portion of its regulatory costs via the ORF as all other options exchanges do.

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 ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive, and enforcement activities. Extending the current ORF sunset date to May 31, 2025 is reasonable because continued collection of ORF will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs,

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

thereby ensuring proper regulatory funding. Moreover, the Exchange's ORF rate is lower than the amount of ORF assessed on other exchanges.¹¹

Extending the sunset date is also reasonable because doing so would allow the Exchange additional time to inform its approach to ORF moving forward while recouping a portion of its regulatory expenses via the ORF as other options exchanges do. If the Exchange were not allowed to charge an ORF during this additional time period, then after the sunset date of October 31, 2024, it would be forced to pay for its regulatory program solely out of business revenues while working towards an alternative ORF solution, unlike every other competing exchange, each of which would continue to assess an ORF, including on transactions executed on the Exchange, indefinitely. This would impact the Exchange's ability to assure adequate funding of its regulatory program.

Extending the ORF sunset date to May 31, 2025 is also equitable and not unfairly discriminatory because prior to the proposed sunset date, the ORF would continue to be objectively allocated to Members in a manner that is consistent with the ORF imposed by the other seventeen (17) options exchanges. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

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

¹¹ See, e.g., NYSE Arca Options Fees and Charges, ORF and NYSE American Options Fees Schedule, Section VII(A), which provide that ORF is assessed at a rate of \$0.0055 per contract for each respective exchange. See also Nasdaq PHLX, Options 7 Pricing Schedule, Section 6(D), which provides for an ORF rate of \$0.0034 per contract; Cboe Options Fee Schedule, which provides an ORF rate of \$0.0017 per contract; Nasdaq Options Market, Options 7 Pricing Schedule, Section 5, which provides an ORF rate of \$0.0016 per contract; BOX Options Fee Schedule Section II(C), which provides an ORF rate of \$0.00295 per contract; MIAX Options Fee Schedule, Section 2(b), which provides an ORF rate of \$0.0019 per contract; MIAX Pearl Fee Schedule, Section 2(b), which provides an ORF rate of \$0.0018 per contract; and the MEMX Fee Schedule which provides an ORF rate of \$0.0015.

MIAX Sapphire 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. This proposal will not create an unnecessary or inappropriate intra-market burden on competition because the ORF will apply to all customer activity, and is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. This proposal will not create an unnecessary or inappropriate inter-market burden on competition because it will be a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. MIAX Sapphire's ORF, is lower than, or comparable to, fees charged by other options exchanges for the same or similar services.

The Exchange notes that while it does not believe that its proposed ORF will impose any burden on inter-market competition, the Exchange not charging an ORF or being precluded from charging an ORF after October 31, 2024 but prior to the proposed sunset date of May 31, 2025 would, in-fact, represent a significant burden on the Exchange's ability to assure adequate funding of its regulatory program. As noted above, the Exchange is a new entrant in the highly competitive environment for equity options trading. Also, as noted above, all registered options exchanges currently impose the ORF on their members, and such ORF fees imposed by other options exchanges currently do and will continue to extend to executions occurring on the Exchange. The Exchange believes that it is likely that a viable ORF alternative may be presented during the proposed sunset period. The Exchange believes that in order to compete with these existing options exchanges, it must, in fact, impose an ORF on its Members during this additional sunset period, and that the inability to do so would result in an unfair competitive disadvantage to the Exchange.

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,¹² and Rule 19b-4(f)(2)¹³ 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-2024-35 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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-2024-35. 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-2024-35 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.¹⁴

Sherry R. Haywood,

Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).