

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100746; File No. SR-SAPPHIRE-2024-11)

August 16, 2024

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees for QCC Orders and cQCC Orders

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 amend the MIAX Sapphire Fee Schedule (the “Fee Schedule”) to adopt fees for Qualified Contingent Cross (“QCC”) Orders³ and complex Qualified Contingent Cross (“cQCC”) Orders.⁴ MIAX Sapphire will commence operations as a national securities exchange registered under Section 6 of the Act⁵ on August 12, 2024.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretation and Policy .01 of MIAX Sapphire Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. See Exchange Rule 516(j).

⁴ A Complex Qualified Contingent Cross of “cQCC” Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretation and Policy .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. See Exchange Rule 518(b)(4).

⁵ 15 U.S.C. 78f.

⁶ 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).

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 proposes to adopt Section 1) a) ii) of the Fee Schedule as “QCC Fees” to adopt certain fees and rebates applicable to QCC Orders. Additionally, the Exchange proposes to adopt Section 1) a) iii) of the Fee Schedule as “cQCC Fees” to adopt certain fees and rebates applicable to cQCC Orders. Finally, the Exchange proposes to adopt Section 1) a) i) to the Fee Schedule which the Exchange is proposing to reserve to be amended by a later proposal. The Exchange notes that these fees are identical to fees charged on the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX Options”).⁷

⁷ See MIAX Options Exchange Fee Schedule, Section 1) a) vii) “QCC Fees” and Section 1) a) viii) “cQCC Fees” available at <https://www.miaxglobal.com/markets/us-options/miax-options/fees>.

Background

A QCC Order is comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order or orders totaling an equal number of contracts.⁸ A “qualified contingent trade” is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) at least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.⁹

Proposal to Adopt QCC Order Fees and Rebates

The Exchange proposes to adopt Section 1) a) ii) of the Fee Schedule as “QCC Fees” to adopt certain fees and rebates applicable to QCC Orders. The Exchange proposes to assess initiator fees as follows: \$0.00 per contract for the Priority Customer¹⁰ origin; \$0.12 for Public

⁸ See Exchange Rule 516(j).

⁹ See Interpretation and Policy .01 of Exchange Rule 516.

¹⁰ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

Customer¹¹ that is Not a Priority Customer; and \$0.20 per contract for all other market participant origins (i.e., Sapphire Market Makers,¹² non-Sapphire Market Makers, non-Member Broker-Dealers, and Firm).¹³

The Exchange proposes to assess contra-side fees for all market participant origins, except the Priority Customer origin, as follows: \$0.12 per contract side for the Public Customer that is not a Priority Customer origin; and \$0.20 per contract side for Professional origins.

The Exchange proposes to establish that rebates are paid to the Electronic Exchange Member (“EEM”)¹⁴ that entered the QCC Order, depending upon the origin type and the origin type on the contra-side. Specifically, the Exchange proposes to provide the following rebates for an EEM when the contra-side is a Priority Customer: \$0.00 per contract for the Priority Customer origin; \$0.07 per contract for the Public Customer that is not a Priority Customer origin; and \$0.17 per contract for Professional origins.

The Exchange proposes to provide the following rebates for an EEM when the contra-side is a Public Customer that is not a Priority Customer: \$0.07 per contract for the Priority Customer origin; \$0.17 per contract for the Public Customer that is not a Priority Customer origin; and \$0.25 per contract for Professional origins.

¹¹ The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

¹² The term “Market Makers” means a Member registered with the Exchange for the purposes of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of MIAX Sapphire Rules. See Exchange Rule 100.

¹³ For the purposes of this filing, the origins comprising Sapphire Market Makers, non-Sapphire Market Makers, non-Member broker-dealers and firms will be referred to as “Professional.”

¹⁴ The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

The Exchange proposes to provide the following rebates for an EEM when the contra-side is all other origins (i.e., neither a Priority Customer nor a Public Customer that is not a Priority Customer): \$0.17 per contract for the Priority Customer origin; \$0.25 per contract for the Public Customer that is not a Priority Customer origin; and \$0.30 per contract for Professional origins.

The Exchange also proposes to adopt a note below the table of fees and rebates for QCC Orders that will specify that per contract rebates will be paid to the EEM that enters the QCC Order into the MIAX Sapphire System.¹⁵ Additionally, the Exchange proposes to include a definition of a QCC order in the note which will provide that, a QCC transaction is comprised of an ‘initiating order’ to buy (sell) at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order to sell (buy) an equal number of contracts. The Exchange notes that with regard to order entry, the first order submitted into the System is marked as the initiating side and the second order is marked as the contra-side.

Proposal to Adopt cQCC Order Fees and Rebates

The Exchange proposes to adopt section 1) a) iii) to the Fee Schedule as “cQCC Fees” to adopt fees and rebates applicable to cQCC Orders, which are assessed per contract per leg. A cQCC Order is comprised of an originating complex order¹⁶ to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent

¹⁵ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹⁶ In sum, a “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a conforming or non-conforming ratio for the purposes of executing a particular investment strategy. See Exchange Rule 518(a). A complex order can also be a “stock-option order” with a conforming or non-conforming ratio as defined in Exchange Rule 518(a).

trade¹⁷ coupled with a contra-side complex order or orders totaling an equal number of contracts.¹⁸

The Exchange proposes to adopt initiator fees for all market participants, except the Priority Customer origin, as follows: \$0.12 per contract side for the Public Customer that is not a Priority Customer origin; and \$0.20 per contract side for Professional origins. The Exchange does not propose to charge an initiator fee for the Priority Customer origin.

The Exchange proposes to assess contra-side fees for all market participants, except the Priority Customer origin, as follows: \$0.12 per contract side for the Public Customer that is not a Priority Customer origin; and \$0.20 per contract side for Professional origins.

The Exchange proposes to provide the following rebates for an EEM when the contra-side is a Priority Customer: \$0.00 per contract for the Priority Customer origin; \$0.07 per contract for the Public Customer that is not a Priority Customer origin; and \$0.17 per contract for Professional origins. The Exchange also proposes to provide the following rebates for an EEM when the contra-side is a Public Customer that is not Priority Customer: \$0.07 per contract for the Priority Customer origin; \$0.17 per contract for the Public Customer that is not a Priority Customer origin; and \$0.25 per contract for Professional origins. Finally, the Exchange proposes to provide the following rebates for an EEM when the contra-side is all other origins (i.e., neither a Priority Customer nor a Public Customer that is not a Priority Customer): \$0.17 per contract for the Priority Customer origin; \$0.25 per contract for the Public Customer that is not a Priority Customer origin; and \$0.30 per contract for Professional origins.

¹⁷ See supra note 4.

¹⁸ Trading of cQCC Orders is governed by Exchange Rule 515(g)(4).

The Exchange also proposes to adopt a note below the table of fees and rebates for cQCC Orders. The Exchange proposes to specify that per contract rebates will be paid to the EEM that enters the cQCC Order into the MIAX Sapphire System. Additionally, the note will provide that, all fees and rebates are per contract leg. Finally, the note will provide the definition of a cQCC transaction as one that is comprised of an ‘initiating complex order’ to buy (sell) where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts. The Exchange also proposes to add the following reference sentence at the end of the notes section following the table of fees and rebates for cQCC Orders: “The stock handling fee for the stock leg of cQCC transactions is described in Section 1) a) v) of the Fee Schedule.” This will provide clarity to the Exchange’s Fee Schedule and help signal to market participants that the stock handling fees for the stock leg of cQCC transactions is located in a separate section of the Fee Schedule. Finally, the Exchange also notes that competing exchanges provide similar rebate and fee structures and amounts for QCC and cQCC Orders.¹⁹

¹⁹ See e.g., BOX Exchange LLC (“BOX”) Fee Schedule (dated January 2, 2024), Section IV.D., Qualified Contingent Cross (“QCC”) Transactions, available at <https://boxoptions.com/resources/fee-schedule/>. BOX does not assess any fee for QCC orders from public customers and professional customers and assesses broker-dealers and market makers a \$0.20 fee per contract for their agency (originating) and contra-side QCC orders. BOX provides tiered rebates depending on the parties to each QCC transaction. For example, when only one side of a QCC transaction is a broker-dealer or market maker, BOX provides rebates ranging from \$0.14 per contract to \$0.17 per contract. When both parties to a QCC transaction are a broker-dealer or market maker (i.e., professionals), BOX provides higher rebates ranging from \$0.22 per contract to \$0.27 per contract, similar to the Exchange’s proposed rebate structure. See also NYSE American LLC (“NYSE American”) Options Exchange Fee Schedule (effective as of July 1, 2024), Section I.F., Qualified Contingent Cross (“QCC”) Fees & Credits, available online at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. NYSE American does not assess any fee for QCC orders from customers or professional customers and assesses market makers, firms and broker-dealers a \$0.20 fee per contract side for their QCC orders. NYSE American provides rebates depending on the parties to each QCC transaction. For example, when a Floor Broker executes a customer or professional customer QCC order when the contra-side is a market maker, firm or broker-dealer, NYSE American provides a lower rebate of \$0.12 per contract. When a Floor Broker executes a market maker, firm or broker-dealer QCC order when the contra-side is another market maker, firm or broker-dealer, NYSE American provides a higher rebate of \$0.18 per contract. See also MIAX Options Exchange Fee Schedule,

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act²¹ 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 Act²² 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 the proposed fees and rebates for QCC and cQCC Orders is reasonable because the Exchange believes the proposal will increase competition and potentially attract additional QCC and cQCC Order flow from various origins to the Exchange, which will grow the Exchange's market share in this segment. The Exchange also believes it is reasonable and not unfairly discriminatory to provide higher rebates for QCC and cQCC Orders for EEMs that trade against origins other than Priority Customer or Public Customer because Priority Customer and Public Customer QCC and cQCC Orders are already incentivized with reduced fees for the initiator and contra-side of such orders. The Exchange believes that it is equitable

Section 1) a) vii) and viii) available online at <https://www.miaxglobal.com/markets/us-options/miax-options/fees>.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4).

²² 15 U.S.C. 78f(b)(5).

and not unfairly discriminatory to assess lower fees to Priority Customer QCC and cQCC Order than to Professional QCC and cQCC Orders because a Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²³ This limitation does not apply to Professionals, who will generally submit a higher number of orders than Priority Customers. Further, the Exchange believes that it is equitable and not unfairly discriminatory that Priority Customer and Public Customer origins be treated differently than Professional origins, who are assessed higher fees for QCC and cQCC Orders. The exchanges, in general, have historically aimed to improve markets for investors and develop various features within their market structure for customer benefit. Priority Customer and Public Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange also believes its proposed fee and rebate structure is reasonable, equitably allocated and not unfairly discriminatory because competing exchanges provide similar rebate and fee structures and amounts for QCC and cQCC Orders on those exchanges.²⁴

Further, the Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory since the Exchange has different net transaction revenues based on different combinations of origins and contra-side orders. For example, when a Priority Customer is both the initiator and contra-side, no rebates are paid (for both QCC and cQCC transactions). This combination is in the MIAX Options Fee Schedule and

²³ See supra note 10.

²⁴ See supra note 7 and 19.

in competitors' fee schedules as well.²⁵ The Exchange notes that Priority Customers are generally assessed a \$0.00 transaction fee. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to provide the proposed higher EEM rebates for QCC and cQCC Orders for Public Customer and Professional origins when they trade against an origin other than Priority Customer, in order to increase competition and potentially attract different combinations of additional QCC and cQCC Order flow to the Exchange. The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to continue to provide higher rebates for EEMs for QCC and cQCC Orders for Professionals when they trade against origins other than Priority Customers or Public Customers because Priority Customers and Public Customers are already incentivized by reduced fees for submitting QCC and cQCC Orders, as compared to Professionals that submit QCC and cQCC Orders.

The Exchange also believes its proposal is consistent with Section 6(b)(5) of the Act²⁶ and is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest; and is not designed to permit unfair discrimination. This is because the Exchange believes the proposed changes will incentivize QCC and cQCC Order flow and an increase in such order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent QCC and cQCC Order flow is increased

²⁵ See id.

²⁶ 15 U.S.C. 78f(b)(1) and (b)(5).

by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger-sized quotations in the effort to trade with such order flow.

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 Exchange believes that the proposed changes do not impose an undue burden on intra-market competition because the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed changes will encourage market participants to send their QCC and cQCC Orders to the Exchange for execution in order to obtain greater rebates and lower their costs. The Exchange believes the proposed fees and rebates for QCC and cQCC Orders will not impose an undue burden on intra-market competition because the proposed changes will increase competition and potentially attract different combinations of additional QCC and cQCC order flow to the Exchange, which will grow the Exchange's market share in this segment. The Exchange's proposal to provide higher rebates for QCC and cQCC Orders for EEMs that trade against origins other than Priority Customer or Public Customer does not impose an undue burden on intra-market competition because Priority Customer and Public Customer QCC and cQCC Orders are already incentivized with reduced fees for such orders. The Exchange's proposed fee and rebate structure is similar to that of competing exchanges that offer QCC and cQCC transaction fees and rebates.²⁷

²⁷ See supra note 15.

Inter-Market Competition

The Exchange 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 17 registered options exchanges competing for order flow. For the month of July 2024, based on publicly-available information, and excluding index-based options, no single exchange exceeded approximately 13-14% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options.²⁸ 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 Exchange’s proposal reflects this competitive environment as the proposal encourages market participants to provide QCC and cQCC liquidity and to send order flow to the Exchange. To the extent this is achieved, all the Exchange’s market participants should benefit from the improved market quality.

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,²⁹ and Rule 19b-4(f)(2)³⁰ 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

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

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

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-2024-11 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-2024-11. 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-2024-11 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.³¹

J. Matthew DeLesDernier,

Deputy Secretary.

³¹ 17 CFR 200.30-3(a)(12).