



February 5, 2024

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. 10-240

Dear Ms. Countryman:

MIAX Sapphire, LLC (“MIAX Sapphire”) appreciates the opportunity to respond to the comments submitted to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) by Nasdaq, Inc. (“Nasdaq”). MIAX Sapphire filed its Form 1 Application (the “Application”)¹ to register as a national securities exchange on September 26, 2023. MIAX Sapphire proposes to trade options, both electronically, and on a physical trading floor. The Application was posted to the SEC’s website on October 13, 2023, and published in the Federal Register on October 19, 2023. The notice in the Federal Register provided for a comment period approximately forty-five days in length and stipulated that any comments concerning MIAX Sapphire’s Form 1 Application should be submitted to the SEC on or before December 4, 2023. Unbeknownst to MIAX Sapphire until January 23, 2024, Nasdaq apparently submitted a comment letter on November 27, 2023, which was posted to the SEC’s website on January 23, 2024.

The comments set forth in the Nasdaq comment letter relate to the Application filed by MIAX Sapphire for registration as a national securities exchange under Section 6 of the Securities Exchange Act of 1934 (the “Act”). Nasdaq comments upon two sections of a proposed MIAX Sapphire rule. Specifically, subsection (1) and (2) of proposed paragraph (d), Determination of Time Priority Sequence, of proposed MIAX Sapphire Rule 2045, Priority in the Trading Crowd. MIAX Sapphire notes that its proposed Rule 2045 is substantively identical to BOX Rule 7610, which became effective on August 2, 2017, is currently operative, and has never been amended.

¹ Securities Exchange Act Release No. 98746 (October 13, 2023), 88 FR 72116 (October 19, 2023) File No. 10-240.

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I. General

First, MIAX Sapphire notes that all trading of multi-listed equity options is transacted on registered securities exchanges and that there are six exchange groups that operate various trading models that comprise the totality of equity option contract volume. These six exchange groups are, (i) Nasdaq; (ii) Cboe Exchange, Inc. (“Cboe”); (iii) the New York Stock Exchange, LLC (“NYSE”); (iv) BOX Exchange, LLC (“BOX”); (v) Miami International Holdings, LLC (“MIAX”); and (vi) MEMX, LLC (“MEMX”). For the month of January 2024 Nasdaq traded 30% of the total volume; Cboe traded 24%; NYSE traded 21%; MIAX traded 16%; BOX traded 7%; and MEMX traded 2%.² The Exchange estimates that approximately 6% of this total volume is executed on physical trading floors. Further, MIAX Sapphire notes that four exchange groups (Nasdaq, NYSE, Cboe, and BOX) have physical options trading floors, whereas MIAX does not, and is therefore currently unable to compete for this volume.

I. Role of Floor Broker

Comments. Nasdaq states that proposed MIAX Sapphire Rule 2045, which permits a Floor Broker to determine the sequence in which bids or offers would be vocalized on the trading floor and, thereafter, the order in which Floor Market Makers would be allocated, does not provide any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers. Nasdaq concludes that allowing a Floor Broker to determine the sequence in which Floor Market Maker responses have been vocalized in response to the Floor Broker’s bid or offer, and thereby receive an allocation, vests unnecessary power with the market participant and presents a conflict of interest. Nasdaq notes that it does not believe proposed Rule 2045 promotes just and equitable principles of trade because, unlike an Options Exchange Official, a Floor Broker has a vested interest in the trade as a party to the transaction.

Firstly, MIAX Sapphire disagrees with the Nasdaq assessment that there is no guidance for Floor Brokers for ranking bids or offers under proposed Rule 2045. A closer reading of proposed Rule 2045 reveals that priority of bids and offers is discussed as a matter of course in paragraph (a) and (b) respectively. Specifically, paragraph (a) provides that, “the highest bid shall have priority, but where two or more bids for the same option contract (or the same strategy) represent the highest price, priority shall be afforded to such bids in the sequence in which they are made.”³

² See MIAX’s “The market at a glance/MTD AVERAGE,” available at <https://www.miaxglobal.com/> (Data as of 1/1/2024 – 1/31/2024).

³ Proposed MIAX Sapphire Rule 2045(b) provides the corollary for priority of offers, which provides that, “the lowest offers shall have priority, but where two or more offers for the same option contract (or the

Secondly, MIAX Sapphire disagrees with the assertion that there is some inherent conflict of interest that will impede upon just and equitable principles of trade. Nasdaq suggests, as a point of comparison, that an Options Exchange Official⁴ is independent, and would make for a better arbiter. MIAX Sapphire does in fact employ the use of Options Exchange Officials to ensure that just and equitable principles of trade are upheld. Proposed Rule 2045(d) provides that, any disputes regarding a Floor Broker's determination of time priority sequence will be resolved by the Options Exchange Official. Additionally, proposed Rule 2045(d) further provides that, an Options Exchange Official may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Exchange Rules.

MIAX Sapphire disagrees with Nasdaq's interpretation and analysis of proposed Rule 2045 and further notes that proposed Rule 2045(d)(1) is substantively identical to BOX Rule 7610(d)(1) which was approved by the Commission and is currently operative on the BOX Exchange.

II. Priority in the Trading Crowd

Comments. Nasdaq states that proposed MIAX Sapphire Rule 2045(d)(2) limits participation in trades. Proposed Rule 2045(d)(2) provides that, when a Floor Broker's bid or offer has been accepted by more than one Floor Participant, that Floor Broker must designate that Floor Participant who was first, second, third, and so forth. The Floor Participant with first priority is entitled to buy or sell as many contracts (or strategies) as the Floor Broker may have available to trade. If there are any contracts (or strategies) remaining, the Floor Participant with second priority will be entitled to buy or sell as many contracts (or strategies) as there are remaining in the Floor Broker's order, and so on, until the Floor Broker's order has been filled entirely. Nasdaq concludes that this type of allocation model will, "disincentivize participation in the trading crowd by allowing a Floor Market Maker to block other liquidity providers from participating in the trade."⁵

MIAX Sapphire notes that this is the de facto definition of a price-time allocation model and that price-time allocation is not a new or novel concept in the options industry. Additionally, this

same strategy) represent the lowest price, priority shall be afforded to such offers in the sequence in which they are made."

⁴ An Options Exchange Official is any Exchange employee or official designated as an Options Exchange Official who will from time to time as provided by the proposed MIAX Sapphire Exchange Rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety and welfare on the Exchange. See proposed Interpretations and Policies .02 of proposed MIAX Sapphire Exchange Rule 2080.

⁵ See Letter from Greg Ferrari, Vice President, Nasdaq, Inc. to Vanessa Countryman, Secretary, SEC (November 27, 2023).

Vanessa Countryman, Secretary

February 5, 2024

Page 4

allocation model is currently in operation on the BOX trading floor, as MIAX Sapphire Exchange Rule 2045(d)(2) is substantively identical to BOX Exchange Rule 7610(d)(2). Further, this allocation model is currently in operation on a number of other electronic options exchanges including Nasdaq BX,⁶ NYSE Arca,⁷ and Cboe BZX.⁸

MIAX Sapphire disagrees with Nasdaq's assessment that its allocation model will disincentivize participation and believes the opposite, that instead of disincentivizing market participation, a price-time allocation model would serve to incentivize market participants to always provide their best price and greatest size which may result in better execution rates and execution prices for all market participants.

III. Conclusion

MIAX Sapphire believes that Nasdaq raises no new concerns that would warrant any change to the Application, as proposed MIAX Sapphire Exchange Rule 2045 is substantively identical to current BOX Rule 7610, and therefore does not present any new or novel issues not already considered by the Commission.

Further, MIAX Sapphire strongly believes that an increase in trading floor competition will benefit all market participants and may lead to improvements in the market to the benefit of all market participants. As such, MIAX Sapphire believes that approval of its Application is proper and consistent with the Act.

Sincerely,



Gregory P. Ziegler

Vice President, Senior Counsel

cc: Haoxiang Zhu, Director, Division of Trading and Markets, SEC
Richard R. Holley III, Assistant Director, Division of Trading and Markets, SEC
Lauren Yates, Senior Special Counsel, Division of Trading and Markets, SEC
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⁶ See Nasdaq BX Trading Rules, Options 3, Section 10(a)(1)(A).

⁷ See NYSE Arca Exchange Rule 6.76P-O.

⁸ See Cboe BZX Exchange Rule 21.8(a).