



April 10, 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 provide an additional response 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. The Exchange was made aware of a comment letter from Nasdaq on January 23, 2024. The Exchange provided an initial response on February 5, 2024, and now submits this letter to provide further clarification of its initial response. In its comment letter, Nasdaq commented 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.

I. Role of Floor Broker

Comments. Nasdaq stated that proposed MIAX Sapphire Rule 2045 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, without providing any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers. Nasdaq concluded 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

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

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an allocation, vests unnecessary power with the market participant and presents a conflict of interest. Nasdaq stated that it does not believe that 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.

The proposed rule text being referenced provides in its entirety that, “[a] Floor Broker is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor in response to the Floor Broker’s bid, offer, or call for a market. A Floor Participant that established priority pursuant to Interpretation and Policy .01(c) of Rule 2040 must inform the Floor Broker of such priority when the Floor Broker announces the order. Any disputes regarding a Floor Broker’s determination of time priority sequence will be resolved by the Options Exchange Official.² An Options Exchange Official may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Exchange’s Rules.”³

In its initial response, MIAX Sapphire stated that it disagreed with Nasdaq’s interpretation and analysis of proposed MIAX Sapphire Rule 2045. MIAX Sapphire maintains that position and believes that Nasdaq is misinterpreting the first sentence of the proposed rule text, as Nasdaq incorrectly believes it to vest power in the Floor Broker to determine the sequence in which bids or offers will be provided, as opposed to determining the sequence in which bids or offers have been provided. To comport to Nasdaq’s interpretation, the rule would have to read that, “a Floor Broker is responsible for determining the sequence in which bids or offers *may be* vocalized . . .” However, the rule clearly states that, “[a] Floor Broker is responsible for determining the sequence in which bids or offers *are* vocalized . . .” meaning that the Floor Broker is determining the sequence of bids or offers after they have been made.

Nasdaq’s assertion that there is no guidance for the Floor Broker in ranking Floor Market Maker responses is patently incorrect. Proposed MIAX Sapphire Rule 2045(a) and (b) requires the Floor Broker to give priority to the highest bid and lowest offer respectively. In the event of simultaneous responses, proposed MIAX Sapphire Rule 2045(c) provides in pertinent part that, “if the bids (or offers) of two or more Floor Participants⁴ are made simultaneously, or if it is impossible to

² 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 Rule 2080.

³ See proposed MIAX Sapphire Rule 2045(d)(1).

⁴ The term “Floor Participant” means Floor Brokers as defined in proposed Rule 2015 and Floor Market Makers as defined in proposed Rule 2105(b). See proposed MIAX Sapphire Rule 100.

determine clearly the order of time in which they are made, such bids (or offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis.” Additionally, the Exchange employs Options Exchange Officials who have the responsibility under proposed MIAX Sapphire Rule 2045(d)(1) to resolve any disputes regarding a Floor Broker’s determination of time priority sequence. Additionally, under proposed MIAX Sapphire Rule 2040(b), an Options Exchange Official will certify that the Floor Broker has adequately announced the Qualified Floor Order to the trading crowd.

MIAX Sapphire maintains that Nasdaq is fundamentally misinterpreting proposed MIAX Sapphire Rule 2045(d)(1), and further that proposed MIAX Sapphire Rule 2045 has provisions to provide guidance for (i) determining priority of bids and offers (Rule 2045(a) and (b)); (ii) handling simultaneous bids and offers when it is impossible to determine the order of time in which they are made (Rule 2045(c)); and (iii) resolving any disputes regarding the determination of time priority sequence (Rule 2045(d)(1)).

Additionally, MIAX Sapphire 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 stated that proposed MIAX Sapphire Rule 2045(d)(2) limits participation in trades.

The proposed rule text being referenced provides in its entirety that, “[w]hen 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. Except as provided [by the exceptions described in the rule text] below, 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.”⁵

⁵ See proposed MIAX Sapphire Rule 2045(d)(2).

Nasdaq concluded 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.”⁶

MIAX Sapphire first notes that this is a common allocation methodology employed by trading floors as a substantively identical rule is in operation on the BOX trading floor,⁷ as well as on the NYSE Arca trading floor.⁸ In its initial response, MIAX Sapphire disagreed with Nasdaq’s assessment that its allocation model would disincentivize participation and submits this response to further clarify its reasoning.

A Floor Broker handling an order is required under proposed MIAX Sapphire Rule 2025 to exercise due diligence to cause the order to be executed at the best price or prices available in accordance with the Rules of the Exchange.⁹ Proposed MIAX Sapphire Rule 2030(e)(2) requires that a Floor Broker must announce an agency order that the Floor Broker is representing to the trading crowd before submitting the order to the Exchange’s System for execution.¹⁰ Similar to other options trading floors, the proposed rules of MIAX Sapphire provide Floor Brokers with latitude over disclosing the size of the order and similarly provide respondents with the same flexibility. Following the announcement of the order to the trading crowd, the Floor Broker must determine the sequence in which bids or offers are vocalized, as discussed above. Once the sequence has been established, the Floor Participant with first priority is solicited for the quantity that Floor Participant wishes to buy or sell at their vocalized bid or offer price. As per proposed MIAX Sapphire Rule 2045(d)(2), the Floor Participant with first priority is entitled to buy or sell

⁶ See Letter from Greg Ferrari, Vice President, Nasdaq, Inc. to Vanessa Countryman, Secretary, SEC (November 27, 2023).

⁷ BOX Exchange Rule 7610(d)(2) provides in pertinent part that, “the Floor Participant with first priority is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. If there are any contracts remaining, the Floor Participant with second priority will be entitled to buy or sell as many contracts as there are remaining in the Floor Broker’s order, and so on, until the Floor Broker’s order has been filled entirely.”

⁸ NYSE Arca Exchange Rule 6.75-O(f)(2) provides in pertinent part that, “that the OTP Holder or OTP Firm with first priority is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. If there are any contracts remaining, the OTP Holder or OTP Firm with second priority will be entitled to buy or sell as many contracts as there are remaining in the Floor Broker’s order, and so on, until the Floor Broker’s order has been filled entirely.”

⁹ See proposed MIAX Sapphire Rule 2025.

¹⁰ This announcement must take place whether the Floor Broker is representing a single-sided order and soliciting contra-side interest, or the Floor Broker has sufficient interest to match against the agency order already. See proposed MIAX Sapphire Rule 2030(e)(2).

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as many contracts (or strategies) as the Floor Broker may have available to trade.¹¹ After the Floor Participant with first priority is satisfied, the Floor Participant with second priority is similarly solicited, and so on, until the Floor Broker's order has been filled entirely. Therefore, the incentive remains for all Floor Participants to vocalize their best bid or offer price, as the size of the Floor Broker's order may be unknown, and the size that other Floor Participants will transact may similarly be unknown.

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. MIAX Sapphire strongly believes that its proposed rules provide for a competitive trading floor which will contribute to price and execution quality and additionally that an increase in trading floor competition in general may lead to improvements in floor based trading that will benefit 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
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Thomas P. Gallagher, Chief Executive Officer, MIAX
Barbara Comly, Executive Vice President, General Counsel, MIAX

¹¹ See proposed MIAX Sapphire Rule 2045(d)(2).