



JEFFREY S. DAVIS
VICE PRESIDENT & DEPUTY GENERAL
COUNSEL
805 King Farm Boulevard
Rockville, MD 20850
P: +1 301 978 8484
F: +1 301 978 8472
E: jeffrey.davis@nasdaqomx.com

October 4, 2012

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

RE: File No. 10-207
Miami International Securities Exchange, LLC; Notice of Filing of Application for
Registration as a National Securities Exchange under Section 6 of the Securities
Exchange Act of 1934

Dear Ms. Murphy:

The NASDAQ OMX Group, Inc. ("NASDAQ OMX") welcomes the opportunity to submit comments in connection with the above-referenced proposal by Miami International Securities Exchange, LLC ("MIAX") seeking registration as a national securities exchange under Section 6 of the Securities Exchange Act of 1934 ("Exchange Act"). On August 5, the Securities and Exchange Commission ("Commission") published for comment MIAX's Form 1 application ("Proposal") under the Exchange Act.¹

NASDAQ OMX is the world's largest exchange company, operating 25 markets, 3 clearinghouses and 5 central securities depositories supporting equities, options, fixed income, derivatives, commodities, futures and structured products as well as providing technology to over 70 marketplaces in 50 developed and emerging countries, powering 1 in 10 of the world's securities transactions. We regulate the trading and clearing of equities, options, commodities, and derivatives across the globe. NASDAQ OMX's three U.S. options markets, NASDAQ OMX PHLX ("PHLX"), The NASDAQ Options Market ("NOM") and NASDAQ OMX BX Options execute approximately 24% of options transactions daily.² As such, NASDAQ OMX has a profound interest in the Proposal and, in particular, the specific rules contained in Exhibit B.

NASDAQ OMX supports competition in the options markets and has long championed the benefits of new entrants, which provide market participants with an additional venue for executing orders in standardized options, enhance innovation, and increase competition

¹ See Securities Exchange Act Release No. 67660 (August 15, 2012).

² NASDAQ OMX files this comment on behalf of its three options markets and NOS.

between and among the options exchanges, resulting in better services, prices and executions for investors as well as increased price competition. While these benefits are important, under the federal securities laws, there is a legal framework for our nation's securities markets built around the definition of an exchange and the requirements applicable to a national securities exchange. The Form 1 application and the requirements of Section 19(b) and the rules thereunder are a vital part of that framework. As explained further below, NASDAQ OMX is concerned that the approval of vague and incomplete rules has the potential to eviscerate these protections.

NASDAQ OMX believes that many of the rules in the Proposal require clarification and greater explanation or detail. Some do not spell out what happens in certain scenarios. Certain rules are unclear. For example, Rule 515(c)(2) states that once repriced, managed interest will remain at that price until executed or cancelled. This implies that an order posted on the book is only repriced once and will not dynamically update the price if the away market moves. MIAX should clarify whether this is the case. Rule 514 contains the core of the priority provisions for various orders and participant types. In reading the various paragraphs and how they operate, it isn't clear whether the various priority overlays, when read in conjunction with the execution process of Rule 515, result in the ability for directing or internalizing orders in a new way. In particular, the interplay between the market maker priority overlay in Rule 514(d)(2), non-displayed penny orders and the liquidity refresh pause in Rule 515(c)(1)(iii)(A) seems unique. MIAX's description of those features is brief, as compared to a typical proposed rule change, rendering it difficult to comment.

Some rules are vague and use the terms "from time-to-time" and "may." For example, proposed Rule 514(j) provides that "from time-to-time, the Exchange may determine to make available to Members the quantity of Priority Customer contracts included in the MBBOs disseminated by the Exchange." It is unclear whether this would be a market data feed of some sort. NASDAQ OMX believes that this should be described more fully. If MIAX is not ready to make such information available upon launch, the provision should not be adopted at this time. In addition, proposed Rule 503(h) and (i) use the term "may" without specifying whether a different procedure could be used. In particular, MIAX should specify how a closing procedure will be employed after the close of the market on an electronic market when most exchange and broker-dealer systems are not anticipating activity, such as imbalance messages. With respect to the opening process, Rule 503(e)(1) provides that the opening process cannot occur prior to 9:30 a.m. Eastern Time and can only begin following the dissemination of a quote or trade in the underlying security. The term "quote or trade in the underlying security" does not make clear whether it includes off-exchange trades and trades on markets other than the primary market. Also with respect to the opening process, Rule 503(g) provides that the Help Desk may deviate from the standard manner of the opening procedure, including delaying the opening in any option class, when necessary in the interests of maintaining a fair and orderly market. MIAX should be more specific about when this would apply.

Some of MIAX's rules are vague in terms of when certain features or functionality will become available and in what combinations. Pursuant to the requirements of Section 19(b) and Rule 19b-4 thereunder, national securities exchanges are required to file proposed rule changes to cover their programs and functions. Although some latitude in terms of implementation details and a reasonable time period for implementation can be appropriate, NASDAQ OMX believes that MIAX's proposed rules are too vague and thus afford MIAX an inappropriate amount of discretion. For instance, proposed Rule 516 states: "It should also be noted that not all order types listed and described in this rule will be initially available for use on the Exchange."

MIAX should be compelled to define which order types will be available and file changes when new order types are introduced. For the protection of investors and the public interest, the details and specific functionality of exchange order types are particularly important to users, who need to understand how their orders will be handled in various situations, which is a current Commission focus. Similarly, proposed Rule 514(g)(2) states: “The Exchange will advise the Membership through a Regulatory Circular when additional order types are eligible to be directed.” Again, if the functionality related to certain order types is not yet available on MIAX, MIAX should specify in its rules what is available and file a proposed rule change later for additional order types or functionality as such technology becomes available. MIAX should be required to define which order types are treated in a particular way and file changes when order types are processed differently. This is of particular concern respecting directed orders, in light of the focus on participation guarantees that usually accompanies directed order programs. Likewise, proposed Rule 517 states: “Not all of the quote types listed and described in this rule will be initially available for use on the Exchange.” MIAX should be compelled to define which quote types will be available and file changes when new quote types are introduced. Proposed Rule 516(d) states: “Attributable Orders may not be available for all Exchange Systems. The Exchange will issue a Regulatory Circular specifying the systems and the class of securities for which the Attributable order type shall be available.” MIAX should specify in the Proposal which systems will have Attributable orders available and when. Rule 612(a), in describing the Aggregate Risk Manager, states that “when an execution of a Market Maker’s Standard quote or Day eQuote occurs, the System will look back over the specified time period to determine whether the execution triggers the Aggregate Risk Manager.” However, the technical specifications provide on pages 4, 8 and 17³ that eQuotes do not count; MIAX should clarify how its risk protection feature will operate.

Additionally, proposed MIAX Rule 514(g)(2) provides, under its priority provisions guaranteeing small size orders will be allocated to the lead market maker, that small size orders will initially be defined as five or fewer contracts. NASDAQ OMX does not believe that MIAX should have the discretion to change that number without filing a proposed rule change. This could result in small size orders suddenly being defined as orders for 10 or 50 contracts, without a rule filing, depending on MIAX’s particular business mix, so long as the 40% caveat was achieved. Participation guarantees have long been the subject of debate in the options industry and changes thereto should be subject to public comment. In sum, these various proposed MIAX rules are vague and afford MIAX the sort of discretion not afforded to existing options exchanges. If the Commission is adopting a more principles-based approach that recognizes a certain amount of discretion is appropriate, we support that approach, as applied evenly to all national securities exchanges.

Other rules are not complete and need to spell out what happens in certain scenarios. For example, proposed Rule 516(b)(4) is silent on what happens to a non-displayed penny order entered in an option not eligible on MIAX for non-displayed penny orders. MIAX should specify how such orders will be handled to avoid any doubt. Proposed Rule 510 covers the penny pilot in options, but does not contain a date for the end of the penny pilot. The other

³ See MIAX technical specifications at http://www.miaxoptions.com/sites/default/files/MIAX_Express_Interface_MEI_v1.2.pdf

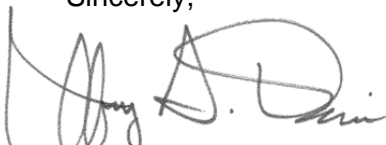
options exchanges have also been required to put the end of date of that (and other pilots) in the rule text and file each pilot extension. MIAX should do so as well. Within proposed Rule 515, there are a number of situations where the rule provides that a posted order "...will immediately execute the remaining contracts..." when an inbound order comes into the system. It is unclear what happens if the inbound order contains a number of contracts less than the size of the posted order. MIAX should explain what happens when the inbound order cannot satisfy the posted order. Specifically, the following subparagraphs need clarification: 515(c)(1)(i)(A); 515(c)(1)(ii)(A); 515(c)(1)(ii)(B)(1)(a); 515(c)(1)(ii)(B)(2)(a); 515(c)(1)(iii)(A)(1)(b); 515(c)(1)(iii)(A)(2)(a)(1); 515(c)(1)(iii)(A)(2)(b)(1); 515(c)(1)(iii)(B)(1)(a); 515(c)(1)(iii)(B)(2)(a); 515(c)(2); 515(d); and 529(b)(2). Again, a less complete and more flexible rule set giving an exchange some discretion is helpful, but that discretion should be available to all exchanges.

In addition, NASDAQ OMX believes that a few other rules need to be corrected or addressed. Proposed Rules 511 and 512 appear to be duplicative. MIAX should explain the need for both or the difference between them. In addition, the last sentence of proposed Rule 516(f) regarding the "Do Not Route Order" assumes that MIAX will receive an order routed to MIAX whenever another market locks or crosses MIAX. In reality, contemporaneous locks are common in the U.S. options markets. MIAX should explain how Do Not Route orders operate when the NBBO is locked contemporaneously.

NASDAQ OMX's options routing broker, NASDAQ Options Services LLC ("NOS") will become a member of MIAX for routing purposes. As such, NASDAQ OMX is concerned about several rules that will affect NOS. Proposed Rule 507 requires that a member who changes clearing information must contact the Clearing Member on the other side of the transaction. This is potentially burdensome on a broker-dealer who is not otherwise required to and may not maintain contact information for all other MIAX members. It is also unnecessary given that The Options Clearing Corporation ("OCC") serves as the central clearing party. Given NOS' membership, NASDAQ OMX believes that a better approach is to require that the member inform the exchange. Furthermore, proposed Rule 608 requires market makers to have a letter of guarantee. NASDAQ OMX believes that all participants should be required to provide a letter of guarantee, not just market makers. On behalf of NOS, NASDAQ OMX seeks the protection that a stronger provision affords, such as Chapter VII, Section 8 of NOM's rules, which provides that no market participant shall make any transactions without a letter of guarantee (that has not been revoked) and that the issuing clearing member accepts financial responsibilities for all transactions made pursuant to such letter.

In conclusion, in order for the Proposal to comport with the statutory standards applicable to a national securities exchange, the proposed rules must be complete and clear, just as the proposed rule changes of all national securities exchanges must be complete and clear. NASDAQ OMX believes that the Proposal contains many incomplete and vague rules that MIAX should clarify and amend, particularly because the existing exchanges are not afforded such discretion.

Sincerely,



Jeffrey S. Davis