

Dated: July 17, 2024.

**Vanessa A. Countryman,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100539; File No. 10-240]

### In the Matter of the Application of MIAX Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

July 15, 2024.

#### I. Introduction

On September 26, 2023, MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”) a Form 1 application (“Form 1”) under the Securities Exchange Act of 1934 (“Act”), seeking registration as a national securities exchange under Section 6 of the Act.<sup>1</sup> Notice of the Form 1 was published for comment in the *Federal Register* on October 19, 2023.<sup>2</sup> On December 21, 2023, MIAX Sapphire consented to an extension of time to March 1, 2024 for Commission consideration of its Form 1.<sup>3</sup> The Commission received two comment letters on the Form 1 and two letters from MIAX Sapphire responding to one of the comment letters.<sup>4</sup> On February 28, 2024, MIAX Sapphire consented to an additional extension of time to July 15, 2024 for Commission consideration of its Form 1.<sup>5</sup> On May

22, 2024, MIAX Sapphire submitted Amendment No. 1 to the Form 1.<sup>6</sup>

For the reasons set forth below, this order approves MIAX Sapphire’s application, as amended, for registration as a national securities exchange.

#### II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,<sup>7</sup> the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that MIAX Sapphire’s application, as amended, for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of MIAX Sapphire are consistent with Section 6 of the Act in that, among other things, they assure a fair representation of the exchange’s members in the selection of its directors and administration of its affairs and provide that one or more directors will be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer;<sup>8</sup> and that they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.<sup>9</sup> The Commission also finds that the proposed rules of MIAX Sapphire are

consistent with Section 11A of the Act.<sup>10</sup> Finally, the Commission finds that MIAX Sapphire’s proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>11</sup>

#### III. Discussion

##### A. Governance of MIAX Sapphire

##### 1. MIAX Sapphire Board of Directors

The board of directors of MIAX Sapphire (“Exchange Board” or “MIAX Sapphire Board”) will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of MIAX Sapphire as a self-regulatory organization (“SRO”).<sup>12</sup>

Under the MIAX Sapphire By-Laws:

- The Exchange Board will be composed of not less than ten Directors;<sup>13</sup>
- One Director will be the Chief Executive Officer of MIAX Sapphire;<sup>14</sup>
- The number of Non-Industry Directors,<sup>15</sup> including at least one Director who has no material relationship with MIAX Sapphire or any affiliate of MIAX Sapphire, or any Exchange Member<sup>16</sup> or any affiliate of any such Exchange Member (“Independent Director”),<sup>17</sup> will equal or exceed the sum of the number of

<sup>10</sup> See 15 U.S.C. 78k-1.

<sup>11</sup> See 15 U.S.C. 78f(b)(8).

<sup>12</sup> See By-Laws of MIAX Sapphire (“MIAX Sapphire By-Laws”), Article II, Section 2.1. See also Amended and Restated Limited Liability Company Agreement of MIAX Sapphire (“MIAX Sapphire LLC Agreement”), Section 9(a). The MIAX Sapphire By-Laws have been established pursuant to the MIAX Sapphire LLC Agreement.

<sup>13</sup> See MIAX Sapphire By-Laws, Article II, Section 2.2(a). “Director” means the persons elected or appointed to the Exchange Board from time to time in accordance with the MIAX Sapphire LLC Agreement and MIAX Sapphire By-Laws in their capacity as managers of MIAX Sapphire. See MIAX Sapphire By-Laws, Article I(j).

<sup>14</sup> See MIAX Sapphire By-Laws, Article II, Section 2.2(b).

<sup>15</sup> “Non-Industry Director” means a Director who is an Independent Director or any other individual who would not be an Industry Director. See MIAX Sapphire By-Laws, Article I(aa).

<sup>16</sup> “Exchange Member” means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by MIAX Sapphire. See MIAX Sapphire By-Laws, Article I(n).

<sup>17</sup> See MIAX Sapphire By-Laws, Article I(p). Provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of MIAX Sapphire or Miami International Holdings, Inc. (“Miami Holdings”). See id.

<sup>1</sup> 15 U.S.C. 78f.

<sup>2</sup> See Securities Exchange Act Release No. 34-98746 (Oct. 13, 2023), 88 FR 72116 (“Notice”).

<sup>3</sup> See Letter from Thomas P. Gallagher, Chairman of the Board, MIAX Sapphire, dated Dec. 21, 2023, available at: <https://www.sec.gov/comments/10-240/10240-319979-832562.pdf>.

<sup>4</sup> See Letter from Greg Ferrari, Vice President, U.S. Options, Nasdaq, Inc., dated Nov. 27, 2023 (“Nasdaq Letter”); Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, dated Feb. 5, 2024 (“MIAX Sapphire Letter”); Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, dated Apr. 10, 2024 (“MIAX Sapphire Letter II”); Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated Apr. 17, 2024 (“Angel Letter”). Comments received on MIAX Sapphire’s Form 1 (File No. 10-240) are available on the Commission’s website at: <https://www.sec.gov/comments/10-240/10-240.htm>.

<sup>5</sup> See Letter from Thomas P. Gallagher, Chairman of the Board, MIAX Sapphire, dated Feb. 28, 2024, available at: <https://www.sec.gov/comments/10-240/10240-436699-1083602.pdf>.

<sup>6</sup> See Letter from Thomas P. Gallagher, Chairman of the Board, MIAX Sapphire, dated May 22, 2024, available at: <https://www.sec.gov/files/rules/other/2024/sapphire-form-1-cover-page-amendment-1.pdf>. In Amendment No. 1, MIAX Sapphire submitted an updated Exhibit B (MIAX Sapphire Options Exchange Rules) to its Form 1.

<sup>7</sup> 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

<sup>8</sup> See 15 U.S.C. 78f(b)(3).

<sup>9</sup> See 15 U.S.C. 78f(b)(5).

Industry Directors<sup>18</sup> and Member Representative Directors;<sup>19</sup> and

- At least 20% of the Directors on the Exchange Board will be Director Representative Directors.<sup>20</sup>

For the interim board (discussed below), and subsequently at the first annual meeting and each annual meeting thereafter, Miami Holdings, as the sole LLC Member of MIAX Sapphire, will elect the MIAX Sapphire Board pursuant to the MIAX Sapphire By-Laws.<sup>21</sup> In addition, Miami Holdings will appoint the initial Nominating Committee<sup>22</sup> and Member Nominating Committee,<sup>23</sup> consistent with each

<sup>18</sup> An "Industry Director" is, among other things, a Director that is or has served within the prior three years as an officer, director, employee, or owner of a broker or dealer, as well as any Director who has, or has had, a consulting or employment relationship with MIAX Sapphire or any affiliate of MIAX Sapphire within the prior three years. See MIAX Sapphire By-Laws, Article I(r). This definition is consistent with what the Commission has approved for other exchanges. See Securities Exchange Act Release Nos. 84891 (Dec. 20, 2018), 83 FR 67421 (Dec. 28, 2018) (File No. 10-233) (order granting the registration of MIAX EMERALD, LLC ("MIAX Emerald")) ("MIAX Emerald Order"); 79543 (Dec. 13, 2016), 81 FR 92901 (Dec. 20, 2016) (File No. 10-227) (order granting the registration of MIAX PEARL, LLC ("MIAX Pearl")) ("MIAX Pearl Order"); 68341 (Dec. 3, 2012), 77 FR 73065 (Dec. 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIAX Exchange")) ("MIAX Order"); 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange, Inc.) ("BATS Order"); and 66871 (Apr. 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10-206) (order granting the registration of BOX Options Exchange LLC ("BOX")) ("BOX Order").

<sup>19</sup> See MIAX Sapphire By-Laws, Article II, Section 2.2(b)(i). "Member Representative Director" means a Director who has been appointed as such to the initial Exchange Board pursuant to Article II, Section 2.5 of the MIAX Sapphire By-Laws, or elected by Miami Holdings after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the MIAX Sapphire By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director may, but is not required to, be an officer, director, employee, or agent of an Exchange Member. See MIAX Sapphire By-Laws, Article I(x). See also MIAX Sapphire By-Laws Article II, Section 2.5. "Member Nominating Committee" means the Member Nominating Committee elected pursuant to the MIAX Sapphire By-Laws. See MIAX Sapphire By-Laws, Article I(w).

<sup>20</sup> See MIAX Sapphire By-Laws, Article II, Section 2.2(b)(ii).

<sup>21</sup> See MIAX Sapphire By-Laws, Article II, Sections 2.4 and 2.5. See also MIAX Sapphire LLC Agreement, Section 9(a).

<sup>22</sup> The Nominating Committee will be composed of at least three Directors, and the number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members. See MIAX Sapphire By-Laws, Article V, Section 5.2. See also MIAX Sapphire By-Laws, Article IV, Section 4.2(a).

<sup>23</sup> The Member Nominating Committee will be composed of at least three Directors, and each member of the Member Nominating Committee shall be a Member Representative member and shall not be required to be a Director of the Exchange.

committee's compositional requirements,<sup>24</sup> to nominate candidates for election to the Exchange Board. Each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating Directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable. Additional candidates for the Member Nominating Committee may be nominated and elected by Exchange Members pursuant to a petition process.<sup>25</sup>

The Nominating Committee will nominate candidates for each Director position, and Miami Holdings, as the sole LLC Member, will elect those Directors. For Member Representative Director positions, the Nominating Committee will nominate those candidates submitted to it, and approved, by the Member Nominating Committee.<sup>26</sup> Additional candidates, however, may be nominated for the Member Representative Director positions by Exchange Members pursuant to a petition process.<sup>27</sup> If no candidates are nominated pursuant to the petition process, then the initial nominees submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee. If the petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to Exchange Members for a run-off election to determine the final slate of nominees for the vacant Member Representative

See MIAX Sapphire By-Laws, Article V, Section 5.3. See also MIAX Sapphire By-Laws, Article IV, Section 4.2(a). Pursuant to MIAX Sapphire By-Laws, Article I(y), a "Member Representative member" is a member of any committee or hearing panel appointed by the Exchange Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the MIAX Sapphire By-Laws and who is an officer, director, employee, or agent of an Exchange Member.

<sup>24</sup> See MIAX Sapphire By-Laws, Article V, Section 5.1.

<sup>25</sup> See *id.* See also MIAX Sapphire By-Laws, Article II, Section 2.4.

<sup>26</sup> The Member Nominating Committee will solicit comments from Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. See MIAX Sapphire By-Laws, Article II, Section 2.4(b).

<sup>27</sup> See MIAX Sapphire By-Laws, Article II, Section 2.4(c). The petition must be signed by executive representatives of 10% or more of the Exchange Members. No Exchange Member, together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate. See *id.*

Director positions.<sup>28</sup> In the event of a contested run-off election, the candidates who receive the most votes will be selected as the nominees for the Member Representative Director positions.<sup>29</sup> Miami Holdings, as the sole LLC Member, is obligated to elect the final nominees for the Member Representative Director positions.<sup>30</sup>

The requirement in the MIAX Sapphire By-Laws that 20% of the Directors be Member Representative Directors and the means by which they will be chosen by Exchange Members provide for the fair representation of members in the selection of Directors and the administration of MIAX Sapphire and therefore is consistent with Section 6(b)(3) of the Act.<sup>31</sup> As the Commission has previously stated, this requirement helps to ensure that members have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.<sup>32</sup>

In addition, with respect to the requirement that the number of Non-Industry Directors, including at least one Independent Director, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors, the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,<sup>33</sup> which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange

<sup>28</sup> See MIAX Sapphire By-Laws, Article II, Sections 2.4(e) and (f). Each Exchange Member shall have the right to cast one vote for each available Member Representative Director nomination, provided that any such vote must be cast for a person on the list of candidates and that no Exchange Member, together with its affiliates, may account for more than 20% of the votes cast for a candidate. See MIAX Sapphire By-Laws, Article II, Section 2.4(f).

<sup>29</sup> See MIAX Sapphire By-Laws, Article II, Section 2.4(f). Tie votes by the Exchange Members will be decided by the Member Nominating Committee. See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> 15 U.S.C. 78f(b)(3).

<sup>32</sup> See, e.g., MIAX Pearl Order, *supra* note 18, at 92903; MIAX Order, *supra* note 18, at 73067; BATS Order, *supra* note 18, at 26325; Securities Exchange Act Release Nos. 76998 (Jan. 29, 2016), 81 FR 6066, 6068 (Feb. 4, 2016) (File No. 10-221) (order granting the exchange registration of ISE Mercury, LLC) ("ISE Mercury Order"); 70050 (July 26, 2013), 78 FR 46622, 46624 (Aug. 1, 2013) (File No. 10-209) (order granting the exchange registration of ISE Gemini, LLC) ("ISE Gemini Order"); and 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (order granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order").

<sup>33</sup> 15 U.S.C. 78f(b)(3).

oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.<sup>34</sup> Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. Public directors can provide unbiased perspectives, which may enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.

## 2. Interim Exchange Board

Prior to commencing operations, Miami Holdings will appoint an interim Exchange board of directors ("Interim Exchange Board"), which will include interim Member Representative Directors.<sup>35</sup> With respect to the selection of the interim Member Representative Directors for the Interim Exchange Board, prior to the commencement of operations as an exchange, Miami Holdings will submit the names of its nominees for the interim Member Representative Directors positions to persons and entities that have begun the process of becoming members in the new Exchange.<sup>36</sup> Such persons and entities will be allowed 14 days to submit the names of alternative candidates.<sup>37</sup> Voting will occur no sooner than five days after the interim election notice is delivered to confirm the final slate of candidates to become an interim Member Representative Director.<sup>38</sup> All other interim Directors, except for the interim Member Representative Directors, will be appointed and elected by Miami Holdings, and must meet the MIAX Sapphire Board composition requirements as set forth in the MIAX

Sapphire By-Laws.<sup>39</sup> Once these interim Member Representative Directors are seated on the Interim Exchange Board, then the Interim Exchange Board will meet the board composition requirements set forth in the governing documents of MIAX Sapphire.

The Interim Exchange Board will serve until the first Exchange Board is elected pursuant to the full nomination, petition, and voting process set forth in the MIAX Sapphire By-Laws.<sup>40</sup> MIAX Sapphire will complete such process within 90 days after its application for registration as a national securities exchange is granted by the Commission.<sup>41</sup>

The process for electing the Interim Exchange Board, as proposed, is consistent with the requirements of the Act, including that the rules of the exchange assure fair representation of the exchange's members in the selection of its directors and administration of its affairs.<sup>42</sup> As noted above, MIAX Sapphire represents that the initial members of MIAX Sapphire will consist substantially of the current group of persons and firms that have begun the membership application process with MIAX Sapphire.<sup>43</sup> MIAX Sapphire will engage the persons and firms who have submitted the initial documents for membership in the Exchange and would meet the qualifications for membership in the Interim Exchange Board election process by, prior to the commencement of operations as an exchange, providing each of them with the opportunity to participate in the selection of interim Member Representative Directors consistent with the MIAX Sapphire By-Laws. Further, MIAX Sapphire represents that it will complete the full nomination, petition, and voting process as set forth in the MIAX Sapphire By-Laws, which will provide persons that are approved as members after the effective date of this order with the opportunity to participate in the selection of the Member Representative Directors, within 90 days of when MIAX Sapphire's application for registration as a national securities exchange is

granted.<sup>44</sup> Therefore, MIAX Sapphire's initial interim board process is consistent with the Act, including Section 6(b)(3), in that it is designed to provide representation among the persons and firms likely to become members when MIAX Sapphire commences operations and is sufficient to allow MIAX Sapphire to commence operations for an interim period prior to going through the process to elect a new Exchange Board pursuant to the full nomination, petition, and voting process set forth in the MIAX Sapphire By-Laws.

In addition, all other interim Directors, except for the interim Member Representative Directors, must meet the MIAX Sapphire Board composition requirements as set forth in the MIAX Sapphire By-Laws, and as such the number of Non-Industry Directors, including at least one Independent Director, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Therefore, the proposed composition of MIAX Sapphire's Interim Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,<sup>45</sup> which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.

## 3. Exchange Committees

In the MIAX Sapphire By-Laws, the Exchange has proposed to establish several standing committees, which would be divided into two categories: Committees of the Board (composed of MIAX Sapphire Directors) and Committees of the Exchange (composed of a mixture of MIAX Sapphire Directors and persons who are not MIAX Sapphire Directors).<sup>46</sup> The standing Committees of the Board would be the Audit, Compensation, Appeals, and Regulatory Oversight Committees.<sup>47</sup> In addition, the Chairman of the Exchange Board ("Exchange Chairman"), with approval of the Exchange Board, may appoint an Executive Committee and a Finance Committee, which also would be Committees of the Board.<sup>48</sup>

The Audit Committee will consist of three or more Directors, a majority of

<sup>34</sup> See MIAX Order, *supra* note 18, at 73067; BATS Order, *supra* note 18, at 49501; and Nasdaq Order, *supra* note 32, at 3553.

<sup>35</sup> See MIAX Sapphire By-Laws, Article II, Section 2.5.

<sup>36</sup> See MIAX Sapphire By-Laws, Article II, Section 2.5(b). Specifically, Miami Holdings will submit the names of its nominees for the interim Member Representative Director positions to persons who have submitted the initial documents for membership in the Exchange who would meet the qualifications for membership based on the information contained in these documents. See MIAX Sapphire By-Laws, Article II, Section 2.5(b). MIAX Sapphire additionally represents that the initial members of MIAX Sapphire will consist substantially of the current group of persons and firms that have begun the membership application process with MIAX Sapphire. See MIAX Sapphire Form 1, Exhibit J.

<sup>37</sup> See MIAX Sapphire By-Laws, Article II, Section 2.5(b).

<sup>38</sup> See MIAX Sapphire By-Laws, Article II, Section 2.5(d).

<sup>39</sup> See MIAX Sapphire By-Laws, Article II, Section 2.5(a).

<sup>40</sup> See MIAX Sapphire By-Laws, Article II, Sections 2.2(e) and 2.5(a).

<sup>41</sup> See MIAX Sapphire By-Laws, Article II, Section 2.5(a). The 90-day period is consistent with what the Commission approved for MIAX Emerald. See MIAX Emerald Order, *supra* note 18, at 67423 (allowing MIAX Emerald to appoint an initial interim board to enable it to commence operations as a registered exchange). See also MIAX Pearl Order, *supra* note 18, at 92903; MIAX Order, *supra* note 18, at 73067; ISE Mercury Order, *supra* note 32, at 6068; and BOX Order, *supra* note 18, at 26325.

<sup>42</sup> See 15 U.S.C. 78f(b)(3).

<sup>43</sup> See *supra* note 36.

<sup>44</sup> MIAX Sapphire's proposed timeline for the interim board process follows a process identical to what the Commission approved for MIAX Emerald. See MIAX Emerald Order, *supra* note 18, at 67423.

<sup>45</sup> 15 U.S.C. 78f(b)(3).

<sup>46</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.1.

<sup>47</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.1(a).

<sup>48</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(e) and (f).

whom will be Non-Industry Directors.<sup>49</sup> Each of the Compensation and Regulatory Oversight Committees will consist of three or more Directors, all of whom will be required to be Non-Industry Directors.<sup>50</sup> The Appeals Committee will consist of one Independent Director, one Industry Director, and one Member Representative Director.<sup>51</sup> If established, the Finance Committee will consist of at least three Directors, a majority of whom will be Non-Industry Directors.<sup>52</sup> The Executive Committee, if established, will consist of at least three Directors. Because the Executive Committee will have the powers and authority of the Exchange Board in the management of the business and affairs of the Exchange between meetings of the Exchange Board, its composition requirements are substantially similar to the composition requirements of the Exchange Board. Accordingly, the number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors and the percentages of Independent Directors and Member Representative Directors must be at least as great as the corresponding percentages on the Exchange Board as a whole.<sup>53</sup>

With respect to Committees of the Exchange, the Exchange has proposed to establish a Nominating Committee<sup>54</sup> and a Member Nominating Committee.<sup>55</sup> As discussed above, these committees will have responsibility for, among other things, nominating candidates for election to the Exchange Board. On an annual basis, the members of these committees will nominate candidates for the succeeding year's respective committees to be elected by Miami Holdings, as the sole LLC Member.<sup>56</sup> In addition, MIAX Sapphire has proposed to establish a Quality of Markets Committee, which will provide

advice and guidance to the Exchange Board on issues related to the fairness, integrity, efficiency, and competitiveness of the information, order handling and execution mechanisms of the Exchange from the perspective of individual and institutional investors, retail and market making firms, Exchange listed companies, and other market participants.<sup>57</sup> The Quality of Markets Committee will include a broad representation of participants in the Exchange, including investors, market makers, integrated retail firms, and order entry firms.<sup>58</sup> Additionally, at least 20% of the members of the committee will be Member Representative members, and the number of Non-Industry members must equal or exceed the total number of Industry and Member Representative members.<sup>59</sup> MIAX Sapphire also has proposed to establish a Business Conduct Committee, which shall be appointed by the Exchange Chairman.<sup>60</sup> Specifically, the Business Conduct Committee will have a minimum of three members and will be composed of a number of individuals as determined by the Exchange Chairman, none of whom shall be Directors of MIAX Sapphire. In addition, at least one member of the Business Conduct Committee and any panel thereof must be an officer, director, or employee of an Exchange Member.<sup>61</sup>

The proposed Committees of the Board and Committees of the Exchange, which are similar to the committees maintained by other exchanges,<sup>62</sup> are designed to help enable MIAX Sapphire to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>63</sup>

## B. Regulation of MIAX Sapphire

When MIAX Sapphire commences operations as a national securities exchange, the Exchange will have all the attendant regulatory obligations under the Act. In particular, MIAX Sapphire will be responsible for the operation and regulation of its trading system and the

regulation of its members. Certain provisions in the MIAX Sapphire and Miami Holdings governance documents are designed to facilitate the ability of MIAX Sapphire to fulfill its regulatory obligations and to help facilitate Commission oversight of MIAX Sapphire. The discussion below summarizes some of these key provisions.

### 1. Ownership Structure: Ownership and Voting Limitations

MIAX Sapphire will be structured as a Delaware limited liability company, which will be wholly owned by the sole member of the LLC, Miami Holdings. The Miami Holdings' Amended and Restated Certificate of Incorporation ("Miami Holdings Certificate") includes restrictions on the ability to own and vote shares of capital stock of Miami Holdings.<sup>64</sup> These limitations are designed to prevent any Miami Holdings shareholder from exercising undue control over the operation of MIAX Sapphire, and to assure that MIAX Sapphire and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as Miami Holdings (directly or indirectly) controls MIAX Sapphire, no person, either alone or together with its related persons,<sup>65</sup> will be permitted to beneficially own more than 40% of any class of capital stock of Miami Holdings.<sup>66</sup> A more conservative restriction will apply to Exchange Members, wherein Exchange Members, either alone or together with their related persons, will be prohibited from beneficially owning more than 20% of shares of any class of capital stock of Miami Holdings.<sup>67</sup> If any stockholder violates these ownership limits, Miami Holdings will be required to redeem the shares in excess of the applicable ownership limit at their par

<sup>49</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(b). A Non-Industry Director shall serve as Chairman of the Committee. *See id.* See also MIAX Sapphire By-Laws, Article IV, Section 4.2(a) (requiring that each committee be composed of at least three people).

<sup>50</sup> See MIAX Sapphire By-Laws, Article IV, Sections 4.5(a) and 4.5(c).

<sup>51</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(d).

<sup>52</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(f).

<sup>53</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(e).

<sup>54</sup> See MIAX Sapphire By-Laws, Article V, Section 5.2, and *supra* note 22.

<sup>55</sup> See MIAX Sapphire By-Laws, Article V, Section 5.3, and *supra* note 23.

<sup>56</sup> See MIAX Sapphire By-Laws, Article V, Section 5.1, and *supra* note 25. Additional candidates for the Member Nominating Committee may be nominated and elected by Exchange Members pursuant to a petition process. *See supra* note 25 and accompanying text.

<sup>57</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.6.

<sup>58</sup> *See id.*

<sup>59</sup> *See id.*

<sup>60</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.7.

<sup>61</sup> *See id.*

<sup>62</sup> See, e.g., MIAX Emerald Order, MIAX Pearl Order, MIAX Order, and BATS Order, *supra* note 18; and ISE Mercury Order, ISE Gemini Order, Nasdaq Order, *supra* note 32.

<sup>63</sup> 15 U.S.C. 78f(b)(1).

<sup>64</sup> These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. *See, e.g.*, ISE Mercury Order and ISE Gemini Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, MIAX Order, and BATS Order, *supra* note 18. *See also* Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222) (order granting the registration of Investors' Exchange, LLC ("IEX")) ("IEX Order"); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88) (order approving CBOE demutualization); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) ("NSX Demutualization Order"); 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (SR-CHX-2004-26) ("CHX Demutualization Order"); and 49098 (Jan. 16, 2004), 69 FR 3974 (Jan. 27, 2004) (SR-Phlx-2003-73) (order approving Phlx demutualization).

<sup>65</sup> See Miami Holdings Certificate, Article NINTH (a)(ii) (defining "related persons").

<sup>66</sup> See Miami Holdings Certificate, Article NINTH (b)(i)(A).

<sup>67</sup> See Miami Holdings Certificate, Article NINTH (b)(i)(B).

value.<sup>68</sup> In addition, no person, alone or together with its related persons, may vote or cause the voting of more than 20% of the voting power of the then issued and outstanding capital stock of Miami Holdings.<sup>69</sup> Further, no person, either alone or together with its related persons, may enter into any agreement, plan, or other arrangement with any other person, either alone or together with its related persons, under circumstances that would result in the shares of capital stock of Miami Holdings that are subject to such agreement, plan, or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other agreement would be to enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of more than 20% of the voting power of the then issued and outstanding capital stock of Miami Holdings.<sup>70</sup> If any stockholder purports to vote, or cause the voting of, shares that would violate this voting limit, Miami Holdings will not honor such vote in excess of the voting limit.<sup>71</sup>

Any person that alone or together with its related persons proposes to own shares of capital stock in excess of the 40% ownership limitation, or vote or grant proxies or consents with respect to shares of capital stock in excess of the 20% voting limitation, must deliver written notice to the Miami Holdings board of directors (“Miami Holdings Board”) of its intention.<sup>72</sup> The notice must be delivered to the Miami Holdings Board not less than 45 days before the proposed ownership of such shares or proposed exercise of such voting rights or the granting of such proxies or consents.<sup>73</sup> The Miami Holdings Board may waive the 40% ownership limitation and the 20% voting limitation, pursuant to a

<sup>68</sup> See Miami Holdings Certificate, Article NINTH (e). Any shares which have been called for redemption will not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote. Once redeemed by Miami Holdings, such shares will become treasury shares and will no longer be deemed to be outstanding. See *id.* Furthermore, if any redemption results in another stockholder owning shares in violation of the ownership limits described above, Miami Holdings will redeem such shares. See *id.*

<sup>69</sup> See Miami Holdings Certificate, Article NINTH (b)(i)(C).

<sup>70</sup> See *id.*

<sup>71</sup> See Miami Holdings Certificate, Article NINTH (d). The Miami Holdings Certificate also prohibits the payment of any stock dividends and conversions that would violate the ownership and voting limitations. See Miami Holdings Certificate, Article FOURTH A.(b) and (e), and D.7.

<sup>72</sup> See Miami Holdings Certificate, Article NINTH (b)(iv).

<sup>73</sup> See *id.*

resolution duly adopted by the Miami Holdings Board, if it makes certain findings,<sup>74</sup> except that the Miami Holdings Board cannot waive the voting and ownership limits above 20% for Exchange Members and their related persons.<sup>75</sup> Any such waiver would not be effective unless and until approved by the Commission pursuant to Section 19 of the Act.<sup>76</sup>

The Miami Holdings Certificate also contains provisions that are designed to further safeguard the ownership and voting limitations described above or are otherwise related to direct and indirect changes in control. Specifically, any person that, either alone or together with its related persons owns, directly or indirectly (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, 5% or more of the then-outstanding shares of capital stock of Miami Holdings will be required to immediately notify the Miami Holdings Board in writing upon acquiring knowledge of such ownership.<sup>77</sup>

<sup>74</sup> See Miami Holdings Certificate, Article NINTH (b)(ii)(B). The required findings include determinations that (A) such waiver will not impair the ability of MIAX Sapphire to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder; (B) such waiver is otherwise in the best interests of MIAX Sapphire and Miami Holdings; (C) such waiver will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and (D) in the case of a sale, assignment, or transfer, that the recipient and its related persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act). See Miami Holdings Certificate, Article NINTH (b)(ii)(B) and (b)(iii). The Commission has previously approved the rules of other exchanges that provide for the ability of the exchange or its holding company to waive the ownership and voting limitations discussed above for non-members of the exchange. See, e.g., ISE Mercury Order and ISE Gemini Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; and Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (File Nos. 10–194 and 10–196) (order approving DirectEdge exchanges) (“DirectEdge Exchanges Order”).

<sup>75</sup> See Miami Holdings Certificate, Article NINTH (b)(ii)(B). These provisions are generally consistent with waiver of ownership and voting limits approved by the Commission for other SROs. See, e.g., ISE Mercury Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; BATS Order, *supra* note 18; NSX Demutualization Order, *supra* note 64; CHX Demutualization Order, *supra* note 64; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08).

<sup>76</sup> See Miami Holdings Certificate, Article NINTH (b)(ii)(B).

<sup>77</sup> See Miami Holdings Certificate, Article NINTH(c)(i). The notice will require the person’s full legal name; the person’s title or status and the date on which such title or status was acquired; the person’s (and its related person’s) approximate ownership interest in Miami Holdings; and whether the person has power, directly or indirectly, to

Thereafter, such persons will be required to update Miami Holdings Board of any increase or decrease of 1% or more in their previously reported ownership percentage.<sup>78</sup>

The MIAX Sapphire LLC Agreement does not include change of control provisions that are similar to those in the Miami Holdings Certificate; however, the MIAX Sapphire LLC Agreement explicitly provides that Miami Holdings is the sole LLC Member of MIAX Sapphire.<sup>79</sup> Thus, if Miami Holdings ever proposes to no longer be the sole LLC Member of MIAX Sapphire (and therefore no longer its sole owner), MIAX Sapphire would be required to amend the MIAX Sapphire LLC Agreement and the MIAX Sapphire By-Laws. Any changes to the MIAX Sapphire LLC Agreement or the MIAX Sapphire By-Laws, including any change in the provisions that identify Miami Holdings as the sole owner of MIAX Sapphire, must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Act, as the case may be.<sup>80</sup> Further, pursuant to the MIAX Sapphire By-Laws, Miami Holdings may not transfer or assign, in whole or in part, its ownership interest in MIAX Sapphire, unless such transfer is filed with and approved by the Commission pursuant to Section 19 of the Act.<sup>81</sup>

Although Miami Holdings is not directly responsible for regulation, its activities with respect to the operation of MIAX Sapphire must be consistent with, and must not interfere with, the self-regulatory obligations of MIAX

direct the management or policies of Miami Holdings. See *id.*

<sup>78</sup> See Miami Holdings Certificate, Article NINTH(c)(ii). Changes of less than 1% must also be reported to Miami Holdings Board if they result in such person crossing a 20% or 40% ownership threshold. See *id.* In addition, the MIAX Sapphire rules also impose limits on affiliation between MIAX Sapphire and a member of MIAX Sapphire. See MIAX Sapphire Rule 201(g) (“Without prior Commission approval, the Exchange or any entity with which it is affiliated shall not directly or indirectly through one or more intermediaries acquire or maintain an ownership interest in an Exchange Member. In addition, without prior Commission approval, no Member shall be or become affiliated with (1) the Exchange; or (2) any affiliate of the Exchange. Nothing herein shall prohibit a Member from acquiring or holding an equity interest in (i) Miami International Holdings, Inc. that is permitted by the Certificate of Incorporation of Miami International Holdings, Inc. or (ii) MIAX Sapphire that is permitted by the Amended and Restated Limited Liability Company Agreement of MIAX Sapphire.”).

<sup>79</sup> See MIAX Sapphire LLC Agreement and MIAX Sapphire By-Laws, Article I(v) (both of which define “LLC Member” to mean Miami Holdings, as the sole member of MIAX Sapphire).

<sup>80</sup> See 15 U.S.C. 78s. See also MIAX Sapphire LLC Agreement, Section 28(b).

<sup>81</sup> See MIAX Sapphire By-Laws, Article III, Section 3.4.

Sapphire.<sup>82</sup> As described above, the provisions applicable to direct and indirect changes in control of Miami Holdings and MIAX Sapphire, as well as the voting limitation imposed on owners of Miami Holdings who also are MIAX Sapphire members, are designed to help prevent any owner of Miami Holdings from exercising undue influence or control over the operation of MIAX Sapphire and to help ensure that MIAX Sapphire retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has stated in the past, a member's ownership interest in an entity that controls an exchange could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.<sup>83</sup> A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of MIAX Sapphire to effectively carry out its regulatory oversight responsibilities under the Act.

MIAX Sapphire's and Miami Holding's proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>84</sup> In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or MIAX Sapphire to

effectively carry out their regulatory oversight responsibilities under the Act.

## 2. Regulatory Independence and Oversight

Although Miami Holdings will not itself carry out regulatory functions, its activities with respect to the operation of MIAX Sapphire must be consistent with, and must not interfere with, MIAX Sapphire's self-regulatory obligations. In this regard, MIAX Sapphire has proposed to adopt certain provisions in its governing documents, and Miami Holdings has certain provisions in its existing governing documents, that are designed to help maintain the independence of the regulatory functions of MIAX Sapphire. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that have been granted registration.<sup>85</sup> Specifically:

- The directors, officers, employees, and agents of Miami Holdings must give due regard to the preservation of the independence of the self-regulatory function of MIAX Sapphire and to its obligations to investors and the general public and must not take actions that would interfere with the effectuation of decisions by the MIAX Sapphire Board relating to its regulatory functions (including disciplinary matters) or that would interfere with MIAX Sapphire's ability to carry out its responsibilities under the Act.<sup>86</sup>

- Miami Holdings must comply with federal securities laws and the rules and regulations promulgated thereunder, and agrees to cooperate with the Commission and MIAX Sapphire

<sup>85</sup> See, e.g., DirectEdge Exchanges Order, *supra* note 74; and BATS Order, *supra* note 18. See also Securities Exchange Act Release No. 61152 (Dec. 10, 2009), 74 FR 66699 (Dec. 16, 2009) (File No. 10-191) (order approving C2 Options Exchange, Incorporated ("C2")) ("C2 Order").

<sup>86</sup> See Amended and Restated By-Laws of Miami Holdings ("Miami Holdings By-Laws"), Article VII, Section 1. Similarly, Article II, Section 2.1(d) of the MIAX Sapphire By-Laws requires the MIAX Sapphire Board to, when managing the business and affairs of MIAX Sapphire and evaluating any proposal, consider the requirements of Section 6(b) of the Act. Section 2.1(e) of the MIAX Sapphire By-Laws also requires the MIAX Sapphire Board, when evaluating any proposal to take into account (among other things and to the extent relevant), the potential impact on the integrity, continuity, and stability of the national securities exchange operated by MIAX Sapphire and the other operations of MIAX Sapphire, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public; and whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanism for a free and open market and a national market system.

pursuant to, and to the extent of, their respective regulatory authority. In addition, Miami Holdings' officers, directors, employees, and agents must comply with federal securities laws and the rules and regulations promulgated thereunder and agree to cooperate with the Commission and MIAX Sapphire in respect of the Commission's oversight responsibilities regarding MIAX Sapphire and the self-regulatory functions and responsibilities of MIAX Sapphire.<sup>87</sup> Miami Holdings must take reasonable steps necessary to cause its officers, directors, employees, and agents to so cooperate.<sup>88</sup>

- Miami Holdings, and its officers, directors, employees, and agents are deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and MIAX Sapphire, for purposes of any action, suit, or proceeding pursuant to U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, MIAX Sapphire activities.<sup>89</sup>

- All books and records of MIAX Sapphire reflecting confidential information pertaining to the self-regulatory function of MIAX Sapphire (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by MIAX Sapphire and its personnel and will not be used by MIAX Sapphire for any non-regulatory purpose and shall not be made available to persons (including, without limitation, any Exchange Member) other than to personnel of the Commission, and those personnel of MIAX Sapphire, members of committees of MIAX Sapphire, members of the MIAX Sapphire Board, or hearing officers and other agents of MIAX Sapphire, to the extent necessary or appropriate to properly discharge the self-regulatory function of MIAX Sapphire.<sup>90</sup>

<sup>87</sup> See Miami Holdings By-Laws, Article VII, Section 4.

<sup>88</sup> See *id.*

<sup>89</sup> See Miami Holdings By-Laws, Article VII, Section 5.

<sup>90</sup> See MIAX Sapphire By-Laws, Article X, Section 10.4. The Miami Holdings By-Laws also provide that all books and records of MIAX Sapphire reflecting confidential information pertaining to the self-regulatory function of MIAX Sapphire will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. See Miami Holdings By-Laws, Article VII, Section 2. The Miami Holdings governing documents acknowledge that the requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such information or limit or impede the ability of officers, directors, employees, or agents of Miami Holdings to disclose such information to the Commission or MIAX Sapphire. See *id.*

<sup>82</sup> See, e.g., IEX Order, *supra* note 64.

<sup>83</sup> See, e.g., ISE Mercury Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; BATS Order, *supra* note 18; and DirectEdge Exchanges Order, *supra* note 74.

<sup>84</sup> 15 U.S.C. 78f(b)(1). See also ISE Mercury Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; and BOX Order, *supra* note 18.

- The books and records of MIAX Sapphire and Miami Holdings must be maintained in the United States<sup>91</sup> and, to the extent they are related to the operation or administration of MIAX Sapphire, Miami Holdings books and records will be subject at all times to inspection and copying by the Commission and MIAX Sapphire.<sup>92</sup>

- Furthermore, to the extent they relate to the activities of MIAX Sapphire, the books, records, premises, officers, directors, employees, and agents of Miami Holdings will be deemed to be the books, records, premises, officers, directors, employees, and agents of MIAX Sapphire, for purposes of, and subject to oversight pursuant to, the Act.<sup>93</sup>

- Miami Holdings will take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee, or agent (as applicable) of Miami Holdings to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, and regulatory obligations, with respect to their activities related to MIAX Sapphire.<sup>94</sup>

- The Miami Holdings Certificate and By-Laws require that, so long as Miami Holdings controls MIAX Sapphire, any changes to those documents be submitted to the MIAX Sapphire Board, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with, or filed with and approved by, the Commission.<sup>95</sup>

The provisions discussed in this section, which are designed to help ensure the independence of MIAX Sapphire's regulatory function and facilitate the ability of MIAX Sapphire to carry out its regulatory responsibilities and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>96</sup>

<sup>91</sup> See MIAX Sapphire By-Laws, Article X, Section 10.4; Miami Holdings By-Laws, Article VII, Section 3.

<sup>92</sup> See Miami Holdings By-Laws, Article VII, Section 3.

<sup>93</sup> See *id.*

<sup>94</sup> See Miami Holdings By-Laws, Article VII, Section 6.

<sup>95</sup> See Miami Holdings Certificate, Article EIGHTH; Miami Holdings By-Laws, Article XII, Section 1.

<sup>96</sup> 15 U.S.C. 78f(b)(1).

Further, Section 19(h)(1) of the Act<sup>97</sup> provides the Commission with the authority "to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance" with any such provision by its members (including associated persons thereof).<sup>98</sup> If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1),<sup>99</sup> these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

Even in the absence of the governance provisions described above, under Section 20(a) of the Act, any person with a controlling interest in MIAX Sapphire would be jointly and severally liable with and to the same extent that MIAX Sapphire is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.<sup>100</sup> In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.<sup>101</sup> Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.<sup>102</sup> These provisions are applicable to all entities' dealings with MIAX Sapphire, including Miami Holdings.

### 3. Regulatory Oversight Committee

The regulatory operations of MIAX Sapphire will be monitored by the Regulatory Oversight Committee of the Exchange Board. The Regulatory Oversight Committee will consist of at least three Directors, all of whom will be Non-Industry Directors. The Regulatory

<sup>97</sup> See 15 U.S.C. 78s(h)(1).

<sup>98</sup> See *id.*

<sup>99</sup> 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

<sup>100</sup> 15 U.S.C. 78t(a).

<sup>101</sup> 15 U.S.C. 78t(e).

<sup>102</sup> 15 U.S.C. 78u-3.

Oversight Committee will be responsible for overseeing the adequacy and effectiveness of MIAX Sapphire's regulatory and SRO responsibilities, assessing MIAX Sapphire's regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing MIAX Sapphire's regulatory plan and the overall effectiveness of MIAX Sapphire's regulatory functions.<sup>103</sup>

Further, a CRO of MIAX Sapphire will have general supervision over MIAX Sapphire's regulatory operations, including responsibility for overseeing MIAX Sapphire's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which MIAX Sapphire is a party.<sup>104</sup> The Regulatory Oversight Committee also will be responsible for recommending compensation and personnel actions involving the CRO and senior regulatory personnel to the Compensation Committee of MIAX Sapphire for action.<sup>105</sup> The CRO will report to the Regulatory Oversight Committee.<sup>106</sup>

### 4. Regulatory Funding and Services

As a prerequisite to the Commission's granting of an exchange's application for registration, an exchange must be so organized and have the capacity to carry out the purposes of the Act.<sup>107</sup> Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the Act and the rules and regulations thereunder and the rules of the exchange.<sup>108</sup> The discussion below summarizes how MIAX Sapphire has proposed to structure and conduct its regulatory operations.

#### a. Regulatory Funding

To help ensure that MIAX Sapphire has and will continue to have adequate funding to be able to meet its responsibilities under the Act, MIAX Sapphire represents that, prior to beginning operations as a national securities exchange, Miami Holdings will allocate sufficient assets to the Exchange to enable its operation.<sup>109</sup>

<sup>103</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(c). The Regulatory Oversight Committee is responsible for reviewing MIAX Sapphire's regulatory budget, and also will meet regularly with the Chief Regulatory Officer ("CRO"). See *id.*

<sup>104</sup> See MIAX Sapphire By-Laws, Article VI, Section 6.10.

<sup>105</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.5(c).

<sup>106</sup> See MIAX Sapphire By-Laws, Article VI, Section 6.10.

<sup>107</sup> See 15 U.S.C. 78f(b)(1).

<sup>108</sup> See *id.* See also 15 U.S.C. 78s(g).

<sup>109</sup> See MIAX Sapphire Form 1, Exhibit I.

Specifically, MIAX Sapphire represents that prior to launching operations, Miami Holdings will make a cash contribution to the Exchange of \$5,000,000, “in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.”<sup>110</sup> MIAX Sapphire represents that such cash and in-kind contributions by Miami Holdings will be adequate to operate the Exchange, including the regulation of the Exchange.

Miami Holdings will be required to provide adequate funding for MIAX Sapphire’s ongoing operations, including the regulation of MIAX Sapphire, pursuant to a written agreement (“Funding Agreement”) between MIAX Sapphire and Miami Holdings. This Funding Agreement provides that MIAX Sapphire will receive all fees, including regulatory fees and trading fees, payable by MIAX Sapphire’s members, as well as any funds received from any applicable market data fees and Options Price Reporting Authority tape revenue. The Funding Agreement further provides that Miami Holdings will reimburse MIAX Sapphire for its costs and expenses to operate the Exchange and to carry out its SRO obligations.<sup>111</sup>

Further, any “Regulatory Funds” received by MIAX Sapphire will not be used for non-regulatory purposes or distributed to Miami Holdings, but rather, will be applied to fund the legal and regulatory operations of MIAX Sapphire, or, as applicable, used to pay restitution and disgorgement of funds intended for customers.<sup>112</sup> Any excess non-regulatory funds, as determined by MIAX Sapphire, will be remitted to Miami Holdings.<sup>113</sup>

<sup>110</sup> *Id.*

<sup>111</sup> *See id.* Based on the various financial statements for 2022 that MIAX Sapphire has filed as part of its Form 1 for itself, its affiliates, and Miami Holdings, the Commission believes that the Funding Agreement appropriately will facilitate the ability of MIAX Sapphire to commence and continue operations.

<sup>112</sup> *See* MIAX Sapphire By-Laws, Article IX, Section 9.4. *See also* MIAX Sapphire LLC Agreement, Section 16. MIAX Sapphire By-Laws, Article 1(gg) defines “Regulatory Funds” as “fees, fines, or penalties derived from the regulatory operations of [MIAX Sapphire],” but such term does not include “revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of [MIAX Sapphire], even if a portion of such revenues are used to pay costs associated with the regulatory operations of [MIAX Sapphire].” This definition is consistent with the rules of other SROs. *See, e.g.,* By-Laws of MIAX Pearl, Article 1(gg); By-Laws of MIAX Emerald, Article 1(gg); By-Laws of MIAX Exchange, Article I(II).

<sup>113</sup> *See* MIAX Sapphire Form 1, Exhibit I.

#### b. Regulatory Contract With FINRA

Although MIAX Sapphire will be an SRO with all of the attendant regulatory obligations under the Act, Financial Industry Regulatory Authority, Inc. (“FINRA”) will serve as a regulatory services provider and perform certain regulatory functions on behalf of MIAX Sapphire pursuant to a Regulatory Services Agreement (“RSA”).<sup>114</sup> Specifically, such services will include assisting MIAX Sapphire with member registration and related administrative support services; certain cross-market surveillance services; certain options trading examinations; at MIAX Sapphire’s request, investigating potential violations of enumerated MIAX Sapphire market rules, as well as federal securities laws, and rules and regulations thereunder, related to MIAX Sapphire market activity; performing examinations related to options, including routine and for cause examinations of Exchange Members under certain MIAX Sapphire rules and federal securities laws; bringing formal disciplinary actions, including hearing officer services; and providing arbitration, mediation, and other dispute resolution services to Exchange Member firms.<sup>115</sup>

Notwithstanding the RSA, MIAX Sapphire will retain legal responsibility for the regulation of its Members and its market and the performance of FINRA as its regulatory services provider. Because MIAX Sapphire has entered into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that will be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of MIAX Sapphire on a final RSA with FINRA that specifies the services that will be provided to MIAX Sapphire.

It is consistent with the Act for MIAX Sapphire to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.<sup>116</sup> These functions are fundamental elements of a regulatory program and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions for MIAX Sapphire.<sup>117</sup>

<sup>114</sup> *See* MIAX Sapphire Form 1, Exhibit L.

<sup>115</sup> *See id.*

<sup>116</sup> For example, MIAX Emerald, MIAX Pearl, MIAX Exchange, Long Term Stock Exchange, Inc. (“LTSE”), IEX, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe BZX Exchange, Inc. (“Cboe BZX”) have all entered into 17d–2 plans and RSAs with FINRA. *See infra* section III.B.4.c for further discussion of Rule 17d–2 plans.

<sup>117</sup> *See, e.g.,* Securities Exchange Act Release No. 86587 (Aug. 7, 2019), 84 FR 39883 (Aug. 12, 2019)

However, MIAX Sapphire, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on MIAX Sapphire’s behalf.<sup>118</sup> In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of MIAX Sapphire to perform its regulatory functions.<sup>119</sup> Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for MIAX Sapphire, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by MIAX Sapphire.

#### c. Rule 17d–2 Plans

Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members.<sup>120</sup> Section 17(d) of the Act and Rule 17d–2 thereunder permit SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.<sup>121</sup> These plans, which must be filed with and declared effective by the Commission, generally

(File No. 4–747) (“LTSE Order”); IEX Order, *supra* note 64; DirectEdge Exchanges Order, *supra* note 74; and Nasdaq Order, *supra* note 32. The Commission is not approving the RSA or any of its specific terms.

<sup>118</sup> *See* 15 U.S.C. 78s(g)(1).

<sup>119</sup> For example, if failings by FINRA have the effect of leaving MIAX Sapphire in violation of any aspect of MIAX Sapphire’s self-regulatory obligations, MIAX Sapphire would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. *See, e.g.,* Nasdaq Order, *supra* note 32; BATS Order, *supra* note 18; and Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (File No. 10–127) (approval of registration of International Securities Exchange Act, LLC (“ISE”) as a national securities exchange).

<sup>120</sup> 15 U.S.C. 78s(g)(1).

<sup>121</sup> *See* 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.



cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. For example, in 2019 the Commission declared effective a plan to allocate regulatory responsibilities between FINRA and LTSE pursuant to which FINRA assumes examination and enforcement responsibility for broker-dealers that are members of both FINRA and LTSE with respect to the rules of LTSE that are substantially similar to the applicable rules of FINRA, as well as certain specified provisions of the federal securities laws.<sup>122</sup>

A 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.<sup>123</sup> MIAX Sapphire has represented to the Commission that it intends to become a party to the existing multiparty options Rule 17d-2 plans concerning sales practice regulation and market surveillance.<sup>124</sup> MIAX Sapphire has also represented that it will enter into a bi-lateral 17d-2 plan to allocate regulatory responsibility to FINRA for common rules of dual members between MIAX Sapphire and FINRA.<sup>125</sup> Under these plans, the examining SROs will examine firms that are common members of MIAX Sapphire and the particular examining SRO for compliance with certain provisions of

<sup>122</sup> See LTSE Order. See also, e.g., Securities Exchange Act Release Nos. 84997 (Jan. 29, 2019), 84 FR 1252 (Feb. 1, 2019) (FINRA/MIAX Emerald); 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (FINRA/MIAX Pearl); 77321 (Mar. 8, 2016), 81 FR 13434 (Mar. 14, 2016) (File No. 4-697) (FINRA/ISE Mercury, LLC); 73641 (Nov. 19, 2014), 79 FR 70230 (Nov. 25, 2014) (File No. 4-678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (Aug. 1, 2013) (File No. 4-663) (FINRA/ISE Gemini, LLC); 59218 (Jan. 8, 2009), 74 FR 2143 (Jan. 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc.); 58818 (Oct. 20, 2008), 73 FR 63752 (Oct. 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. ("NASD") (n/k/a FINRA) and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (Feb. 27, 2007), 72 FR 9983 (Mar. 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/The Nasdaq Stock Market LLC ("Nasdaq")).

<sup>123</sup> See *supra* notes 121-122 and accompanying text.

<sup>124</sup> See MIAX Sapphire Form 1, Exhibit L. See also Securities Exchange Act Release No. 68363 (Dec. 5, 2012), 77 FR 73711 (Dec. 11, 2012) (File No. S7-966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related sales practice matters); and 68362 (Dec. 5, 2012), 77 FR 73719 (Dec. 11, 2012) (File No. 4-551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related market surveillance).

<sup>125</sup> See MIAX Sapphire Form 1, Exhibit L.

the Act, certain rules and regulations adopted thereunder, and certain MIAX Sapphire rules. In addition, the Commission is conditioning operation of MIAX Sapphire as an exchange on MIAX Sapphire first joining the applicable multilateral Rule 17d-2 plans.

Because MIAX Sapphire anticipates entering into these Rule 17d-2 plans, it has not made provision to fulfill the regulatory obligations that will be undertaken by FINRA and other SROs under these plans with respect to common members.<sup>126</sup> Accordingly, the Commission is conditioning the operation of MIAX Sapphire on approval by the Commission of a Rule 17d-2 plan that allocates the above-specified matters to FINRA, and the approval of an amendment to the existing multi-party Rule 17d-2 plans specified above to add MIAX Sapphire as a party.

### C. Trading System and Trading Floor

MIAX Sapphire will operate both a fully automated electronic options trading platform and a physical trading floor for the trading of listed options.<sup>127</sup> As described below, the electronic trading platform will operate with a continuous, automated matching function.<sup>128</sup> The physical trading floor of the Exchange will be located in Miami, Florida.<sup>129</sup> On the trading floor, as described below, floor brokers will announce to the trading crowd either single-sided or two-sided orders, thereby exposing the orders to competition from the crowd, before submitting any matched contracts to the Exchange's system for execution.<sup>130</sup>

#### 1. Access to MIAX Sapphire

Access to MIAX Sapphire's System<sup>131</sup> will be granted to individuals or organizations who are approved to become Members.<sup>132</sup> Approved

<sup>126</sup> For common members, the regulatory obligations will be covered by the Rule 17d-2 plans, and for MIAX Sapphire members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

<sup>127</sup> See MIAX Sapphire Form 1, Exhibit E at 44.

<sup>128</sup> See *id.* at 44, 53; MIAX Sapphire Rule 514(b).

<sup>129</sup> See MIAX Sapphire Form 1, Exhibit E at 44.

<sup>130</sup> See *id.* at 69; MIAX Sapphire Rule 2030(e)(2).

<sup>131</sup> "System" means the automated trading system used by the Exchange for the trading of securities. See MIAX Sapphire Rule 100.

<sup>132</sup> "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of the MIAX Sapphire Rules for purposes of trading on the Exchange as an Electronic Exchange Member ("EEM") or Market Maker. MIAX Sapphire Members are deemed "members" under the Act. See MIAX Sapphire Rule 100. See *infra* notes 138-139 and accompanying text for a description of EEMs and Market Makers.

Members will be issued Trading Permits that grant the Member the ability to transact on MIAX Sapphire.<sup>133</sup> Trading Permits will not convey upon Members any ownership interest in MIAX Sapphire, and they will not be transferable except in cases where a Member experiences a change in control or corporate reorganization.<sup>134</sup> Membership will be open to any broker-dealer that: (1) is registered under Section 15 of the Act,<sup>135</sup> and (2) has and maintains membership in another registered national securities exchange (other than MIAX Exchange, MIAX PEARL, or MIAX Emerald) or FINRA.<sup>136</sup> There will be no limit to the number of Trading Permits that MIAX Sapphire may issue, although MIAX Sapphire will have the authority to limit or decrease the number of Trading Permits issued in the future.<sup>137</sup> Members of

<sup>133</sup> See MIAX Sapphire Rule 200(a). A "Trading Permit" means a permit issued by the Exchange that confers the ability to transact on the Exchange. See MIAX Sapphire Rule 100. MIAX Sapphire represents that it has designed its systems to allow its Members to individually determine the best method for accessing the Exchange, whether by using customized front-end software using protocols determined by the Exchange or through third-party vendors who route orders to MIAX Sapphire through a front-end or service bureau configuration. See MIAX Sapphire Form 1, Exhibit E. MIAX Sapphire will not accept telephone orders. See *id.* As discussed below, before participating on the physical trading floor, a Member will need to submit an application to the Exchange and comply with additional requirements that are specific to the trading floor. See *infra* notes 148-151 and accompanying text.

<sup>134</sup> See MIAX Sapphire Rule 200(e).

<sup>135</sup> See MIAX Sapphire Rule 200(b).

<sup>136</sup> See MIAX Sapphire Rule 200(d). If such other registered national securities exchange has not been designated by the Commission to examine Members for compliance with financial responsibility rules pursuant to Rule 17d-1 under the Act, then the broker-dealer must have and maintain a membership in FINRA. See *id.*

<sup>137</sup> See MIAX Sapphire Rule 200(a). MIAX Sapphire would announce in advance any limitation or decrease it plans to impose pursuant to Rule 200(a). See *id.* In the event that MIAX Sapphire imposes a limitation or decrease, MIAX Sapphire, in doing so, may not eliminate the ability of an existing Member to trade on the Exchange unless the Exchange is permitted to do so pursuant to a rule filing submitted to the Commission under Section 19(b) of the Act. See *id.* In addition, MIAX Sapphire's exercise of authority under MIAX Sapphire Rule 200 would be subject to the provisions of Section 6(c)(4) of the Act. See *id.* See also MIAX Pearl Rule 200(a) (concerning limiting or reducing the number of trading permits). Further, MIAX Sapphire's exercise of authority under MIAX Sapphire Rule 200 would be subject to the provisions of Section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or any natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof. See 15 U.S.C. 78f(b)(2).

MIAX Sapphire may be Market Makers<sup>138</sup> or EEMs.<sup>139</sup>

A holder of a MIAX Exchange, MIAX Pearl, or MIAX Emerald trading permit in good standing will be eligible to receive one MIAX Sapphire Trading Permit.<sup>140</sup> A holder of a MIAX Exchange, MIAX Pearl, or MIAX Emerald trading permit who wishes to apply to the Exchange will not be required to submit a full application for membership on MIAX Sapphire, but rather will only need to complete selected MIAX Sapphire forms concerning their election to trade on MIAX Sapphire, consent to MIAX Sapphire's jurisdiction, and other operational matters.<sup>141</sup> This waive-in application process is similar to arrangements in place at other exchanges.<sup>142</sup>

Applicants that do not hold a MIAX Exchange, MIAX Pearl, or MIAX Emerald trading permit and seek to become members of MIAX Sapphire will need to submit a full application in accordance with procedures established by the Exchange.<sup>143</sup> Individuals and entities that become Members, and their associated persons, will be required to meet and maintain certain qualification and registration criteria similar to what is required by other options exchanges.<sup>144</sup> In addition, MIAX Sapphire will impose further requirements on Members that seek to do business with the public.<sup>145</sup> Applicants who are denied membership may appeal MIAX Sapphire's decision pursuant to MIAX Sapphire's rules

<sup>138</sup> "Market Maker" 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 the MIAX Sapphire Rules. See MIAX Sapphire Rule 100. For further discussion of Market Maker registration, see *infra* section III.C.3.

<sup>139</sup> "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. See MIAX Sapphire Rule 100. For definitions of "Public Customer Order" and "Non-Customer Order," see MIAX Sapphire Rule 100.

<sup>140</sup> See MIAX Sapphire Rule 200(c)(1).

<sup>141</sup> See *id.*

<sup>142</sup> See, e.g., C2 Rule 3.1(c)(1) (containing similar expedited waive-in membership process for members of Cboe) and MIAX Emerald Rule 200(c)(1) (containing a similar expedited waive-in membership process for members of MIAX Exchange and MIAX Pearl).

<sup>143</sup> See MIAX Sapphire Rule 200(c)(2).

<sup>144</sup> See MIAX Sapphire Rules Chapter II. Such criteria include, but are not limited to, capital maintenance requirements. See, e.g., MIAX Exchange Rule 200 Series and C2 Rules 3.1 and 3.2 (containing similar criteria).

<sup>145</sup> See MIAX Sapphire Rules Chapter XIII (incorporating by reference Chapter XIII of the MIAX Exchange Rules).

governing hearings, review, and arbitration.<sup>146</sup> Every Member will be subject to MIAX Sapphire's regulatory jurisdiction, including MIAX Sapphire's disciplinary jurisdiction.<sup>147</sup>

MIAX Sapphire will operate a physical trading floor of the Exchange located in Miami, Florida ("Trading Floor" or "Floor"), consisting of one "crowd area" or "pit" where Floor Participants will be located and options contracts will be traded.<sup>148</sup> "Floor Participants" may be Floor Brokers or Floor Market Makers.<sup>149</sup> Floor Brokers will be required to submit a written application to be reviewed by the Exchange, which will consider an applicant's ability as demonstrated by their passing a Floor Broker's examination and such other factors as the Exchange deems appropriate.<sup>150</sup> No employee of a Floor Participant will be admitted to the Trading Floor unless that person is registered with and approved by the Exchange, which may at any time in its discretion withdraw its approval.<sup>151</sup>

The Commission finds that MIAX Sapphire's proposed membership rules are consistent with the Act, including Section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or natural person associated with a broker or dealer may become a member of such exchange or associated with a member thereof.<sup>152</sup> MIAX Sapphire's proposed rules with respect to exchange membership are substantially similar to the rules of other exchanges.<sup>153</sup>

<sup>146</sup> See MIAX Sapphire Rules Chapter XI (incorporating by reference Chapter XI of the MIAX Exchange Rules).

<sup>147</sup> See MIAX Sapphire Rule 200(g). For MIAX Sapphire's rules concerning discipline, see MIAX Sapphire Rules Chapter X.

<sup>148</sup> See MIAX Sapphire Rule 100.

<sup>149</sup> "Floor Participant" means Floor Brokers as defined in MIAX Sapphire Rule 2015 and Floor Market Makers as defined in MIAX Sapphire Rule 2105(b). See MIAX Sapphire Rule 100. "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling orders, and a Floor Broker must be registered as a Floor Participant prior to registering as a Floor Broker. See MIAX Sapphire Rule 2015. "Floor Market Maker" means a Floor Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account. See MIAX Sapphire Rule 2105(b).

<sup>150</sup> See MIAX Sapphire Rule 2020.

<sup>151</sup> See MIAX Sapphire Rule 2010. In exercising Exchange discretion in withdrawing approval, the Exchange will follow applicable disciplinary rules and procedures, including the ability to appeal such Exchange determination. See *id.*

<sup>152</sup> 15 U.S.C. 78f(b)(2).

<sup>153</sup> See, e.g., MIAX Emerald Rules Chapter II; MIAX Pearl Rules Chapter II.

The Commission notes that pursuant to Section 6(c) of the Act,<sup>154</sup> an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, MIAX Sapphire must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.<sup>155</sup>

In addition, Members may enter into arrangements with other parties, including non-Members and other Members, to provide "Sponsored Access" to trading on MIAX Sapphire.<sup>156</sup> Members who provide such Sponsored Access will be responsible for all trading conducted pursuant to the access agreement, and to the same extent as if the Member were trading directly.<sup>157</sup> Accordingly, Members that provide Sponsored Access must maintain and implement policies and procedures to supervise and monitor sponsored trading activity.<sup>158</sup> Additionally, non-Members who seek to trade on MIAX Sapphire through Sponsored Access agreements will need to agree to comply with all applicable federal securities laws and rules and Exchange rules.<sup>159</sup> MIAX Sapphire's rules governing Sponsored Access arrangements are similar to the rules of other exchanges.<sup>160</sup>

## 2. Linkage

MIAX Sapphire intends to become a participant in the Plan Relating to Options Order Protection and Locked/Crossed Markets or any successor plan ("Linkage Plan").<sup>161</sup> If admitted as a

<sup>154</sup> 15 U.S.C. 78f(c).

<sup>155</sup> See, e.g., MIAX Pearl Order, *supra* note 18, at 92910; ISE Mercury Order, *supra* note 32, at 6076; ISE Gemini Order, *supra* note 32, at 46633; MIAX Order, *supra* note 18, at 73074; BOX Order, *supra* note 18, at 26337; BATS Order, *supra* note 18, at 49502; and Nasdaq Order, *supra* note 32, at 3555.

<sup>156</sup> See MIAX Sapphire Rule 210.

<sup>157</sup> See MIAX Sapphire Rule 210(b).

<sup>158</sup> See MIAX Sapphire Rule 210(b)-(c).

<sup>159</sup> See MIAX Sapphire Rule 210(b). See also, e.g., 17 CFR 240.15c3-5.

<sup>160</sup> See, e.g., MIAX Pearl Rule 210; MIAX Exchange Rule 210; Nasdaq Rule 4611(d).

<sup>161</sup> See MIAX Sapphire Form 1, Exhibit E at 48. See also Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (Aug. 6, 2009) (File No. 4-546) (order approving the national market system Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, ISE, Nasdaq, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.).

participant to the Linkage Plan, other plan participants would be able to send orders to MIAX Sapphire in accordance with the terms of the plan as applied to the Exchange. The MIAX Sapphire Rules include relevant definitions, establish the conditions pursuant to which Members may enter orders in accordance with the Linkage Plan, impose obligations on the Exchange regarding how it must process incoming orders, establish a general standard that Members and MIAX Sapphire should avoid trade-throughs, establish potential regulatory liability for Members that engage in a pattern or practice of trading through other exchanges, and establish obligations with respect to locked and crossed markets.<sup>162</sup>

MIAX Sapphire has proposed rules that are designed to comply with the requirements of the Linkage Plan. Further, as provided below, before MIAX Sapphire can commence operations as a national securities exchange, it must become a participant in the Linkage Plan.

### 3. Market Makers

#### a. Registration of Market Makers

MIAX Sapphire Members may register as Market Makers for the purpose of making markets in options contracts traded on the Exchange, electronically or on the Trading Floor.<sup>163</sup> Market Makers are entitled to receive certain benefits and privileges in exchange for fulfilling certain affirmative and negative market-making obligations. To begin the process of registering as a Market Maker, a Member will be required to file a written application with MIAX Sapphire.<sup>164</sup> MIAX Sapphire will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's registration.<sup>165</sup> All Market Makers will be designated as specialists and dealers on MIAX Sapphire for all purposes under the Act and rules thereunder.<sup>166</sup> In addition, all MIAX Exchange, MIAX Pearl, and MIAX Emerald market makers in good standing will be eligible to receive a MIAX Sapphire Trading Permit in the same membership

<sup>162</sup> See Chapter XIV of the MIAX Sapphire Rules (incorporating by reference Chapter XIV of the MIAX Exchange Rules).

<sup>163</sup> See MIAX Sapphire Rule 100; MIAX Sapphire Rule 600.

<sup>164</sup> See MIAX Sapphire Rule 600(a).

<sup>165</sup> See *id.* The provision permitting MIAX Sapphire to consider "such other factors as [it] deems appropriate" must be applied in a manner that is consistent with the Act, including provisions that prohibit an exchange from acting in an unfairly discriminatory manner. See 15 U.S.C. 78f(b)(5); see also C2 Order, *supra* note 85.

<sup>166</sup> See MIAX Sapphire Rules 600 and 600(i).

category in which they operate on MIAX Exchange, MIAX Pearl, or MIAX Emerald.<sup>167</sup> For example, a Market Maker in good standing on MIAX Exchange will be eligible to become a Market Maker on MIAX Sapphire, through the completion of the necessary forms.<sup>168</sup> The good standing of a Market Maker may be suspended, terminated, or otherwise withdrawn if the conditions for approval cease to be maintained or the Market Maker violates any of its agreements with MIAX Sapphire or any provisions of the MIAX Sapphire Rules.<sup>169</sup>

A Member that has qualified as a Market Maker may register to make markets in individual series of options.<sup>170</sup> A Market Maker may become registered in a series by either: (i) entering a registration request via the MEO Interface<sup>171</sup> prior to 9:00 a.m. Eastern Time of the current trading day, which registration request will need to be submitted for every requested trading day; or (ii) entering a registration request via an Exchange approved electronic interface submitted prior to 6:00 p.m. Eastern Time of the business day immediately preceding the next trading day, which registration request will persist until it is withdrawn.<sup>172</sup>

No Participant can act as a Floor Market Maker in any option unless such Participant is already registered as a Floor Market Maker in such option by the Exchange pursuant to MIAX Sapphire Rule 600.<sup>173</sup> Floor Market Makers will be subject to a set of obligations and restrictions that are specific to Floor Market Makers.<sup>174</sup> The registration of a Floor Participant as a Floor Market Maker may be suspended or terminated by the Exchange upon a determination that such Floor Participant has failed to properly perform as a Floor Market Maker.<sup>175</sup>

The Commission finds that the MIAX Sapphire qualification requirements for Market Makers are consistent with the Act. MIAX Sapphire's rules provide an objective process by which a Member

<sup>167</sup> See MIAX Sapphire Rule 200(c)(1).

<sup>168</sup> See *id.*

<sup>169</sup> See MIAX Sapphire Rule 603(b).

<sup>170</sup> See MIAX Sapphire Rule 602(a).

<sup>171</sup> "MEO Interface" means a binary order interface used for submitting certain order types to the MIAX Sapphire System. See MIAX Sapphire Rule 100.

<sup>172</sup> See MIAX Sapphire Rule 602(b).

<sup>173</sup> See MIAX Sapphire Rule 2100(a).

"Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the MIAX Sapphire Rules for purposes of participating in trading on a facility of the Exchange that includes a Floor Participant. See MIAX Sapphire Rule 100.

<sup>174</sup> See MIAX Sapphire Rule 2105.

<sup>175</sup> See MIAX Sapphire Rule 2100(b).

could become a Market Maker on MIAX Sapphire. The Commission notes that MIAX Sapphire's proposed Market Maker qualification requirements are substantially similar to those of other options exchanges.<sup>176</sup>

#### b. Market Maker Obligations

Pursuant to MIAX Sapphire rules, all Market Makers, including Floor Market Makers, will be subject to a number of general obligations. In particular, the transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.<sup>177</sup> Among other things, a Market Maker must: (1) during trading hours, maintain a two-sided market in those option series in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity, and competitiveness of the market; (2) engage in dealings for its own account when there is a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same series; (3) compete with other Market Makers; (4) make markets that will be honored for the number of contracts entered into the Exchange's System; (5) update quotations in response to changed market conditions; and (6) maintain active markets.<sup>178</sup> In addition, Market Makers must maintain minimum net capital in accordance with the federal securities laws.<sup>179</sup>

On a daily basis, a Market Maker must provide continuous two-sided quotes for 90% of the time on a given trading day, or such higher percentage as MIAX Sapphire may announce in advance, in at least 75% of the options series in which the Market Maker is registered.<sup>180</sup> Further, a Market Maker may be called upon by MIAX Sapphire to submit a single bid or offer or maintain continuous bid and offers in one or more series to which the Market Maker is registered whenever, in the judgment of the Exchange, it is necessary to do so in the interest of fair and orderly markets.<sup>181</sup>

<sup>176</sup> See, e.g., Cboe BZX Rules 22.2, 22.3 and 22.4; Nasdaq Rules, Options 2.

<sup>177</sup> See MIAX Sapphire Rule 604(a).

<sup>178</sup> See *id.*

<sup>179</sup> See MIAX Sapphire Rule 608.

<sup>180</sup> See MIAX Sapphire Rule 605(d)(1) and (d)(3). Immediate-or-Cancel Orders from Market Makers will not be counted for the continuous quoting obligations of Market Makers. See MIAX Sapphire Rule 605, Interpretations and Policies .01.

<sup>181</sup> See MIAX Sapphire Rule 605(d)(2).

On the Trading Floor, in response to any request for quote by a Floor Broker or Options Exchange Official,<sup>182</sup> a Floor Market Maker must provide a two-sided market complying with quote spread parameter requirements contained in MIAX Sapphire Rule 2105(d)(1) and with a size of not less than 10 contracts.<sup>183</sup> With respect to classes of options to which a Floor Market Maker is assigned, whenever a Floor Market Maker is called upon by an Options Exchange Official or a Floor Broker to make a market, the Floor Market Maker is expected to engage in dealing for its own account when there is a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.<sup>184</sup> Further, in the course of maintaining a fair and orderly market, a Floor Market Maker is expected to provide quotations that comply with the quote spread parameters (bid/ask differentials) in MIAX Sapphire Rule 2105(d)(1), unless the Exchange establishes otherwise for one or more series of options classes, and to bid no more than \$1 lower (or offer no more than \$1 higher) than the last preceding transaction price for the particular option contract.<sup>185</sup>

In options classes other than those in which a Market Maker is registered, the total number of contracts executed by the Market Maker may not exceed 25% of the total number of all contracts executed by the Market Maker in any

<sup>182</sup> See MIAX Sapphire Rule 2080, Interpretations & Policies .02 (stating that Exchange employees or officials designated as an Options Exchange Official will from time to time as provided in the MIAX Sapphire Rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety, and welfare on the Exchange).

<sup>183</sup> See MIAX Sapphire Rule 2100(c)(1). In classes of options contracts to which a Floor Market Maker is assigned, a Floor Market Maker is expected to provide bids and offers so as to create differences of no more than \$0.25 between the bid and offer for each option contract for which the prevailing bid is less than \$2; no more than \$0.40 where the prevailing bid is \$2 or more but less than \$5; no more than \$0.50 where the prevailing bid is \$5 or more but less than \$10; no more than \$0.80 where the prevailing bid is \$10 or more but less than \$20; and no more than \$1 where the prevailing bid is \$20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. See MIAX Sapphire Rule 2100(d)(1).

<sup>184</sup> See MIAX Sapphire Rule 2105(d).

<sup>185</sup> See MIAX Sapphire Rule 2105(d)(1) and (2). The maximum option price change standard will not ordinarily apply if the price per share of the underlying stock or exchange-traded fund share has changed by more than \$1 since the last preceding transaction for the particular option contract. See MIAX Sapphire Rule 2105(d)(2).

calendar quarter.<sup>186</sup> On the Trading Floor, with respect to classes of options other than those to which a Floor Broker's assignment extends, a Floor Market Maker, whenever he enters the trading crowd or is called upon by an Options Exchange Official or a Floor Broker to make a market, will be subject to the obligations in MIAX Sapphire Rule 2105(d).<sup>187</sup> The registration of any Member as a Market Maker may be subject to suspension or termination by the Exchange upon a determination that the Member has failed to properly perform as a Market Maker.<sup>188</sup>

Market Makers will receive certain benefits in return for satisfying their responsibilities.<sup>189</sup> For example, a broker-dealer or other lender may extend "good faith" credit to a member of a national securities exchange or registered broker-dealer to finance its activities as a market maker or specialist.<sup>190</sup> In addition, market makers are excepted from the prohibition in Section 11(a) of the Act.<sup>191</sup> Market Makers on MIAX Sapphire will not receive special trading allocations or similar rights vis-à-vis other Members.<sup>192</sup>

A market maker must be subject to sufficient and commensurate affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify favorable treatment.<sup>193</sup> The rules of all U.S. options markets need not provide the same standards for market maker participation, so long as they impose affirmative obligations that are consistent with the Act.<sup>194</sup> Nevertheless, MIAX Sapphire's proposed Market Maker obligations are substantially similar to those of another options exchange.<sup>195</sup> MIAX Sapphire's Market Maker participation requirements impose affirmative obligations on MIAX Sapphire's Market Makers that balance

<sup>186</sup> See MIAX Sapphire Rule 605(e). See also Nasdaq Rules, Options 2, Section 6(b).

<sup>187</sup> See MIAX Sapphire Rule 2105(e). See *supra* note 185 and accompanying text for a discussion of the requirements of MIAX Sapphire Rule 2105(d).

<sup>188</sup> See MIAX Sapphire Rule 600(b).

<sup>189</sup> See, e.g., Securities Exchange Act Release No. 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR-NASDAQ-2007-004) ("NOM Approval Order"), at 14526; BATS Order, *supra* note 18, at 5159 (discussing the benefits and obligations of market makers).

<sup>190</sup> See 12 CFR 221.5 and 12 CFR 220.7; see also 17 CFR 240.15c3-1(a)(6) (capital requirements for market makers).

<sup>191</sup> 15 U.S.C. 78k(a). See also *infra* section III.C.5.

<sup>192</sup> See MIAX Sapphire Rule 514. See also MIAX Sapphire Form 1, Exhibit E at 2.

<sup>193</sup> See NOM Approval Order, *supra* note 189, at 14526; and BATS Order, *supra* note 18, at 5159.

<sup>194</sup> See *id.*

<sup>195</sup> See, e.g., BOX Rule 8500.

the benefits afforded to such participants and, accordingly, are consistent with the Act.

Finally, MIAX Sapphire's proposed continuous quoting obligations for Market Makers on MIAX Sapphire's electronic market and open outcry quoting obligation for Floor Market Makers on the Trading Floor are appropriate under the Act and consistent with a Market Maker's obligation to contribute to the maintenance of a fair and orderly market.

#### 4. Order Display, Execution, and Priority

On MIAX Sapphire's electronic options marketplace, liquidity will be derived from quotes as well as orders to buy and orders to sell submitted to MIAX Sapphire electronically by Members from remote locations.<sup>196</sup> On the Trading Floor, liquidity will be provided by Floor Participants, including Floor Market Makers. After a Floor Broker announces and exposes a single-sided or two-sided order to the trading crowd on the Floor, a Floor Broker submits any resulting matched two-sided order to the Exchange (referred to as a "Qualified Floor Order") for execution.<sup>197</sup>

Options traded on the Exchange will be subject to Minimum Price Variations ("MPV") that will begin at \$0.05 for option contracts trading at less than \$3.00 per option, and \$0.10 for option contracts trading at \$3.00 per option or higher.<sup>198</sup> In addition, MIAX Sapphire will implement a "Penny Interval Program" pursuant to which it will permit certain options in the most actively traded multiply listed options classes to be quoted and traded in increments as low as \$0.01, options contracts included in the program that are trading at less than \$3 to be quoted and traded in increments as low as \$0.01, and all other option contracts included in the program that are trading at or above \$3 to be quoted and traded in increments as low as \$0.05.<sup>199</sup>

Orders submitted to the Exchange will be displayed unless the order is a contingent order, such as an immediate-

<sup>196</sup> See MIAX Sapphire Form 1, Exhibit E at 44. The definition of "quote" or "quotation" means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any. An order entered by the Market Maker in the options series to which such Market Maker is registered shall, as applicable, constitute a quote or quotation on MIAX Sapphire. See MIAX Sapphire Rule 100.

<sup>197</sup> See MIAX Sapphire Form 1, Exhibit E at 44; MIAX Sapphire Rule 2040. See *infra* notes 223-233 for further discussion of "Qualified Floor Orders."

<sup>198</sup> See MIAX Sapphire Rule 510(a).

<sup>199</sup> See MIAX Sapphire Rule 510(a)(3).

or-cancel order.<sup>200</sup> Displayed orders and quotes will be displayed on an anonymous basis at a specified price.<sup>201</sup> Non-displayed orders will not be displayed to any Members and will not have time priority over displayed orders.<sup>202</sup> On MIAX Sapphire's Trading Floor, a Floor Broker must announce an agency order that the Floor Broker is representing to the trading crowd ("open outcry") before submitting the order to the Exchange's System for execution, 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.<sup>203</sup> Contemporaneously upon receipt of an order and prior to the announcement of such an order in the trading crowd, a Floor Broker or its employees must record all options orders represented by such Floor Broker onto the Floor Broker's order entry mechanism.<sup>204</sup> A Participant shall not utilize the Trading Floor to effect any transaction for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Act ("G Exemption").<sup>205</sup>

Members may electronically submit the following types of orders: Market; Limit; Marketable Limit; Cancel-Replacement; Immediate-or-Cancel; Intermarket Sweep; Do Not Route; Day Limit; Customer Cross; Qualified Contingent Cross; Route to Floor; Complex Market; Complex Limit; Complex Day Limit; Complex Immediate-or-Cancel; Complex Customer Cross; and Complex Qualified Contingent Cross Orders.<sup>206</sup> On the

Trading Floor, only Floor Brokers may submit two-sided Qualified Floor Orders to the Exchange's System for execution after the "open outcry" process described in greater detail below.<sup>207</sup> All of these order types are based on similar order types available on other options exchanges.<sup>208</sup> These order types are substantially similar to order types approved by the Commission on other exchanges and thus raise no novel regulatory issues.

After the opening, trades will execute on MIAX Sapphire when a buy order and a sell order match one another on the MIAX Sapphire order book ("MIAX Sapphire Book" or "Book").<sup>209</sup> The System will continuously and automatically match orders pursuant to price-time priority. The highest bid and lowest offer will have priority on the Exchange. Within each price level, if there are two or more orders at the best price, trading interest will be executed in time priority.<sup>210</sup>

MIAX Sapphire has proposed to make available order processing and matching features, which are based on those features available on MIAX Pearl. MIAX Sapphire's System will automatically execute incoming orders that are executable against orders in its System, provided that such incoming orders will not be executed at prices inferior to the

time period when the order type is not valid, the System will reject the order. Further, not all order types will be available for use on each of the MEO Interface and the FIX Interface, and the Exchange will issue a Regulatory Circular listing which order types, among the order types listed above, will be available for delivery via the MEO Interface and which will be available for delivery via the FIX Interface. See MIAX Sapphire Rule 516. "FIX Interface" means the Financial Information Exchange interface used for submitting certain order types to the MIAX Sapphire System. See MIAX Sapphire Rule 100.

<sup>207</sup> See MIAX Sapphire Rule 2040(a). A Qualified Floor Order will have an initiating side, which is the side of the order which must be filled in its entirety, and a contra-side, which must guarantee the full size of the initiating side of the Qualified Floor Order and may provide a maximum surrender size, as described below. See MIAX Sapphire Rule 2040(a)(1).

<sup>208</sup> See, e.g., Nasdaq Rules, Options 3, Section 7(a)(7) (Intermarket Sweep Order) and (a)(1) (Cancel-replacement Order); MIAX Exchange Rule 515(h) (Customer Cross Orders, Qualified Contingent Cross Orders, Complex Customer Cross Orders, Complex Qualified Contingent Cross Orders); NASDAQ ISE, LLC Rules, Options 3, Section 7(l) (Day Order) and (m) (Do-Not-Route Order); BOX Rule 7600 (Qualified Open Outcry Order, similar to MIAX Sapphire's proposed Qualified Floor Order).

<sup>209</sup> See MIAX Sapphire Form 1, Exhibit E at 53. MIAX Sapphire will open for trading with an opening process that is substantially identical to the opening process on MIAX Pearl. See MIAX Sapphire Rule 503 and MIAX Pearl Rule 503.

<sup>210</sup> See MIAX Sapphire Rule 514(a) and (b). As noted above, non-displayed orders will not be displayed to any Members and will not have time priority over displayed orders. See *supra* note 202 and accompanying text.

national best bid and offer ("NBBO").<sup>211</sup> MIAX Sapphire Rule 515 sets forth how MIAX Sapphire's System will handle incoming orders that cannot be executed in part or in full. In particular, MIAX Sapphire Rule 515 specifies a "price protection process" and a "managed interest process."

The MIAX Sapphire System offers a "price protection" process for all orders that prevents an order from being executed beyond the price designated in the order's price protection instructions ("the price protection limit").<sup>212</sup> When triggered, price protection will cancel an order or the remaining contracts of an order. The System will not execute such orders at prices inferior to the current NBBO.<sup>213</sup> The MIAX Sapphire price protection process is substantially similar to that adopted by MIAX Pearl and can benefit all market participants.<sup>214</sup>

The Exchange's rules also provide for a process that applies to non-routable orders<sup>215</sup> that would either lock or cross the current opposite side NBBO where the SBBO is inferior to the NBBO (the "Managed Interest Process").<sup>216</sup> The System will not execute such orders at prices inferior to the current NBBO.<sup>217</sup> The managed order would be displayed at one MPV away from the current opposite side NBBO and placed on the MIAX Sapphire Book at a price equal to the opposite side NBBO.<sup>218</sup> Should the NBBO price change to an inferior price level, the order's displayed price will continue to re-price so that it is displayed one MPV away from the new NBBO, and the order's Book price will continuously reprice to lock the new NBBO.<sup>219</sup> Such re-pricing will continue until the managed order is fully executed, reaches its limit price, reaches

<sup>211</sup> See MIAX Sapphire Rule 515(a) and (b).

<sup>212</sup> See MIAX Sapphire Rule 515(c). The price protection limit is expressed in units of MPV away from the NBBO at the time of the order's receipt, or the best bid and offer on MIAX Sapphire's regular Book ("SBBO") if the best bid or offer on away markets ("ABBO") is crossing the SBBO. See *id.* The Exchange will publish a Regulatory Circular setting a minimum and maximum number of MPVs away from the NBBO (or SBBO if the ABBO is crossing the SBBO) that a market participant may designate for its price protection limit. The Exchange will also set, and announce by Regulatory Circular, a default price protection limit within 1 to 5 MPVs away from the NBBO (or SBBO if the ABBO is crossing the SBBO). See *id.*

<sup>213</sup> See MIAX Sapphire Rule 515(c).

<sup>214</sup> See MIAX Pearl Rule 515(c).

<sup>215</sup> Non-routable orders would include, for example, orders marked "Do Not Route." See MIAX Sapphire Rule 515(d)(2)(i).

<sup>216</sup> See MIAX Sapphire Rule 515(d)(2).

<sup>217</sup> See *id.*

<sup>218</sup> See MIAX Sapphire Rule 515(d)(2)(ii). See also MIAX Pearl Rule 515(c)(1)(ii) (providing for the same Managed Interest Process on MIAX Pearl).

<sup>219</sup> See MIAX Sapphire Rule 515(d)(2)(ii).

<sup>200</sup> See MIAX Sapphire Form 1, Exhibit E at 51.

<sup>201</sup> See *id.*

<sup>202</sup> See *id.*

<sup>203</sup> See MIAX Sapphire Rules 2030(e)(2) and 2040(b). In addition, a Floor Broker must ascertain that at least one Floor Market Maker is present in the crowd area prior to announcing an order for execution and an Options Exchange Official will certify that the Floor Broker adequately announced the Qualified Floor Order to the trading crowd. See MIAX Sapphire Rules 2030(a) and 2040(b).

<sup>204</sup> See MIAX Sapphire Rule 2030(e).

<sup>205</sup> See MIAX Sapphire Rule 2040, Interpretations and Policies .05. Therefore, pursuant to MIAX Sapphire Rule 2040, Interpretations and Policies .05, Floor Participants utilizing the Trading Floor to effect transactions in covered accounts cannot rely on the G Exemption and must rely on other available exemptions to the prohibition in Section 11(a)(1) of the Act. See *infra* note 265 and accompanying text (describing the Section 11(a)(1) prohibition and defining "covered accounts").

<sup>206</sup> See MIAX Sapphire Rules 516 and 518 for a description of each of these order types. Some of these order types will be valid only during certain portions of the trading day (e.g., after the opening), and if a Member submits an order type during a

its price protection limit, or is cancelled.<sup>220</sup> During the Managed Interest Process, if the Exchange receives a new order or quote on the opposite side of the market from the managed order that could be executed, the System will immediately execute the remaining contracts to the extent possible at the initiating order's current booked bid or offer price, provided that it does not trade through the current NBBO.<sup>221</sup> MIAX Sapphire's Managed Interest Process is consistent with the managed interest process that the Commission approved for MIAX Pearl.<sup>222</sup>

On the Trading Floor, as described above, all Qualified Floor Orders will be subject to an open outcry process prior to submission to the System for execution. During this process, the Floor Broker must provide Floor Participants a reasonable amount of time to respond with interest in trading against the order held by the Floor Broker.<sup>223</sup> Then the Floor Broker must submit the Qualified Floor Order to the System without undue delay.<sup>224</sup> The execution price must be equal to or better than the NBBO, with certain exceptions, and may not trade through any equal priced or better priced Priority Customer bids or offers on the Book or trade through any better priced interest.<sup>225</sup> The highest bid (or lowest offer) will have priority, but where two or more bids (or offers) represent the highest (or lowest) price, priority will be afforded to such bids (or offers) in the sequence in which they are made.<sup>226</sup> The Floor Broker will be responsible for handling all orders in accordance with the Exchange's priority and trade-through rules and for

<sup>220</sup> See *id.*

<sup>221</sup> See MIAX Sapphire Rule 515(d)(2)(iii)(A). See also MIAX Pearl Rule 515(c)(1)(ii).

<sup>222</sup> See MIAX Pearl Rule 515(c)(1)(ii).

<sup>223</sup> See MIAX Sapphire Rule 2040, Interpretations and Policies .09. A Floor Participant must verbalize that he is "in" after a Floor Broker announces an order, even if a valid quote has been provided by the Floor Participant prior to the announcement of the order by a Floor Broker. See *id.*

<sup>224</sup> See MIAX Sapphire Rule 2040(c).

<sup>225</sup> See *id.* "Priority Customer" is defined as 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 accounts. See MIAX Sapphire Rule 100.

<sup>226</sup> See MIAX Sapphire Rule 2045(a) and (b). If the bids (or offers) of two or more Floor Participants are made simultaneously, or if it is impossible to 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. See MIAX Sapphire Rule 2045(c). MIAX Sapphire's rules also provide split-price priority to a Floor Participant that buys (sells) one or more contracts at one price with respect to buying (selling) the same number of contracts at the next lower (higher) price. See MIAX Sapphire Rule 2040(i).

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.<sup>227</sup> If Floor Participants provide a collective response to a Floor Broker's request for a market in order to fill a large order and the size of the trading crowd's market exceeds the size of the order to be filled, that order will be allocated on a size pro rata basis.<sup>228</sup>

When a Floor Broker holds an order of the eligible size or greater, the Floor Broker is entitled to cross a certain percentage of the order with other orders that he is holding.<sup>229</sup> Specifically, a Floor Broker is entitled to cross 40% of the remaining contracts in the order, after all equal or better priced Priority Customer bids or offers on the Electronic Book and any better priced interest is filled.<sup>230</sup> In addition, a Floor Broker may, but is not required to, provide a maximum surrender size, which is the number of contracts, if any, of the initiating side of the Qualified Floor Order that the Floor Broker is willing to relinquish to orders and quotes on the Book that have priority pursuant to MIAX Sapphire Rule 2040(c).<sup>231</sup> If the number of contracts on the Book that have priority over the contra-side order is greater than the maximum surrender size, then the Qualified Floor Order will be rejected.<sup>232</sup> If a Floor Broker announces a Qualified Floor Order to the trading crowd and Floor Participants respond with interest to the initiating side and the Floor Broker provides sufficient interest to match against the initiating side, the Floor Broker will allocate the initiating side of the order pursuant to an allocation process.<sup>233</sup>

The exposure, execution, and priority rules relating to Qualified Floor Orders are substantially similar to the exposure, execution, and priority rules of BOX's trading floor's Qualified Open Outcry Order.<sup>234</sup>

<sup>227</sup> See MIAX Sapphire Rules 2040(a) and 2045(d)(1).

<sup>228</sup> See MIAX Sapphire Rule 2045(d)(5). In such circumstances, the size of the order to be allocated will be multiplied by the size of an individual Floor Participant's quote divided by the aggregate size of all Floor Participants' quotes. See MIAX Sapphire Rule 2045(d)(5)(ii).

<sup>229</sup> See MIAX Sapphire Rule 2040(f)(1). The Exchange may determine, on an option by option basis, the eligible size, which may not be less than 50 contracts, for an order that may be transacted pursuant to this guarantee and will communicate any changes to the eligible order size to Participants via circular. See MIAX Sapphire Rule 2040(f)(2).

<sup>230</sup> See MIAX Sapphire Rule 2040(f)(3).

<sup>231</sup> See MIAX Sapphire Rule 2040(h).

<sup>232</sup> See *id.*

<sup>233</sup> See MIAX Sapphire Rule 2040(a)(1) and (d).

<sup>234</sup> See BOX Rule 7600.

A commenter states that MIAX Sapphire's proposed Rule 2045, which describes the role of a Floor Broker on the Trading Floor and priority in a trading crowd, "does not promote just and equitable principles of trade" and "hinders competition."<sup>235</sup> The commenter states that MIAX Sapphire Rule 2045 would permit a Floor Broker to determine the sequence in which bids or offers "would be vocalized" on the Trading Floor and the order in which Floor Market Makers "would be allocated."<sup>236</sup> The commenter further states that "[a]llowing a Floor Broker to determine the sequence in which a Floor Market Maker may vocalize liquidity in response to its Floor Broker's bid or offer and receive an allocation vests unnecessary power with the market participant and presents a conflict of interest."<sup>237</sup> The commenter explains that, "unlike an Options Exchange Official, a Floor Broker has a vested interest in the trade as a party to the transaction" such that "without providing any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers" the rule does not promote just and equitable principles of trade.<sup>238</sup> In response, the Exchange states that proposed MIAX Sapphire Rule 2045(d)(1) is "substantively identical" to BOX Rule 7610(d)(1),<sup>239</sup> and that it "disagrees with the assertion that there is some inherent conflict of interest that will impede upon just and equitable principles of trade."<sup>240</sup> The Exchange further states that proposed MIAX Sapphire Rule 2045(a) and (b) requires the Floor Broker to give priority to the highest bid and lowest offer respectively, and proposed MIAX Sapphire Rule 2045(c) provides that if

<sup>235</sup> Nasdaq Letter at 1. In response, the Exchange states that approximately 6% of total equity option contract volume is executed on physical trading floors and that "four exchange groups (Nasdaq, NYSE, Cboe, and BOX) have physical options trading floors, whereas [Miami International Holdings, LLC] does not, and is therefore unable to compete for this volume." MIAX Sapphire Letter at 2.

<sup>236</sup> Nasdaq Letter at 2.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* The commenter states that the rule does not "provide[] any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers." *Id.* The Exchange states that it "disagrees with the Nasdaq assessment that there is no guidance for Floor Brokers in ranking bids or offers" and states that the Exchange's Rule 2045(a) and (b) discusses the priority of bids and offers. See MIAX Sapphire Letter at 2.

<sup>239</sup> MIAX Sapphire Letter II at 3. A separate commenter states that the objection concerned "one minor rule" that "was identical to an existing rule on another options exchange," and calls for the Commission to quickly approve the Form 1. See Angel Letter at 1-2.

<sup>240</sup> MIAX Sapphire Letter at 3.

multiple bids or offers are made simultaneously, 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.<sup>241</sup> According to the Exchange, “MIAX Sapphire does in fact employ the use of Options Exchange Officials to ensure that just and equitable principles of trade are upheld.”<sup>242</sup> The Exchange states that the Options Exchange Officials will 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, and 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.<sup>243</sup>

The proposed rule does not allow a Floor Broker to “determine the sequence in which a Floor Market Maker *may* vocalize liquidity in response to [the] Floor Broker’s bid or offer” (emphasis added) as the commenter describes, but rather MIAX Sapphire Rule 2045 provides for price-time priority unless “the bids (or offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made,” in which case they are “deemed to be on parity.”<sup>244</sup> Thus, a Floor Broker cannot prospectively determine the order in which participants in the trading crowd “may” respond, but rather everyone in the trading crowd is free to respond and the Floor Broker determines the order in which each Floor Participant did, in fact, so respond. Paragraph (d) of the rule addresses the determination of time priority sequence, noting that the Floor Broker determines “who was first, second, third, and so forth.”<sup>245</sup> If there is any dispute over the Floor Broker’s determination of time priority sequence for the bids/offers the Floor Broker heard, an Options Exchange Official would resolve the dispute and the rule provides that the Options Exchange Official’s determination of time priority sequence follows the same process used by the Floor Broker.<sup>246</sup> Accordingly,

MIAX Sapphire Rule 2045 does not allow a Floor Broker to constrain the ability of a trading crowd to compete for orders and provides a reasonable process to settle any disputes in determining the time sequence order in which Floor Participants, in fact, vocalized their bids and offers, and as such this process does not raise concerns about just and equitable principles of trade or competition.

The commenter also states that the Exchange’s Rule 2045(d)(2), which would allow the Floor Participant with first priority to trade against all available contracts, “would disincentivize participation in the trading crowd by allowing a Floor Market Maker to block other liquidity providers from participating in the trade.”<sup>247</sup> The commenter further states that, “[a]s a result, Sapphire’s trading floor would attract less Floor Market Makers because the ability to participate in trades would be constrained,” and “Floor Market Maker participation in trading crowds is important for price discovery, liquidity, and competition.”<sup>248</sup> According to the commenter, the rule would result in a trading floor environment that “does not serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.”<sup>249</sup> In response, the Exchange states that the priority rule that the commenter describes “is the de facto definition of a price-time allocation model” and such a model “is not a new or novel concept in the options industry.”<sup>250</sup> The Exchange also states that, in addition to the Exchange’s rule being “substantively identical” to BOX Rule 7610(d)(2), the price-time allocation model is in use on a number of other electronic options exchanges, including Nasdaq BX, NYSE Arca, and Cboe BZX.<sup>251</sup> In addition, the Exchange states that “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.”<sup>252</sup> The Exchange further states that because the proposed rules of MIAX Sapphire provide Floor Brokers

with latitude over disclosing the size of the order, similar to other options trading floors, all Floor Participants are incentivized 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 be similarly unknown.<sup>253</sup>

The Commission agrees that Floor Market Maker participation in trading crowds is important for price discovery, liquidity, and competition. Unlike liquidity provided in an electronic trading system where the interest has a visible stated price and quantity, a response from a member of the trading crowd might not have an express verbalized quantity.<sup>254</sup> Nevertheless, Floor Participants are incentivized to compete by offering improved prices and responding promptly. Accordingly, the proposed rule by itself would not constrain the ability of Floor Market Makers to provide price improvement and compete for orders and thus does not raise a concern that the rule would not serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, as discussed above, the price-time allocation model will provide an objective methodology for allocating trades and the Options Exchange Official will resolve any disputes about the time priority sequence, thereby alleviating concerns that a Floor Broker may be prioritizing an allocation to a particular Floor Market Maker for reasons including a financial arrangement. The Commission agrees with the Exchange that MIAX Sapphire Rule 2045 “does not present any new or novel issues not already considered by the Commission”<sup>255</sup> because the MIAX Sapphire Rule is not substantively different than BOX Rule 7610.<sup>256</sup>

MIAX Sapphire will permit the trading of complex orders on the Exchange, including on the Trading Floor.<sup>257</sup> The proposed rules define the types of complex orders and quotes, and also describe the priority, execution, and allocation of complex orders and quotes, including a managed interest process for complex orders.<sup>258</sup> MIAX Sapphire also has proposed price and

<sup>241</sup> See MIAX Sapphire Letter II at 2–3.

<sup>242</sup> MIAX Sapphire Letter at 3 (stating that the Exchange’s Rule 2045(d) provides that the Options Exchange Official will resolve any disputes regarding a Floor Broker’s determination of time priority sequence and may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Exchange rules).

<sup>243</sup> See MIAX Sapphire Letter II at 3.

<sup>244</sup> See MIAX Sapphire Rule 2045(a), (b), and (c).

<sup>245</sup> See MIAX Sapphire Rule 2045(d)(1).

<sup>246</sup> See MIAX Sapphire Rule 2045(d)(1) and (3). In addition, MIAX Sapphire Rule 2040(b) requires an Options Exchange Official to certify that a Floor

Broker adequately announced the Qualified Floor Order to the trading crowd.

<sup>247</sup> Nasdaq Letter at 2.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.* The commenter also states that “if a Floor Broker had a financial arrangement with a Floor Market Maker, the Floor Broker could utilize this rule to favor a certain Floor Market Maker in terms of allocation by prioritizing that Floor Market Maker.” *Id.*

<sup>250</sup> MIAX Sapphire Letter at 3.

<sup>251</sup> See *id.* at 3–4.

<sup>252</sup> *Id.* at 4.

<sup>253</sup> See MIAX Sapphire Letter II at 4–5.

<sup>254</sup> Floor Market Maker quotations have a minimum size of 10 contracts. See MIAX Sapphire Rule 2105(c)(1).

<sup>255</sup> MIAX Sapphire Letter at 4.

<sup>256</sup> See *supra* note 234 and accompanying text. See also MIAX Sapphire Letter at 1 (“proposed Rule 2045 is substantively identical to BOX Rule 7610, which became effective on Aug. 2, 2017, is currently operative, and has never been amended”).

<sup>257</sup> See MIAX Sapphire Rules 518 and 2040.

<sup>258</sup> See MIAX Sapphire Rules 515, 518, and 2040.

order protection features for complex orders.<sup>259</sup> MIAX Sapphire's rules governing the trading of complex orders and quotes are consistent with the complex order rules that the Commission approved for MIAX Exchange and, with respect to the rules governing the trading of complex Qualified Floor Orders, BOX.<sup>260</sup>

MIAX Sapphire's proposed display, execution, and priority rules discussed above in this section are consistent with the Act. In particular, the Commission finds that the proposed rules are consistent with Section 6(b)(5) of the Act,<sup>261</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 to not permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rules are consistent with Section 6(b)(8) of the Act,<sup>262</sup> which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The trading rules of MIAX Sapphire are substantially similar to the current trading rules of MIAX Exchange, MIAX Pearl, MIAX Emerald, and other exchanges, as noted above, which were filed with and approved by the Commission (or otherwise became effective) pursuant to Section 19(b) of the Act.<sup>263</sup> With respect to the rules pertaining to the Trading Floor, the floor trading rules of MIAX Sapphire are substantially similar to the current floor trading rules of BOX, which were filed and approved by the Commission pursuant to Section 19(b) of the Act.<sup>264</sup> Therefore, these rules raise no novel regulatory issues and, as with the substantially similar rules of other

exchanges, the Commission finds that they are consistent with the Act.

#### 5. Section 11(a) of the Act

Section 11(a)(1) of the Act<sup>265</sup> prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, "covered accounts"), unless an exception applies. Sections 11(a)(1)(A)–(I)<sup>266</sup> of the Act and the rules thereunder provide certain exemptions from this general prohibition, including the exemption set forth in Rule 11a2–2(T) under the Act.<sup>267</sup> The Exchange has represented that it has analyzed its rules proposed hereunder, and believes that they are consistent with Section 11(a) of the Act and rules thereunder.<sup>268</sup>

As described above,<sup>269</sup> MIAX Sapphire Rule 2040, Interpretations and Policies .05 states that a Participant shall not utilize the Trading Floor to effect any transaction for a covered account by relying on the G Exemption.<sup>270</sup> Because no covered account transactions utilizing the Trading Floor may rely on the G Exemption, Participants utilizing the Trading Floor to effect transactions for covered accounts may only rely upon other exemptions to the Section 11(a)(1) prohibition.<sup>271</sup>

<sup>265</sup> 15 U.S.C. 78k(a)(1).

<sup>266</sup> 15 U.S.C. 78k(a)(1)(A)–(I).

<sup>267</sup> 17 CFR 240.11a2–2(T).

<sup>268</sup> See Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, dated Mar. 19, 2024 ("MIAX Sapphire 11(a) Request Letter").

<sup>269</sup> See *supra* note 205 and accompanying text.

<sup>270</sup> 15 U.S.C. 78k(a)(1)(G). Section 11(a)(1)(G) of the Act provides an exemption from the general prohibition in Section 11(a)(1) of the Act for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange. See also 17 CFR 240.11a1–1(T) (setting forth requirements for relying on the G Exemption).

<sup>271</sup> Section 11(a) of the Act and the rules thereunder provide other exemptions to the Section 11(a)(1) prohibition, including, for example, the "effect versus execute" exemption (as discussed below), the exemption for transactions by a dealer acting in the capacity of a market maker, and the exemption for transactions to offset a transaction made in error.

In addition to statutory exemptions, Rule 11a2–2(T) under the Act,<sup>272</sup> known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) may not be associated with the executing member; (ii) must transmit the order from off the exchange floor; (iii) may not participate in the execution of the transaction once the order has been transmitted to the member performing the execution;<sup>273</sup> and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.

In a letter to the Commission,<sup>274</sup> MIAX Sapphire requests that the Commission concur with its conclusion that Exchange Members that enter orders into the MIAX Sapphire trading system satisfy the requirements of Rule 11a2–2(T). For the reasons set forth below, Exchange Members entering orders into the MIAX Sapphire trading system, including Participants utilizing the Trading Floor, may comply with the conditions of Rule 11a2–2(T) under the Act.

First, Rule 11a2–2(T) requires that orders for covered accounts be transmitted from off the exchange floor. The Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.<sup>275</sup>

<sup>272</sup> 17 CFR 240.11a2–2(T).

<sup>273</sup> This prohibition also applies to associated persons. See 15 U.S.C. 78f(b)(8). The member may, however, participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) (regarding the NYSE's Designated Order Turnaround System) ("1978 Release").

<sup>274</sup> See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

<sup>275</sup> See, e.g., Securities Exchange Act Release Nos. 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR–BSE–2008–48) (order approving proposed rules of BX); 49068 (Jan. 13, 2004), 69 FR 2775 (Jan. 20, 2004) (establishing, among other things, BOX as an options trading facility of BSE); 44983 (Oct. 25, 2001), 66 FR 55225 (Nov. 1, 2001) (approving the PCX's use of the Archipelago Exchange as its equity trading facility); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility). See 1978 Release, *supra* note 273. See also Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979)

<sup>259</sup> See MIAX Sapphire Rule 518, Interpretations and Policies .03.

<sup>260</sup> See, e.g., MIAX Exchange Rule 518; BOX Rule 7600.

<sup>261</sup> 15 U.S.C. 78f(b)(5).

<sup>262</sup> 15 U.S.C. 78f(b)(8).

<sup>263</sup> Many of MIAX Exchange's rules were approved at the time that MIAX Exchange's registration as a national securities exchange was granted. See MIAX Order, *supra* note 18.

<sup>264</sup> See Securities Exchange Act Release No. 81292 (Aug. 2, 2017), 82 FR 37144 (Aug. 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).



Floor Brokers will receive orders from members electronically through the use of a variety of systems.<sup>276</sup> The Exchange states that, in order to rely on the “effect versus execute” exemption, a Participant would submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker.<sup>277</sup> Accordingly, Participants utilizing the Trading Floor and relying on the “effect versus execute” exemption may satisfy the off-floor transmission requirement. Further, with respect to orders submitted from remote locations directly to the MIAX Sapphire System, the MIAX Sapphire System satisfies this off-floor transmission condition.

Second, Rule 11a2–2(T) requires that neither the initiating exchange member nor an associated person of the initiating exchange member participate in the execution of the transaction any time after the order for the transaction has been transmitted. MIAX Sapphire has represented that at no time following the submission of an order into the System will the submitting Exchange Member or any associated person of such member acquire control or influence over the result or timing of an order’s execution.<sup>278</sup> In addition, the Exchange states that once a Floor Broker submits an order to the Exchange’s system for execution, neither the Floor Broker nor anyone else may alter the terms of the order.<sup>279</sup> Moreover, the execution of an Exchange Member’s order will be in accordance with MIAX Sapphire rules and based on market conditions present in the MIAX Sapphire System at the time the Exchange Member submits the order.<sup>280</sup>

(regarding the American Stock Exchange (“Amex”) Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) (“1979 Release”).

<sup>276</sup> See *supra* note 133.

<sup>277</sup> See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

<sup>278</sup> See *id.* Exchange Members may change or cancel an order or quote at any time before the order is executed on the Exchange. See MIAX Sapphire Form 1, Exhibit E. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, *supra* note 273 (stating that the “non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor”).

<sup>279</sup> See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

<sup>280</sup> See *id.*

Accordingly, an Exchange Member and its associated persons would not participate in the execution of its order submitted for execution to the MIAX Sapphire System.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member that is not associated with the exchange member initiating the order. To rely on the exemption in Rule 11a2–2(T), a Participant could submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker. A Participant relying on Rule 11a2–2(T) could not submit an order for a covered account to its “house” Floor Broker on the Trading Floor for execution. If a Participant sends its order from off the floor to an affiliated Participant that is on the Trading Floor, who then directs the order into the MIAX Sapphire System for execution, the off-floor Participant may not rely on the exemption in Rule 11a2–2(T). Further, with respect to orders submitted from remote locations directly to the MIAX Sapphire System, the Commission has stated that the requirement is satisfied when automated exchange facilities, such as the MIAX Sapphire System, are used, as long as the design of these systems ensures that Exchange Members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to the Exchange.<sup>281</sup> MIAX Sapphire has represented that the design of its System ensures that no member has any special or unique trading advantage over non-members in the handling of its orders after transmitting its orders to MIAX Sapphire.<sup>282</sup> Therefore, the MIAX Sapphire System satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the

<sup>281</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). See 1979 Release, *supra* note 275.

<sup>282</sup> See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.<sup>283</sup> Exchange Members and their associated persons trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule’s exemption.<sup>284</sup>

#### D. Discipline and Oversight of Members

One prerequisite for the Commission’s grant of an exchange’s application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.<sup>285</sup> Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the Act and the rules and regulations thereunder and the rules of the exchange.<sup>286</sup>

MIAX Sapphire’s rules codify MIAX Sapphire’s disciplinary jurisdiction over its Members, thereby facilitating its ability to enforce its Members’ compliance with its rules and the federal securities laws.<sup>287</sup> MIAX Sapphire’s rules permit it to sanction Members for violations of its rules and violations of the federal securities laws and rules, by, among other things, expelling or suspending Members; limiting Members’ activities, functions, or operations; fining or censuring Members; suspending or barring a person from being associated with a Member; or any other fitting sanction in accordance with MIAX Sapphire rules.<sup>288</sup>

MIAX Sapphire’s disciplinary and oversight functions will be administered in accordance with Chapter X of the MIAX Sapphire Rules, which governs

<sup>283</sup> 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2–2(T)(d). See also 1978 Release, *supra* note 273 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

<sup>284</sup> See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

<sup>285</sup> See 15 U.S.C. 78f(b)(1).

<sup>286</sup> See *id.*

<sup>287</sup> See MIAX Sapphire Rule 1000.

<sup>288</sup> See *id.* See also MIAX Exchange Rule 1000 and MIAX Pearl Rule 1000 (containing similar provisions).

disciplinary actions. Unless delegated to another SRO pursuant to the terms of any effective 17d-2 plan,<sup>289</sup> MIAX Sapphire's regulatory staff (including regulatory staff of another SRO that may be acting on MIAX Sapphire's behalf pursuant to an RSA) will, among other things, investigate potential securities laws violations and initiate charges pursuant to MIAX Sapphire rules.<sup>290</sup>

Upon a finding of probable cause of a violation within the disciplinary jurisdiction of MIAX Sapphire and where further proceedings are warranted,<sup>291</sup> MIAX Sapphire will conduct a hearing on disciplinary matters before a professional hearing officer<sup>292</sup> and two members of the Business Conduct Committee<sup>293</sup> (the "Panel").<sup>294</sup> The MIAX Sapphire Member (or their associated person) or the MIAX Sapphire regulatory staff may petition for review of the decision of the Panel by the MIAX Sapphire Board.<sup>295</sup> Any review would be conducted by the MIAX Sapphire Board or a committee thereof composed of at least three Directors of the MIAX Sapphire Board<sup>296</sup> (whose decision must be ratified by the MIAX Sapphire Board) and such decision will be final.<sup>297</sup> In addition, the MIAX Sapphire Board on its own motion may order review of a disciplinary decision.<sup>298</sup>

Appeals from any determination that impacts access to MIAX Sapphire, such as termination or suspension of membership, will be instituted under, and governed by, the provisions in the Chapter XI of the MIAX Sapphire Rules,

<sup>289</sup> See *supra* section III.B.4.c (concerning the 17d-2 plans to which MIAX Sapphire has committed to join).

<sup>290</sup> See MIAX Sapphire Rules 1002 and 1004. As stated above, MIAX Sapphire will enter into an RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of MIAX Sapphire. See MIAX Sapphire Rule 1015.

<sup>291</sup> See MIAX Sapphire Rule 1004.

<sup>292</sup> See MIAX Sapphire Rule 1015, Interpretation and Policy .01.

<sup>293</sup> See MIAX Sapphire By-Laws, Article IV, Section 4.7.

<sup>294</sup> See MIAX Sapphire Rule 1006.

<sup>295</sup> See MIAX Sapphire Rule 1010(a).

<sup>296</sup> Specifically, the Exchange Chairman, with the approval of the Board, will appoint an Appeals Committee to preside over all appeals related to disciplinary and adverse action determinations. See *supra* note 51 and accompanying text (detailing the composition of the Appeals Committee). If the Independent Director serving on the Appeals Committee recuses himself or herself from an appeal, due to a conflict of interest or otherwise, the Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as the replacement. See MIAX Sapphire By-Laws, Article IV, Section 4.5(d). See also MIAX Exchange Amended and Restated By-Laws, Article IV, Section 4.5(d).

<sup>297</sup> See MIAX Sapphire Rule 1010(b).

<sup>298</sup> See *id.*

which incorporates by reference Chapter XI of the MIAX Exchange Rules. MIAX Sapphire's Chapter XI applies to persons economically aggrieved by Exchange action including, but not limited to: (a) denial of an application to become a Member; (b) barring a person from becoming associated with a Member; or (c) limiting or prohibiting services provided by MIAX Sapphire or services of any Exchange Member.<sup>299</sup>

Any person aggrieved by an action of MIAX Sapphire within the scope of Chapter XI may file a written application to be heard within thirty days<sup>300</sup> after such action has been taken.<sup>301</sup> Applications for hearing and review will be referred to the Business Conduct Committee, which will appoint a hearing panel of no less than three members of such Committee.<sup>302</sup> The decision of the hearing panel made pursuant to Chapter XI of the MIAX Sapphire Rules is subject to review by the MIAX Sapphire Board, either on its own motion within thirty days after issuance of the decision, or upon written request submitted by the applicant or the President of MIAX Sapphire, within 15 days after issuance of the decision.<sup>303</sup> The review would be conducted by the MIAX Sapphire Board

<sup>299</sup> See MIAX Sapphire Rule 1100 (which incorporates by reference MIAX Exchange Rule 1100). As stated above, MIAX Sapphire will enter into an RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of MIAX Sapphire. MIAX Sapphire may perform some or all of the functions specified in the Chapter XI of the MIAX Sapphire Rules, which incorporates by reference Chapter XI of the MIAX Exchange Rules. See *supra* note 114 and accompanying text. See also MIAX Sapphire Rule 1106 (which incorporates by reference MIAX Exchange Rule 1106).

<sup>300</sup> An applicant may file for an extension of time as allowed by the Chairman of the Business Conduct Committee within thirty days of MIAX Sapphire's action. An application for an extension will be ruled upon by the Chairman of the Business Conduct Committee and his ruling will be given in writing. Rulings on applications for extensions of time are not subject to appeal. See MIAX Sapphire Rule 1101(b) (which incorporates by reference MIAX Exchange Rule 1101(b)).

<sup>301</sup> See MIAX Sapphire Rule 1101(a) (which incorporates by reference MIAX Exchange Rule 1101(a)). The application must include: (1) the action for which review is sought; (2) the specific reasons for the applicant's exception to such action; (3) the relief sought; and (4) whether the applicant intends to submit any documents, statements, arguments, or other material in support of the application, with a description of any such materials. See *id.*

<sup>302</sup> See MIAX Sapphire Rule 1102(a) (which incorporates by reference MIAX Exchange Rule 1102(a)). The decision of the hearing panel will be made in writing and sent to the parties to the proceedings. See MIAX Sapphire Rule 1103(d) (which incorporates by reference MIAX Exchange Rule 1103(d)).

<sup>303</sup> See MIAX Sapphire Rule 1104(a) (which incorporates by reference MIAX Exchange Rule 1104(a)). The MIAX Sapphire Board, or a committee of the MIAX Sapphire Board, will have sole discretion to grant or deny either request. See *id.*

or a committee of the MIAX Sapphire Board composed of at least three Directors.<sup>304</sup>

The Commission finds that MIAX Sapphire's proposed disciplinary and oversight rules and structure, as well as its proposed process for persons economically aggrieved by certain MIAX Sapphire actions, are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act<sup>305</sup> in that they provide that members and persons associated with members shall be appropriately disciplined for violation of the rules of the exchange and provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposed MIAX Sapphire Rules are designed to provide MIAX Sapphire with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of MIAX Sapphire.<sup>306</sup> The Commission notes that MIAX Sapphire's proposed disciplinary and oversight rules and structures are similar to the rules of other exchanges.<sup>307</sup>

#### E. Listing Requirements

MIAX Sapphire does not intend to initially list or trade common stock or non-option securities of operating companies but rather intends to initially only trade option contracts that meet the options listing standards of the Exchange.<sup>308</sup> MIAX Sapphire's listing rules, including the criteria for the underlying securities of the options to be traded, are substantially similar to the listing rules of MIAX Exchange.<sup>309</sup>

<sup>304</sup> See MIAX Sapphire Rule 1104(b) (which incorporates by reference MIAX Exchange Rule 1104(b)). The MIAX Sapphire Board or its designated committee may affirm, reverse, or modify in whole or in part, the decision of the hearing panel. The decision of the MIAX Sapphire Board or its designated committee will be final, will be in writing, and will be sent to the parties to the proceeding. See MIAX Sapphire Rule 1104(c) (which incorporates by reference MIAX Exchange Rule 1104(c)).

<sup>305</sup> 15 U.S.C. 78f(b)(6) and (b)(7), respectively.

<sup>306</sup> See 15 U.S.C. 78f(b)(1).

<sup>307</sup> See, e.g., ISE Mercury Order, *supra* note 32; ISE Gemini Order, *supra* note 32; and MIAX Order, *supra* note 18.

<sup>308</sup> See MIAX Sapphire Form 1, Exhibit H.

<sup>309</sup> See MIAX Sapphire Rules Chapter IV (Option Contracts Traded on the Exchange); MIAX Exchange Rules Chapter IV; and MIAX Sapphire Rules Chapter XVIII (Index Options) (which incorporates by reference MIAX Exchange Rules Chapter XVIII). After the submission of the Form 1, MIAX Exchange adopted a "Low Priced Stock Strike Price Interval Program" and a "Monthly Options Series Program" that are not in the MIAX Sapphire Rules as proposed. See MIAX Exchange Rule 404, Interpretations and Policies .12 and .13.

The Commission finds that MIAX Sapphire's proposed initial and continued listing rules are consistent with the Act, including Section 6(b)(5),<sup>310</sup> in that they are designed to protect investors and the public interest, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade. Before beginning operation, MIAX Sapphire will need to become a participant in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("OLPP").<sup>311</sup> In addition, before beginning operation, MIAX Sapphire will need to become a participant in the Options Clearing Corporation.

**IV. Exemption From Section 19(b) of the Act With Regard to MIAX Exchange, Cboe, New York Stock Exchange ("NYSE"), and FINRA Rules Incorporated by Reference**

MIAX Sapphire has proposed to incorporate by reference certain MIAX Exchange, Cboe, NYSE and FINRA rules.<sup>312</sup> Thus, for certain MIAX Sapphire rules, Exchange Members will comply with a MIAX Sapphire rule by complying with the referenced MIAX Exchange, Cboe, NYSE, and FINRA rules.

In connection with the proposal to incorporate MIAX Exchange, Cboe, NYSE and FINRA rules by reference, MIAX Sapphire requests, pursuant to Rule 240.0-12 under the Act,<sup>313</sup> an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to the MIAX Sapphire rules that are effected solely by virtue of a change to a cross-referenced MIAX Exchange,

Cboe, NYSE, or FINRA rule.<sup>314</sup> MIAX Sapphire has proposed to incorporate by reference categories of rules, rather than individual rules within a category, that are not trading rules. In addition, MIAX Sapphire agrees to provide written notice to its members whenever MIAX Exchange, Cboe, NYSE, or FINRA proposes a change to a cross-referenced rule<sup>315</sup> and whenever any such proposed changes are approved by the Commission or otherwise become effective.<sup>316</sup>

Using the authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.<sup>317</sup> The Commission is hereby granting MIAX Sapphire's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that MIAX Sapphire has proposed to incorporate by reference. The exemption is conditioned upon MIAX Sapphire providing written notice to MIAX Sapphire members whenever MIAX Exchange, Cboe, NYSE, or FINRA proposes to change an incorporated by reference rule and whenever any such proposed changes are approved by the Commission or otherwise become effective. The exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of the Commission's and SROs' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought to be implemented by more than one SRO.

**V. Conclusion**

*It is ordered* that the application, as amended, of MIAX Sapphire for registration as a national securities exchange be, and it hereby is, granted.

*It is further ordered* that operation of MIAX Sapphire is conditioned on the satisfaction of the requirements below:

**a. Participation in National Market System Plans Relating to Options**

<sup>314</sup> See Letter from Gregory P. Ziegler, Senior Counsel, Miami Holdings, dated Oct. 25, 2023.

<sup>315</sup> See *id.*

<sup>316</sup> MIAX Sapphire will provide such notice through a posting on the same website location where MIAX Sapphire posts its own rule filings pursuant to Rule 19b-4 under the Act, within the required time frame. The website posting will include a link to the location on the MIAX Exchange, Cboe, NYSE, or FINRA website where MIAX Exchange, Cboe, NYSE, or FINRA's proposed rule change is posted. See *id.*

<sup>317</sup> See, e.g., MIAX Emerald, MIAX Pearl, MIAX Order, and BATS Order, *supra* note 18; Mercury Order, *supra* note 32; C2 Order, *supra* note 85; Nasdaq Order, *supra* note 32; and NOM Approval Order, *supra* note 189.

*Trading.* MIAX Sapphire must join: (1) the Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; (4) the Plan of the Options Regulatory Surveillance Authority; and (5) the Plan Governing the Consolidated Audit Trail.

**b. Bi-lateral Rule 17d-2 Plan.** A plan pursuant to Rule 17d-2<sup>318</sup> that allocates regulatory responsibility for those matters specified above<sup>319</sup> must be declared effective by the Commission, or MIAX Sapphire must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

**c. Participation in Multiparty Rule 17d-2 Plans.** MIAX Sapphire must become a party to the multiparty Rule 17d-2 plans concerning options sales practice regulation and market surveillance, and covered Regulation NMS rules.

**d. RSA.** MIAX Sapphire must have entered into an RSA with its regulatory service provider, as described above, that specifies the MIAX Sapphire and Commission rules for which the regulatory services provider will provide certain regulatory functions, or MIAX Sapphire must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

**e. Participation in the Options Clearing Corporation.** MIAX Sapphire must become an Options Clearing Corporation participant exchange.

**f. Participation in the Intermarket Surveillance Group.** MIAX Sapphire must join the Intermarket Surveillance Group.

*It is further ordered*, pursuant to Section 36 of the Act,<sup>320</sup> that MIAX Sapphire shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the MIAX Exchange, Cboe, NYSE, and FINRA rules that MIAX Sapphire proposes to incorporate by reference, subject to the conditions specified in this order that MIAX Sapphire provide written notice to MIAX Sapphire members whenever MIAX Exchange, Cboe, NYSE, or FINRA proposes to change an incorporated by reference rule and whenever any such proposed changes are approved by the Commission or otherwise become effective.

By the Commission.

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

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<sup>318</sup> 17 CFR 240.17d-2.

<sup>319</sup> See *supra* notes 125-126 and accompanying text.

<sup>320</sup> 15 U.S.C. 78mm.

<sup>310</sup> 15 U.S.C. 78f(b)(5).

<sup>311</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>312</sup> Specifically, MIAX Sapphire has proposed to incorporate by reference the following MIAX Exchange Rules: Chapter III (Business Conduct), Chapter VII (Exercises and Deliveries), Chapter VIII (Records, Reports and Audits), Chapter IX (Summary Suspension), Chapter XI (Hearings, Review and Arbitration), Chapter XIII (Doing Business With the Public), Chapter XIV (Order Protection, Locked and Crossed Markets), Chapter XV (Margins), Chapter XVI (Net Capital Requirements), Chapter XVII (Consolidated Audit Trail Compliance Rule), and Chapter XVIII (Index Options). The following rules are cross-referenced in the MIAX Exchange Rules: MIAX Exchange Rule 1107 (Arbitration) incorporates by reference the Rule 12000 Series and Rule 13000 Series of the FINRA Manual and FINRA Rule 2268; MIAX Exchange Rule 1321 (Transfer of Accounts) cross-references FINRA Rule 11870; MIAX Exchange Rule 1502 (Margin Requirements) cross-references the Cboe and NYSE rules concerning initial and maintenance margin requirements that may be in effect from time to time.

<sup>313</sup> 17 CFR 240.0-12.