



Greg Ferrari
Vice President
151 West 42nd Street
New York, NY 10036

November 27, 2023

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F. Street NE.
Washington, DC 20549

Re: MIAX Sapphire, LLC – Form 1 Application for Registration as a National Securities Exchange Pursuant to Section 6 of the Securities Exchange Act of 1934

Dear Ms. Countryman:

The Nasdaq Stock Market LLC, Nasdaq PHX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC markets (collectively “Nasdaq”) respectfully submit this comment in response to a Form 1 Application for Registration as a National Securities Exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (“Act”) that was filed by MIAX Sapphire, LLC (“Sapphire”). Specifically, Nasdaq’s comments with respect to Sapphire’s Form 1 relate to Sapphire’s proposed Rule 2045, Priority in a Trading Crowd,¹ which describes the role of a Floor Broker on the trading floor and priority in a trading crowd. Nasdaq believes that Sapphire’s proposed Rule 2045 does not promote just and equitable principles of trade, rather the proposed rule hinders competition.

¹ Sapphire’s proposed Rule 2045(d) provides, (1) A Floor Broker is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor in response to the Floor Broker’s bid, offer, or call for a market. A Floor Participant that established priority pursuant to Interpretation and Policy .01(c) of Rule 2040 must inform the Floor Broker of such priority when the Floor Broker announces the order. Any disputes regarding a Floor Broker’s determination of time priority sequence will be resolved by the Options Exchange Official. An Options Exchange Official may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Exchange’s Rules. (2) When a Floor Broker’s bid or offer has been accepted by more than one Floor Participant, that Floor Broker must designate that Floor Participant who was first, second, third, and so forth. Except as provided below, the Floor Participant with first priority is entitled to buy or sell as many contracts (or strategies) as the Floor Broker may have available to trade. If there are any contracts (or strategies) remaining, the Floor Participant with second priority will be entitled to buy or sell as many contracts (or strategies) as there are remaining in the Floor Broker’s order, and so on, until the Floor Broker’s order has been filled entirely.

Role of Floor Broker

Proposed Rule 2045 permits a Floor Broker² to determine the sequence in which bids or offers would be vocalized on the trading floor and, thereafter, the order in which Floor Market Makers would be allocated without providing any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers. Nasdaq does not believe proposed Rule 2045 promotes just and equitable principles of trade because, unlike an Options Exchange Official,³ a Floor Broker has a vested interest in the trade as a party to the transaction. Allowing 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.

Priority in the Trading Crowd

Further, proposed Rule 2045(d)(2) provides that if a Floor Broker's bid or offer has been accepted by more than one Floor Participant, the Floor Participant with first priority is entitled to buy or sell as many contracts (or strategies) as the Floor Broker may have available to trade. Permitting a Floor Market Maker that was granted first priority from the Floor Broker to buy or sell as many contracts as the Floor Broker has available would prevent other Floor Market Makers from participating in that trade. Nasdaq believes that this practice of limiting participation in trades by allowing a single Floor Market Maker 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. As a result, Sapphire's trading floor would attract less Floor Market Makers because the ability to participate in trades would be constrained. Floor Market Maker participation in trading crowds is important for price discovery, liquidity and competition. Creating a floor environment that permits a Floor Market Maker to deter other Floor Market Makers from participating in a trade does not serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, 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.

For these reasons, Nasdaq believes that Sapphire's proposed Rule 2045 is not consistent with Section 6(b) of Act and does not further the objectives of Section 6(b)(5) of the Act.

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² Proposed Rule 2015 defines a Floor Broker as "an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as a Floor Participant prior to registering as a Floor Broker. A Floor Broker may take into his own account, and subsequently liquidate, any position that results from an error made while attempting to execute, as Floor Broker, an order."

³ Pursuant to proposed Interpretations and Policies .02 of Rule 2080, an Options Exchange Official is any Exchange employee or official designated as an Options Exchange Official will from time to time as provided in these Rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety and welfare on the Exchange.

Nasdaq appreciates the opportunity to comment on Sapphire's Form 1. If you have any additional questions, or if we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Ferrari". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Greg Ferrari
Vice President, U.S. Options