

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96286; File No. SR-Phlx-2022-45)

November 9, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 28, 2022, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the expiration date of the temporary amendments in SR-Phlx-2020-53 from October 31, 2022, to January 31, 2023.<sup>4</sup> The proposed rule change would not make any changes to the text of the Exchange rules.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, the Exchange will submit a separate rule filing to further extend the temporary

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue to harmonize Exchange Rule General 3, Section 16 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rule 1015 in response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities.<sup>5</sup> The Exchange originally filed

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extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

<sup>5</sup> See Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-029). (“FINRA Filing”). The Exchange notes that the FINRA Filing also proposed to temporarily amend FINRA Rules 9261, 9524, and 9830, which govern hearings in connection with appeals of disciplinary actions, eligibility proceedings, and temporary and permanent cease and desist orders. The Exchange’s Rules 9261, 9524, and 9830 incorporate by reference The Nasdaq Stock Market LLC rules, which are the subject of a separate filing. See SR-NASDAQ-2022-059. Therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

proposed rule change SR-Phlx-2020-53, which allows the Exchange Review Council (“ERC”) to conduct hearings in connection with appeals of Membership Application Program decisions, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. In July 2022, the Exchange filed a proposed rule change, SR-Phlx-2022-32, to extend the expiration date of the temporary amendments in SR-Phlx-2020-53 from July 31, 2022, to October 31, 2022.<sup>6</sup> Although there has been a downward trend in the number of COVID-19 cases since July 2022, the Exchange believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, the Exchange notes that COVID-19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (“CDC”), the 7-day moving average of new deaths from COVID-19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,<sup>7</sup> and approximately 19 percent of counties in the United States have a

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<sup>6</sup> See Securities Exchange Act Release No. 95435 (August 5, 2022), 87 FR 49635 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2022-32); see also Securities Exchange Act Release No. 94611 (April 5, 2022), 87 FR 21230 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2022-15); Securities Exchange Act Release No. 93853 (December 22, 2021), 86 FR 74164 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2021-75); Securities Exchange Act Release No. 92906 (September 9, 2021), 86 FR 51404 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2021-49); Securities Exchange Act Release No. 91766 (May 4, 2021), 86 FR 25014 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2021-27); Securities Exchange Act Release No. 90758 (December 21, 2020), 85 FR 85782 (December 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2020-053).

<sup>7</sup> See CDC, COVID Data Tracker - Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailydeaths\\_select\\_00](https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00) (last visited Oct. 24, 2022).

medium or high COVID-19 Community Level based on the CDC's most recent calculations.<sup>8</sup> Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID-19 in the future given the emergence of new Omicron variants that the CDC currently is tracking<sup>9</sup> and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.

As set forth in SR-Phlx-2020-53, the Exchange also relies on COVID-19 data and criteria to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference. Based on that data and criteria, the Exchange believes that there will be a continued need for this temporary relief beyond October 31, 2022. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR-Phlx-2020-53 from October 31, 2022, to January 31, 2023. The extension of the temporary amendments allowing for specified ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances – enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while also protecting the health and safety of hearing participants.

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<sup>8</sup> See CDC, COVID Data Tracker – COVID-19 Integrated County View, [https://covid.cdc.gov/covid-data-tracker/#county-view?list\\_select\\_state=all\\_states&list\\_select\\_county=all\\_counties&data-type=CommunityLevels&null=CommunityLevels](https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels) (last visited Oct. 24, 2022).

<sup>9</sup> These new Omicron variants include BA.4.6, BF.7, and BA.2.75. See CDC, COVID Data Tracker – Variant Proportions, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last visited Oct. 24, 2022).

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>12</sup> resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR-Phlx-2020-53, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given that COVID-19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing ERC hearings to proceed by video conference, the Exchange might be required to postpone some or almost all hearings for a significant period of time. The Exchange must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See supra note 5.

investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR-Phlx-2020-53, this temporary relief allowing ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR-Phlx-2020-53, the proposed rule change is intended solely to extend temporary relief necessitated by the continued presence of COVID-19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange believes the COVID-19 related health concerns necessitating this relief will continue beyond October 31, 2022.<sup>17</sup>

Importantly, extending the temporary relief provided in SR-Phlx-2020-53 immediately

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> See supra Item II.

upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.<sup>18</sup> The Commission also notes that this proposal extends without change the temporary relief previously provided by SR-Phlx-2020-53.<sup>19</sup> As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.<sup>20</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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<sup>18</sup> See 87 FR 64526, at 64528-29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR-FINRA-2022-029 would become operative immediately upon filing).

<sup>19</sup> See supra note 6.

<sup>20</sup> See supra note 4. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2022-45 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2022-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2022-45 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

J. Matthew DeLesDernier  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).