

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97825; File No. SR-Phlx-2023-28)

June 30, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Purge Ports For Equities Trading

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 establish Purge Ports for equities trading.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange is proposing to establish a new port type, “Purge Port,” which is a function enabling PSX Participants (the “Participants”) to cancel all open orders or a subset of open orders (per MPID, buy or sell side of the order, or ticker symbol) across multiple protocols through a single cancel message.³ The Exchange also proposes to amend the Pricing Schedule in Equity 7, Section 3 to set fees for Purge Ports and to waive the fees for the Purge Ports in the Exchange’s Test Facility for the first two months a Participant uses them in the Test Facility. Finally, the Exchange proposes to make functional enhancements to its Order entry protocols to include a function enabling Participants to cancel, through a single cancel message, all open orders or a subset of open orders (per MPID, buy or sell side of the order, or ticker symbol) entered through that port (the “purging functionality”).

A logical port represents a port established by the Exchange within the Exchange’s system for trading and billing purposes. Each logical port grants a Participant the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

The proposed Purge Ports are designed to assist Participants, including Market Makers⁴ in the management of, and risk control over, their orders, particularly if the firm is dealing with a large number of securities. For example, if a Participant detects market indications that may influence the execution potential of their orders, the Participant may use the proposed Purge Ports to reduce uncertainty and to manage risk by purging all orders in a number of securities.

³ Purge Ports will be available for RASH, FIX and OUCH protocols.

⁴ Member organizations seeking to become registered as a PSX Market Maker must comply with the applicable requirements of General 3, Section 1. See Equity 2, Section 4.

This would allow the Participant to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. While Purge Ports will be available to all Participants, the Exchange anticipates they will be used primarily by firms that conduct business activity that exposes them to a large amount of risk across a number of securities. The proposed purging functionality will operate similar to a Purge Port, by allowing a Participant to purge all orders or a subset of open orders (per MPID, buy or sell side of the order, or ticker symbol) open on that port. The only material difference for a Participant, between relying on the purging functionality as opposed to using a Purge Port, is that Purge Port requires a Participant to send one message to accomplish desired cancellation of orders or a subset thereof as described above, while the purging functionality requires a Participant to send multiple messages (which could be sent simultaneously) to accomplish the same task.⁵

Participants may currently cancel individual orders through the existing functionality of the RASH Order entry protocol,⁶ FIX Order entry protocol⁷ and the OUCH Order entry protocol.⁸ In addition to the current functionality, which is being retained, the Exchange now proposes to expand the ability of Participants to cancel orders through the new purge functionality, which would enable them to cancel all open orders or a subset of open orders (per MPID, buy or sell side of the order, or ticker symbol) entered through a single port; and through

⁵ The Exchange expects the purging functionality to remain substantially similar to Purge Ports, as described above, and would offer the purging functionality as long as it offers Purge Ports.

⁶ The RASH Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing.

⁷ Financial Information eXchange (FIX) is a vendor-neutral standard message protocol that defines an electronic message exchange for communicating securities transactions between two parties.

⁸ The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders.

the proposed Purge Ports, which would enable them to cancel all open orders, or a subset of open orders (per MPID, buy or sell side of the order, or ticker symbol) across multiple protocols through a single cancel message.

The Exchange notes that dedicated Purge Ports are not a new functionality for equities exchanges, as other equity exchanges already offer similar functionality.⁹ The Exchange also notes that the proposed Purge Ports increase efficiency of already existing functionality enabling the cancellation of orders. Nasdaq operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel orders at high rates. In that regard, Participants can cancel orders in rapid succession across their order entry ports.¹⁰ In addition, the Exchange provides a similar ability to mass cancel orders through the Nasdaq Kill Switch, which is an optional tool offered at no charge that enables Participants to establish pre-determined levels of risk exposure, which can be used to cancel all open orders. Similarly, Participants may use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to immediately cancel all pending Exchange orders except for good-till-canceled orders. Accordingly, the Exchange believes that the purge functionality and Purge Ports provide an efficient option as an alternative to already available services and enhance the Participant's ability to manage their risk.

⁹ See Securities Exchange Act Release No. 84405 (October 11, 2018), 83 FR 52598 (October 17, 2018)(SR-CboeEDGA-2018-016). Explaining its decision to waive the 30-day operative delay of this proposed rule change, the Commission stated that it believed that purge ports may be a helpful tool for managing the risk associated with trading equities, and that this can be important both for individual market participants and the market in general.

¹⁰ Current Exchange port functionality supports cancellation rates that exceed one thousand messages per second and the Exchange's research indicates that certain Participants rely on such functionality and at times utilize such cancellation rates.

The Exchange proposes to provide the purging functionality without charging any additional fees. All existing ports will be enhanced with the purging functionality and will continue to be subject to the existing fee schedule without any changes.

The Exchange proposes to adopt a fee for Purge Ports of \$500 per port/per month. As stated above, the Exchange believes that Participants would benefit from a dedicated purge mechanism. Only firms that request Purge Ports would be subject to the proposed fees, and other firms can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging functionality.

The Exchange proposes to waive the applicable \$300 per Purge Port, per month fees for Participants that use their PSX access protocols connection through the Exchange's Testing Facility to test the new Purge Ports. The fees will be waived for the first two calendar months from the date the participant first receives access to Purge Ports in the Test Facility. A Participant may choose to conduct testing for OUCH, FIX and RASH protocols simultaneously or at different times. If a Participant chooses to conduct tests for their protocols separately, the fees will be waived each time.

After the two months of service, a Participant will be expected to have fully tested the new Purge Ports and will be charged for any fees incurred for using the Exchange's Testing Facility ports thereafter.

Implementation

The Exchange intends to implement the proposed rule changes on or before March 31, 2024. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the Purge Ports and the purging functionality, as described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also 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.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Participants a new optional service promotes choice, flexibility, efficiency, and competition. The Exchange believes the new features may enhance participants' ability to manage orders, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that the purging functionality and the Purge Ports would foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry quote and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. Although dedicated Purge Ports are a new functionality for Phlx equities exchange,¹³ similar connectivity and functionality is offered by options exchanges, including the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See footnote 6, above.

Exchange's own affiliated options exchanges, and other equities exchanges.¹⁴ The Exchange believes that proper risk management, including the ability to efficiently cancel multiple orders quickly when necessary, is similarly valuable to firms that trade in the equities market, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

The proposed rule change will not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.¹⁵ Specifically, any interest that is executable against a Participant's or Market Maker's quotes and orders that is received by the Exchange prior to the time of the removal of orders request will automatically execute. Market Makers that purge their orders will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.¹⁶

Dedicated Purge Ports, which were originally introduced for options trading, subsequently became a feature in the equities market. The Exchange, therefore, is not the first equities exchange to offer this functionality to Participants and to charge associated fees.¹⁷

The Exchange believes the proposed fee for Purge Ports is reasonable. The Exchange currently charges \$400 per port/per month for logical ports. The Exchange believes it is

¹⁴ See Securities Exchange Act Release No. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016). See also Securities Exchange Act Release Nos. 79956 (February 3, 2017), 82 FR 10102 (February 9, 2017) (SR-BatsBZX-2017-05); 79957 (February 3, 2017), 82 FR 10070 (February 9, 2017) (SR-BatsEDGX-2017-07); 83201 (May 9, 2018), 83 FR 22546 (May 15, 2018) (SR-C2-2018-006).

¹⁵ 17 CFR 242.602.

¹⁶ See Equity 2, Section 5.

¹⁷ Cboe charges \$650 per port/per month for Purge Ports that have substantially similar functionality. This fee is also \$100 more than the fee for a logical port on its exchange. See, Cboe EDGA U.S. Equities Exchange Fee Schedule.

reasonable to charge \$500 per month for the proposed Purge Ports, which is \$100 more than the fee for a logical port, as such ports represent targeted enhancement of technology and were specially developed to allow for the sending of a single message to cancel multiple orders, thereby assisting firms in effectively managing risk. Nasdaq also believes that a Participant that chooses to utilize a Purge Port may, in the future, reduce their need for additional logical ports by consolidating cancel messages to the Purge Port and thus freeing up some capacity of the existing logical ports and, therefore, allowing for increased message traffic without paying for additional logical ports. In addition, the proposed purging functionality will allow Participants to achieve essentially the same outcome without paying for a dedicated Purge Port. Purge Ports provide the ability to cancel multiple orders across multiple ports with less messaging from the firms using the ports and therefore may create efficiencies for firms and provide a more economical solution to their risk management needs. In addition, Purge Port requests may cancel orders submitted over numerous ports and contain added functionality to purge only a subset of these orders (per MPID, buy or sell side of the order, or ticker symbol). Effective risk management is important both for individual market participants that choose to utilize risk features provided by the Exchange, as well as for the market in general. As a result, the Exchange believes that it is appropriate to charge fees for such functionality as doing so aids in the maintenance of a fair and orderly market.

The Exchange also believes that its ability to set fees for Purge Ports is subject to significant substitution-based forces because Participants are able to rely on currently available services both free and those they receive when using existing trading protocols, which will include the proposed purging functionality. If the value of the efficiency introduced through the Purge Port functionality is not worth the proposed fees, Participants will simply continue to rely

on the existing functionality and the proposed purging functionality and not pay for Purge Ports. In that regard, Participants already can cancel orders individually and by utilizing Nasdaq protocols that allow them to develop proprietary systems that can send cancel messages at a high rate.¹⁸ In addition, the Exchange already provides similar ability to mass cancel orders through the Nasdaq Kill Switch, which is an optional tool offered at no charge that enables Participants to establish pre-determined levels of risk exposure, and can be used to cancel all open orders. Similarly, Participants may use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to immediately cancel all pending Exchange orders except for good-till-canceled orders. Finally, the proposed purging functionality will allow Participants to achieve essentially the same outcome in canceling orders as they would by utilizing the Purge Ports. Accordingly, the Exchange believes that the proposed Purge Ports fee is reasonable because it is related to the efficiency introduced by the Purge Port functionality related to other means and services already available which are either free or already a part of a fee assessed to the Participant's for existing connectivity. Accordingly, because the proposed Purge Ports provide additional optional functionality, excessive fees would simply serve to reduce or eliminate demand for this optional product.

The Exchange also believes that offering the purging functionality and the Purge Ports at the Exchange level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality (as described above) in their trading systems that permit the flexible cancellation of orders entered on the Exchange at a high rate. Offering Exchange level protections ensures that such functionality is widely available to all firms, including smaller

¹⁸ Current Exchange port functionality supports cancellation rates that exceed one thousand messages per second and the Exchange's research indicates that certain Participants rely on such functionality and at times utilize such cancellation rates.

firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

As noted above, the Exchange is not the first equities exchange to develop and offer dedicated Purge Ports for equities trading, and the proposed rate is lower than that charged by other equities exchanges for similar functionality. Generally speaking, restricting the Exchange's ability to offer new services and charge fees for these new services discourages innovation and competition. Specifically in this case, the Exchange's inability to introduce similar services to those offered by other exchanges, and charge reasonable and equitable fees for such services, would put the Exchange at a significant competitive disadvantage and therefore serves to restrict competition in the market – especially when other exchanges assess fees higher than those proposed by the Exchange.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its fee schedule are not unfairly discriminatory because they will apply uniformly to all Participants that choose to use the optional Purge Ports. The proposed Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Participant is required or under any regulatory obligation to utilize them. All Participants that voluntarily select this service option will be charged the same amount for the same services. All Participants have the option to select any connectivity option, and there is no differentiation among Participants with regard to the fees charged for the services offered by the Exchange.

The Exchange believes that the proposal to waive the applicable \$300 per Purge Port, per month fees for Participants that conduct tests of their PSX access protocols connection through the Exchange's Testing Facility to test the new Purge Ports functionality is reasonable and not unfairly discriminatory. Importantly, the Exchange believes the two-month waiver of the fee will encourage testing of the new optional Purge Ports, which will allow participants to evaluate whether the new optional service is of value to them and if so will help them better implement them into their workflow. All Participants will be notified about the availability of the new Purge Port functionality and have access to test it but will not be required to use it. Moreover, the fees for the RASH, FIX and OUCH ports will remain the same and apply to all Participants in the same manner. Based on the Exchange's experience, we anticipate that Participants will complete testing the new Purge Ports within two months from initiating such tests and thus will not incur any fees related to testing the functionality of Purge Ports.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change will enhance competition because it will enable the Exchange to innovate and offer similar equities Purge Port functionality to that offered by other equity exchanges and on options markets today. The proposed Purge Ports are completely voluntary and will be made available to all members on an equal basis at the same cost. While the Exchange believes that the proposed Purge Ports provide a valuable service, Participants can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Participant is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that the

proposed rule change is designed to offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

The Exchange is also allowing the Participants to test this new functionality for free by providing a two-month waiver in the Exchange's Test Facility. Accordingly, the Exchange believes that the proposed rule change is designed to offer optional risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

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 Act¹⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁰

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 Commission takes such action, the

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-28 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-2023-28. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-28 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Lynn Taylor,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).