

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101482; File No. SR-Phlx-2024-56)

October 30, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Rules at Options 6 and 6C

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 18, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a 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 adopt a new rule titled “Letters of Guarantee” in Options 6, Options Trade Administration, and a new rule entitled “Margin Required Is Minimum” in Options 6C, Margins.

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

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

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

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 adopt a new rule titled "Letters of Guarantee" in Options 6, Options Trade Administration and a new rule entitled "Margin Required Is Minimum" in Options 6C, Margins. Each proposed change is described below.

**Options 6**

The Exchange proposes to adopt a new rule titled, "Letters of Guarantee," at Options 6, Section 4, which is currently reserved. The adoption of Options 6, Section 4 is not intended to expand the current requirements imposed on members and member organizations, rather it is intended to make clear the current requirement to maintain a letter of guarantee. By way of background, the letter of guarantee provides that the Clearing Member<sup>3</sup> accepts financial responsibility for all Exchange transactions made by the Phlx member organization on whose behalf the Clearing Member submits the letter of guarantee. Clearing Members guarantee all transactions on behalf of a member and member organizations, and therefore bear the risk associated with those transactions.

Today, all Phlx members and member organizations are required to have a membership in, or access arrangement with a participant of a clearing agency registered with the Commission

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<sup>3</sup> The term "Clearing Member" means a member organization which has been admitted to membership in The Options Clearing Corporation pursuant to the provisions of the rules of The Options Clearing Corporation. See Options 1, Section 1(b)(10).

that maintains facilities through which compared trades may be settled.<sup>4</sup> Further, today, Phlx Options 6D, Section 1 makes clear that each member organization referred to in paragraph (iii)<sup>5</sup> shall at all times maintain positive net liquid assets and, in its clearing account(s), positive equity, provided that said organization has filed with the Exchange a letter of guarantee issued on its behalf by a clearing member organization of this Exchange which is also a clearing member of The Options Clearing Corporation.<sup>6</sup> At this time, the Exchange proposes to adopt a “Letters of Guarantee” rule at Options 6, Section 4, which is substantively identical to Nasdaq ISE, LLC (“ISE”) Options 6, Section 4, to make clear that member organizations have an obligation to obtain a letter of guarantee.

Similar to ISE, the Exchange proposes to specifically note at Options 6, Section 4(a) that no Phlx Market Maker shall make any transactions on the Exchange unless a letter of guarantee has been issued for such member organization by a Clearing Member and filed with the Exchange, and unless such letter of guarantee has not been revoked pursuant to paragraph (c) of Options 6, Section 4. This language is consistent with Phlx General 3, Rule 1032 and Phlx Options 6D, Section 1(a)(iv), and the language is substantively identical to ISE Options 6, Section 4(a). Further, the Exchange proposes to state at Options 6, Section 4(b) that a letter of guarantee shall provide that the issuing Clearing Member accepts financial responsibilities for all

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<sup>4</sup> See Nasdaq General 3, Rule 1032. Phlx General 3 Rules are incorporated by reference to Nasdaq General 3 Rules. See also Nasdaq’s membership form (<https://www.nasdaqtrader.com/content/marketregulation/membership/NASDAQSROMembershipApplicationFinal.pdf>) which states that all options participants must provide an executed clearing letter of guarantee.

<sup>5</sup> See Phlx Options 6D, Section 1(a)(iii) provides that each member organization or foreign currency options participant organization exempt from SEC Rule 15c3-1 and whose principal business is as a registered options trader on the Exchange, shall, subject to subparagraph (iv) below, at all times maintain a minimum of \$25,000 in net liquid assets.

<sup>6</sup> See Phlx Options 6D Section 1(a)(iv). This rule is intended to make clear that member organizations or other participants that are exempt from SEC Rule 15c3-1 must also have a letter of guarantee.

Exchange transactions made by the guaranteed member organization. This language is consistent with Phlx Options 6D, Section 1(a)(iv), and the language is substantively identical to ISE Options 6, Section 4(b). Finally, the Exchange proposes to state at Options 6, Section 4(c) that a letter of guarantee filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange. A revocation shall in no way relieve a Clearing Member of responsibility for transactions guaranteed prior to the effective date of such revocation. This language is consistent with Phlx Options 6D, Section 1(a)(iv), and the language is substantively identical to ISE Options 6, Section 4(c).

The proposed rule creates a new rule, separate and apart from the financial responsibility rules, which makes clear a Market Maker's obligation to obtain a letter of guarantee. Further, the rule will further harmonize the Exchange's rule with that of other Nasdaq affiliated exchanges.<sup>7</sup>

### **Options 6C**

The Exchange proposes to adopt a new rule titled, "Margin Required Is Minimum," at Options 6C, Section 5, which is currently reserved. By way of background, margin requirements help to offset the risk that brokers take when allowing investors to use margin. There are two types of margin requirements: initial margin and maintenance margin. Initial margin is the minimum amount of equity required to open a new margin position and maintenance margin is the minimum amount of equity that must be maintained in the account at all times. This proposed rule would be substantively identical to Nasdaq BX, Inc. ("BX") and The Nasdaq Options Market LLC ("NOM") Options 6C, Section 5.

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<sup>7</sup> Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") incorporate by reference ISE's Options 6 rules.

The Exchange proposes to provide at Phlx Options 6C, Section 5(a) that the amount of margin prescribed by Options 6C is the minimum which must be required initially and subsequently maintained with respect to each account affected thereby; but nothing in these Rules shall be construed to prevent a member organization from requiring margin in an amount greater than that specified. Further, the Exchange proposes to provide at Phlx Options 6C, Section 5(b) that the Exchange may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

Today, Phlx Options 6C, Section 3(a) provides that no member organization shall effect a transaction or accept or carry an account for a customer, whether a member or non-member of the Exchange, without proper and adequate margin in accordance with the Margin Rules set forth in Options 6C, Sections 3 and 7 and Regulation T. The Exchange also proposes to amend Phlx Options 6C, Section 3(a) to note compliance with proposed Section 5.

With this rule, Phlx, similar to BX and NOM, would be able to impose higher margin requirements. This rule will further harmonize the Exchange's rule with that of other Nasdaq affiliated exchanges.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</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.

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

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

## **Options 6**

The Exchange's proposal to adopt a new rule titled, "Letters of Guarantee," at Options 6, Section 4, is consistent with the Act because it will create a new rule, separate and apart from the financial responsibility rules, that makes clear a Market Maker's current obligation to obtain a letter of guarantee. Additionally, the proposed rule will harmonize Phlx's rule text with other Nasdaq affiliated exchanges<sup>10</sup> with respect to requirements to obtain a letter of guarantee. The proposed rule makes clear that Market Makers are required to obtain a letter of guarantee from a Clearing Member. Similar to Phlx General 3, Rule 1032, which specifies membership requirements, and Phlx Options 6D, Section 1(a)(iv), which govern financial responsibilities, each Market Maker must obtain a letter of guarantee from a Clearing Member, and such letter must be filed with the Exchange. Additionally, the letter of guarantee shall provide that the issuing Clearing Member accepts financial responsibilities for all Exchange transactions made by the guaranteed member organization. Finally, the letter of guarantee shall remain in effect until a written notice of revocation has been filed with the Exchange and specifies that it in no way relieves a Clearing Member of responsibility for transactions guaranteed prior to the effective date of such revocation. The proposed rule will further harmonize the Exchange's rule with that of other Nasdaq affiliated exchanges.<sup>11</sup>

## **Options 6C**

The Exchange's proposal to adopt a new rule, titled "Margin Required Is Minimum," at Options 6C, Section 5 is consistent with the Act as it would permit Phlx to impose higher margin

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<sup>10</sup> GEMX and MRX incorporate by reference ISE's Options 6 rules.

<sup>11</sup> Id.

requirements<sup>12</sup> similar to other options markets; the proposed rule would be substantively identical to BX and NOM Options 6C, Section 5. As proposed in Options 6C, Section 5(a), the amount of margin prescribed by Options 6C would be the minimum which must be required initially and subsequently with respect to each account affected thereby; but nothing in these Rules shall be construed to prevent a member organization from requiring margin in an amount greater than that specified. As proposed in Options 6C, Section 5(b), the Exchange may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable. Today, Phlx Options 6C, Section 3(a) provides that no member organization shall effect a transaction or accept or carry an account for a customer, whether a member or non-member of the Exchange, without proper and adequate margin in accordance with the Margin Rules set forth in Options 6C, Sections 3 and 7 and Regulation T. The Exchange's proposal to amend Phlx Options 6C, Section 3(a) to note compliance with proposed Section 5 will make clear the applicable margin rules that a member organization must comply with when trading on Phlx. This rule will further harmonize the Exchange's rule with that of other Nasdaq affiliated exchanges.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**Options 6**

The Exchange's proposal to adopt a new rule titled, "Letters of Guarantee," at Options 6, Section 4, does not impose an intra-market burden on competition because all Market Makers will have to uniformly comply with this proposed rule which makes clear the current requirement

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<sup>12</sup> The Exchange notes that higher margin requirements would be imposed in times of market volatility and with respect to a particular product(s).

that each member organization must provide a letter of guarantee from a Clearing Member as specified in the membership requirements<sup>13</sup> and Options 6D, Section 1.<sup>14</sup> The Exchange notes that this rule would apply the same standards to Market Makers similar to ISE.

The Exchange's proposal to adopt a new rule titled, "Letters of Guarantee," at Options 6, Section 4, does not impose an inter-market burden on competition because other options exchanges may adopt a similar rule. Today, ISE has substantively identical rule at Options 6, Section 4.

### **Options 6C**

The Exchange's proposal to adopt a new rule titled, "Margin Required Is Minimum," at Options 6C, Section 5 does not impose an intra-market burden on competition because all member organizations would be subject to the proposed rule and the application of the rule would apply uniformly to all member based on the affected product. The proposed rule is substantively identical to BX and NOM Options 6C, Section 5.

The Exchange's proposal to adopt a new rule titled, "Margin Required Is Minimum," at Options 6C, Section 5 does not impose an inter-market burden on competition because other options exchanges may adopt a similar rule. Today, BX and NOM have a substantively identical rule at Options 6C, Section 5.

### **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.

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<sup>13</sup> See supra note 4.

<sup>14</sup> See supra note 6.



### 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>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number

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

<sup>16</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.

SR-Phlx-2024-56 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-2024-56. 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-2024-56 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.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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