

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96285; File No. SR-Phlx-2022-44)

November 9, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule Phlx Equity 6, Section 5 Concerning Optional Risk Settings for Stocks

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 27, 2022, 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 amend Rule Phlx Equity 6, Section 5 (Exchange Sharing of PSX Participant Risk Settings) to provide PSX Participants with additional optional settings.

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

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

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

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 purpose of the proposed rule changes under Rule Phlx Equity 6, Section 5 (Exchange Sharing of PSX Participant Risk Settings) is to provide PSX Participants (the “Participants”) with additional optional settings to assist them in their efforts to manage risk on their order flow. These additional settings provide participants with extra oversight and controls on orders coming into the exchange. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a Participant is exceeded. Such risk settings would provide Participants with enhanced abilities to manage their risk with respect to orders on the Exchange.

All proposed risk settings are optional for Participants and afford flexibility to Participants to select their own risk tolerance levels. The proposed new and amended risk settings are as follows.

The Exchange is proposing to add an additional risk setting titled “Restricted Stock List.” This control allows a Participant to restrict the types of securities transacted by setting a list of symbols for which orders cannot be entered. This control also allows Participants to set a hard to borrow list, which is a list of symbols for which short sale orders may not be entered. Short sale orders for symbols not on the hard to borrow list will be accepted; however, Participants will have an option to indicate that short sales orders are permitted for all symbols by not maintaining

a hard to borrow list. This setting is similar to Interpretations and Policies .01(d) of BZX Rule 11.13.<sup>3</sup>

The Exchange is proposing to add an additional risk setting titled “ADV Check.” This control relates to the size of an order as compared to the 20 day consolidated average daily volume<sup>4</sup> (ADV) of the security and allows a Participant to set a specified percent of ADV that an order size cannot exceed. This control also allows a Participant to specify the minimum value on which such control is based if the average daily volume of the securities is below such value. This setting is similar to Interpretations and Policies .01(g) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled “Fat Finger Protection.” This control relates to the limit price of an order as compared to the NBBO and includes both percentage-based and dollar-based controls. If the limit price of an order deviates from the NBBO in excess of the amount set by a Participant (either percentage or dollar based), the order will not be accepted. This setting is similar to Interpretations and Policies .01(b) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled “Rate Thresholds Check.” A Participant will be able to set the maximum number of messages (other than cancellations, but including new orders, replacement orders and modifications) that can be sent in during a configurable one second time window set by the Exchange. This control can be set as a port level or per symbol. This setting is similar to Interpretations and Policies .01(f) of BZX Rule 11.13.

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<sup>3</sup> See Securities Exchange Act Release No. 80611 (May 5, 2017) 82 FR 22045 (May 11, 2017) (SR-BatsBZX-2017-24).

<sup>4</sup> In certain circumstances, when the security does not have 20 days of trading history, the ADV Check is calculated on fewer than 20 data points.

The Exchange is proposing to add an additional risk setting titled “Gross Exposure Check.” This control measures open, executed, or notional exposure of a Participant on the Exchange; and, when breached, prevents submission of all new orders and, optionally, will cancel all open orders. Gross open order exposure is measured as the sum of booked price times size for all open orders plus the sum of booked price times size for all open sell orders. Gross executed order exposure is measured as the sum of all executed buy and sell orders. Gross notional order exposure is measured as the sum of the gross open exposure and gross executed exposure. This setting is similar to Interpretations and Policies .01(h) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled “Market Impact Check.” This optional control, if enabled, will result in the rejection of a Participant’s incoming limit order if the limit price of the order is priced through the far-side of the current LULD bands. In other words, a buy (sell) order cannot be priced more aggressively than the upper (lower) LULD band.<sup>5</sup> The Exchange notes that pursuant to the existing LULD requirements, buy orders priced below the lower price bands (and vice versa for sell orders) will be accepted and are eligible for inclusion in the NBBO; however, these orders are outside the price bands and will be non-executable. If the price bands move in such a way that an order that was previously outside the price band is now inside the band, the order will become executable.

The Exchange believes that this new optional setting is similar to the Exchange’s existing Limit Order Protection (“LOP”). LOP is a feature of the PSX that prevents certain Limit Orders

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<sup>5</sup> The Limit Up-Limit Down (LULD) mechanism is intended to prevent trades in National Market System (NMS) securities from occurring outside of specified price bands. The bands are set at a percentage level above and below the average reference price of the security over the immediately preceding five-minute period. To accommodate fundamental price moves, there is a five-minute trading pause if trading is unable to occur within the specified price band after 15 seconds.

at prices outside of pre-set standard limits (“LOP Limit”) from being accepted by the System.<sup>6</sup> LOP is operational each trading day. LOP does not apply in the event that there is no established LOP Reference Price.<sup>7</sup> LOP is applicable on all order entry protocols.<sup>8</sup> While the current LULD functionality would continue to apply, this additional proposed risk setting would allow a Participant to manage its risk more comprehensively.

The Exchange is also proposing to amend two existing risk settings titled, ISO Control and Duplication Control.

Currently, pursuant to Phlx Equity 6, Section 5(j), the Duplication control will automatically reject an order that a Participant submits to the Exchange to the extent that it is duplicative of another order that the Participant submitted to the Exchange during the prior five seconds. The Exchange proposes to provide additional flexibility for Participants by allowing the interval applicable to this risk check to vary from one to thirty seconds, as set by a Participant. This setting is similar to Interpretations and Policies .01(e) of BZX Rule 11.13.

Pursuant to Phlx Equity 6, Section 5(b), ISO Control setting prevents a Participant from entering an ISO order onto the Exchange. The Exchange proposes to expand this setting to allow a Participant to restrict additional order types from being entered. Specifically, a Participant may restrict their ability to place any of the following: ISO Orders (as currently provided by this risk setting), short sale orders, non-auction market orders, pre-market orders or post-market orders.

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<sup>6</sup> The LOP Limit is the greater of 10% of the LOP Reference Price or \$0.50 for all securities across all trading sessions. The LOP Reference Price is the current National Best Bid or Best Offer, the bid for sell orders and the offer for buy orders.

<sup>7</sup> For example, if there is a one-sided quote or if the NBB, when used as the LOP Reference Price, is equal to or less than \$0.50.

<sup>8</sup> PSX maintains several communications protocols for Participants to use in entering Orders and sending other messages, such as: OUCH, RASH, QIX, FLITE and FIX.

The Exchange proposes to change the title of this risk setting to Order Type/Attribution Check to better reflect its substance, as amended. This setting is similar to Interpretations and Policies .01(c) of BZX Rule 11.13.

As currently provided for existing risk settings, the Exchange will share any Participant risk settings in the trading system that are specified Rule Phlx Equity 6, Section 5, with the clearing member that clears transactions on behalf of the Participant even if the clearing member is not designated.

#### Implementation

The Exchange intends to implement of the proposed rule changes on or before March 31, 2023. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the risk protections.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</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.

Specifically, the Exchange believes the proposed amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides functionality for a Participant to manage its risk exposure, while also maintaining a

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

notification system under Rule Phlx Equity 6, Section 5 that would help to ensure the Participant and its clearing member are aware of developing issues.

A clearing member guarantees transactions executed on PSX for members with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. The Exchange therefore believes that it is appropriate for the clearing member to have knowledge of what risk settings the Participant may utilize within the Exchange's trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of Participants with whom the Participants have entered into clearing arrangements to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act.

In addition, the Exchange believes that the proposed amendments under Rule Phlx Equity 6, Section 5, are designed to protect investors and the public interest because the proposed functionalities are a form of risk mitigation that will aid Participants and clearing members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. The proposed new:

- Gross Executed Check settings are appropriate measures to serve as an additional tool for Participants and clearing members to assist them in identifying open, executed, or notional exposure risk;
- Market Impact Check and ADV check may assist Participants in avoiding placing orders with unintentional market impact;

- Rate Thresholds Check may help alert a Participant to excessive message traffic that could affect technical port performance;
- Fat Finger Protection will assist a Participant in avoiding submission of orders with unintended price limits or share sizes;
- Restricted Stock List will assist a Participant in limiting trading for a particular security.

The proposed amendments to ISO Control will a Participant prevent trading in a particular order type by expanding the types of orders subject to this check to pre-market, post-market, short sales, non-auction market orders. The proposed amendments to the Duplication Control will allow a Participant additional flexibility in using this control by letting a Participant to choose the period of time over which this control applies.

The Exchange also believes the proposed amendments will assist Participants and clearing members in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

Finally, the Exchange believes that the proposed rule changes do not unfairly discriminate among the Exchange's Participants because use of the risk settings under Rule Phlx Equity 6, Section 5 are optional and available to all Participants, and not a prerequisite for participation on the Exchange.

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. In fact, the Exchange believes that the proposal will have a positive effect on competition because, it would

allow the Exchange to offer risk management functionality that is comparable to functionality being offered by other national securities exchanges. Moreover, by providing Participants and their clearing members additional means to monitor and control risk, the proposed rule may increase confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by Participants and clearing members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

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>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</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.

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 (<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-2022-44 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-2022-44. 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2022-44 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>13</sup>

J. Matthew DeLesDernier

Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).