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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89512; File No. SR-Phlx-2020-37]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 3316 and Rule 3215 Commentary

August 10, 2020.

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 July 31, 2020, 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 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 3316 (PHLX Kill Switch) and Rule 3215 (Exchange Sharing of PSX Participant Risk Settings) Commentary to provide PSX Participants with additional optional settings and to make certain technical changes.

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

¹ 15 U.S.C. 78s(b)(1).

² 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 purpose of the proposed rule changes under PSX Rule 3316 (PHLX Kill Switch) and Rule 3215 (Exchange Sharing of PSX Participant Risk Settings) Commentary is to provide PSX Participants with additional optional settings in order to assist them in their efforts to manage their risk levels and to make certain technical changes. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a PSX Participant is exceeded. Such risk settings would provide PSX Participants with enhanced abilities to manage their risk with respect to orders on the Exchange.

The proposed pre-trade risk controls described below are meant to supplement, and not replace, the PSX Participant's own internal systems, monitoring and procedures related to risk management. For clarification, the Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of a PSX Participant's needs, nor are the controls designed to be the sole means of risk management, and using these controls will not necessarily meet a PSX Participant's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3-5 under the Act³ ("Rule 15c3-5")). Use of the Exchange's Kill Switch or proposed risk setting in Rule 3215 (Exchange Sharing of Risk Settings) Commentary (h) will

³ 17 CFR § 240.15c3-5.

not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the PSX Participant.⁴

Rule 3316(a) provides the definition of the PHLX Kill Switch, which is an optional tool offered at no charge that enables PSX Participants to establish a pre-determined level of Net Notional Risk Exposure (“NNRE”), to receive notifications as the value of executed orders approaches the NNRE level, and to have order entry ports disabled and open orders administratively cancelled when the value of executed orders exceeds the NNRE level. Most order entry ports are assigned to one MPID. In the event that multiple MPIDs are assigned to one port, only the affected MPID is disabled from the port. The NNRE, although not explicitly defined,⁵ accounts for the daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purpose of calculating NNRE, only executed orders are included.

The Exchange is renaming the NNRE by proposing to remove references to “Net Notional Risk Exposure” and to replace them with “Gross Executed Risk Exposure”. This risk level refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Executed Risk Exposure, only executed orders are included. The Exchange is not changing the NNRE calculation under the proposed amendment. Rather, it will be renamed as the Gross Executed Risk Exposure. This risk setting is identical to Nasdaq Stock Market LLC

⁴ See Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, available at <https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm>.

⁵ The Exchange is not changing the NNRE functionality under the proposed amendment. Rather, it is being renamed as the Gross Executed Risk Exposure.

(“Nasdaq”) Rule 6130(a)(1) and similar to Cboe BZX Exchange, Inc.’s (“BZX”) Interpretations and Policies .03(a)(1) of BZX Rule 11.13.

The Exchange is also proposing to add an additional risk setting titled “Gross Notional Risk Exposure,” which refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Notional Risk Exposure, unexecuted orders on the Exchange book and executed orders are included. This setting is identical to Nasdaq Rule 6130(a)(2) and similar to Interpretations and Policies .03(a)(2) of BZX Rule 11.13, except BZX excludes unexecuted orders and counts purchases as positive values and sales are counted negative values. Additionally, the Exchange’s rule is similar to New York Stock Exchange LLC (“NYSE”) Rule 7.19(a)(5) and NYSE Arca, Inc. (“Arca”) Rule 7.19-E(a)(5), except NYSE and Arca include orders routed on arrival. While the current functionality would continue to be available, this additional proposed risk setting would allow a PSX Participant to manage its risk more comprehensively, instead of relying solely on the NNRE functionality offered today.

The Exchange also proposes to make a conforming change to Rule 3316(b) by removing “Net Notional Risk Exposure” and replacing it with “Establishing and Adjusting Levels.” The Exchange is also proposing to specify that a PSX Participant’s clearing member, as discussed below, may set the risk levels for each MPID individually. This action is identical to Nasdaq Rule 6130(b) and similar to Interpretations and Policies .03(b)(1) of BZX Rule 11.13 and NYSE Rule 7.19(b)(3)(B) and Arca Rule 7.19-E(b)(3)(B), except unlike NYSE and Arca, the Exchange does not allow for setting risk levels at the sub-ID of an MPID. Additionally, the proposal allows for the clearing member, in addition to the PSX Participant, to set and adjust the values before the beginning of a trading day as well as set and adjust them during the trading day. This

is identical to Nasdaq Rule 6130(b) and similar to Interpretations and Policies .03(b) of BZX Rule 11.13, NYSE Rule 7.19(b)(3)(A) and Arca Rule 7.19-E(b)(3)(A).

The Exchange is proposing under Rule 3316(c) to allow clearing members, if designated pursuant to Rule 3316(d), to receive notifications when the total value of executed orders, and if applicable, unexecuted orders associated with an MPID exceeds 50, 75, 85, 90, and 95 percent of the applicable risk level values. This rule is identical to Nasdaq Rule 6130(c) and similar to Interpretations and Policies .03(d) of BZX Rule 11.13, NYSE Rule 7.19(b)(4), and Arca Rule 7.19-E(b)(4).

A clearing member guarantees transactions executed on PSX for PSX Participants with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. Because clearing members bear the risk on behalf of their PSX Participant, the Exchange believes that it is appropriate for the clearing member to have knowledge of what risk settings the PSX 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 PSX Participants with whom the PSX 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. Therefore, the Exchange proposes to make the proposed optional risk settings in Phlx Rule 3316 available to clearing members, if so authorized by the PSX Participant.

Proposed Rule 3316(d) would allow for a PSX Participant that does not self-clear to allocate responsibility for establishing and adjusting the risk levels to a clearing member that clears transactions on behalf of the PSX Participant. A PSX Participant may request to sign up

for the Kill Switch optional setting by contacting Nasdaq Subscriber Services or by completing a Front End Request form.⁶ In order to allocate responsibility to a clearing member, a PSX Participant must provide the Exchange with authorization, either by providing Nasdaq Subscriber Services with written authorization or by requesting the appropriate user role and permission for the clearing member via the Front End Request form. The PSX Participant may adjust the user role and permissions at any time. If a PSX Participant chooses to designate responsibility to its clearing member, the PSX Participant may view any risk levels established by the clearing member pursuant to proposed Rule 3316(d). Additionally, by allocating responsibility to its clearing member, the PSX Participant consents to the Exchange taking action as provided for in proposed Rule 3316(e). Even if a clearing member is designated, a PSX Participant will continue to be notified by the Exchange of any action taken regarding its trading activity. By allowing PSX Participants to allocate the responsibility for establishing and adjusting such risk settings to its clearing member, the Exchange believes clearing members may reduce potential risks that they assume when clearing for members of the Exchange. A member may revoke responsibility allocated to its clearing member at any time by following the same process described above that is used to grant the clearing member authorization.

Nasdaq, BZX, NYSE and Arca also provide similar designations to its clearing members pursuant to Nasdaq Rule 6130(d), Interpretations and Policies .03(c) of BZX Rule 11.13, NYSE Rule 7.19(b)(2), and Arca Rule 7.19-E(b)(2). However, unlike NYSE and Arca, the Exchange does not allow for multiple risk level values to be in place at one time.

⁶ The Front End Request form is available at <https://www.nasdaqtrader.com/EASP/TraderEASP.aspx?id=FrontEndForm>.

The Exchange also proposes to renumber current Rule 3316(d) as Rule 3316(e) and retitle it to more accurately describe the provision by removing “Operation” and replacing it with “Breach Action and Reinstatement.” Additionally, the Exchange is proposing to clarify that when a pre-established risk level is breached and the Kill Switch is triggered, it shall result in the immediate cancellation of all unexecuted orders of any type or duration entered by the PSX Participant via the affected MPID, and in the immediate prevention of order entry of any type via affected MPID. The PSX Participant or the clearing member, if designated pursuant to paragraph (d), must request reactivation of the MPID before trading will be reauthorized.

Additionally, the Exchange refers to “member” throughout Rule 3316. The term “PSX Participant” more accurately refers to the entity⁷ that would utilize the Kill Switch and therefore, the term “member” was used in error. The Exchange is proposing to make a technical change to correct the reference to “member” by replacing it with “PSX Participant.” Therefore, the Exchange will refer to “member” as “PSX Participant” throughout this discussion.

As a reminder, pursuant to current Rule 3215, the Exchange will continue to share any PSX Participant risk settings in the trading system that are specified in the Rule 3215 Commentary and Rule 3316 with the clearing member that clears transactions on behalf of the member even if the clearing member is not designated. Under current Rule 3215 Commentary,

⁷ Pursuant to PSX Rule 3301(c), a “PSX Participant” is defined as an entity that fulfills the obligations contained in Rule 3211 regarding participation in the System, and shall include: (1) “Equities ECNs,” which are member organizations that meet all of the requirements of Rule 3223, and that participate in the System with respect to one or more System Securities; (2) “PSX Market Makers” or “Market Makers”, member organizations that are registered as PSX Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) “Order Entry Firms,” which are member organizations that are registered for the purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 3223.

the Exchange offers certain risk settings applicable to a PSX Participant on the Exchange. Proposed Rule 3215 Commentary (h) would allow for a PSX Participant to limit the maximum dollar amount that the PSX Participant may associate with an order placed on the Exchange. This risk setting is identical to Nasdaq Rule IM-6200-1(h) and similar to the risk control provided by NYSE pursuant to Rule 7.19(a)(3) and Arca pursuant to Rule 7.19-E(a)(3). When the Maximum Single Order Notional Check is enabled, if a PSX Participant breaches this risk setting, the single order will be rejected by the system. The action taken is identical to Nasdaq Rule IM-6200-1(h) and similar to NYSE Rule 7.19(c)(2) and Arca Rule 7.19-E(c)(2).

The Exchange is also proposing to make the following non-substantive conforming changes:

- Remove the term “open orders” and replace with “unexecuted orders”.
- Remove all references to the acronym “NNRE” throughout the rule in conjunction with the removal of the reference to “Net Notional Risk Exposure.”
- Renumber Rule 3215 Commentary to conform to the addition of proposed Rule 3215 Commentary (h).

The Exchange will announce the implementation date of the proposed rule change in a Trader Alert to be published no later than 60 days following the effective date. The implementation date will be no later than 90 days following the effective date.⁸

⁸ The Exchange will implement the Net Notional Risk Exposure and the Gross Notional Risk Exposure risk settings as soon as possible. The Maximum Single Order Notional Check will be implemented within 90 days following the effective date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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 PSX Participant to manage its risk exposure under Rule 3316 and Rule 3215 Commentary, while also providing a notification system under Rule 3316(c) that would help to ensure the PSX Participant and a PSX Participant's clearing member are aware of developing issues. In addition, the proposed amendments to Rule 3316 would provide clearing members, who have assumed certain risks of PSX Participants, greater control over risk tolerance and exposure on behalf of their correspondent PSX Participant, while helping to ensure that both PSX Participant and a PSX Participant's clearing member are aware of developing issues.

A clearing member guarantees transactions executed on PSX for PSX Participants 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 PSX Participant may utilize within the Exchange's trading system, as well as the option to set and adjust the risk levels. The proposal

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

will permit clearing members who have a financial interest in the risk settings of PSX Participants with whom the PSX 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 3316 and Rule 3215 Commentary are designed to protect investors and the public interest because the proposed functionalities are a form of risk mitigation that will aid PSX Participants and clearing members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. The proposed Gross Executed Risk Exposure and Gross Notional Risk Exposure settings are appropriate measures to serve as an additional tool for PSX Participants and clearing members to assist them in identifying risk exposure by identifying when the PSX Participant is reaching its maximum dollar amount for purchases and sales across all symbols. The Exchange also believes the proposed amendments will assist PSX 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. Moreover, a PSX Participant may revoke responsibility allocated to its clearing member at any time.

Further, the Exchange believes that the proposed amendments under Rule 3316 and Rule 3215 Commentary (h) will foster cooperation and coordination with persons facilitating transactions in securities because under Rule 3316(c), the Exchange will provide alerts when a PSX Participant's trading activity reaches certain thresholds and under Rule 3215 Commentary (h), the Exchange will limit the PSX Participant's maximum dollar amount placed on an order.

As such, the Exchange may help clearing members monitor the risk levels of corresponding PSX Participants.

Additionally, the proposed change to replace the term “member” with PSX Participant in Rule 3316 will provide greater clarity to the public regarding the Exchange’s optional risk control rules and it is in the public interest for the rules to be accurate as to eliminate potential confusion.

Finally, the Exchange believes that the proposed rule changes do not unfairly discriminate among PSX Participants because use of the risk settings under Rule 3316 and Rule 3215 Commentary (h) are optional and available to all PSX Participants, and not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by PSX Participants who have opted to use the risk settings versus those who have not opted to use them.¹¹

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.¹² Moreover, by providing PSX Participants

¹¹ All Exchange orders pass through a basic risk check regardless of whether a PSX Participant opts into a risk setting.

¹² See Securities Exchange Act Release Nos. 89225 (July 6, 2020) 85 FR 41650 (July 10, 2020) (SR-NASDAQ-2020-034); 88904 (May 19, 2020) 85 FR 31560 (May 26, 2020) (SR-NYSEArca-2020-43); 88776 (April 29, 2020) 85 FR 26768 (May 5, 2020) (SR-NYSE-2020-17) (Approval Order); 88599 (April 8, 2020) 85 FR 20793 (April 14, 2020) (SR-CboeBZX-2020-006) (Approval Order).

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 PSX 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) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission notes that the Exchange plans to implement the Gross Executed Risk Exposure and the Gross Notional Risk Exposure risk settings as soon as possible.¹⁷ The Commission believes that waiver of the operative delay would allow the Exchange to provide PSX Participants and their clearing members expeditiously with additional optional settings to manage their risk levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

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 change 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:

¹⁷ According to the Exchange, the Maximum Single Order Notional Check will be implemented within 90 days following the effective date.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-Phlx-2020-37 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-2020-37. 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-2020-37 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.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12).