

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82550; File No. SR–Phlx–2018–03]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a New Rule 3215 and Commentary Thereto To Codify PSX Participant Risk Settings in PSX and To Authorize the Exchange To Share Those Settings With the Clearing Member That Clears Transactions on Behalf of the PSX Participant

January 19, 2018.

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 January 16, 2018, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 add a new Rule 3215 and commentary thereto to codify PSX Participant risk settings in PSX and to authorize the Exchange to share those settings with the clearing member that clears transactions on behalf of the PSX Participant.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

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#### Nasdaq PHLX Rules

##### Rules of the Exchange

\* \* \* \* \*

##### Nasdaq PSX

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[Rule 3215. Reserved.]

#### Rule 3215. Exchange Sharing of PSX Participant Risk Settings

The Exchange may share any PSX Participant risk settings in the trading system specified in the commentary below with the clearing member that clears transactions on behalf of the PSX Participant. For purposes of this Rule,

the term “PSX Participant” has the meaning set forth in Rule 3301(c).

#### Commentary

*The Exchange offers certain risk settings applicable to a PSX Participant’s activities on the Exchange. The risk settings currently offered by the Exchange are:*

*(a) Share Size Control—When enabled by a PSX Participant, this optional control will allow a PSX Participant to limit the number of shares that the PSX Participant may associate with an order placed on the Exchange;*

*(b) ISO Control—When enabled by a PSX Participant, this optional control will prevent a PSX Participant from entering an ISO order onto the Exchange;*

*(c) Cancel-on-Disconnect Control—When enabled by a PSX Participant, this optional control will allow a PSX Participant, when it experiences a disruption in its connection to the Exchange, to immediately cancel all pending Exchange orders except for Good-Till-Canceled orders (RASH & FIX only);*

*(d) The Phlx Kill Switch—This control is described in Rule 3316;*

*(e) Limit Order Protection—This control is described in Rule 3307(f);*

*(f) Price Collar Check—This control will automatically restrict a routed order from executing at a price that differs from the NBBO (at the time of order entry) by more than five percent or \$0.25, whichever difference is greater.*

*The system will proceed to route an order unless and until it crosses the greater of these two price collars, and if it does so, then the system will block further routings of the order that fall outside of the collars. For example, if the NBBO is \$99 × \$100 at the time of entry of a buy order, then the system will route the order at prices at or below \$105, but will stop doing so if the offer price rises above \$105 (five percent of the NBO);*

*(g) Maximum Order Volume Check—This control will automatically reject an order for routing away that exceeds a maximum volume of shares. As applied to equity orders, the default maximum order volume is set at 25,000 shares, but the PSX Participant may request that the Exchange set a higher default based on historic volume;*

*(h) Cumulative Order Volume Check—This control will automatically block an attempt by a PSX Participant using a particular MPID to route orders away to buy or sell equity securities that, cumulatively, exceed 9.5 million shares during a five second time period; and*

*(i) Duplication Control—This control will automatically reject an order that a*

*PSX Participant submits to the Exchange to the extent that it is duplicative of another order that the PSX Participant submitted to the Exchange during the prior five seconds.*

\* \* \* \* \*

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

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

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

###### 1. Purpose

The Exchange proposes to adopt the proposed commentary to Rule 3215, which codifies a comprehensive list of PSX Participant risk settings in the Exchange’s trading system. The Exchange also proposes to adopt new Rule 3215 to authorize the Exchange to share these risk settings with the clearing member that clears transactions on behalf of the PSX Participant. For purposes of Rule 3215, the term “PSX Participant” has the meaning set forth in Rule 3301(c).<sup>3</sup>

PSX Participants are required to be members of the Exchange. Rule 3218 states that “all transactions through the facilities of PSX shall be cleared and settled through a registered clearing agency using a continuous net settlement system.” It further provides that this requirement may be satisfied by “direct participation, use of direct clearing services, by entry into a correspondent clearing arrangement with another member organization that clears trades through such a clearing agency. . . .” Further, pursuant to Rule 3227, every clearing member acting on a PSX Participant’s behalf that constitutes a side of a system trade is responsible for honoring such trades of that PSX Participant.

All PSX Participants that are not clearing members require a clearing

<sup>3</sup> Rule 3301(c) defines a “PSX Participant” as an entity that fulfills the obligations contained in Rule 3211 regarding participation in the System, and includes Equities ECNs, PSX Market Makers, and Order Entry Firms.

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

<sup>2</sup> 17 CFR 240.19b–4.

member's consent to clear transactions on their behalf in order to conduct business on the Exchange. Each PSX Participant that transacts through a clearing member on the Exchange must have an arrangement between the PSX Participant and the clearing member. The Exchange is provided notice of which clearing members have relationships with which PSX Participants. The clearing member that guarantees the PSX Participant's transactions on the Exchange has a financial interest in understanding the risk tolerance of the PSX Participant. The proposal would provide the Exchange with authority to directly provide clearing members with information that may otherwise be available to such clearing members by virtue of their relationship with the respective PSX Participants.

The proposed commentary to Rule 3215 would codify a list of risk settings that are currently offered by the Exchange and would be covered by proposed Rule 3215. This list is comprehensive with respect to the risk settings that the Exchange presently offers. Certain of these risk settings are mandatory for PSX Participants, meaning that the Exchange either imposes specific risk tolerances that are uniform for all PSX Participants or it sets default risk tolerances, but it affords flexibility to PSX Participants to select their own risk tolerance levels. In certain instances, the Exchange does not require PSX Participants to utilize risk settings, but instead makes them available for use at the option of PSX Participants. The risk settings set forth in the proposed commentary to Rule 3215 comprise the following:

- *Share Size Control*—When enabled by a PSX Participant, this optional control will allow a PSX Participant to limit the number of shares that the PSX Participant may associate with an order placed on the Exchange;

- *ISO Control*—When enabled by a PSX Participant, this optional control will prevent a PSX Participant from entering an ISO order onto the Exchange;

- *Cancel-on-Disconnect Control*—When enabled by a PSX Participant, this optional control will allow a PSX Participant, when it experiences a disruption in its connection to the Exchange, to immediately cancel all pending Exchange orders except for Good-Till-Canceled orders (RASH & FIX only);

- *The Phlx Kill Switch*—This control is described in Rule 3316;

- *Limit Order Protection*—This control is described in Rule 3307(f);

- *Price Collar Check*—This control will automatically restrict a routed order from executing at a price that differs from the NBBO (at the time of order entry) by more than five percent or \$0.25, whichever difference is greater. The system will proceed to route an order unless and until it crosses the greater of these two price collars, and if it does so, then the system will block further routings of the order that fall outside of the collars. For example, if the NBBO is \$99 x \$100 at the time of entry of a buy order, then the system will route the order at prices at or below \$105, but will stop doing so if the offer price rises above \$105 (five percent of the NBO).

- *Maximum Order Volume Check*—This control will automatically reject an order for routing away that exceeds a maximum volume of shares. As applied to equity orders, the default maximum order volume is set at 25,000 shares, but the PSX Participant may request that the Exchange set a higher default based on historic volume.

- *Cumulative Order Volume Check*—This control will automatically block an attempt by a PSX Participant using a particular MPID to route orders away to buy or sell equity securities that, cumulatively, exceed 9.5 million shares during a five second time period; and

- *Duplication Control*—This control will automatically reject an order that a PSX Participant submits to the Exchange to the extent that it is duplicative of another order that the PSX Participant submitted to the Exchange during the prior five seconds.

As set forth above, the proposal to authorize the Exchange to share any of the PSX Participant's risk settings with the clearing member that clears transactions on behalf of the PSX Participant would be limited to the risk settings specified in the proposed commentary. The Exchange notes that use by a PSX Participant of the risk settings offered by the Exchange is optional for share size, ISO, kill switch, and cancel-on disconnect controls, and is required in other instances.<sup>4</sup> By using the optional risk settings, following this proposed Rule change a PSX Participant therefore also opts-in to the Exchange sharing its risk settings with its clearing member. The Exchange notes that any PSX Participant that does not wish to share its mandatory risk settings with its clearing member could avoid sharing

<sup>4</sup> As noted above, for the Maximum Order Volume Check, the Exchange sets a default order volume but PSX Participants have flexibility to adjust this level.

such settings by becoming a clearing member.

To the extent that a clearing member might reasonably require a PSX Participant to provide access to its risk settings as a prerequisite to continuing to clear trades on the PSX Participant's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on PSX Participants and ensures that clearing members are receiving information that is up-to-date and conforms to the settings active in the Exchange's trading system. Further, the Exchange believes that the proposal will help such clearing members to better monitor and manage the potential risks that they assume when clearing for PSX Participants of the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change will allow the Exchange to directly provide a PSX Participant's risk settings to the clearing member that clears trades on behalf of the PSX Participant. 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 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. 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. To the extent a clearing member might reasonably require a PSX

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Participant to provide access to its risk settings as a prerequisite to continuing to clear trades on the PSX Participant's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on PSX Participants and ensures that clearing members are receiving information that is up-to-date and conforms to the settings active in the Exchange's trading system. Moreover, the proposal will foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by reducing administrative burden on both clearing members and other PSX Participants and by allowing clearing members to better monitor their risk exposure.

The Exchange further believes that codifying the risk settings described above in the proposed commentary is consistent with the Act. These settings assist PSX Participants in managing and controlling the risks associated with their access to and activity on the Exchange, both for the benefit of PSX Participants and investors. The Exchange's risk settings, moreover, are consistent with risk settings employed by other exchanges, such as Cboe BYX. Although the Exchange presently offers these risk settings, codifying them will provide additional transparency to PSX Participants regarding the risk settings offered by the Exchange. It will also foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by providing additional transparency regarding risk settings offered by 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 that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-clearing members because, unlike clearing members, non-clearing members do not guarantee the execution of a Participant's transactions on the Exchange. Moreover, the proposal to share risk settings with clearing members will not burden competition among clearing members because it will apply to all clearing members equally and regardless of size. The Exchange notes that this proposal will not affect competition among PSX Participants because the proposal provides for sharing of all of PSX

Participants' risk settings set forth in the commentary to Rule 3215. Any PSX Participant that does not wish to share its risk settings with its clearing member could avoid sharing such settings by becoming a clearing member. Lastly, the proposal to codify the Exchange's risk settings will not burden competition among PSX Participants because the risk settings are already available to or required of PSX Participants and will continue to be available or required of all PSX Participants going forward.

#### *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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 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.

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-03 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-2018-03. 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 (<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-2018-03 and should be submitted on or before February 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).