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Page 1 of \* 19

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2021 - \* 49

Amendment No. (req. for Amendments \*)

Filing by Nasdaq PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to extend the expiration date of the temporary amendments concerning video conference hearings from August 31, 2021, to December 31, 2021.

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Olumuyiwa Last Name \* Odeniyide

Title \* Enforcement Counsel

E-mail \* Olumuyiwa.Odeniyide@nasdaq.com

Telephone \* (301) 590-6852 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 08/27/2021


(Title \*)

By John Zecca

EVP and Chief Legal Counsel

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2021.08.27 13:33:28 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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SR-Phlx-2021-49 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-Phlx-2021-49 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to extend the expiration date of the temporary amendments in SR-Phlx-2020-53 from August 31, 2021, to December 31, 2021.<sup>3</sup> The proposed rule change would not make any changes to the text of the Exchange rules.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not

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

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

<sup>3</sup> If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2021, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

become operative for 30 days after the date of the filing, so that the Exchange can implement the proposed rule change immediately.

Questions and comments on the proposed rule change may be directed to:

Olumuyiwa Odeniyide  
Enforcement Counsel  
Nasdaq, Inc.  
301-590-6852

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

a. Purpose

The Exchange proposes to continue to harmonize Exchange Rule General 3, Section 16 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rule 1015 in response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities.<sup>4</sup> The Exchange originally filed proposed rule change SR-Phlx-2020-53, which allows the Exchange Review Council (“ERC”) to conduct hearings in connection with appeals of Membership Application Program decisions, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. In April 2021, the Exchange filed a proposed rule change, SR-Phlx-2021-027, to extend the expiration date of the temporary amendments in SR-Phlx-2020-53 from April 30, 2021, to August 31,

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<sup>4</sup> See Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019) (“FINRA Filing”). The Exchange notes that the FINRA Filing also proposed to temporarily amend FINRA Rules 9261, 9524, and 9830, which govern hearings in connection with appeals of disciplinary actions, eligibility proceedings, and temporary and permanent cease and desist orders. The Exchange’s Rules 9261, 9524, and 9830 incorporate by reference The Nasdaq Stock Market LLC rules, which are the subject of a separate filing. See SR-NASDAQ-2021-067 (August 27, 2021). Therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

2021.<sup>5</sup> While there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>6</sup> Based on its assessment of current COVID-19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,<sup>7</sup> the Exchange has determined that there is a continued need for temporary relief for several months beyond August 31, 2021. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR-Phlx-2020-53 from August 31, 2021, to December 31, 2021.

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<sup>5</sup> See Securities Exchange Act Release No. 91766 (May 4, 2021), 86 FR 25014 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2021-027); see also Securities Exchange Act Release No. 90758 (December 21, 2020), 85 FR 85782 (December 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2020-053).

<sup>6</sup> For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>.

<sup>7</sup> For instance, the Centers for Disease Control and Prevention on July 27, 2021, began recommending that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission and noted that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>. Also, several cities, including Atlanta, Baltimore, Los Angeles, New Haven and San Francisco, have recently reinstated their mask mandates.

As set forth in SR-Phlx-2020-53, the Exchange also relies on COVID-19 data and criteria to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference. Based on that data and criteria, the Exchange does not believe the COVID-19- related health concerns necessitating this relief will meaningfully subside by August 31, 2021, and has determined that there will be a continued need for this temporary relief for several months beyond that date. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR-Phlx-2020-53 from August 31, 2021, to December 31, 2021. The extension of the temporary amendments allowing for specified ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances – enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

b. 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,

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

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

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, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>10</sup> resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR-Phlx-2020-53, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID-19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing ERC hearings to continue to proceed by video conference, the Exchange might be required to postpone some or almost all hearings indefinitely. The Exchange must be able to perform its critical adjudicatory functions in order to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR-Phlx-2020-53, this temporary relief allowing ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing

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<sup>10</sup> See supra note 4.

participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

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

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR-Phlx-2020-53, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>11</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>12</sup> in that it effects a change

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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).



that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange requests that the Commission waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),<sup>13</sup> so that the proposed rule change may become operative immediately. Waiver of the operative delay would allow the proposed changes, which are designed to minimize disruptions to the Exchange's operations in order to maintain fair processes and fulfill its obligations to protect investors and maintain fair and orderly markets, to be operative on the date of filing. Given that the need for the temporary relief provided originally by the Exchange persists, waiving the 30-day operative delay would provide continuation and an uninterrupted extension of this necessary relief.<sup>14</sup>

Furthermore, Rule 19b-4(f)(6)(iii)<sup>15</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> The Exchange notes that waiver of the 30-day operative period here is consistent with previous extensions of this temporary relief. See, e.g., SR-Phlx-2021-027, supra note 5.

<sup>15</sup> See supra note 13.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on a similar FINRA rule change.<sup>16</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

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<sup>16</sup> See supra note 4.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2021-49)

August \_\_, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

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 August 27, 2021, 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, II, and III, below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 extend the expiration date of the temporary amendments in SR-Phlx-2020-53 from August 31, 2021, to December 31, 2021.<sup>4</sup> The proposed rule change would not make any changes to the text of the Exchange rules.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2021,

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.

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

1. Purpose

The Exchange proposes to continue to harmonize Exchange Rule General 3, Section 16 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its Rule 1015 in response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities.<sup>5</sup> The Exchange originally filed

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the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

<sup>5</sup> See Securities Exchange Act Release No. 92685 (August 17, 2021), No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019) ("FINRA Filing"). The Exchange notes that the FINRA Filing also proposed to temporarily amend FINRA Rules 9261, 9524, and 9830, which govern hearings in connection with appeals of disciplinary actions, eligibility proceedings, and temporary and permanent cease and desist orders. The Exchange's Rules 9261, 9524, and 9830 incorporate by reference The Nasdaq Stock Market LLC rules, which are the subject of a separate filing. See SR-NASDAQ-2021-067 (August 27, 2021). Therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

proposed rule change SR-Phlx-2020-53, which allows the Exchange Review Council (“ERC”) to conduct hearings in connection with appeals of Membership Application Program decisions, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. In April 2021, the Exchange filed a proposed rule change, SR-Phlx-2021-027, to extend the expiration date of the temporary amendments in SR-Phlx-2020-53 from April 30, 2021, to August 31, 2021.<sup>6</sup> While there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>7</sup> Based on its assessment of current COVID-19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,<sup>8</sup> the

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<sup>6</sup> See Securities Exchange Act Release No. 91766 (May 4, 2021), 86 FR 25014 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2021-027); see also Securities Exchange Act Release No. 90758 (December 21, 2020), 85 FR 85782 (December 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2020-053).

<sup>7</sup> For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>.

<sup>8</sup> For instance, the Centers for Disease Control and Prevention on July 27, 2021, began recommending that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission and noted that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>. Also, several cities, including

Exchange has determined that there is a continued need for temporary relief for several months beyond August 31, 2021. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR-Phlx-2020-53 from August 31, 2021, to December 31, 2021.

As set forth in SR-Phlx-2020-53, the Exchange also relies on COVID-19 data and criteria to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference. Based on that data and criteria, the Exchange does not believe the COVID-19- related health concerns necessitating this relief will meaningfully subside by August 31, 2021, and has determined that there will be a continued need for this temporary relief for several months beyond that date.

Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR-Phlx-2020-53 from August 31, 2021, to December 31, 2021. The extension of the temporary amendments allowing for specified ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances – enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

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Atlanta, Baltimore, Los Angeles, New Haven and San Francisco, have recently reinstated their mask mandates.

## 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, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>11</sup> resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR-Phlx-2020-53, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID-19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing ERC hearings to continue to proceed by video conference, the Exchange might be required to postpone some or almost all hearings indefinitely. The Exchange must be able to perform its critical adjudicatory functions in order to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

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

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

<sup>11</sup> See supra note 5.

Among other things, this relief will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR-Phlx-2020-53, this temporary relief allowing ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

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

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR-Phlx-2020-53, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

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>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

#### 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-2021-49 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-2021-49. 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2021-49 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>16</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).