

should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>58</sup>

**J. Matthew DeLesDernier,**  
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[FR Doc. 2021-09786 Filed 5-7-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91766; File No. SR-Phlx-2021-27]

### 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

May 4, 2021.

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 April 28, 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 and II below, which Items have been substantially 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 April 30, 2021, to August 31, 2021.<sup>4</sup> The proposed rule change would not make

any changes to the text of the Exchange rules.

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 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. While there are signs of improvement, the COVID-19 conditions necessitating the temporary amendments persist and, based on its assessment of current COVID-19 conditions and the lack of certainty as to when COVID-19-related health concerns and corresponding

restrictions will meaningfully subside, the Exchange has determined that there is a continued need for this temporary relief for several months beyond April 30, 2021. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR-Phlx-2020-53 from April 30, 2021, to August 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 April 30, 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 April 30, 2021, to August 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.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</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, resulting in less burdensome and more efficient regulatory compliance.<sup>8</sup>

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See *supra* note 5.

<sup>58</sup> 17 CFR 200.30-3(a)(12).

<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> See Securities Exchange Act Release No. 90758 (Dec. 21, 2020), 85 FR 85782 (Dec. 29, 2020) (SR-Phlx-2020-53). If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond August 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.

<sup>5</sup> See Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR-FINRA-2021-006) (“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-2021-033 (April 28, 2021). Therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

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 current COVID-19 conditions and the uncertainty around when those conditions will meaningfully improve, without this relief allowing ERC hearings to continue to proceed by video conference, such hearings may need to be postponed 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 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 April 30, 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>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</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>12</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. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to 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 April 30, 2021.<sup>13</sup> Importantly, extending the relief provided in Phlx-2020-53 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.<sup>14</sup> The Commission also

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</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>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See *supra* Item II.

<sup>14</sup> See FINRA Filing, 86 FR at 19308 (noting the same in granting FINRA's request to waive the 30-

notes that this proposal extends without change the temporary relief previously provided by Phlx-2020-53,<sup>15</sup> and only during the period in which the Exchange's operations are impacted by COVID-19. As proposed, the changes would be in place through August 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.<sup>16</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<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-2021-27 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.

day operative delay so that SR-FINRA-2021-006 would become operative immediately upon filing).

<sup>15</sup> See *supra* note 4.

<sup>16</sup> See *id.* As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond August 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–Phlx–2021–27. 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; 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–2021–27 and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021–09773 Filed 5–7–21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91761; File No. SR–CboeBYX–2021–011]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Fee Schedule to Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

May 4, 2021.

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 April 21, 2021, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) 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

Cboe BYX Exchange, Inc. (the “Exchange” or “Cboe BYX”) proposes to adopt a fee schedule to establish fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).<sup>3</sup> The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange’s Office of the Secretary, 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

Under the CAT NMS Plan, the Operating Committee of the Consolidated Audit Trail, LLC

(“Company”) (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants.<sup>4</sup> The Operating Committee has filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the CAT NMS Plan to implement a revised funding model for the CAT (“CAT Funding Model”) and to establish a fee schedule for Participant CAT fees (“Proposed CAT Fee Plan Amendment”).<sup>5</sup> The Proposed CAT Fee Plan Amendment describes the CAT Funding Model in detail, including the proposal to charge Industry Members CAT fees. The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any CAT fees applicable to Industry Members that the Operating Committee approves.<sup>6</sup> Accordingly, the purpose of this proposed rule change is to implement the required fee schedule provisions for CAT fees applicable to Industry Members that are Members in accordance with the CAT Funding Model. The fee schedule provisions will become operative upon the SEC’s approval of the Proposed CAT Fee Plan Amendment.

###### (1) CAT Funding Model

Under the CAT Funding Model set out in the Proposed CAT Fee Plan Amendment, the CAT fees applicable to Participants and Industry Members for the relevant quarter would be designed to cover the total CAT costs associated with developing, implementing and operating the CAT for the relevant quarter (“Total CAT Costs”).<sup>7</sup> The CAT Funding Model would implement a bifurcated funding model, where these costs would be borne by both Participants and Industry Members. Industry Members as a group would pay 75% of the Total CAT Costs (the “Industry Member Allocation”), and Participants as a group would pay 25% of the Total CAT Costs (the “Participant Allocation”).<sup>8</sup>

<sup>4</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>5</sup> See Securities Exchange Act Rel. No. 91555 (Apr. 14, 2021), 86 FR 21050 (April 21, 2021).

<sup>6</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>7</sup> Note that certain costs would be excluded from the Historical CAT Assessment Costs, as discussed in more detail below. See Proposed CAT Fee Plan Amendment at 4, 56–57.

<sup>8</sup> Each Industry Member and Participant CAT Reporter would be required to pay CAT fees established via the CAT Funding Model. CAT Reporting Agents acting in their role as such would not have an obligation to pay CAT fees. See Proposed CAT Fee Plan Amendment at 4.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT Compliance Rule. See Rules 4.5 through 4.17 of the Exchange’s Rulebook. The Exchange and each of its affiliated exchanges (Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.) are filing to adopt the CAT fee schedule.

<sup>18</sup> 17 CFR 200.30–3(a)(12).