

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93674; File No. SR-Phlx-2021-69)

November 29, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Juneteenth National Independence Day As an Exchange Holiday and Give the Exchange the Authority to Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures

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 November 17, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Rule 1030, within General 3, titled “Member Access to the Exchange,” to make Juneteenth National Independence Day a holiday of the Exchange memorialize all current Exchange holidays within General 3, Rule 1030, and to add a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 a new Rule 1030, within General 3, titled “Member Access to the Exchange,” to make Juneteenth National Independence Day a holiday. The Exchange also proposes to memorialize all current holidays within General 3, Rule 1030, as well as add a provision to permit the Exchange authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

Today, the Exchange observes the following holidays: New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.³ Equity 2, Section 8 (Normal Business Hours) provides, “The System operates from 8:00 a.m. to 5:00 p.m. Eastern. Time on each business day, unless modified by the Exchange.”⁴

³ See <https://www.nasdaq.com/market-activity/stock-market-holiday-calendar>.

⁴ Additionally, Phlx Options 3, Section 1 (Hours of Business) provides, “The Board of Directors shall determine by resolution the hours during which business may be transacted on the Exchange.”

At this time, the Exchange also proposes to observe Juneteenth National Independence Day, which was designated a legal public holiday on June 17, 2021.⁵ Consistent with broad industry sentiment⁶ and the approach recommended by the Securities Industry and Financial Markets Association (“SIFMA”),⁷ the Exchange proposes to add “Juneteenth National Independence Day” to the proposed list of holidays within General 3, Rule 1030(a). As a result, the Exchange will not be open for business on Juneteenth National Independence Day, which falls on June 19 of each year, in addition to the other annual holidays noted within proposed General 3, Rule 1030(a).

As is the case today for those annual holidays currently observed, when a holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday and when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the succeeding Monday, unless unusual business conditions exist at the time.⁸ Proposed General 3, Rule 1030(a) would provide,

The Exchange will be open for the transaction of business on business days. The Exchange will not be open for business on New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Good Friday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday and when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the succeeding Monday, unless unusual business conditions exist at the time.

⁵ Public Law No. 117-17.

⁶ See, e.g. <https://www.wsj.com/articles/wall-street-moves-to-close-markets-for-juneteenth-in-2022-11626376243#:~:text=Stock%20and%20bond%20markets%20are,on%20a%20Sunday%20next%20year.>

⁷ SIFMA recommends a full market close in observance of Juneteenth National Independence Day. See <https://www.sifma.org/resources/general/holiday-schedule/#US>.

⁸ For example, New Year's Day 2022 would not be observed because January 1, 2022 falls on a Saturday and typically the last day of the preceding year remains a full business day.

When determining whether unusual business conditions exist in connection with the observance of a holiday on the preceding Friday or following Monday, or not observing the holiday, the Exchange would coordinate with the securities industry. Proposed General 3, Rule 1030(a) is similar to Cboe BYX Exchange, Inc. (“CBOE BYX”) Rule 11.1(b) and Cboe Exchange, Inc. (“Cboe”) Rules 5.1(d) and 5.23(d). The Exchange believes memorializing these annual holidays within its rules will bring additional clarity to those observed holidays.

Next, the Exchange proposes to add rule text within proposed General 3, Rule 1030(b), similar to CBOE BYX Rule 11.1(c), which states, “The Chief Executive Officer of the Exchange shall have the power to halt, suspend trading in any and all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, suspension, or closing, when he or she deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest including special circumstances such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. No such action shall continue longer than a period of two days, or as soon thereafter as a quorum of the Board of Directors can be assembled, unless the Board approves the continuation of such suspension.” While the Exchange would continue to submit a proposed rule change to the Commission to amend the annual holidays within General 3, Rule 1030(a), the Exchange proposes to give the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures. Unanticipated closures are typically the result of natural disasters, ad hoc National Holidays, disruptions of infrastructure, and other unpredictable events that would cause the Exchange to close for business. The Exchange would

not utilize this authority routinely, rather the authority is reserved for extraordinary circumstances where there would not be sufficient time for the Exchange to file to amend its rules. The Exchange notes that it would coordinate with the industry in determining closures for these events.⁹ The Exchange believes that it is necessary to have such authority in the aforementioned cases as there may not be sufficient time to file a proposed rule change. Additionally, these unanticipated closures would not be recognized on an annual basis, rather these types of closures would be ad hoc closures. The Exchange would provide notice to members and member organizations of these unanticipated closures in addition to continuing to post its annual holiday schedule on its website.

Finally, the Exchange proposes to add rule text at the end of General 3, Section 1030(b) which states, “The powers granted to the Chief Executive Officer within paragraph (b) do not apply to paragraph (a) or any other rule within the Exchange’s Rulebook.” The power of the Chief Executive Officer to halt, suspend or close facilities of the Exchange within paragraph (b) applies only to the circumstances noted within that paragraph. The powers of the Chief Executive Officer do not extend to paragraph (a) of General 3, Section 1030 or to any other provision in the Rulebook, including but not limited to Options 3, Section 1 or Equity 2, Section 8.

⁹ The Options Clearing Corporation (“OCC”) has issued a guide for such events. See OCC’s Market Closing Guide (<https://www.theocc.com/getmedia/8d6a36c6-1aa4-4984-9333-d7b0a6a09be7/unscheduled-market-closings-guide.pdf>). See also DTCC Reference Guide: Unscheduled Closing of Exchanges and Markets for Clearing Agencies (https://www.dtcc.com/~media/Files/Downloads/%20issues/Unscheduled_Close.pdf).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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 memorializing its current holidays within General 3, Rule 1030(a) and also providing the manner in which the Exchange would handle holidays that fell on a Saturday or Sunday, unless unusual business conditions exist. Today, the Exchange coordinates with the securities industry with respect to annual holidays.

Further, the Exchange's proposal to observe the Juneteenth National Independence Day as an annual holiday is consistent with the Act. Similar to other holidays listed within proposed General 3, Rule 1030(a), the rule text addresses what day would be taken off if June 19 fell on a Saturday or Sunday. The proposed rule also accounts for unusual business conditions that may alter the observance of an annual holiday or affect the day the holiday is observed. The Exchange notes that when determining whether to utilize the unusual business conditions provision, the Exchange would continue to coordinate with the securities industry.

The proposed rule promotes clarity and transparency by providing the list of current annual holidays, as well as the proposed new Juneteenth National Independence Day holiday, within its Rules. The proposed changes do not raise any new or novel issues. For these reasons, the Exchange believes that these aspects of the proposal are consistent with the Act.

¹⁰ 15 U.S.C. 78f(b)

¹¹ 15 U.S.C. 78f(b)(5).

Further, the Exchange's proposal to permit the Chief Executive Officer to halt, suspend trading in any and all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, suspension, or closing, when he or she deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest including certain specified special circumstances is consistent with the Act as the provision would permit the Exchange to act in coordination with other exchanges within the securities industry to close, as necessary, for natural disasters, ad hoc National Holidays, disruptions of infrastructure, and other unpredictable events. The Exchange would not utilize this authority routinely, rather the authority is reserved for extraordinary circumstances¹² where there would not be sufficient time for the Exchange to file to amend its rules. With this proposal, the Exchange's process of filing a proposed rule change for any new annual holidays it determines to add to the list of holidays within General 3, Rule 1030(a) would remain unchanged. The proposed authority would permit the Exchange to close the market on an ad hoc basis for an extraordinary event without the need to file a proposed rule change; these unanticipated closures would not be recognized on an annual basis. Today, the Exchange would utilize emergency authority to close its market as a result of an extraordinary circumstance.¹³ This amendment removes impediments to and perfects the mechanism of a free and open market and a national market system by allowing the Exchange to halt or suspend trading or close

¹² The special circumstances noted in proposed Rule 1030(b) include, (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event.

¹³ See Phlx By-Law 7.5.

Exchange facilities for unanticipated circumstances by providing notice to members and member organizations in addition to continuing to post its annual holiday schedule on its website.

The Exchange's proposal to add rule text at the end of General 3, Section 1030(b) to make clear the power of the Chief Executive Officer to halt, suspend or close facilities of the Exchange within paragraph (b) applies only to the circumstances noted within that paragraph is consistent with the Act as that rule text will clarify the scope of the Chief Executive Officer's powers. Making clear the powers of the Chief Executive Officer adds greater transparency to the proposed rule.

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.

Memorializing its current holidays within General 3, Rule 1030(a) and describing the way holidays are observed today that fall on a Saturday or Sunday, unless unusual business conditions exist, does not impose an undue burden on competition, rather the proposal brings clarity to the Exchange's Rules. Moreover, adding Juneteenth National Independence Day to its list of annual holidays within General 3, Rule 1030(a) will not impose any burden on competition as the holiday aligns with broad industry sentiment¹⁴ and the approach recommended by SIFMA. The Exchange would continue to coordinate with the securities industry regarding the observation of annual holidays.

Further, the Exchange's proposed changes to General 3, Rule 1030(b) to permit the Chief Executive Officer to halt, suspend trading in any and all securities traded on the Exchange, to

¹⁴ See note 6 above.

close some or all Exchange facilities, and to determine the duration of any such halt, suspension, or closing, when he or she deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest including certain specified special circumstances does not impose an undue burden on competition. The proposed authority would permit the Exchange to close on an ad hoc basis for an extraordinary event without the need to file a rule change by providing notice to members and member organizations of these unanticipated closures. This would allow the Exchange to continue to coordinate with the securities industry for unanticipated closures. These proposed changes are not designed to address any competitive issues and are consistent with existing rules of other exchanges.¹⁵

The Exchange's proposal to add rule text at the end of General 3, Section 1030(b) to make clear the power of the Chief Executive Officer to halt, suspend or close facilities of the Exchange within paragraph (b) applies only to the circumstances noted within that paragraph does not impose an undue burden on competition, rather, the rule text will make clear the powers of the Chief Executive Officer thereby adding greater transparency to the proposed rule.

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

¹⁵ See Cboe BYX Rule 11.1(b) and (c) and Cboe Rules 5.1(d) and 5.23(d).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-69 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.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 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.

All submissions should refer to File Number SR-Phlx-2021-69. 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-2021-69 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).