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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91263; File No. SR-Phlx-2021-11]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 4, Rule 3301B Regarding Reserve Orders

March 5, 2021

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 February 23, 2021, 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 amend Equity 4, Rule 3301B, as described further below.

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.

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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 amend Equity 4, Rule 3301B(h), which describes Orders with "Reserve Size," to clarify its existing practice relating to replenishments of such Orders. As set forth in Equity 4, Rule 3301B(h), "Reserve Size" is an Order Attribute that permits a Participant to stipulate that an Order Type that is Displayed may have its displayed size replenished from additional non-displayed size.[3]

The Exchange established the Reserve Orders with the intention that it would always act as a provider of liquidity upon replenishment. Indeed, this is what participants have come to expect from the operation of Reserve Orders.

However, a rule filing [4]introduced a rare circumstance where a Reserve Order, upon replenishment of its Displayed Order component, theoretically could become a liquidity remover under the existing Exchange Rules.

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[3] An Order with Reserve Size may be referred to as a "Reserve Order."

[4] See Securities Exchange Act Release No. 34-88583 (April 7, 2020), 85 FR 20533 (April 13, 2020) (SR-PHLX-2020-015).

An example of the rare theoretical circumstance is as follows. Order 1 is a Price to Comply Order to buy at $10.00 resting on the Exchange book with 100 shares displayed and 3,000 shares in reserve (for a total order size of 3,100 shares). Order 2 is an Order to sell 100 shares at $10.00, which executes against the 100 displayed shares from Order 1 upon entry. Order 3 is a Post Only order to sell 1,000 shares at $10.00 that is entered and posts to the Book before Order 1 has been replenished. Following the rules of the Post Only Order Type, Order 3 does not execute against the non-displayed interest resting at $10.00, but instead posts at the locking price. Therefore, upon replenishment, the new 100 shares of Order 1 would lock Order 3 at $10.00. As directed by the rule governing Price to Comply Orders,[5] Order 1 would execute against Order 3 at $10.00 as a liquidity taker.

The Exchange did not account for this scenario when drafting its rules. In fact, the Exchange does not presently handle this scenario as described above. Instead, upon replenishment, the Exchange reprices the new displayed Price to Comply Order such that it does not execute against Order 3 as a liquidity taker.

However, the Exchange now proposes to eliminate any unintended inconsistency as to how it handles this scenario and make clear in its Rules that a Reserve Order is an adder of liquidity after posting on the Exchange Book in all circumstances. Specifically,

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[5] Pursuant to Equity 4, Rule 3301A(b)(1)(A), a "Price to Comply Order" is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. When a Price to Comply Order is entered, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation.

the Exchange proposes to amend the Rule to state that if the new Displayed Order would lock an Order that posted to the Exchange Book before replenishment can occur, the Displayed Order will post at the locking price if the resting Order is Non-Display or will be repriced, ranked, and displayed at one minimum price increment lower (higher) than the locking price if the resting order to sell (buy) is Displayed.[6] [7]

Again, in the above example, the proposed rule will prevent Order 1 from becoming a liquidity remover because upon replenishment, the new Displayed Order will not attempt to execute against Order 3, but instead it will post to the Exchange Book and display at a price of $9.99, while the remaining 2,900 non-display shares in reserve will remain posted at $10.00.

By posting new Displayed Orders without attempting to execute, the Displayed Order will avoid removing liquidity upon replenishment.[8]

The Exchange notes that the Commission has approved a similar rule change that its sister exchange, the Nasdaq Stock Market, LLC ("Nasdaq"), submitted late last year.[9]

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[6] The Exchange notes that a Reserve Order that does not execute fully upon initial order entry will behave in the same manner as described in this Proposal if the Displayed portion of the Reserve Order would lock a resting Order upon entry.

[7] If a Displayed Order posts to the Exchange Book and locks a resting Non-Displayed Order with the Trade Now attribute enabled, then consistent with the definition of Trade Now, as set forth in Equity 4, Rule 3301B(l), the Trade Now functionality would apply and the Non-Displayed Order would be able to execute against the locking Displayed Order as a liquidity taker. If a locked Non-Displayed Order does not have the Trade Now attribute enabled, then new incoming orders will be eligible to execute against the Displayed Order.

[8] The Exchange proposes to correct a non-substantive typographical error in the existing rule text by removing the word "the" from the following sentence: "For example, if a Price to Comply Order with Reserve Size … and the 150 shares …."

[9] See Securities Exchange Act Release No. 34-91109 (February 11, 2021), 86 FR 10141 (February 18, 2021) (SR-NASDAQ-2020-090).

The Exchange's proposal will harmonize the Exchange's Reserve Order Attribute rule with that of Nasdaq.

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.

The proposed rule change is consistent with the Act because it will help ensure that the Exchange's Rule governing Reserve Orders will be consistent with the original intention of the Exchange and the expectation of participants that such Orders, after posting on the Exchange Book, will always be liquidity providers and not liquidity takers. It would also ensure that the Exchange's Order Types operate the same way during a race condition as they do during normal conditions. The proposal would eliminate any ambiguity under the existing rules as to whether a Reserve Order would take liquidity when a locking order posts to the Exchange book prior to the Reserve Order completing its replenishment (or prior to the Displayed portion of a Reserve Order posting to the Exchange Book for the first time). Thus, the proposal would ensure that the Exchange's Rules are transparent and clear about how the System processes Reserve Orders.

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Finally, the proposal is consistent with the Act because it would correct a non-substantive typographical error in the Rule text, which will improve its readability and clarity, to the benefit of the public and investors.

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. Again, Exchange intends for the proposed rule change to only eliminate an inconsistency as to how it handles a rare circumstance that causes the System to process Reserve Orders in an unintended manner. The Exchange does not anticipate this proposal will have any impact on competition whatsoever.

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[12] and Rule 19b-4(f)(6) thereunder.[13]

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12 15 U.S.C. 78s(b)(3)(A).

13 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to immediately amend its Reserve Order rule to account for scenarios that may occur today and harmonize its Reserve Order rule with that of Nasdaq.[16] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[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 change should be approved or disapproved.

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14 17 CFR 240.19b-4(f)(6).

15 17 CFR 240.19b-4(f)(6)(iii).

16 See supra note 9.

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

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-2021-11 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-2021-11. 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-2021-11 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF 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.

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[18] 17 CFR 200.30-3(a)(12).