

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96154; File No. SR-Phlx-2022-43)

October 25, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 4, Rule 3307 to Enhance the Anti-Internalization Functionality Available on the Exchange

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 October 21, 2022, 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 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 3307, 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to enhance the anti-internalization functionality available on the Exchange by giving market participants the flexibility to choose to have this protection apply to market participants under Common Ownership.³ Anti-internalization, also known as self-match prevention, is an optional feature available on the Exchange that (1) prevents two orders with the same Market Participant Identifier (MPID) from executing against each other, or (2) prevents two orders entered through a specific order entry port from executing against each other (in the case of market participants using the OUCH order entry protocol). The proposed rule change would permit market participants to direct that quotes/orders entered into the System not execute against quotes/orders entered across MPIDs that are under Common Ownership. The Exchange believes that this enhancement will provide helpful flexibility for market participants that wish to prevent trading against all quotes and orders entered by market participants under Common Ownership, instead of just quotes and orders that are entered under the same MPID or under a particular order entry port.

Currently, under Equity 4, Rule 3307, the Exchange provides optional anti-internalization functionality whereby quotes and orders entered by market participants using the same MPID are not executed against each other. In addition, under Equity 4, Rule 3307, market participants

³ The proposed rule change would define “Common Ownership” under Equity 4, Rule 3307 to mean participants under 75% common ownership or control.

using the OUCH order entry protocol may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent quotes/orders with such modifier from executing against each other.⁴ Self-match prevention functionality assists participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange currently provides three versions of self-match prevention functionality to allow participants to choose how orders are handled in the event of a self-match situation: (1) decrement, (2) cancel oldest, and (3) cancel newest. Under the first version (“decrement”), if the self-match orders have the same share size, both orders will cancel back to the customer. If the orders are not equivalent in size, the smaller order will cancel back to the originating customer and the larger order will decrement by the size of the smaller order. The remaining shares of the larger order will remain on the book. Under the second version (“cancel oldest”), the full size of the order residing on the book will cancel back to the customer if the incoming order would execute against it. The incoming order will remain intact with no changes. Under the third version (“cancel newest”), the full size of the order coming into the book will cancel back to the customer. The resting order will remain intact with no changes. Currently, firms may opt-in to any version of the self-match prevention functionality on a per MPID basis or per port basis.

Today, the anti-internalization protection prevents market participants from trading against their own quotes and orders at the MPID or port level. The proposed enhancement to this functionality would allow participants to choose to have this protection applied at the MPID or port level as implemented today, or across MPIDs under Common Ownership. If participants

⁴ The group identification modifier allows firms to apply self-match prevention on a more granular level (i.e., per a specific order entry port).

choose to have this protection applied across MPIDs under Common Ownership, the anti-internalization functionality would prohibit quotes and orders from different MPIDs associated with the same Organization ID (“OrgId”)⁵ from trading against one another. Under the proposed rule change, the anti-internalization functionality would continue to be an optional feature. If a firm chooses to take advantage of self-match prevention, the firm would need to opt-in to the self-match prevention functionality, as is the case today. If participants opt-in to the self-match prevention functionality, under the proposed rule change, participants would have the option to choose whether to apply the protection at the OrgId, MPID, or port level. In addition, participants may opt-in to any version of the self-match prevention strategy that exists today (i.e., decrement, cancel oldest, or cancel newest).⁶

The Exchange believes that the proposed anti-internalization enhancement would provide participants with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the participant’s business needs. While the Exchange believes that some firms will want to restrict self-match prevention to trading against interest from the same MPID or same port – i.e., as implemented today – the Exchange believes that other firms will find it helpful to be able to configure self-match prevention to apply at the OrgId level so that they are protected regardless of which MPID the order or quote originated from.

⁵ The OrgId is a field that indicates Common Ownership across multiple MPIDs.

⁶ If the self-match prevention strategy differs between two orders, the strategy of the order removing liquidity applies.

Implementation Date

The Exchange intends to introduce this new functionality no later than the First Quarter of 2023. In any event, the Exchange will issue an Equities Trader Alert to provide notification of the change and relevant date prior to introducing the new functionality.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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 Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it is designed to provide market participants with additional flexibility with respect to how to implement self-trade protections provided by anti-internalization functionality. Currently, market participants are provided optional functionality that (1) prevents quotes and orders from one MPID from trading with quotes and orders from the same MPID, or (2) prevents quotes and orders entered through a specific order entry port from trading with quotes and orders entered through the same order entry port (in the case of market participants using the OUCH order entry protocol). This functionality allows participants to better manage their order flow and prevent undesirable executions where the participant, using the same MPID or same port, would be on both sides of the trade. While this functionality is helpful, the Exchange proposes to expand the protections to provide participants with the option

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

not to trade with quotes and orders entered by different MPIDs under Common Ownership. The Exchange would continue to provide the option to opt out of the self-match prevention. In addition, the Exchange would continue to provide the option to use the current functionality to prevent self-trades on a per MPID or per port basis. The proposed rule change would offer a new option for participants opting-in to the self-match prevention to prevent undesirable executions across different MPIDs under the same Common Ownership. The Exchange believes that flexibility to apply anti-internalization functionality at the OrgId level would be useful to participants. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market as it will further enhance self-trade protections provided to market participants. This functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers.

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. The proposed rule change is designed to enhance self-match prevention functionality provided to the Exchange's participants and will benefit participants that wish to protect their quotes and orders against trading with other quotes and orders within the same OrgId, rather than the more limited MPID or port standard applied today. The new functionality is also completely voluntary, and members that wish to use the current functionality (or opt out altogether) can also continue to do so. The Exchange does not believe that providing more flexibility to participants will have any significant impact on competition. In fact, the Exchange believes that the proposed rule change

is evidence of the competitive environment where exchanges must continually improve their offerings to maintain competitive standing.

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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

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.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 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.

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-2022-43 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-2022-43. 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-2022-43 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.¹¹

J. Matthew DeLesDernier

Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).