

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100061; File No. SR-Phlx-2024-22)

May 3, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Trade Now Order Attribute, at Equity 4, Rule 3301B and Rule 3301A

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 April 30, 2024, 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 the Trade Now Order Attribute, at Equity 4, Rule 3301B,³ as well as to make conforming changes to Rule 3301A, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

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 Rule 3301B(1), which governs the Trade Now Order Attribute.⁴ Under the Exchange’s rules, as amended by SR-Phlx-2023-43,⁵ Trade Now is an Attribute that allows a resting Order “that becomes locked or crossed, as applicable, at its non-displayed price by the posted price of an incoming Displayed Order or a Midpoint Peg Post-Only Order to execute against the locking or crossing Order(s) as a liquidity taker automatically.” The Exchange proposes to amend this rule text to state instead that Trade Now allows “a resting Order that is locked or crossed, as applicable, at its non-displayed price by the posted price of an incoming Displayed Order or a Midpoint Peg Post-Only Order or another Order or Orders (where such locking or crossing Order(s) or the order with Trade Now satisfies a Minimum Quantity condition) to execute against a locking or crossing Order(s) as a liquidity taker automatically, when such Orders become marketable.” These proposed amendments serve several purposes.

First, the proposed amended text broadens the scope of the Rule so that it provides for Trade Now to also activate in circumstances where Orders possessing the Trade Now Order

⁴ An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See id.

⁵ See Securities Exchange Act Release No. 34-98377 (September 13, 2023); 88 FR 64504 (September 19, 2023) (SR-Phlx-2023-43).

Attribute cannot execute at the point of initial interaction due to a Minimum Quantity condition⁶ on the resting Order. The existing rule text suggests that Trade Now will activate only where it can do so immediately upon interaction with an incoming Displayed Order or a Midpoint Peg Post-Only Order, rather than after waiting for any conditions that preclude immediate execution from occurring. Under the proposed amendment, Trade Now would activate and execute against the locking or crossing Orders when the Minimum Quantity condition that prevented the immediate execution is satisfied, provided that the other requirements for activation of Trade Now functionality remain satisfied at that time.⁷

This proposed amendment enables Trade Now to better achieve its underlying purpose – which is to help clear the Exchange Book of locking or crossing orders. The Exchange perceives no logical basis to preclude activation of Trade Now when two (or more) Orders meet the conditions for activation, but for the fact that one of them has a Minimum Quantity condition that precluded it from executing (immediately upon entry and/or against subsequent incoming contra-side orders). Provided that the conditions for Trade Now to activate remain satisfied as of the time when the Orders become marketable, the Exchange believes that it is logical and consistent with the purpose of Trade Now for these Orders to execute such locking or crossing

⁶ Pursuant to Rule 3301B(e), “Minimum Quantity” is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. The Rule provides for two types of Minimum Quantity Attributes: one in which a participant specifies that the condition may be satisfied by execution against one or more orders with an aggregate size of at least the minimum quantity; and another in which the condition must be satisfied by execution against one or more Orders, each of which must have a size of at least the minimum quantity. *Id.* This proposed rule change concerns the first of these two alternatives.

⁷ The Proposal also replaces the word “becomes” with “is” in the existing phrase “resting Order that becomes locked or crossed, as applicable, at its non-displayed price” to accommodate the fact that, with the proposed amendment, Trade Now could activate after an Order with Trade Now becomes locked if it is not marketable at that initial point in time.

orders when the Minimum Quantity condition can be satisfied because doing so will help clear the Order Book of locked and crossed orders.

An example of a scenario in which the proposed amendment would apply is when an Order with Trade Now has a Minimum Quantity condition that a locking or crossing Order cannot initially satisfy. By way of illustration, assume that Participant A enters Order 1, which is a Displayed Order to sell 100 shares of XYZ at \$10.00. Participant B then enters Order 2, which is a Non-Displayed Trade Now order to buy 200 shares of XYZ at \$10.00, with a Minimum Quantity requirement of 200 shares. Order 2 will not automatically remove Order 1 due to the Minimum Quantity requirement. Participant C thereafter enters Order 3, which is a Non-Displayed Order to sell 100 shares of XYZ at \$10.00. Under the existing Rule, Order 2 would not remove Order 3 using Trade Now due to the Minimum Quantity requirement of Order 2. Under the proposed amended Rule text, however, Trade Now would be activated for Order 2, and it would remove both Orders 1 and 3.

Similarly, the amendment would apply when it is an incoming locking Order, or a resting locking Order, that has a Minimum Quantity condition which the Order with Trade Now cannot satisfy immediately. In this scenario, assume that Participant A enters Order 1, which is a Non-Displayed Order to sell 300 shares of XYZ at \$10.00, with a Minimum Quantity requirement of 200 shares. Participant B then enters Order 2, which is a Non-Displayed Order with Trade Now to buy 100 shares of XYZ at \$10.00. Under the existing Rule, Order 2 will lock Order 1 but not execute due to the Minimum Quantity requirement associated with Order 1. If Participant C thereafter enters Order 3, which is another Displayed Order to buy 200 shares of XYZ at \$10.00, then under the existing Rule, Order 3 will execute against Order 1 upon receipt, but Order 2 will not use Trade Now to trade against the remaining shares of Order 1. Under the proposal,

however, once Order 3 is entered, it will execute against Order 1, satisfying the Minimum Quantity requirement of Order 1 and reducing the remaining size of Order 1 to 100 shares. At this point, Order 2 is capable of executing against the reduced size of Order 1. Order 2 will activate Trade Now, execute against Order 1, and clear the locked book.

In addition to the above, the proposed amendments to Rule 3301B(l), along with corresponding amendments to Rule 3301A(b)(4) and (6), would discontinue the applicability of Trade Now to Midpoint Peg Post-Only Orders and Post-Only Orders.⁸ The Exchange proposes to eliminate the applicability of Trade Now to these two Order Types because Trade Now is incompatible with the designs of these Order Types. In other words, Midpoint Peg Post-Only Orders and Post-Only Orders are liquidity-adding Order Types, whereas Orders with Trade Now are designed to be liquidity taking Orders. Because of this incompatibility, the Exchange finds that market participants rarely, as a practical matter, select Trade Now for their Midpoint Peg Post-Only Orders or their Post-Only Orders. Insofar as Trade Now serves no apparent utility as an Attribute of these Order Types, the Exchange proposes to eliminate its applicability thereto.

Lastly, the Exchange proposes to modify existing language in the Rule which states that only an incoming Displayed Order whose displayed price locks or crosses a resting Order with Trade Now at its non-displayed price, or an incoming Midpoint Peg Post-Only Order, will trigger the Trade Now functionality. The proposed Rule amendment broadens this text to also provide for another Order (including a Displayed or a Non-Displayed Order) whose price locks or crosses a resting Order with Trade Now to trigger Trade Now where the resting Order with Trade Now has a Minimum Quantity condition that the incoming Order (either itself, or in aggregate

⁸ The existing rule text of Rule 3301B(l) expressly applies Trade Now to Midpoint Peg Post-Only Orders, and implicitly applies Trade Now to Post-Only Orders by virtue of Trade Now's applicability to Displayed Orders (Post-Only Orders are Displayed).

with other resting Orders) satisfies. The purpose of this new language is to account for the fact that a non-Displayed incoming Order, in addition to a Displayed incoming Order, can lock or cross a resting Order with Trade Now if it satisfies the Minimum Quantity condition of the resting Trade Now Order. The proposed amended Rule text also accounts for scenarios in which the Order with Trade Now does not possess a Minimum Quantity condition, but instead, the incoming locking/crossing Order or another resting locking/crossing Order possesses the Minimum Quantity Attribute, and the Minimum Quantity condition is reduced such that the Order with Trade Now becomes able to satisfy the condition. The proposed amendments would provide for Trade Now to activate in these scenarios as well.

The Exchange will publish an Equity Trader Alert at least seven days prior to implementing the proposed amendments.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and further the objectives of Section 6(b)(5) of the Act,¹⁰ 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.

Specifically, the Exchange believes that it is consistent with the Act to amend the Exchange's Trade Now Rule to allow for Trade Now to activate, not only immediately upon receipt of a locking or crossing contra Displayed or Midpoint Peg Post-Only Order, but also at such time when the Order with Trade Now become marketable, if it was not marketable initially due to a Minimum Quantity Condition. The Exchange believes that the proposed behavior is

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

consistent with the underlying intent of Trade Now, which is to help to clear the Exchange's Order Book of locking and crossing Orders. The Exchange perceives no logical basis to preclude activation of Trade Now when two Orders meet the conditions for activation, but for the fact that one of them is not marketable, and thus cannot interact with the other one immediately upon entry. Provided that the conditions for Trade Now to activate remain satisfied as of the time when the Orders become marketable, the Exchange believes that these Orders should execute automatically at that time. Moreover, the Exchange believes that the proposed behavior is consistent with the expectations of market participants for Trade Now functionality.

In addition to the above, it is also consistent with the Act to amend Rule 3301B(1), along with Rule 3301A(b)(4) and (6), to discontinue the applicability of Trade Now to Midpoint Peg Post-Only Orders and Post-Only Orders. As noted above, the Exchange proposes to eliminate the applicability of Trade Now to these two Order Types because Trade Now, which classifies an Order as a liquidity taker, is incompatible with the designs of these Order Types as liquidity maker Orders. Insofar as Trade Now serves no apparent utility as an Attribute of these Order Types, it is reasonable and in the interests of the markets and investors to eliminate its applicability thereto.

Lastly, the Exchange believes it is consistent with the Act to modify existing language in the Rule which states that only an incoming Displayed Order whose displayed price locks or crosses a resting Order with Trade Now at its non-displayed price, or an incoming Midpoint Peg Post-Only Order, will trigger the Trade Now functionality. As stated above, the proposed Rule amendment broadens this text to also provide for another Order (including a Displayed or a Non-Displayed Order) whose price locks or crosses a resting Order with Trade Now to trigger Trade Now where the resting Order with Trade Now has a Minimum Quantity condition that the

incoming Order satisfies. This new language would account for the fact that a non-Displayed incoming Order, in addition to a Displayed incoming Order, can lock or cross a resting Order with Trade Now if it satisfies the Minimum Quantity condition. The proposed amended Rule text also accounts for scenarios in which the Order with Trade Now does not possess a Minimum Quantity condition, but instead, the incoming locking/crossing Order or another resting locking/crossing Order possesses the Minimum Quantity Attribute, and the Minimum Quantity condition is reduced such that the Order with Trade Now becomes able to satisfy the condition. The proposed amendments would provide for Trade Now to activate in these scenarios as well. Again, no purpose is served by excluding these scenarios from triggering Trade Now. To the contrary, including them would further the purpose of Trade Now, which is to aid in the clearing the Exchange's Order Book of locked and crossing Orders.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Although the proposal will broaden the applicability of Trade Now, the Exchange neither intends nor perceives that this rule change will have any significant impact on competition other than to make the Exchange's Trade Now Attribute more useful for participants, and thus the Exchange a more attractive venue in which to trade. Even as amended, Trade Now will remain an optional functionality that the Exchange offers at no charge, and which may be used equally by similarly-situated participants.

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 Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-22 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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.

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-2024-22. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-22, and should be submitted on or before [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(12).