



Jeffrey S. Davis

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June 12, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
Division of Trading and Markets
100 F Street, NE
Washington, DC 20549-1090

Re: SR-Phlx-2017-04

Dear Mr. Fields:

On January 18, 2017, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change (“Proposal”) to permit the listing and trading of P.M.-settled NASDAQ-100 Index options (“NDXPM Options”) on a pilot basis. The SEC published the Proposal in the Federal Register for notice and comment on February 3, 2017.¹ On March 14, 2017, the Commission extended the 45-day time period for Commission action on the proposed rule change from March 20, 2017 to May 4, 2017.² On May 3, 2017, the Commission issued a Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing and Trading of P.M.-settled NASDAQ-100 Index® Options on a Pilot Basis.³

The Phlx Proposal is based largely on a similar proposed rule change filed by the Chicago Board Options Exchange (“CBOE”) in connection with its own pilot program to list P.M.-settled S&P 500 Index options (“SPXPM Options”).⁴ In the purpose section of the Phlx Proposal, the Exchange’s proposed rule change language largely tracks the SPXPM Options filing’s discussion of reports to be provided to the Commission as part of the Phlx pilot program.

¹ See Securities Exchange Act Release No. 79894 (January 30, 2017), 82 FR 9259 (February 3, 2017).

² See Securities Exchange Act Release No. 80241 (March 20, 2017), 82 FR 14393 (March 20, 2017).

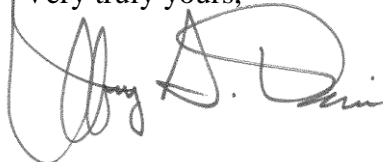
³ See Securities Exchange Act Release No. 80581 (May 3, 2017), 82 FR 21587 (May 9, 2017).

⁴ See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2017) (SR-CBOE-2012-120).

Both exchanges' filings state that pilot reports would be submitted to the Commission on confidential basis.

Commission staff have now requested that Phlx commit to making the NDXPM pilot reports available to the public. While the Exchange appreciates the Commission's desire to obtain public input on pilot reports, and is willing to engage in a Commission-led discussion with CBOE and other exchanges on this topic, it would simply be unfair to require Phlx to make its NDXPM Options pilot reports public when CBOE has not been required to do likewise with the SPXPM Options pilot reports. Phlx believes strongly that Commission staff requirements regarding proposed rule changes, including requirements applicable to associated material such as pilot reports, should not be applied in an arbitrary and capricious manner. Rather, they should be adopted and announced in a public and transparent way, and applied uniformly across all exchanges. This has not happened. Therefore, and as originally proposed, if Phlx's proposed rule change is approved the NDXPM Options pilot reports will be submitted to the Commission on a confidential basis.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey S. Davis". The signature is fluid and cursive, with a large initial "J" and "S".

Jeffrey S. Davis