

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103118; File No. SR-Phlx-2025-08]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to List and Trade Nasdaq Bitcoin Index Options

May 23, 2025

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade options on the Nasdaq Bitcoin Index (“Index”). The proposed rule change was published for comment in the Federal Register on February 24, 2025.³ On March 12, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to disapprove the proposal.⁵ On May 17, 2025, the Exchange submitted a comment letter regarding the proposal.⁶ The Commission has received no other comments on the proposal. This order

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 102440 (Feb. 18, 2025), 90 FR 10545 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 102631 (Mar. 12, 2025), 90 FR 12588 (Mar. 18, 2025). The Commission designated May 25, 2025, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ See letter from Angela Dunn, Principal Associate General Counsel, Phlx, dated March 17, 2025 (“Phlx Letter”), available at <https://www.sec.gov/comments/sr-phlx-2025-08/srphlx202508-581995-1674542.pdf>.

institutes proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposal.

II. Description of the Proposal

As described in detail in the Notice,⁸ the Exchange proposes to amend its rules to provide for the listing and trading of cash-settled, European-style options on the Index, which reflects the price of spot bitcoin. At expiration, holders of Index options would receive U.S. dollars representing the difference between the CME CF Bitcoin Reference Rate - New York Variant (“BBRNY”) and the strike price of the option contract, multiplied by \$100.⁹ The proposal includes rules addressing minimum quoting and trading increments, position and exercise limits, strike price intervals, expiration months, and the closing settlement value for the proposed Index options.¹⁰ The Exchange states that the proposed Index options would provide investors, speculators, and multinational corporations with an important risk-shifting mechanism and would be used for a wide range of activities, including asset valuation, settlement of financial risk, risk management, and net asset value calculation.¹¹ The Exchange further states that the proposed Index options would allow market participants to precisely hedge their exposure to bitcoin.¹² In addition, the Exchange states that the proposed Index options “would provide investors with the means to create highly correlated hedges to reduce risk and allow market

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See supra note 3.

⁹ See Notice, 90 FR at 10555, and proposed Options 4D, Section 8(a). The Exchange states that BBRNY is a once-a-day benchmark index price for bitcoin that aggregates trade data from multiple bitcoin-USD markets operated by major cryptocurrency platforms. See Notice, 90 FR at 10549.

¹⁰ See proposed Options 3, Section 3, Supplementary Material .06; Options 4D, Section 5(a); Options 4D, Section 6; Options 4D, Section 7; and Options 4D, Section 8.

¹¹ See Phlx Letter at 3 and Notice, 90 FR at 10550.

¹² See Phlx Letter at 2.

markets [sic] the leverage to offset risk and provide additional liquidity in options for bitcoin products.”¹³ The Exchange states that the proposed Index options would allow market participants that hold spot bitcoin-based exchange traded products (“ETPs”) to hedge or modify their exposure in a single regulatory regime.¹⁴

The Exchange states that the Commission’s 2006 approval of the Exchange’s proposal to list and trade foreign currency options “established precedent to list and trade index options overlying an underlying that is not a security.”¹⁵ In addition, the Exchange states that the proposed Index options are foreign currency options, which are securities under Section 3(a)(10) of the Act if they are entered into on a national securities exchange.¹⁶ The Exchange states that bitcoin is a foreign currency because bitcoin is legal tender in El Salvador.¹⁷ The Exchange further states that its rules define “foreign currency” to mean “the standard unit of the official medium of exchange of a sovereign government including the United States Government....”¹⁸

¹³ See Phlx Letter at 7.

¹⁴ See Phlx Letter at 3. The Exchange states that the proposed Index options would allow investors in spot bitcoin-based ETPs to carry the proposed Index options in the same account subject to the same margin regime that applies to the asset through which they take long exposure to bitcoin. See *id.* at footnote 13.

¹⁵ See Notice, 90 FR at 10549. See also Securities Exchange Act Release No. 54989 (Dec. 21, 2006), 71 FR 78506 (Dec. 29, 2006) (File No. SR-Phlx-2006-34) (order approving the listing and trading of U.S. dollar-settled foreign currency options on the British pound and the euro).

¹⁶ 15 U.S.C. 78c(a)(10). See Phlx Letter at 1-2. Section 3(a)(10) of the Exchange Act states, in part, that a “security” includes “any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency....”

¹⁷ See Phlx Letter at 2. The Exchange states that El Salvador became the first country to adopt bitcoin as legal tender under a law that came into effect on September 7, 2021. See *id.* at footnote 9.

¹⁸ See Phlx Letter at 2 (citing Options 1, Section 1(b)(23)). Options 1, Section 1(b)(23) defines foreign currency to mean “the standard unit of the official medium of exchange of a sovereign government including the United States Government (e.g., the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, the Swedish krona, or the United States dollar) or the Euro.”

The Exchange also states that courts have determined that bitcoin is “money” for purposes of different federal statutes.¹⁹

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-Phlx-2025-08 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁰ to determine whether the proposal should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act,²² which requires, among other things, that the rules of a national securities exchange not be designed to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the exchange.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.”²³ The description of a proposed

¹⁹ See Phlx Letter at 3.

²⁰ 15 U.S.C. 78s(b)(2)(B).

²¹ 15 U.S.C. 78s(b)(2)(B).

²² 15 U.S.C. 78f(b)(5).

²³ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁴ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²⁵ The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit regarding the proposal. In particular, the Commission seeks comment on whether the proposal includes sufficient analysis to support a conclusion that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, including the Exchange's statements that the proposed Index options are foreign currency options, and that bitcoin is a foreign currency because bitcoin is legal tender in El Salvador. As noted above, options on foreign currency entered into on a national securities exchange are included in the definition of security. If bitcoin is not a foreign currency, the Commission seeks comment regarding whether the proposed Index options are instead commodity options and not securities. The Commodity Futures Trading Commission has exclusive jurisdiction with respect to certain derivatives, such as commodity options, traded or executed on certain markets, boards of trade, or exchanges, and certain transactions under section 2(a)(1) of the Commodity Exchange Act.²⁶

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other

²⁴ See id.

²⁵ See id.

²⁶ 7 U.S.C. 2(a)(1).

concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁷ any request for an opportunity to make an oral presentation.²⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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 No. SR-Phlx-2025-08 on the subject line.

²⁷ 17 CFR 240.19b-4.

²⁸ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2025-08. 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 a.m. and 3 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-2025-08 and should be submitted by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(57).