

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95100; File No. SR-Phlx-2022-22)

June 14, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options that Expire on Tuesday or Thursday under its Nonstandard Expirations Pilot Program

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 June 2, 2022, 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 permit P.M.-settled Nasdaq-100 Index[®] (“NDX”) options that expire on Tuesday or Thursday under its Nonstandard Expirations Pilot Program.

The Exchange also proposes to make technical amendments within Options 5, Section 2, Order Protection; Options 8, Section 2, Definitions; and Options 8, Section 30, Crossing, Facilitation and Solicited Orders.

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.

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 Options 4A, Section 12(b)(5), which governs its Nonstandard Expirations Pilot Program (“Pilot Program”), to permit P.M.-settled Nasdaq-100 Index (“NDXP”) options that expire on Tuesday or Thursday. Under the existing Pilot Program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday (“Weekly Expirations”) and (2) the last trading day of the month (“End of Month Expirations” or “EOMs”).³ Today, Cboe Exchange, Inc. (“Cboe”) is permitted to list P.M.-settled S & P 500 Index options that expire on Tuesday or Thursday under its Nonstandard Expirations Pilot Program.⁴

Specifically, the proposed rule change amends Options 4A, Section 12(b)(5)(A) to add NDXP options (P.M.-settled) that expire on Tuesday or Thursday as permissible Weekly

³ See Options 4A, Section 12(b)(5).

⁴ See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (SR-CBOE-2022-005) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Expand the Nonstandard Expirations Pilot Program To Include P.M.-Settled S&P 500 Index Options That Expire on Tuesday or Thursday).

Expirations under the Pilot Program (currently set to expire on November 4, 2022). The Exchange notes that permitting NDXP options with Tuesday and Thursday expirations, as proposed, is in addition to the NDXP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list, as they are permissible Weekly Expirations for options on a broad-based index (e.g., NDX) pursuant to Options 4A, Section 12(b)(5)(A). The Pilot Program for Weekly Expirations will apply to NDXP options with Tuesday and Thursday expirations in the same manner as it currently applies to P.M.-settled broad-based index options with Monday, Wednesday and Friday expirations. That is, as proposed, Options 4A, Section 12(b)(5)(A) provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on NDX options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration).⁵

Monday, Wednesday and Friday weekly expirations are subject to all provisions of Options 4A, Section 12(b)(5)(A) as would be the proposed Tuesday and Thursday expirations. Additionally, the Monday, Wednesday and Friday weekly expirations are treated the same as options on the same underlying index that expire on the third Friday of the expiration month as would be the proposed Tuesday and Thursday expirations; provided, however, that Weekly Expirations (including the new Tuesday and Thursday expirations) shall be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an

⁵ In the event that the third Friday of a given month is a holiday and the Exchange is not open for trading, the Exchange would not list both an A.M.-settled NDX option as well as P.M.-settled NDXP.

expiring Weekly Expiration. The maximum number of expirations that may be listed for each Weekly Expiration (i.e., a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Options 4A, Section 12(b)(5)(A) for standard options on the same broad-based index (which is 12 for NDXP options).

Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class.⁶ Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable⁷ broad-based index class.

If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day.

⁶ Given that each trading day of the week, as proposed, could be the last trading day of the month and the day in which a Weekly Expiration expires, the Exchange updates this rule text to streamline the language.

⁷ The Exchange updates the rule text for additional clarity.

The proposed rule change also adds that, if two different Weekly Expirations on NDX options would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. The Exchange believes it is appropriate to clarify in the rule text that the Exchange will list just one Weekly Expiration in such a case, as the two Weekly Expirations would essentially be the same options contract. For example, if the Exchange listed NDXP options with proposed Thursday expirations and Friday expirations and the Exchange was closed for business on a Friday then, pursuant to current Options 4A, Section 12(b)(5)(A), the normally expiring Friday expiration would expire on the previous business day—essentially making it an NDXP option with a Thursday expiration. Thus, expiring NDXP options in this case will always have the same weekday expiration (per the example, it is an NDXP option with a Thursday expiration, whether it was listed as an NDXP with a Thursday expiration or a Friday expiration). As such, for the sake of clarity in the rules and to mitigate any confusion regarding the listing of NDXP options when the Exchange is closed for business, the proposed rule change provides that the Exchange will list just one Weekly Expiration if two Weekly Expirations would expire on the same day due to the Exchange being closed for business. Transactions in Weekly Expirations may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 pm (Eastern Time), except that on the last trading day, transactions in expiring Weekly Expirations may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).

The Exchange believes that that the introduction of NDXP options with Tuesday and Thursday expirations will expand hedging tools available to market participants while also providing greater trading opportunities. By offering NDXP options with Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule

change will allow market participants to purchase NDXP options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios.

In particular, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection. The Exchange proposes to abide by the same reporting requirements for the trading of NDXP options that expire on any Tuesday or Thursday that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday pursuant to the Pilot Program.

Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Pilot to the Commission and would include data regarding NDXP options that expire on Tuesdays or Thursdays as it does for current Weekly Expirations on any broad-based index option either by providing additional data in such proposal or in an annual report regarding NDXP options that expire on each trading day of the week, as proposed. The Exchange would continue to provide the Commission with ongoing data regarding NDXP options that expire on Tuesdays or Thursdays unless and until the Nonstandard Pilot is made permanent or discontinued.

As provided in the Pilot Program Approval Order,⁸ the annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain

⁸ See Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR-Phlx-2017-79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of

minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.⁹ Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program, including NDXP options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act. As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with NDXP options with Tuesday and Thursday expirations it submits to the Commission under the Pilot Program. Going forward, the Exchange will include the same areas of analysis for NDXP options with Tuesday and Thursday expirations. The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for NDXP options (NDXP and standard NDX options) as part of the annual reports going forward: (1) time-weighted relative quoted spreads; (2) relative effective spreads; and (3) time-weighted bid and offer sizes.

Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

⁹ Specifically, for all Weekly Expirations and EOM series, the annual report will contain the following volume and open interest data for each broad-based index overlying Weekly Expiration and EOM options: (1) Monthly volume aggregated for all Weekly Expiration and EOM series, (2) Volume in Weekly Expiration and EOM series aggregated by expiration date, (3) Month-end open interest aggregated for all Weekly Expiration and EOM series, (4) Month-end open interest for EOM series aggregated by expiration date and open interest for Weekly Expiration series aggregated by expiration date, (5) Ratio of monthly aggregate volume in Weekly Expiration and EOM series to total monthly class volume, and (6) Ratio of month-end open interest in EOM series to total month-end class open interest and ratio of open interest in each Weekly Expiration series to total class open interest. In addition, the annual report will contain the information noted above for standard Expiration Friday, AM-settled series, if applicable, for the period covered in the pilot report as well as for the six-month period prior to the initiation of the pilot. See Pilot Program Approval Order at 60652 and 60653.

The Exchange believes there is sufficient investor interest and demand in NDXP options with Tuesday and Thursday expirations to warrant inclusion in the Pilot Program and that the Pilot Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives.¹⁰ The Exchange notes that during the Pilot Program’s 4 year tenure, the Exchange has not observed any significant adverse market effects or identified any regulatory concerns as a result of the Pilot Program, nor does it believe that additional expirations listed under the Pilot Program would result in any such impact or regulatory concerns. Based on a study conducted by Commission staff on the pilot data (including quarterly, weekly, EOM and third Friday expirations for P.M.-settled NDX options),¹¹ there is no evidence of any significant adverse economic impact to the futures, index, or underlying index component securities markets as a result of the quantity of P.M.-settled NDX options that settle at the close or the amount of expiring open interest in P.M.-settled NDX options.¹²

With regard to the impact of this proposal on System capacity, the Exchange has analyzed its capacity and represents that it believes that the Exchange and OPRA have the

¹⁰ The Exchange additionally notes that it already allows NDXP options to expire on Tuesdays for normally Monday or Wednesday expiring NDXP options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows NDXP options to expire on Thursdays for normally Friday expiring NDXP options when the Exchange is not open for business on a respective Friday.

¹¹ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February 2, 2021) (“DERA Staff PM Pilot Memo”), available at: <https://www.sec.gov/dera/staff-papers/studies-and-reports/analysis-of-pm-cash-settled-index-option-pilots>.

¹² See DERA Staff PM Pilot Memo at 3. For example, the largest settlement event that occurred during the time period of the study (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).

necessary systems capacity to handle any potential additional traffic associated with trading of NDXP options with Tuesday and Thursday expirations. The Exchange does not believe that its members or member organizations will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems. While this proposal may increase the number of strike intervals listed on Phlx, the amount of additional strike intervals added should be insignificant.

Technical Amendments

The Exchange also proposes to amend Options 5, Section 2, Order Protection. The Exchange proposes to remove a citation to paragraph (c) within Options 5, Section 2(a). This rule has not paragraph (c).

The Exchange proposes to amend Options 8, Section 2, Definitions, to update an incorrect citation to Rule 1(z). The proper citation is to General 1, Section 1(23).

Finally, the Exchange proposes to amend Options 8, Section 30, Crossing, Facilitation and Solicited Orders to remove the stray word "Rule."

Implementation

Provided this rule change is approved, the Exchange proposes to implement this rule change on or before August 1, 2022. The Exchange will issue an Options Trader Alert to notify members and member organizations of the implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in

¹³ 15 U.S.C. 78f(b).

general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange does not believe that the addition of NDXP options with Tuesday and Thursday expirations to the Pilot Program will raise any prohibitive regulatory concerns, nor adversely impact fair and orderly markets on expiration days. The Exchange has not experienced any meaningful regulatory concerns, nor adverse impact on fair and orderly markets, in connection with the Pilot Program that has permitted the listing and trading of NDXP options with Monday, Wednesday and Friday expirations since 2018. Particularly, and as described above, the Exchange does not believe increases in the number P.M.-settled NDX

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(5).

options series will have any significant adverse economic impact on the futures, index, or underlying index component securities markets. The Exchange believes that the proposed rule change will provide investors with greater trading and hedging opportunities and flexibility, allowing them to transact in NDXP options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging objectives by listing NDXP options that expire each trading day of the week.

The Exchange notes also that it will include analysis in connection with NDXP options that expire on Tuesdays and Thursdays, in the same manner that it currently does for other Pilot Program products, as well as the additional market quality data as described above, in either a permanency proposal or in an annual report it submits to the Commission, and will provide the Commission with any additional data or analyses that it may request if it deems such data or analyses necessary to determine whether the Pilot Program, including NDXP options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act.

The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of NDXP options with Tuesday and Thursday expirations and does not believe that its members and member organizations will experience any capacity issues as a result of this proposal. The Exchange will monitor the trading volume associated with any possible additional options series listed and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems. The Exchange again notes that, as a result of an NDXP options strike mitigation initiative recently implemented by the Exchange, the number of NDXP options series listed on the Exchange once Tuesday and Thursday expirations become available will be less

than the number of such series that were listed prior to the implementation of the strike mitigation initiative.

Technical Amendments

The proposed amendments to Options 5, Section 2, Order Protection; Options 8, Section 2, Definitions; and Options 8, Section 30, Crossing, Facilitation and Solicited Orders are non-substantive technical amendments.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because NDXP options with Tuesday and Thursday expirations will be available to all market participants. By listing NDXP options that expire Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the NDX options market greater trading and hedging opportunities and flexibility to meet their investment and hedging needs.

Additionally, Tuesday and Thursday expiring NDXP options will trade in the same manner as Weekly Expirations currently trade. The Exchange does not believe that the proposal to list NDXP options with Tuesday and Thursday expirations will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because NDX options (including NDXP options) are proprietary Exchange products. Also, Cboe similarly lists Tuesday and Thursday options within their non-standard program.¹⁷ To the extent that the addition of NDXP options that expire on Tuesdays and Thursdays available for trading

¹⁷ See supra note 4.

on the Exchange makes the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange.

Technical Amendments

The proposed amendments to Options 5, Section 2, Order Protection; Options 8, Section 2, Definitions; and Options 8, Section 30, Crossing, Facilitation and Solicited Orders are non-substantive technical amendments.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2022-22 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-2022-22. 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-2022-22, 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.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).