

July 29, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of a 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

I. Introduction

On June 2, 2022, Nasdaq PHLX LLC (“Phlx” or the Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to add P.M.-settled Nasdaq-100 Index (“NDX”) options that expire on Tuesday or Thursday to the Exchange’s Nonstandard Expirations Pilot Program (“Pilot Program”) and make certain technical amendments to the rules of the Exchange. The proposed rule change was published for comment in the Federal Register on June 21, 2022.³ No comments were received. The Commission is approving the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Options 4A, Section 12(b)(5), which governs its 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 95100 (June 14, 2022), 87 FR 36902 (“Notice”).

Expirations”) and (2) the last trading day of the month (“End of Month Expirations” or “EOMs”).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 (“Tuesday and Thursday NDXP Expirations”) as permissible Weekly Expirations under the Pilot Program (currently set to expire on November 4, 2022).⁵ The Exchange notes that permitting Tuesday and Thursday NDXP Expirations, as proposed, is in addition to the NDXP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list pursuant to Options 4A, Section 12(b)(5)(A).⁶ The Pilot Program for Weekly Expirations will apply to Tuesday and Thursday NDXP Expirations in the same manner as it currently applies to P.M.-settled broad-based index options with Monday, Wednesday and Friday expirations.⁷ As proposed, Options 4A, Section 12(b)(5)(A) provides that the Exchange may 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).⁸

The proposed weekly Tuesday and Thursday NDXP Expirations will be subject to all provisions of Options 4A, Section 12(b)(5)(A) in the same manner as existing Monday, Wednesday, and Friday expirations.⁹ The maximum number of expirations that may be listed for each Weekly Expiration (i.e., a Monday expiration, Tuesday expiration, Wednesday expiration,

⁴ See Options 4A, Section 12(b)(5).

⁵ See Notice, supra note 3, at 36903.

⁶ See id.

⁷ See id.

⁸ See id.

⁹ See id.

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(a)(4) for standard options on the same broad-based index (which is 12 for NDXP options).¹⁰ Further, other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class.¹¹ 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.¹² Weekly Expirations that are initially listed in a given class may expire up to four weeks from the actual listing date.¹³ Additionally, the Tuesday and Thursday NDXP Expirations will be treated the same as options on the same underlying index that expire on the third Friday of the expiration month, except that they will be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.¹⁴

If the Exchange is not open for business on a Tuesday or Thursday, the normally Tuesday- or Thursday-expiring NDXP options will expire on the previous business day.¹⁵ The proposed rule change also adds that, if two different Weekly Expirations on NDX 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.¹⁶ Transactions in Weekly Expirations

¹⁰ See proposed Options 4A, Section 12(b)(5)(A). See also Notice, supra note 3, at 36903.

¹¹ See proposed Options 4A, Section 12(b)(5)(A).

¹² See id.

¹³ See Options 4A, Section 12(b)(5)(A).

¹⁴ See also Notice, supra note 3, at 36903.

¹⁵ See id.

¹⁶ See id. The Exchange believes it is appropriate to clarify in the rule text that the

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).¹⁷

Pilot Report

The Exchange proposes to abide by the same reporting requirements for the trading of Tuesday and Thursday NDXP Expirations 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.¹⁸ The Exchange represented that it will continue to provide the Commission with ongoing data regarding Tuesday and Thursday NDXP Expirations unless and until the Nonstandard Pilot is made permanent or discontinued.¹⁹ As provided in the Pilot Program Approval Order,²⁰ the annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.²¹ 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

Exchange will list just one Weekly Expiration in such a case, as the two Weekly Expirations would essentially be the same options contract. Id.

¹⁷ See id.

¹⁸ See id.

¹⁹ See id. at 36904.

²⁰ 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 Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

²¹ See Notice, supra note 3, at 36904.

whether the Pilot Program, including Tuesday and Thursday NDXP Expirations as proposed, is consistent with the Exchange Act.²² As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with Tuesday and Thursday NDXP Expirations it submits to the Commission under the Pilot Program.²³ Going forward, the Exchange states that it will include the same areas of analysis for Tuesday and Thursday NDXP Expirations.²⁴ 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.²⁵

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) because this rule has no paragraph (c).²⁶ 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).²⁷ Finally, the Exchange proposes to amend Options 8, Section 30, Crossing, Facilitation and Solicited Orders to remove the stray word “Rule.”²⁸

Implementation

²² See id.

²³ See id.

²⁴ See id.

²⁵ See id.

²⁶ See id. at 36904 – 36905.

²⁷ See id. at 36905.

²⁸ See id.

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.²⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.³⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³¹ which requires, among other things, that a national securities exchange have rules 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 facilitating 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.

As the Commission noted in its recent order approving the listing and trading of P.M.-settled options on the S&P 500 Index that expire on Tuesday or Thursday, the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based

²⁹ See id.

³⁰ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³¹ 15 U.S.C. 78f(b)(5).

index.³² The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

The Exchange's proposal to add Tuesday and Thursday NDXP Expirations to the existing Pilot Program would offer additional investment options to investors and may be useful for their investment or hedging objectives while providing the Commission with data to monitor the effects of Tuesday and Thursday NDXP Expirations and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of Tuesday and Thursday NDXP Expirations on the options markets as well as the underlying cash equities markets, the Exchange will be required to submit data to the Commission in connection with the Pilot Program.³³ Further, including the proposed Tuesday and Thursday NDXP Expirations in the Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects of allowing Tuesday and Thursday NDXP Expirations, including on the underlying component stocks. In particular, the data collected from the Pilot Program will help inform the Commission's consideration of whether the Pilot Program, as amended to include Tuesday and Thursday NDXP Expirations, should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the Pilot Program should help it monitor any potential risks from large P.M.-settled

³² See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE-2022-005).

³³ See Notice, supra note 3, at 36905.

positions and take appropriate action if warranted.

Finally, the Commission believes that the proposed non-substantive technical amendments would remove or correct obsolete text and ensure internal consistency within the Exchange's rules.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-Phlx-2022-22), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

J. Matthew DeLesDernier,
Deputy Secretary.

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).