

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81293; File No. SR-Phlx-2017-04)

August 2, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Permit the Listing and Trading of P.M.-settled NASDAQ-100 Index® Options on a Pilot Basis

I. Introduction

On January 18, 2017, NASDAQ PHLX LLC (“Phlx” or “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 permit the listing and trading of P.M.-settled NASDAQ-100 Index® (“NASDAQ-100”) options on a pilot basis. The proposed rule change was published for comment in the Federal Register on February 3, 2017.³ On March 14, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁴ On May 2, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On May 3, 2017, the Commission instituted

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79894 (January 30, 2017), 82 FR 9259 (“Notice”).

⁴ See Securities Exchange Act Release No. 80241, 82 FR 14393 (March 20, 2017).

⁵ In Amendment No. 1, the Exchange revised its proposal to add that raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange, would be provided as part of the pilot data. When the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 to the public comment file for SR-Phlx-2017-04 (available at: www.sec.gov/comments/sr-phlx-2017-04/phlx201704.htm).

proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On July 25, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.⁸ The Commission received three comment letters on the proposed rule change, including two from the Exchange.⁹ The Commission is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, subject to a pilot period set to end on the earlier of: (1) twelve months following the date of the first listing of the options; or (2) December 29, 2018.

II. Description of the Proposal, as Modified by Amendment Nos. 1 and 2

The Exchange is proposing to amend its rules to permit the listing and trading, on a pilot basis, of NASDAQ-100 options with third-Friday-of-the-month expiration dates, whose exercise settlement value will be based on the closing index value, symbol XQC, of the NASDAQ-100 on the expiration day (“P.M.-settled”).

The Exchange represents that the conditions for listing the proposed contract (“NDXPM”) on Phlx will be similar to those for Full Value Nasdaq 100 Options (“NDX”),

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 80581, 82 FR 21587 (May 9, 2017) (“Order Instituting Proceedings”).

⁸ In Amendment No. 2, the Exchange revised the proposed duration of the pilot program such that the pilot would terminate on the earlier of: (i) twelve months following the date of the first listing of the options; or (ii) December 29, 2018. When the Exchange filed Amendment No. 2 with the Commission, it also submitted Amendment No. 2 to the public comment file for SR-Phlx-2017-04 (available at: www.sec.gov/comments/sr-phlx-2017-04/phlx201704.htm). Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment.

⁹ See Letters to Brent J. Fields, Secretary, Commission, from Laura G. Dickman, Lead Counsel, Chicago Board Options Exchange, Incorporated (“CBOE”), dated May 30, 2017 (“CBOE Letter”); Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ PHLX LLC, dated June 12, 2017 (“Phlx Letter I”); and Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ PHLX LLC, dated June 29, 2017 (“Phlx Letter II”).

which are already listed and trading on Phlx, except that NDXPM will be P.M.-settled.¹⁰ In particular, NDXPM will use a \$100 multiplier, and the minimum trading increment will be \$0.05 for options trading below \$3.00 and \$0.10 for all other series. Strike price intervals will be set at no less than \$5.00. Consistent with existing rules for index options, the Exchange will allow up to nine near-term expiration months, as well as LEAPS. The product will have European-style exercise and will not be subject to position limits, though there would be enhanced reporting requirements.¹¹

As proposed, NDXPM would become subject to a pilot for a period that would end on the earlier of: (i) twelve months following the date of the first listing of NDXPM; or (ii) December 29, 2018 (“Pilot Program”). If the Exchange were to propose an extension of the Pilot Program or should the Exchange propose to make the Pilot Program permanent, then the Exchange would submit a filing proposing such amendments to the Pilot Program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a P.M.-settled series that expires beyond the conclusion of the pilot period could be established during the pilot. If the Pilot Program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

The Exchange proposes to submit a Pilot Program report to Commission at least two months prior to the expiration date of the Pilot Program (the “annual report”). The annual report would contain an analysis of volume, open interest, and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise

¹⁰ See Notice, supra note 3, at 9260.

¹¹ For a more detailed description of the proposed NDXPM contract, see Notice, supra note 3.

the NASDAQ-100. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange would provide the Commission with periodic interim reports while the Pilot Program is in effect that would contain some, but not all, of the information contained in the annual report. The annual report would be provided to the Commission on a confidential basis. The annual report would contain the following volume and open interest data:

- (1) monthly volume aggregated for all trades;
- (2) monthly volume aggregated by expiration date;
- (3) monthly volume for each individual series;
- (4) month-end open interest aggregated for all series;
- (5) month-end open interest for all series aggregated by expiration date; and
- (6) month-end open interest for each individual series.

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the Pilot Program is in effect. These interim reports would also be provided on a confidential basis. The annual report would also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled NASDAQ-100 options traded on Phlx.

In addition, the annual report would contain the following analysis of trading patterns in Expiration Friday, P.M.-settled NASDAQ-100 option series in the Pilot Program: (1) a time series analysis of open interest; and (2) an analysis of the distribution of trade sizes. Also, for series that exceed certain minimum parameters, the annual report would contain the following

analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays: a comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange, would be provided. The Exchange would provide a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period. The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.¹²

III. Summary of Comments

As noted above, the Commission received three comment letters on the proposed rule change, including two letters from the Exchange.¹³ In its letter, CBOE expresses support for Phlx's proposal, stating that NDXPM would not present any novel issues not considered in connection with SPXPM options.¹⁴ CBOE further states that many of the concerns regarding P.M. settlement have been mitigated over time, and believes the availability of additional P.M.-

¹² See Notice, supra note 3, at 9261 and Amendment No. 1. The proposed Pilot Program for NDXPM options is similar to the pilot program approved for the listing and trading of P.M.-settled S&P 500 Index options ("SPXPM options"). See Securities Exchange Act Release No. 64011 (March 2, 2011), 76 FR 12775, 12776-77 (March 8, 2011).

¹³ See supra note 9.

¹⁴ See CBOE Letter at 2.

settled options would enhance transparency, price discovery, and liquidity by moving these products from the over-the-counter market to an exchange environment.¹⁵ In support of its position, CBOE states that it has not observed any adverse effects or impact on market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading in its SPXPM options.¹⁶

In its first comment letter, the Exchange notes that its proposal is largely based on CBOE's pilot program for SPXPM options.¹⁷ In response to a request from Commission staff that any pilot data be made public, the Exchange states that, although it is willing to participate in further discussion with the Commission, CBOE, and other exchanges about the possibility of making public the data under its Pilot Program and other similar pilots, the Exchange does not believe it should be required to make its Pilot Program reports public absent the development of a uniform and transparent approach regarding pilot reports and other associated materials to similar proposed rule changes, such as the SPXPM options pilot.¹⁸ Therefore, the Exchange maintains that any reports in connection with its Pilot Program will be submitted to the Commission on a confidential basis.¹⁹

In its second comment letter, the Exchange responds to the Order Instituting Proceedings and states that it does not expect any significant impact on trading in the underlying securities of

¹⁵ See id.

¹⁶ See id. In its letter, CBOE further proposes that the Commission approve pilot programs for a set period of time, such as three years, after which the respective pilot may become permanent or, if the Commission finds that the pilot resulted in adverse effects to the market, conclude. See id. at 3. The Commission notes that this comment is beyond the scope of the specific proposed rule change under consideration.

¹⁷ See Phlx Letter I at 1.

¹⁸ See id. at 2.

¹⁹ See id.

NDXPM given the similarity to SPXPM options that are currently trading.²⁰ The Exchange believes that the changes in the operation and structure of the options markets over time, in conjunction with the proposed NDXPM Pilot Program's similarity to the SPXPM options pilot and its lack of novel issues, further support permitting trading in NDXPM on a pilot basis.²¹ The Exchange further states that it expects the data to be provided under the NDXPM Pilot Program should be similar to data submitted in connection with the SPXPM options pilot, with the exception of the index to be used to normalize the pilot data for prevailing market volatility, for which the Exchange proposes to work with the Commission to identify an index it believes would be more suitable to the NDXPM Pilot Program.²² The Exchange also reiterated its belief that the proposal could benefit investors to the extent it attracts trading from opaque over-the-counter markets to an exchange-listed market and could offer investors additional flexibility.²³

IV. Discussion and Commission Findings

After careful consideration of the proposal, 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,²⁴ and, in particular, the requirements of Section 6 of the Act.²⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁶ which requires that an exchange have rules designed to remove

²⁰ See Phlx Letter II at 2-4.

²¹ See id. at 4-5.

²² See id. at 5-6.

²³ See id. at 7.

²⁴ 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).

²⁵ 15 U.S.C. 78f.

²⁶ 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest, to allow Phlx to conduct a limited, and carefully monitored, pilot as proposed.

As noted in the Order Instituting Proceedings, 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 market at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.²⁷ In particular, the Commission sought input from commenters to inform its evaluation of whether P.M.-settled, cash-settled index options such as NDXPM could impact volume and volatility on the underlying cash equities markets at the close of the trading day, and the potential consequences this might have for investors and the overall stability of the markets.²⁸ 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.

For the reasons described below, the Commission believes that Phlx's proposed NDXPM Pilot Program is designed to mitigate concerns regarding P.M. settlement and will provide additional trading opportunities for investors while providing the Commission with data to

²⁷ See Order Instituting Proceedings, supra note 7, at 21589. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); 65256 (September 2, 2011), 76 FR 55969, 55970-76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options); and 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on CBOE).

²⁸ See Order Instituting Proceedings, supra note 7, at 21589.

monitor the effects of NDXPM and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of a P.M.-settled NASDAQ-100 index option on the options markets as well as the underlying cash equities markets, Phlx will be required to submit data to the Commission in connection with the Pilot Program. The Commission believes that Phlx's proposed Pilot Program, together with the data and analysis that Phlx will provide to the Commission, will allow Phlx and the Commission to monitor for and assess any potential for adverse market effects of allowing P.M. settlement for Nasdaq-100 index options, including on the underlying component stocks. In particular, the data collected from Phlx's NDXPM Pilot Program will help inform the Commission's consideration of whether the Pilot Program 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 positions and take appropriate action on a timely basis if warranted.

The Exchange represents that it has adequate surveillance procedures to monitor trading in these options thereby helping to ensure the maintenance of a fair and orderly market, and has represented that it has sufficient capacity to handle additional traffic associated with this new listing.²⁹

For the reasons discussed above, the Commission finds that Phlx's proposal is consistent with the Act, including Section 6(b)(5) thereof, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the

²⁹ See Notice, supra note 3, at 9261. In addition, the Commission notes that Phlx would have access to information through its membership in the Intermarket Surveillance Group with respect to the trading of the securities underlying the Nasdaq-100 index, as well as tools such as large options positions reports to assist its surveillance of NDXPM options. In approving the proposed rule change, the Commission also has relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal. See id.

public interest. In light of the enhanced closing procedures at the underlying markets and the potential benefits to investors discussed by the Exchange in the Notice,³⁰ the Commission finds that it is appropriate and consistent with the Act to approve Phlx's proposal on a pilot basis. The collection of data during the Pilot Program and Phlx's active monitoring of any effects of NDXPM on the markets will help Phlx and the Commission assess any impact of P.M. settlement in today's market.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-Phlx-2017-04), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved, subject to a pilot period set to expire on the earlier of: (1) twelve months following the date of the first listing of NDXPM; or (2) December 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

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Assistant Secretary

³⁰ See id. at 9262.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).