



March 17, 2025

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F. Street NE.
Washington, DC 20549

Re: **SR-Phlx-2025-08, Nasdaq Bitcoin Index Options**

Dear Ms. Countryman:

Nasdaq Phlx LLC (“Phlx”) is filing this comment letter to supplement its proposal to list and trade Nasdaq Bitcoin Index Options, a new product that reflects the price of bitcoin as represented by the CME CF Bitcoin Real Time Index¹ (“Proposal”). Phlx received informal indications that Commission staff is inclined to disapprove Phlx’s Proposal on the grounds that the Commission lacks jurisdiction over the product. Before Commission Staff proceeds to disapprove the Proposal, Phlx seeks to address the matter of jurisdiction in this comment letter. With the launch of the SEC’s Crypto Task Force,² Phlx believes that determining whether the Commission has jurisdiction over the product in this Proposal falls squarely within the province of the Task Force. The Crypto Task Force is specifically seeking comment on whether certain crypto assets fall within any category of financial instruments, other than investment contracts, that are specifically listed in the definition of “security” in the federal securities laws.³ This jurisdictional issue should be remitted to the Task Force for its consideration and should not be rejected out of hand by Commission Staff.

Specifically, Phlx proposes to list and trade Nasdaq Bitcoin Index Options as a foreign currency option (hereinafter “Bitcoin FCO”). This product falls within the definition of “security” at Section 3(a)(10) of the Securities Exchange Act of 1934 (“Act”) as a foreign

¹ The BRTI is a real time price benchmark and is regulated by the UK FCA under EU BMR.

² On January 21, 2025, SEC Acting Chairman Uyeda launched a crypto task force. The Crypto Task Force seeks to provide clarity on the application of the federal securities laws to the crypto asset market and to recommend practical policy measures that aim to foster innovation and protect investors. [See https://www.sec.gov/about/crypto-task-force](https://www.sec.gov/about/crypto-task-force).

³ [See Hester M. Peirce, There Must Be Some Way Out of Here](https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125), February 21, 2025. (Available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>).

currency option.⁴ Bitcoin FCOs achieve the Commission’s important regulatory objective of protecting investors by offering a means to manage exposure to bitcoin. Permitting Phlx to list and trade Bitcoin FCOs, a new and innovative means to manage exposure to bitcoin, is in the public interest. Specifically, Phlx’s Bitcoin FCO, comprised of a component⁵ of a security approved by the Commission,⁶ will offer investors a vehicle to precisely hedge their bitcoin positions and would provide an accurate reflection of the bitcoin spot price for purposes of price discovery.

Nasdaq Bitcoin Index Options are Foreign Currencies

Phlx’s proposed Bitcoin FCO is a foreign currency option pursuant to Section 3(a)(10) of the Act.⁷ The term “foreign currency” means the standard unit of the official medium of exchange of a sovereign government including the United States Government...⁸ Bitcoin is officially recognized as legal tender in El Salvador, alongside the U.S. dollar.⁹ Accordingly,

⁴ The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), **or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency**, or in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited [emphasis added]. See 15 U.S.C. 78c(a)(10).

⁵ CME CF Bitcoin Reference Rate—New York Variant constitutes the index for several Bitcoin-Based Commodity-Based Trust Shares and Trust Units which underly exchange-traded funds (“ETFs”) traded in the national market system: iShares Bitcoin Trust ETF, Franklin Bitcoin ETF, Bitwise Bitcoin ETF, Valkyrie Bitcoin Fund, ARK 21Shares Bitcoin ETF, WisdomTree Bitcoin Fund, and Smart Bitcoin ETF. Taken together, these Commission-approved securities comprise \$59.6 billion as of March 12, 2025.

⁶ The Commission approved several Bitcoin-Based Commodity-Based Trust Shares and Trust Units, namely the Grayscale Bitcoin Trust, the Bitwise Bitcoin ETF, the Hashdex Bitcoin ETF, the iShares Bitcoin Trust, the Valkyrie Bitcoin Fund, the ARK 21Shares Bitcoin ETF, the Invesco Galaxy Bitcoin ETF, the VanEck Bitcoin Trust, the WisdomTree Bitcoin Fund, the Fidelity Wise Origin Bitcoin Fund, and the Franklin Bitcoin ETF (collectively “Spot Bitcoin ETPs”). See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (File Nos. SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units).

⁷ See 15 U.S.C. 78c(a)(10).

⁸ See Phlx Options 1, Section 1(b)(23).

⁹ El Salvador became the first country to adopt Bitcoin as legal tender. The law was officially passed by the Legislative Assembly of El Salvador on June 8, 2021. The law came into effect on September 7, 2021.

bitcoin is a foreign currency pursuant to Section 3(a)(10) of the Act.¹⁰ Phlx notes that Courts have determined that bitcoin is “money” with regard to different federal statutes, including those regarding money laundering.¹¹ Similar to other foreign currencies, bitcoin is a foreign currency that is used as a form of payment in ordinary commerce and its value rises and falls in relation to the dollar.

A market for standardized, exchange-traded put and call options on bitcoin foreign currency options would serve important economic functions by providing investors, speculators and multinational corporations with an important risk-shifting mechanism. Similar to other listed foreign currency options, Bitcoin FCOs are cash-settled, European-styled options issued by The Options Clearing Corporation (“OCC”) that permit holders to receive U.S. dollars representing the difference between the current foreign exchange spot price and the exercise price of the option. Further, the Bitcoin FCO would trade in the same general manner as other foreign currency options. Like foreign currency markets, the bitcoin market is liquid and is characterized by a significant degree of volume and turnover. As a result, the Exchange believes that sufficient venues exist to provide investors with ready access to reliable information on the spot market price of bitcoin for purposes of this product.¹² Finally, permitting Bitcoin FCOs to trade as a foreign currency option would provide market participants that have invested in Spot Bitcoin ETPs the ability to hedge or modify that exposure within a single regulatory regime.¹³

Options Provide Market Participants Valuable Hedging Opportunities

Options are risk management tools utilized by many investors to hedge a position in the underlying or a portfolio. Options derive their value from the price of the underlying asset. Options may overlie single stocks, ETFs, the value of an index, debt securities (like bonds or index-linked notes) or foreign currencies. Options are transacted by retail investors, institutional traders, broker-dealers and market makers. Each of these market participants utilize options, in addition to other derivatives, to hedge their positions or portfolios and manage risk. Market makers in particular have quoting obligations as members of options markets. Market makers are essential participants as they provide liquidity in the options marketplace and stand ready to take the opposite side of a trade. The ability for a market maker to hedge their portfolio and manage risk is directly correlated to a market maker’s ability to provide liquidity in options.

¹⁰ 15 U.S.C. 78c(a)(10).

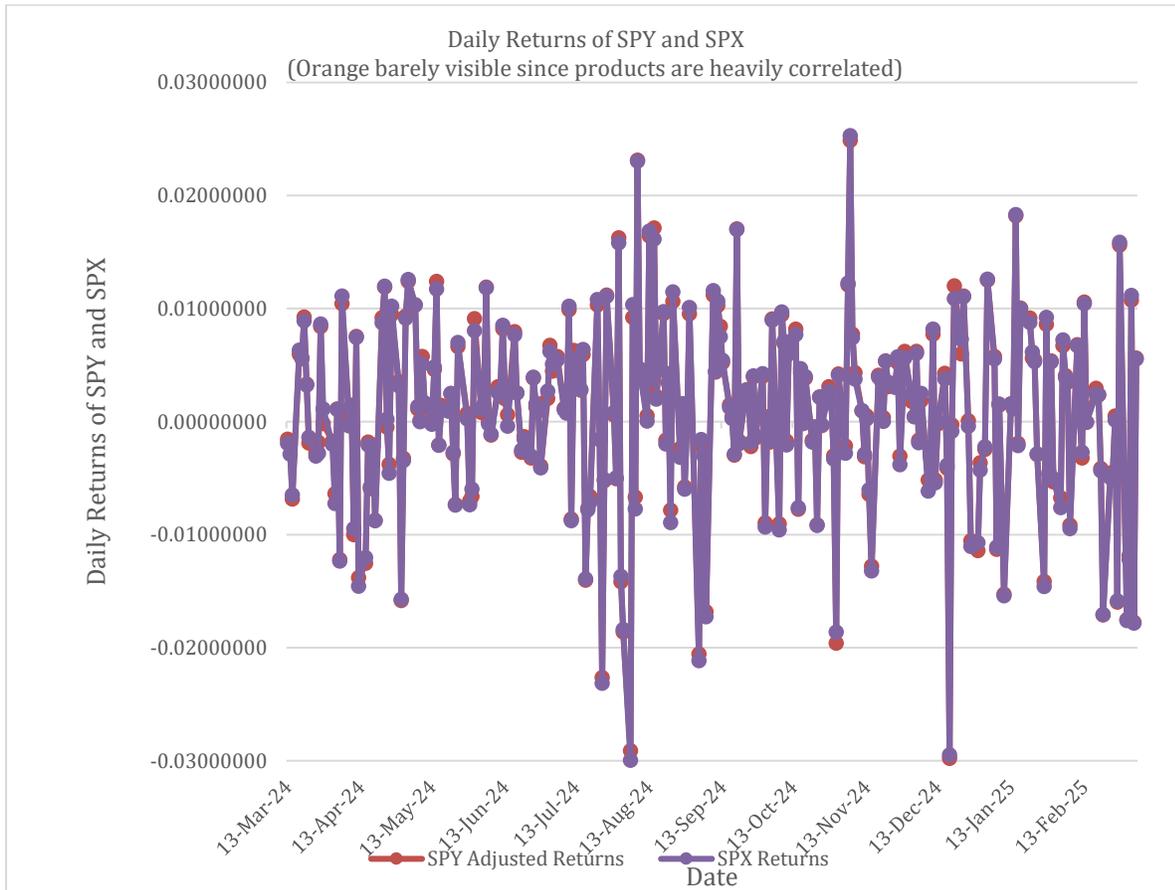
¹¹ See, e.g., United States v. Ulbricht, No. 14-CR-68 KBF, 2014 WL 3362059 (S.D.N.Y. 2014) (concluding that Bitcoin is money within the context of the federal anti-money laundering statute); United States v. Faiella, No. 14-CR-243 JSR, 2014 U.S. Dist. LEXIS 116114 (S.D.N.Y. Aug. 18, 2014) (concluding that Bitcoin is money within the context of 18 U.S.C. § 1960 and the United States’ allegations that the defendant operated as an unlicensed money transmitting business). Also, in most states, state money transmitter laws classify bitcoin, and other cryptocurrencies, as money. See Joseph Jasperse, *50-State Review of Cryptocurrency and Blockchain Regulation*, Stevens Center for Innovation and Finance, February 2023. (Available at <https://stevenscenter.wharton.upenn.edu/publications-50-state-review/>).

¹² Today, there are regulated bitcoin futures and options on futures derivatives contracts from CME Group and Eurex AG, approved regulated spot FTSE Bitcoin Index futures as well as a variety of other regulated exchange traded products and funds in Canada, Brazil, Hong Kong and Europe.

¹³ In particular, it would allow such investors to carry bitcoin options in the same account subject to the same margin regime as applies to the asset through which they take long exposure to bitcoin.

Market participants utilize hedging to limit or offset market risk in an investment or a portfolio. There are several methods to hedge against risk utilizing portfolio diversification, options or volatility. With respect to options, market participants may take a position in an asset that is highly correlated to another asset to offset potential losses by leveraging the relationship between the assets with the goal of achieving the most “precise” hedge possible. For example, pairing currency pairs with a strong positive correlation is one form of correlated hedging. The more correlated the assets the more “precise” the hedge.

A complex of correlated instruments provides an environment that permits a market participant to capture both price efficiency and risk diffusion for correlated hedging. For example, if we look at the SPDR S&P 500 ETF Trust (“SPY”) and its complementary assets, the S&P 500 Index (“SPX”) and E-mini S&P 500 futures (“ES”),¹⁴ there is a strong correlation between these products, due to their shared underlying asset, allowing market participants to monitor these instruments in tandem to gauge price movements. The below correlation analysis as between the SPY ETF and SPX demonstrates the high correlation (99.98%) between these two instruments.



¹⁴ There are other related products in bitcoin such as the ProShares Bitcoin Strategy (“BITO”), an ETF that invests in bitcoin futures.

While options overlying SPY can be utilized to hedge SPY transactions, the ability to hedge the SPY ETF with SPX or ES futures allows investors to capture price efficiency through multiple products. Multiple instruments tied to the same underlying provides a greater range of instruments with which to realize the appropriate risk profile based on an investor's pricing model. More specifically, a market maker is able to leverage the complex of instruments related to SPY to absorb risk and outlay a greater amount of liquidity in assigned options series. The more liquidity that is available in a security, the more competition that exists in that instrument leading to tighter spreads and more precise pricing of the instrument.

Hedging in Bitcoin

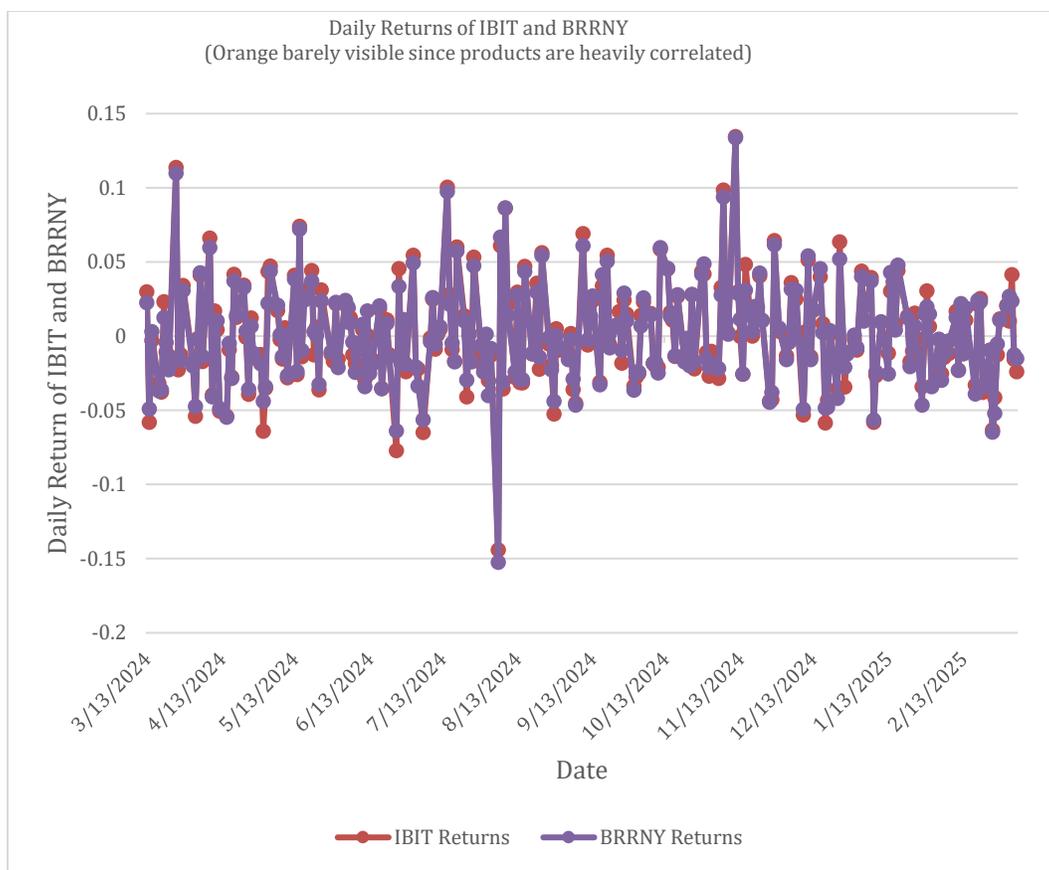
Today, there are various approved Spot Bitcoin ETPs¹⁵ that market participants may hedge utilizing Bitcoin FCOs. Additionally, bitcoin futures and options may be utilized to hedge bitcoin.¹⁶ Similar to the SPY complex described above, Phlx believes that market participants would be able to utilize the Bitcoin FCO to manage short-term market risk by creating a precise hedge for certain Spot Bitcoin ETPs. Phlx's Bitcoin FCO would broaden the hedging opportunities for market participants that transact in bitcoin by providing them with an alternative to using futures products and off-exchange platforms to satisfy their investment objectives.¹⁷ The below graph reveals how highly correlated (99.98%) the Bitcoin FCO is to IBIT, one of the several Spot Bitcoin ETPs which track the BRRNY.¹⁸

¹⁵ See supra note 6.

¹⁶ Of note, bitcoin has assets under management greater than \$100 billion. This figure is based on the closing price of bitcoin as of March 12, 2025. See https://etfdb.com/themes/bitcoin-etfs/#complete-list&sort_name=assets_under_management&sort_order=desc&page=1.

¹⁷ Phlx notes that the Cboe Bitcoin U.S. ETF Index Options (CBTX) and the Cboe Mini Bitcoin U.S. ETF Index Options (MBTX) are available for hedging. These index options, unlike SPX, merely replicate the Spot Bitcoin ETP prices in the form of an index and are therefore not a distinct instrument for precise hedging.

¹⁸ See supra note 5.



Phlx’s Bitcoin FCO is a cash-settled instrument that relies on spot pricing similar to foreign currencies options.¹⁹ Providing a complex of instruments for bitcoin on a regulated market would allow market participants to utilize the Bitcoin FCO, in addition to the options and futures products, to hedge against short-term market movements. Phlx’s Bitcoin FCO is a new and innovative means to hedge bitcoin because it is highly correlated to the settlement value of several Spot Bitcoin ETPs for which the CME CF Bitcoin Reference Rate constitutes the index.²⁰

Phlx’s proposed Bitcoin FCO also provides an accurate reflection of the bitcoin market thereby providing investors with a vehicle for price discovery. The CME CF Bitcoin Real Time Index (“BRTI”) is calculated every second of every day, using the Relevant Order Books²¹ of all

¹⁹ Phlx’s foreign currency options are cash-settled, European-styled options that allow holders to receive U.S. dollars representing the difference between the foreign exchange spot/price and exercise price of the cash/spot foreign currency. See Securities Exchange Act Release No. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (SR-Phlx-81-4).

²⁰ See *supra* note 6.

²¹ Relevant Order Books comprise the universe of the currently unmatched limit orders to buy or sell a unit of the cryptocurrency base asset versus the quote asset on a Constituent Exchange in the Relevant Pair, aggregated by price, that is reported through its API to the Calculation Agent. To assure that the CME CF Cryptocurrency Pricing Products reflect global cryptocurrency trading activity in a representative and unbiased manner, a geographically diverse set of spot trading venues is included within the current

seven Constituent Exchanges,²² thereby aggregating the notional value of bitcoin trading activity across major bitcoin spot platforms. This methodology is analogous to the methodology utilized for calculating the settlement value of cash/spot foreign currency options.²³ Offering market participants that may trade Spot Bitcoin ETPs a highly correlated product with which to hedge their exposure to bitcoin as well as a price discovery tool provides market participants with necessary tools to offset risk.

Phlx's Bitcoin FCO is a response to the demands of various market participants who require greater flexibility to tailor their bitcoin positions and portfolios to satisfy their investment objections by creating a "precise" hedge for approved Spot Bitcoin ETPs. The addition of Phlx's Bitcoin FCO to the suite of bitcoin products traded on regulated markets would provide investors with the means to create highly correlated hedges to reduce risk and allow market makers the leverage to offset risk and provide additional liquidity in the options markets. Further, Bitcoin FCOs would create competition among the various bitcoin products and allow market makers the means to offset risk and provide additional liquidity in the options markets. The Commission should approve Phlx's rule proposal.

Nasdaq appreciates the opportunity to comment. If you have any additional questions, please do not hesitate to contact us.

Sincerely,



Angela Dunn
Principal Associate General Counsel

cc: Eric Juzenas, Trading and Markets
David Hsu, Trading and Markets
Crypto Task Force

framework. At their launch the Indices for any given Relevant Pair shall require input data from no less than two (2) Constituent Exchanges.

²² Constituent Exchanges are cryptocurrency trading venues approved by the CME CF Cryptocurrency Pricing Products Oversight Committee to serve as pricing source for the calculation of a CME CF Cryptocurrency Reference Rate or CME CF Cryptocurrency Real Time Index, collectively known as the CME CF Cryptocurrency Pricing Products. See proposed Options 4D, Section 2(a)(2).

²³ The term "Exchange Spot Price" in respect of an option contract on a foreign currency means the cash market spot price, for the sale of one foreign currency for another, quoted by various foreign exchange participants for the sale of a single unit of such foreign currency for immediate delivery that is calculated from the foreign currency price quotation reported by the foreign currency price quotation dissemination system selected by the Exchange, to which an appropriate multiplier is applied.... See Phlx Options 1, Section 1(b)(17).