

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96090; File No. SR-Phlx-2022-38)

October 17, 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 Micro 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 October 4, 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 Phlx to open for trading Weekly Expirations on Nasdaq 100 Micro Index Options (“XND”) that expire on any Tuesday or Thursday within the Nonstandard Expirations Pilot Program.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Phlx proposes to amend its Options 4A, Section 12(b)(5) which governs its Nonstandard Expirations Pilot Program to permit Phlx to open for trading Weekly Expirations on Nasdaq 100 Micro Index Options (“XND”) that expire on any Tuesday or Thursday within the Nonstandard Expirations Pilot Program.

Phlx’s Nonstandard Expirations Pilot Program permits the listing and trading of P.M.-settled options on broad-based indexes with nonstandard expirations dates.³ Under the Nonstandard Expirations Pilot Program the Exchange may open for trading Weekly Expirations on the Nasdaq-100 Index options (“NDX”) to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an End of Month (“EOM”) expiration).⁴

³ 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) (“Nonstandard Expirations Pilot Program Approval Order”).

⁴ See Options 4A, Section 12(b)(5)(A). Further, Cboe is permitted to list P.M.-settled S & P 500 Index options and Mini-S&P 500 Index options that expire on Tuesday or Thursday under its Nonstandard Expirations Pilot Program. 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). See also Securities Exchange Act Release No. 95795 (September 15, 2022), 87 FR 57745 (September 21, 2022) (SR-CBOE-2022-039) (Order Approving a Proposed Rule Change To Expand the Nonstandard Expirations Pilot

Additionally, the Exchange may open for trading EOMs on any broad-based index eligible for standard options trading to expire on last trading day of the month.⁵

At this time, the Exchange proposes to permit Phlx to open for trading Weekly Expirations on XND options⁶ that expire on Tuesday or Thursday within the Nonstandard Expirations Pilot Program. XND options that expire on Tuesday or Thursday would be listed under the Nonstandard Expirations Pilot Program. The Exchange notes that permitting XND options with Tuesday and Thursday expirations, as proposed, would be in addition to the XND 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. the Nasdaq-100 Index) pursuant to Options 4A, Section 12(b)(5)(A). Specifically, with this proposal, the Exchange may open for trading Weekly Expirations on XND options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration), similar to options on the Nasdaq-100 Index.

The Nonstandard Expirations Pilot Program will apply to XND options with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-

Program To Include P.M.-Settled Options on the Mini-S&P 500 Index That Expire on Tuesday or Thursday).

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

⁶ XND options trade independently of and in addition to NDX options, and the XND options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, XND options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror in all respects those of the NDX options contract already listed on the Exchange, except that XND options are based on 1/100th of the value of the Nasdaq-100 Index, and are P.M.-settled pursuant to Options 4A, Section 12(f)(i). Similar to other broad-based, the Exchange may open for trading Weekly Expirations on XND options to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration).

based index options with Monday, Wednesday, and Friday expirations and to Nasdaq-100 Index options with Tuesday and Thursday expirations. Specifically, the proposed rule change amends Options 4A, Section 12(b)(5)(A) to add XND options (P.M.-settled) that expire on Tuesday or Thursday as permissible Weekly Expirations. Options with Tuesday and Thursday expirations, including the proposed XND Tuesday and Thursday expirations, would be subject to all provisions within Options 4A, Section 12(b)(5) and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are 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.

The maximum number of XND options 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(a)(4)⁷ for standard options on the same broad-based index.

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 initially listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs

⁷ Options 4A, Section 12(a)(4) provides, “Index options contracts may expire at three (3)-month intervals or in consecutive weeks or months. The Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options.”

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. 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.

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. If two different Weekly Expirations on XND 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 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 XND 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 XND option with a Thursday expiration. Thus, expiring XND options in this case will always have the same weekday expiration (per the example, it is an XND option with a Thursday expiration, whether it was listed as an XND with a Thursday expiration or a Friday expiration). As such, when the Exchange is closed for business, 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 P.M. (Eastern Time), except that that on the last trading

day, transactions in expiring p.m.-settled broad-based index options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).⁸

The Exchange believes that that the introduction of XND options with Tuesday and Thursday expirations will expand hedging tools available to market participants while also providing greater trading opportunities. By offering XND 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 XND 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 XND 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 and for Nasdaq-100 Index options that expire on Tuesday or Thursday pursuant to the Nonstandard Expirations Pilot Program.

Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Expirations Pilot Program to the Commission and would include data regarding XND 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

⁸ See Options 4A, Section 12(b)(5)(D).

regarding XND options that expire on each trading day of the week, as proposed. The Exchange would continue to provide the Commission with ongoing data regarding XND options that expire on Tuesdays or Thursdays unless and until the Nonstandard Expirations Pilot Program is made permanent or discontinued.

As provided in the Nonstandard Expirations Pilot Program Approval Order,⁹ 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.¹⁰ 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 Nonstandard Expirations Pilot Program, including XND options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act. As it does for current Nonstandard Expirations Pilot Program products, the Exchange will make public on its website all data and analyses in connection with XND options with Tuesday and Thursday expirations it submits to the

⁹ See supra note 3.

¹⁰ 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 Nonstandard Expirations Pilot Program Approval Order at 60652 and 60653.

Commission under the Nonstandard Expirations Pilot Program. Going forward, the Exchange will include the same areas of analysis for XND 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 XND options (XND 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.

The Exchange believes there is sufficient investor interest and demand in XND options with Tuesday and Thursday expirations to warrant inclusion in the Nonstandard Expirations Pilot Program and that the Nonstandard Expirations Pilot Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives. The Exchange notes that during the Nonstandard Expirations 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 Nonstandard Expirations Pilot Program, nor does it believe that additional expirations listed under the Nonstandard Expirations 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

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>.

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 necessary systems capacity to handle any potential additional traffic associated with trading of XND 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Section 6(b)(5) of the Act,¹⁴ in that it is designed 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

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).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act¹⁵ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In particular, the Exchange believes that the proposed rule change will 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 by providing investors with greater trading and hedging opportunities and flexibility, allowing them to transact in XND options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging objectives by listing XND options that expire each trading day of the week. The Exchange does not believe that the addition of XND options with Tuesday and Thursday expirations to the Nonstandard Expirations Pilot Program will raise any prohibitive regulatory concerns or 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 listing of XND options with Monday, Wednesday and Friday expirations or the listing and trading of Nasdaq-100 Index options with Tuesday and Thursday expirations. Particularly, the Exchange does not believe increases in the number P.M.-settled XND options series will have any significant adverse economic impact on the futures, index, or underlying index component securities markets.

¹⁵ 15 U.S.C. 78f(b)(8).

The Exchange believes that the proposed rule change will provide investors with greater trading and hedging opportunities and flexibility, allowing them to transact in XND options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging objectives by listing XND options that expire each trading day of the week.

The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of XND options with Tuesday and Thursday expirations and does not believe that its Members 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 options strike mitigation initiative recently implemented by the Exchange, the number of XND 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.

The Exchange will include analysis in connection with XND options that expire on Tuesdays and Thursdays in its rule change proposing permanency of the Nonstandard Expirations Pilot Program to the Commission and would include data regarding XND 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 XND options that expire on each trading day of the week, as proposed. The Exchange also 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 Nonstandard Expirations Pilot

Program, including XND options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act.

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 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 XND options with Tuesday and Thursday expirations will be available to all market participants. By listing XND 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 XND options will trade in the same manner as Weekly Expirations currently trade.

The Exchange does not believe that the proposal to list XND 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 XND options) are proprietary Exchange products. Also, Cboe similarly lists Tuesday and Thursday options within their non-standard program.¹⁶ To the extent that the addition of XND options that expire on Tuesdays and Thursdays available for trading 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.

¹⁶ See supra note 5.

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-2022-38 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-2022-38. 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-2022-38, 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.¹⁷

J. Matthew DeLesDernier

Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).