

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97385; File No. SR-Phlx-2023-13)

April 26, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Certain Pilot Programs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 14, 2023, 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 extend the pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index (“Nasdaq-100”) and the Exchange’s nonstandard expirations pilot program, both currently set to expire on May 4, 2023.

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 extend 2 pilots, which are both set to expire on May 4, 2023. The Exchange proposes to extend (1) pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index ("XND Pilot"), and (2) the Exchange's nonstandard expirations pilot program ("Nonstandard Pilot").

XND Pilot

Phlx filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Micro Index Options ("XND") on a pilot basis.³ 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(a)(5).

The Exchange proposes to amend Phlx Options 4A, Section 12(a)(6) to extend the current XND Pilot period to November 6, 2023. This pilot was previously extended and is currently

³ See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order).

extended through May 4, 2023.⁴ The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of XND options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in XND options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the XND Pilot. The Exchange believes that the proposed extension of the XND Pilot will not have an adverse impact on capacity.

XND Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the XND Pilot and will continue to make public any data or analysis it submits under the XND Pilot in the future. The Exchange has filed a rule change proposing permanency of the XND Pilot.⁵ The Exchange continues to provide monthly data and has provided additional data in the permanency filing. The Exchange would continue to provide the Commission with ongoing data unless and until the XND Pilot is made permanent or discontinued.

Nonstandard Pilot

On December 15, 2017, the Commission approved a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with

⁴ See Securities Exchange Act Release No. 93447 (October 28, 2021), 86 FR 60719 (November 3, 2021) (SR-Phlx-2021-66); 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR-Phlx-2022-16); and 95993 (October 6, 2022), 87 FR 62161 (October 13, 2022) (SR-Phlx-2022-39).

⁵ See Securities Exchange Act Release No. 96980 (February 24, 2023), 88 FR 13161 (March 2, 2023) (SR-Phlx-2023-07).

nonstandard expirations dates (“Nonstandard Pilot”).⁶ The Nonstandard Pilot permits both Weekly Expirations and End of Month (“EOM”) expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. On July 29, 2022, the Commission approved 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.⁷ The Nonstandard Pilot was extended various times and is currently extended through May 4, 2023.⁸

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) 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 Nasdaq-100 Index options to expire on any Tuesday or Thursday (other than days that coincide with

⁶ See Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (Notice of Filing of Amendment No. 2, 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).

⁷ See Securities Exchange Act Release No. 95391 (July 29, 2022), 87 FR 47797 (August 4, 2022) (SR-Phlx-2022-22) (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).

⁸ See Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR-Phlx-2018-80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR-Phlx-2019-13); 87381 (October 22, 2019), 84 FR 57788 (October 28, 2019) (SR-Phlx-2019-43); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR-Phlx-2020-24); 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR-Phlx-2020-48); 91484 (April 6, 2021), 86 FR 19050 (April 12, 2021) (SR-Phlx-2021-21); 93464 (October 29, 2021), 86 FR 60952 (November 4, 2021) (SR-Phlx-2021-65); 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR-Phlx-2022-16); and 95993 (October 6, 2022), 87 FR 62161 (October 13, 2022) (SR-Phlx-2022-39).

the third Friday-of-the-month or an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through November 6, 2023. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

Nonstandard Pilot Report

The Exchange submitted a rule change proposing permanency of the Nonstandard Pilot.⁹ The Exchange continues to provide monthly data and has provided additional data in the

⁹ See Securities Exchange Act Release No. 96980 (February 24, 2023), 88 FR 13161 (March 2, 2023) (SR-Phlx-2023-07).

permanency filing. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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.

XND Pilot

In particular, the Exchange believes that the XND Pilot has been successful to date. The Exchange has not encountered any problems with the XND Pilot. By extending the XND Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the XND Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for XND options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the pilot for potential adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

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 believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

XND Pilot

XND options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the pilot programs prior to their expiration on May 4, 2023, permitting the pilot programs to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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-2023-13 on the subject line.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2023-13. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to File Number SR-Phlx-2023-13, 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

Sherry R. Haywood

Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12), (59).