

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98950; File No. SR-Phlx-2023-45)

November 15, 2023

Self-Regulatory Organizations; Nasdaq PHLX, LLC; Order Approving a Proposed Rule Change to Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index® Options with a Third-Friday-of-the-Month Expiration

I. Introduction

On September 28, 2023, 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 options with a third-Friday-of-the-month (“Third Friday”) expiration. The proposed rule change was published for comment in the Federal Register on October 4, 2023.³ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Description of the Proposal

Phlx proposes to amend its rules to permit the listing and trading of p.m.-settled Nasdaq-100 Index (“NDXP”) options with a Third Friday expiration. The Exchange currently can list a.m.-settled Third Friday expirations on Nasdaq-100 Index (“NDX”) options.⁴ With this proposal, the Exchange would have Third Friday expirations on NDX options that are both a.m.-settled and p.m.-settled on the same day.⁵ The Exchange states that the conditions for listing options on NDXP with Third Friday expirations will be similar to the a.m.-settled NDX Third

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98644 (September 29, 2023), 88 FR 68885 (“Notice”).

⁴ See Notice, supra note 3 at 68885.

⁵ See id.

Friday expirations.⁶ The Exchange proposes to amend Options 4A, Section 12(a)(6) to provide that in addition to a.m.-settled Nasdaq-100 Index options approved for trading on the Exchange, the Exchange may also list options on the Nasdaq-100 Index whose exercise settlement value is the closing value of the Nasdaq-100 Index on the expiration day.

The proposed contract would use a \$100 multiplier, and the minimum trading increment would be \$0.05 for options trading below \$3.00 and \$0.10 for all other series.⁷ Strike price intervals would be set at no less than \$2.50.⁸ Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months⁹ as well as LEAPS.¹⁰ The product would have European-style exercise. Because the product is based on NDX, there would be no position limits.¹¹

NDXP options are series of the NDX options class.¹² Currently, these NDXP options may expire any day of the week: Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, as applicable (other than third-Friday-of-the-month), and the last trading day of the month.¹³ Third Friday p.m.-settled options trading under the NDXP symbol will be a new type of series under the Nasdaq-100 Index options class and not a new options class—therefore all Third-Friday

⁶ See id.

⁷ See Options 3, Section 3, Minimum Increments.

⁸ See Options 4A, Section 12(a)(3).

⁹ The Exchange proposes the same expiration month options for NDXP as are permitted for the Nasdaq-100 Index, since both options classes are derived from the Nasdaq-100 Index.

¹⁰ See Options 4A, Section 12(b).

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

¹² See Notice, supra note 3 at 68886.

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

NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.¹⁴

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXP option position, including Third Friday NDXP, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority pursuant to Exchange Rules Options 6E, Section 2.¹⁵ The trading hours for NDXP, including Third Friday NDXP, will be from 9:30 a.m. to 4:15 p.m. Eastern Time.¹⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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.

¹⁴ See Options 3, Section 6(e).

¹⁵ See Notice, supra note 3 at 68886.

¹⁶ The Exchange notes that trading in NDXP will ordinarily cease at 4:00 p.m. on the day on which the exercise-settlement value is calculated. See Notice, supra note 3 at 68886, n. 17.

¹⁷ 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).

¹⁸ 15 U.S.C. 78f(b)(5).

In support of its proposal, the Exchange notes that the Commission recently approved trading of Third Friday expirations for options based on 1/100 the value of the Nasdaq-100 Index (“XND”).¹⁹ The Exchange states that the introduction of Third Friday NDXP will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors.²⁰ The Exchange further believes that listing Third Friday NDXP would not have 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 Nasdaq-100 Index options.²¹ Further, the Exchange states it does not believe that any market disruptions will be encountered with the introduction of Nasdaq-100 Index options with third-Friday-of-the-month expiration dates.²² The Exchange states it will monitor for any such disruptions or the development of any factors that could cause such disruptions.²³ Finally, the Exchange represents it has sufficient capacity to handle additional traffic associated with listing Third Friday NDXP options and that it has in place adequate surveillance procedures to monitor trading in Third Friday NDXP options.²⁴

The Commission has had concerns about the 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 on expiration days.²⁵ However, the Commission

¹⁹ See Securities Exchange Act Release No. 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR-Phlx-2023-07) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots)(“Phlx Pilot Approval”).

²⁰ See Notice, supra note 3 at 68887.

²¹ See Notice, supra note 3 at 68886.

²² See id.

²³ See id.

²⁴ See id.

²⁵ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and

recently approved proposals from several exchanges, including the Exchange, to permanently establish programs permitting the listing and trading of certain p.m.-settled broad-based index options.²⁶ In approving these proposals, the Commission reviewed data provided by the exchanges in their filings, the exchanges' pilot data and reports, as well as an analysis conducted at the direction of Staff from the Commission's Division of Economic and Risk Analysis and concluded that analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality for an existing product when a new p.m.-settled expiration was introduced.²⁷ Further, the Commission stated that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.²⁸

As noted above, the Exchange currently may trade Third Friday XND options in addition to p.m.-settled NDX option with nonstandard expirations.²⁹ The Exchange's proposal, which would permit p.m.-settled Third Friday NDX, is reasonably designed as a limited expansion of existing p.m.-settled broad-based index option programs and may provide the investing public

trade SPXPM options on the C2 Options Exchange, Incorporated).

²⁶ See e.g., Phlx Pilot Approval; Securities Exchange Act Release Nos. 98450 (September 20, 2023), 88 FR 66111 (September 26, 2023) (SR-ISE-2023-08) (Order approving a nonstandard expirations pilot program and p.m.-settled 1/5 NDX options) and 98454 (September 20, 2023), 88 FR 66103 at 66103-04 (September 26, 2023) (SR-CBOE-2023-005)(Order approving p.m.-settled Third Friday SPX options).

²⁷ See e.g., Phlx Pilot Approval, 88 FR at 66091.

²⁸ See id.

²⁹ See *supra* note 19. In addition, the Commission previously approved a pilot program permitting the listing and trading of Third Friday NDX options on the Exchange. See Securities Exchange Act Release No. 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (approving SR-Phlx-2017-04). Phlx did not list any options under the program and subsequently removed the rule from its rule book. See Securities Exchange Act Release No. 87517 (November 13, 2019), 84 FR 63910 (November 19, 2019) (SR-Phlx-2019-49).

and other market participants more flexibility to closely tailor their investment and hedging decisions. The Exchange has represented that it has an adequate surveillance program in place to monitor trading in the Third Friday NDXP options and has the necessary systems capacity to support the new options series.³⁰ The Commission expects the Exchange to continue to monitor any potential risks from large p.m.-settled positions and take appropriate action on a timely basis if warranted.

Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³¹ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (SR-Phlx-2023-45) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,
Assistant Secretary.

³⁰ See *supra* note 24 and accompanying text.

³¹ 15 U.S.C. 78f(b)(5).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).