

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79894; File No. SR-Phlx-2017-04)

January 30, 2017

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 Index® Options on a Pilot Basis

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 January 18, 2017, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 the listing and trading of P.M.-settled NASDAQ-100 Index® options on a pilot basis.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, 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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(i) New P.M.-Settled NASDAQ-100 Index Options

The purpose of this rule filing is to permit the listing and trading, on a pilot basis, of NASDAQ-100 Index® (“NASDAQ-100”) options with third-Friday-of-the-month (“Expiration Friday”) 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”) for an initial period of twelve months (the “Pilot Program”) from the date of approval of this proposed rule change.

The NASDAQ-100, a modified market capitalization-weighted index, includes 100 of the largest non-financial companies listed on The Nasdaq Stock Market, based on market capitalization. It does not contain securities of financial companies including investment companies. Security types generally eligible for the NASDAQ-100 include common stocks, ordinary shares, American Depository Receipts, and tracking stocks. Security or company types not included in the NASDAQ-100 are closed-end funds, convertible debentures, exchange traded funds, limited liability companies, limited partnership interests, preferred stocks, rights, shares or units of beneficial interest, warrants, units and other derivative securities.³

The conditions for listing the proposed contract (“NDXPM”) on Phlx will be similar to those for Full Value Nasdaq 100 Options (“NDX”), which are already listed and trading on Phlx,

³ A description of the NASDAQ-100 is available on Nasdaq’s website at https://indexes.nasdaqomx.com/docs/methodology_NDX.pdf.

except that NDXPM will be P.M.-settled.⁴ 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.⁵ Strike price intervals would be set at no less than \$5.00.⁶ Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months⁷ as well as LEAPS.⁸ The product would have European-style exercise, and because it is based on the NASDAQ-100, there would be no position limits.⁹ The Exchange has the flexibility to open for trading additional series in response to customer demand.

As with NDX, in determining compliance with Rule 1001A, Position Limits, there will be no position limits for broad-based index option contracts in the NDXPM class.¹⁰ Each member or member organization (other than Registered Options Traders) that maintains a position on the same side of the market in excess of 100,000 contracts for its own account, or for

⁴ The Exchange currently lists an A.M. Reduced Value Nasdaq 100 Option, but does not at this time propose to list a reduced value P.M. settled option based on the NASDAQ-100.

⁵ See Rule 1034.

⁶ See Rule 1101A, Terms of Option Contracts, section (a).

⁷ The Exchange wishes to give the same expiration month options for NDXPM as are given for NDX, since both options classes are derived from the NASDAQ-100.

⁸ Exchange Rule 1101A(b)(i) provides that after a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and may also open for trading series of options having not less than nine and up to 60 months to expiration (long-term options series) as provided in Rule 1101A(b)(iii). Rule 1101A(b)(iii) provides that The Exchange may list, with respect to any class of stock index options, series of options having not less than nine and up to 60 months to expiration, adding up to ten expiration months. Such series of options may be opened for trading simultaneously with series of options trading pursuant to Rule 1101A. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.

⁹ See proposed amendment to Rule 1001A(a)(ii).

¹⁰ See proposed amendment to Rule 1079(d).

the account of a customer, in the aggregate of (i) Full Value Nasdaq 100 Options and (ii) NDXPM options, would be required to file a report with the Exchange that includes, but is not limited to, data related to the option positions, whether such positions are hedged and if applicable, a description of the hedge and information concerning collateral used to carry the positions.¹¹ As with NDX, there would be no exercise limits for NDXPM.¹²

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXPM option position, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority under Exchange Rules 1003(b) (for non-FLEX options) and 1079(d)(2) (for FLEX options). The trading hours for NDXPM will be from 9:30 a.m. ET to 4:00 p.m. ET.¹³

Regarding NDXPM FLEX Options, there would be no position limits (as with NDX FLEX Options). As with NDX FLEX Options, each member or member organization (other than a Specialist or Registered Options Trader) that maintains a position on the same side of the market in excess of 100,000 contracts for NDXPM FLEX Options, for its own account or for the account of a customer, would be required to report information on the FLEX equity option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. The report would be required to be in the form and manner prescribed by the Exchange. Like NDX FLEX Options, there would be no exercise limits for

¹¹ See Rule 1001A(c) as proposed to be revised.

¹² See Rule 1002A which provides that exercise limits for index option contracts are equivalent to the position limits described in Rule 1001A.

¹³ Note that the trading hours for NDX end at 4:15 pm ET rather than at 4:00 pm ET.

NDXPM FLEX Options (including reduced-value option contracts).¹⁴

In addition, whenever the Exchange determined that a higher margin requirement was necessary in light of the risks associated with a NDXPM FLEX Option position in excess of the standard limit for NDXPM non-FLEX options of the same class, the Exchange could consider imposing additional margin upon the account maintaining such under-hedged position.

Additionally, the clearing firm carrying the account would be subject to capital charges under SEC rule 15c3-1 to the extent of any margin deficiency resulting from the higher margin requirement.¹⁵

To explain the basic adoption of NDXPM, the Exchange proposes to add Commentary .05 to Rule 1101A, Terms of Options Contracts. This proposed new Commentary would provide that in addition to A.M.-settled Full Value Nasdaq 100 Options approved for trading on the Exchange pursuant to Rule 1101A Commentary .01, 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.¹⁶ NDXPM options would be listed for trading for an initial pilot period ending twelve months from the date of approval of the proposed rule change.

Precedent exists for P.M. settlement of broad-based index options. SPXPM (a P.M. settled index option contract based on the Standard & Poor's 500 index) is traded on the Chicago Board Options Exchange ("CBOE"). Further, OEX (an index option contract based on the Standard & Poor's 100 index) is also traded on CBOE and has been P.M.-settled since 1983.

The Exchange does not believe that any market disruptions will be encountered with the

¹⁴ See Rule 1079(d), as proposed to be revised.

¹⁵ See Rule 1079(d)(2).

¹⁶ Note that the closing value of the NASDAQ-100 may change up until 17:15 ET due to corrections to prices of the underlying component securities.

introduction of P.M.-settled NASDAQ-100 index options. The Exchange will monitor for any such disruptions or the development of any factors that could cause such disruptions.

The Exchange also notes that P.M.-settled options predominate in the OTC market, and Phlx is not aware of any adverse effects in the stock market attributable to the P.M.-settlement feature. Phlx is merely proposing to offer a P.M.-settled product in an exchange environment which offers the benefit of added transparency, price discovery, and stability. In response to any potential concerns that disruptive trading conduct could occur as a result of the concurrent listing and trading of two index option products based on the same index but for which different settlement methodologies exist (i.e., one is A.M.-settled and one is P.M.-settled), the Exchange notes that CBOE lists and trades both the A.M.-settled S&P 500 index option called SPX and a P.M.-settled S&P 500 index option, SPXPM. Phlx is not aware of any market disruptions occurring as a result of CBOE offering both products.

The adoption of trading of P.M.-settled options on the NASDAQ-100 Index on the same exchange that lists A.M.-settled options on the NASDAQ-100 Index would provide greater spread opportunities. This manner of trading in different products allows a market participant to take advantage of the different expiration times, providing expanded trading opportunities. In the options market currently, market participants regularly trade similar or related products in conjunction with each other, which contributes to overall market liquidity.

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

(ii) Pilot Program Reports

As proposed, the proposal would become effective on a Pilot Program basis for period of twelve months. If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the 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 12-month 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 the NASDAQ-100 index. 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 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 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 index 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 index option series in the pilot: (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. 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁷ in general, and with Section 6(b)(5) of the Act,¹⁸ 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 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 Act¹⁹ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the introduction of NDXPM options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors.

The Commission has previously stated that when cash-settled index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (i.e., P.M. settlement). The Commission stated it became concerned about the impact of P.M. settlement on cash-settled index options on the markets for the underlying stocks at the close on expiration Fridays especially during the quarterly expirations of the third Friday of March, June, September

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(8).

and December when options, index futures, and options on index futures all expire simultaneously. The Commission expressed concerns that p.m.-settlement was believed to have contributed to above-average volume and added market volatility on those days, which sometimes led to sharp price movements during the last hour of trading, as a consequence of which the close of trading on the quarterly expiration Friday became known as the "triple witching hour." The Commission observed that besides contributing to investor anxiety, heightened volatility during the expiration periods created the opportunity for manipulation and other abusive trading practices in anticipation of the liquidity constraints.²⁰

However, the Exchange believes that the above concerns that have led to the transition to a.m. settlement for index derivatives have been largely mitigated. It believes that expiration pressure in the underlying cash markets at the close has been greatly reduced with the advent of multiple primary listing and unlisted trading privilege markets, and that trading is now widely dispersed among many market centers. Additionally, the Exchange notes that opening procedures in the 1990s were deemed acceptable to mitigate one-sided order flow driven by index option expiration and that Nasdaq uses an automated closing cross procedure and has a closing order type that facilitates orderly closings. The Nasdaq closing procedures are well-equipped to mitigate imbalance pressure at the close. In addition, after-hours trading now provides market participants with an alternative to help offset market-on-close imbalances.²¹

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. NDXPM

²⁰ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55569 (September 9, 2011) (approving SR-C2-2011-008).

²¹ C2 made similar arguments to justify Commission approval of listing of SPXPM. See id.

options would be available for trading to all market participants. The proposed rule change will facilitate the listing and trading of a novel option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The listing of NDXPM 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 NASDAQ-100 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, the Exchange notes that it is possible for other exchanges to develop or license the use of a new or different index to compete with the NASDAQ-100 and seek Commission approval to list and trade options on such an index.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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-2017-04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-04. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-Phlx-2017-04 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.²²

Eduardo A. Aleman
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).