

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83458; File No. SR-Phlx-2018-47)

June 18, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 1101A, Terms of Option Contracts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 11, 2018, Nasdaq PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 amend Exchange Rule 1101A, Terms of Option Contracts.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt new Commentary .06 to Exchange Rules 1101A, to codify that the Exchange will defer to The Options Clearing Corporation ("OCC") in determining settlement prices for index options when OCC elects to do so in accordance with its own rules and bylaws. Such OCC-determined settlement prices may be determined in a manner that differs from the settlement price procedures under the Exchange's own rules.

Exchange Rule 1101A(d) currently states that the Rules of the Options Clearing Corporation specify that, unless the Rules of the Exchange provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of the Options Clearing Corporation or, if such day is not a business day, for the most recent business day. Exchange Rule 1101A(e) currently states that the current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under Exchange rules and OCC rules, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The Exchange proposes to add new Commentary .06 to Rule 1101A to make clear that the Exchange's settlement price procedures shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to settlement in the event of the unavailability or inaccuracy of the current underlying interest value.<sup>3</sup> An option holder's contract with OCC is governed by OCC rules and by-laws. The proposed language makes clear that Exchange rules concerning settlement value calculation would not apply in the event that OCC exercises its authority to determine settlement prices under OCC rules and by-laws. In that case, the Exchange would defer to OCC.

Proposed Rule 1101A Commentary .06 is based in part upon Chapter XIV, Section 10(g) of the Nasdaq rulebook, Chapter XIV, Section 10(g) of the BX rulebook, and ISE Rule 2008(g).<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is

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<sup>3</sup> See OCC By-Laws Article XVII, Section 4(a), which provides in relevant part that if OCC shall determine that the primary market for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the current index value for that trading day would ordinarily be determined, or that a current index value or other value or price to be used as, or to determine, the exercise settlement amount (a "required value") for a trading day is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for purposes of calculating the exercise settlement amount, then, in addition to any other actions that OCC may be entitled to take under OCC's bylaws and rules, the OCC is empowered to take any or all of a range of permitted actions with respect to any series of options on such index, including fixing the exercise settlement amount.

<sup>4</sup> These rules generally provide that the exchanges' settlement price rules will not apply when the settlement price is determined in accordance with OCC rules and bylaws.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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.

OCC may elect to use various procedures in the event it exercises its authority to set settlement prices.<sup>7</sup> By adopting the proposed rule, the Exchange would acknowledge clearly that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

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. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws.

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.

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<sup>7</sup> OCC By-Laws Article XVII, Section 4(a)(2) provides in relevant part that if OCC elects to exercise its authority under Section 4(a), it may, among other actions, fix the exercise settlement amount using the reported price or value for the relevant security(ies), at the close of regular trading hours on the last preceding trading day for which such a price or value was reported by the reporting authority. Section 4(a)(2) provides that OCC may elect instead to fix the exercise settlement amount using other prices, such as the reported price or value for the relevant security(ies) at the opening of regular trading hours on the next trading day for which such an opening price or value is reported by the reporting authority.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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 Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to immediately eliminate any perceived conflict between the Exchange's settlement price rules and OCC's rules and by-laws regarding the establishment of settlement prices. The Exchange noted that the proliferation of expiration dates resulting from new index option weekly listings has increased the possibility that unforeseen events may occur on an expiration date, thereby necessitating that OCC determine settlement prices. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 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 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.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

of investors and the public interest and designates the proposed rule change operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) of the Act<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-47 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.

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<sup>13</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-Phlx-2018-47. 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 such 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-2018-47, 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.<sup>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).