

Required fields are shown with yellow backgrounds and asterisks.

Filing by Nasdaq PHLX LLC
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend Options 6, Section 7 to permit in-kind transfers of positions off of the Exchange in connection with unit investment trusts.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sun Last Name * Kim
 Title * Associate General Counsel
 E-mail * Sun.Kim@nasdaq.com
 Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 05/06/2021 EVP and Chief Legal Officer
 By John Zecca
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

john.zecca@nasdaq.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 6, Section 7 to permit in-kind transfers of positions off of the Exchange in connection with unit investment trusts (“UITs”).

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend Options 6, Section 7, which permits off-Exchange, in-kind transfers of options positions in connection with exchange-traded funds (“ETFs”) organized as open-ended management investments companies under the Investment Company Act of 1940 (the “1940 Act”), to also permit in-kind transfers of options positions in connection with entities registered as UITs under the 1940 Act. This is a competitive filing that is substantially similar to rules in place on Cboe Exchange, Inc. (“Cboe”) and its affiliates.³

Today, the Exchange allows members and member organizations to transfer their options positions off of the Exchange in limited, specified circumstances.⁴ For instance, Options 6, Section 7 permits positions in options listed on the Exchange to be transferred off the Exchange by a member or member organization in connection with transactions to purchase or redeem creation units of ETF shares between an authorized participant⁵ and

³ See Cboe Rule 6.9 (the “Cboe Rule”); see also Securities Exchange Act Release No. 88786 (April 30, 2020), 85 FR 26998 (May 6, 2020) (SR-CBOE-2020-042). See also Cboe C2 Exchange (“C2”) Rule 6.63; Securities Exchange Act Release No. 89056 (June 12, 2020), 85 FR 36888 (June 18, 2020) (SR-C2-2020-006). See also Cboe BZX Exchange (“BZX”) Rule 20.12; Securities Exchange Act Release No. 89313 (July 14, 2020), 85 FR 43907 (July 20, 2020) (SR-CboeBZX-2020-054). See also Cboe EDGX Exchange (“EDGX”) Rule 20.12; Securities Exchange Act Release No. 89312 (July 14, 2020), 85 FR 43887 (July 20, 2020) (SR-CboeEDGX-2020-031).

⁴ See Options 6, Section 5(a) (Transfer of Positions), Section 6 (Off-Exchange RWA Transfers), and Section 7 (In-Kind Exchange of Options Positions and ETF Shares).

⁵ An “authorized participant” is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized

the issuer of such ETF shares.⁶ Such transfers pursuant to Section 7 occur between two different parties, off the Exchange, and are considered position transfers from an account with one clearing firm to the account of another clearing firm.⁷ Each of these transfers occurs at the price used to calculate the net asset value (“NAV”) of such ETF shares. The ability to effect in-kind transfers is a key component of the operational structure of an ETF and Options 6, Section 7 allows options-based ETFs to be more tax-efficient investment vehicles, to the benefit of their shareholders, and potentially resulting in transaction cost savings, which may be passed along to investors.

The Exchange now proposes to expand Options 6, Section 7 to mirror the Cboe Rule, which would permit in-kind transfers in connection with the creation or redemption of units issued by a UIT, another type of investment company registered under the 1940 Act. Although UITs operate differently than ETFs in certain respects, as described below, the anticipated potential benefits to UIT investors (i.e., greater tax efficiencies and transaction cost savings) from the proposed changes would be similar as discussed below. Furthermore, allowing the Exchange to permit such in-kind transfers would enable the

participant to place orders for the purchase and redemption of creation units (*i.e.*, specified numbers of ETF shares). See Options 6, Section 7(a).

⁶ An “issuer of ETF shares” is an entity registered with the Commission as an open-ended management investment company under the Investment Company Act of 1940. See Options 6, Section 7(b).

⁷ These back-office transfers of options positions are in accordance with the rules of The Options Clearing Corporation (“OCC”), as the transferred positions are held in an account of an OCC member. Accordingly, all transfers pursuant to proposed Options 6, Section 7 would be required to comply with OCC rules. See Options 1, Section 1(b)(10) and Options 6, Section 8 (which, taken together, effectively requires all members and member organizations that are OCC members to comply with OCC’s rules).

Exchange to compete more effectively with other options exchanges that already allow such transfers.⁸

Under the 1940 Act,⁹ a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.¹⁰ A UIT's investment portfolio is relatively fixed and, unlike an ETF, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including ETFs), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like ETFs, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as "units." A broker-dealer purchases a unit of UIT shares from the UIT trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by "in-kind" transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to

⁸ See supra note 3.

⁹ 15 U.S.C. 80a-4(2).

¹⁰ The Exchange also notes that although a majority of ETFs are structured as open-ended funds (i.e., those ETFs covered by Options 6, Section 7), some ETFs are structured as UITs, and currently represent a significant amount of assets within the ETF industry. These include, for example, SPDR S&P 500 ETF Trust ("SPY") and PowerShares QQQ Trust, Series 1 ("QQQ").

the aggregate NAV of the shares of the UIT comprising a unit.¹¹ The UIT then issues units that are publicly offered and sold. Unlike ETFs, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (i.e., the primary period, which may range from a single day to a few months). Similar to the process for ETFs, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of ETFs, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Although ETFs and UITs operate differently in certain respects, the ability to effect in-kind transfers is significant to both types of investment vehicles. Currently, in-kind transfers of options pursuant to Options 6, Section 7 protect ETF shareholders from certain undesirable tax consequences and improve the overall tax efficiency of the products. Indeed, by effecting redemptions on an in-kind basis, as permitted by Options

¹¹ The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. See §270.2a-4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of §270.2a-4(a), which provides for other events that would trigger computation of a UIT's NAV.

6, Section 7, there is no need for an ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. Additionally, by transacting on an in-kind basis, ETFs may currently avoid certain transaction costs they would otherwise incur in connection with the purchase and sale of securities and other assets (including options). Options 6, Section 7 does not currently permit these in-kind transfers for UITs as they are still generally required to sell options on an exchange to obtain the requisite cash when effecting redemption transactions with broker-dealers.

In light of the foregoing, the Exchange proposes to extend Options 6, Section 7 to UITs. As amended, Options 6, Section 7 will provide that positions in options listed on the Exchange may be transferred off the Exchange by a member or member organization in connection with transactions (1) to purchase or redeem creation units of ETF shares between an authorized participant and the issuer of such ETF shares or (2) to create or redeem units of a unit investment trust (“UIT”) between a broker-dealer and the issuer of such UIT units, which transfers would occur at the price(s) used to calculate the net asset value of such ETF shares or UIT units, respectively. An “issuer of UIT units” will be defined in new paragraph (c) of the Rule as a trust registered with the Commission as a unit investment trust under the Investment Company Act of 1940.

As described above, UITs and ETFs are situated in substantially the same manner; the key differences being a UIT’s fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implications and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, permitting off-Exchange in-kind transfers for UITs would

benefit investors by potentially providing tax efficiencies and transaction cost savings similar to those that investors in ETFs may enjoy today.

The Exchange does not believe that the proposed extension of Options 6, Section 7 will compromise price discovery or transparency. To note, this Rule is already applicable to options in connection with ETF creations and redemptions. Although options positions in connection with ETF and UIT (as proposed) creations and redemptions are transferred off the Exchange, they are not closed or “traded,” and instead, merely reside in a different clearing account until closed in a trade on the Exchange or until they expire. The Exchange also notes that just like the Cboe Rule, amended Options 6, Section 7 will continue to be clearly delineated and limited in scope, given that the Rule will continue to apply only to transfers of options effected in connection with the creation and redemption process, and for certain investment companies registered under the 1940 Act. Other than the transfers covered by the amended Rule, options transactions, whether held by an ETF or an authorized participant, or a UIT or a broker-dealer, would be fully subject to all applicable trading Rules on the Exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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.

The Exchange believes that permitting off-Exchange transfers in connection with the in-kind UIT creation and redemption process promotes just and equitable principles of trade and helps remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is currently available for ETFs under Options 6, Section 7. Furthermore, the Exchange believes that permitting a comparable investment vehicle, also registered as an investment company under the 1940 Act, to be covered by Options 6, Section 7 removes impediments to and perfects the mechanism of a free and open market and national market system as it would enable UITs to compete more effectively with other investment vehicles that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. The Exchange notes that the ability to effect in-kind transfers is significant to both ETFs and UITs as investment vehicles. By permitting UITs that invest in options traded on the Exchange to benefit from potential tax efficiencies and transaction cost savings similar to those that ETFs may currently enjoy, the proposed rule change would protect investors and the public interest by passing along such potential benefits to investors that participate in UITs. The Exchange does not believe that the proposed rule change affects the protection of investors or the maintenance of a fair and orderly market because Options 6, Section 7, as amended, would continue to be clearly delineated and limited in scope. The Rule already applies to ETFs, which operate in a similar manner as UITs, and the proposed rule change to extend

the Rule to UITs is based on a similar rationale and does not raise any new or novel issues. In this regard, as with in-kind, off-exchange transfers of options in connection with ETFs, those transfers in connection with UITs would also occur at a price related to the NAV of the applicable UIT units, which removes the need for price discovery on an exchange. The Exchange expects that off-exchange options transfers in connection with the creation and redemption process for UITs will comprise a minimal percentage of average daily volume (“ADV”), just as such transfers currently permissible in connection with ETFs comprise a minimal percentage of ADV. Further, the general price at which UIT-related transfers are effected will be publicly available as they are based on the disseminated closing prices and are generally expected to include corresponding transactions by a broker-dealer that would occur on an exchange and be reported to OPRA.¹⁴

Finally, the proposed rule change would align the Exchange’s Rule with that of other options exchanges, thereby allowing the Exchange to compete on equal footing.¹⁵

¹⁴ The Exchange notes that in conjunction with depositing options with a UIT’s trustee and creating units, the necessary options positions will be acquired in an on-exchange transaction that is reported to OPRA. In conjunction with redemptions, the sponsor or other broker-dealer will generally acquire both the units redeemed by a redeeming unit holder and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position is likely acquired in an on-exchange transaction that would be reported to OPRA. Thus, while the transfer of options positions between the sponsor or other broker-dealer and the UIT would not necessarily be reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

¹⁵ See supra note 3.

4. 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 does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed in-kind process under Options 6, Section 7 would be voluntary. The proposed rule change would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for UITs under the same specified circumstances currently applicable to the ETF creation and redemption process. The proposed expansion of Options 6, Section 7 to UITs would enable this investment vehicle, which is comparable to ETFs, to enjoy the benefits of off-Exchange, in-kind creations and redemptions already available to ETFs, and to pass these benefits along to investors. The proposed rule change would apply in the same manner to all broker-dealers that opt to invoke the proposed in-kind process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule would continue to provide a clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Furthermore, as indicated above, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed expansion may lead to further development of UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that proposed rule change is

based rules already in place on other options exchanges.¹⁶ As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for UITs that hold options to utilize the in-kind transfers proposed herein.

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹⁷ of the Act and Rule 19b-4(f)(6) thereunder¹⁸ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the public interest and the protection of investors, and will not impose any significant burden on competition, because the proposed rule, which mirrors the Cboe Rule, will provide an

¹⁶ See supra note 3.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange, which the Exchange believes will eliminate a significant competitive disadvantage for UITs that invest in options. Furthermore, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed expansion may lead to further development of UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the market place and the public. Moreover, the proposed rule change is substantively identical to the Cboe Rule, and therefore does not raise any novel regulatory issues.¹⁹ In addition, the proposed rule change would not significantly the protection of investors or the public interest because transfers at NAV-related prices would not affect price discovery on an exchange, options transfers in connection with UITs are expected to comprise a minimal percentage of ADV, and the general price at which these transfers are effected will be publicly available.²⁰ As such, the Exchange believes that its proposal qualifies for immediate effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6).

Furthermore, Rule 19b-4(f)(6)(iii)²¹ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

¹⁹ See supra note 3.

²⁰ See supra note 14.

²¹ 17 CFR 240.19b-4(f)(6)(iii).

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 should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among options exchanges by allowing the Exchange to adopt a transfer rule similar to the Cboe Rule as soon as possible. The Exchange believes that adopting this rule will benefit investors and the general public because of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings) as discussed above, which may lead to further development of UITs that invest in options, thereby fostering competition and resulting in additional choices for investors.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is substantively identical to Cboe Rule 6.9, C2 Rule 6.63, BZX Rule 21.12, and EDGX Rule 21.12.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2021-30)

August __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 6, Section 7

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 May 6, 2021, 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 amend Options 6, Section 7 to permit in-kind transfers of positions off of the Exchange in connection with unit investment trusts (“UITs”).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the 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

The Exchange proposes to amend Options 6, Section 7, which permits off-Exchange, in-kind transfers of options positions in connection with exchange-traded funds (“ETFs”) organized as open-ended management investments companies under the Investment Company Act of 1940 (the “1940 Act”), to also permit in-kind transfers of options positions in connection with entities registered as UITs under the 1940 Act. This is a competitive filing that is substantially similar to rules in place on Cboe Exchange, Inc. (“Cboe”) and its affiliates.³

Today, the Exchange allows members and member organizations to transfer their options positions off of the Exchange in limited, specified circumstances.⁴ For instance, Options 6, Section 7 permits positions in options listed on the Exchange to be transferred off the Exchange by a member or member organization in connection with transactions to

³ See Cboe Rule 6.9 (the “Cboe Rule”); see also Securities Exchange Act Release No. 88786 (April 30, 2020), 85 FR 26998 (May 6, 2020) (SR-CBOE-2020-042). See also Cboe C2 Exchange (“C2”) Rule 6.63; Securities Exchange Act Release No. 89056 (June 12, 2020), 85 FR 36888 (June 18, 2020) (SR-C2-2020-006). See also Cboe BZX Exchange (“BZX”) Rule 20.12; Securities Exchange Act Release No. 89313 (July 14, 2020), 85 FR 43907 (July 20, 2020) (SR-CboeBZX-2020-054). See also Cboe EDGX Exchange (“EDGX”) Rule 20.12; Securities Exchange Act Release No. 89312 (July 14, 2020), 85 FR 43887 (July 20, 2020) (SR-CboeEDGX-2020-031).

⁴ See Options 6, Section 5(a) (Transfer of Positions), Section 6 (Off-Exchange RWA Transfers), and Section 7 (In-Kind Exchange of Options Positions and ETF Shares).

purchase or redeem creation units of ETF shares between an authorized participant⁵ and the issuer of such ETF shares.⁶ Such transfers pursuant to Section 7 occur between two different parties, off the Exchange, and are considered position transfers from an account with one clearing firm to the account of another clearing firm.⁷ Each of these transfers occurs at the price used to calculate the net asset value (“NAV”) of such ETF shares. The ability to effect in-kind transfers is a key component of the operational structure of an ETF and Options 6, Section 7 allows options-based ETFs to be more tax-efficient investment vehicles, to the benefit of their shareholders, and potentially resulting in transaction cost savings, which may be passed along to investors.

The Exchange now proposes to expand Options 6, Section 7 to mirror the Cboe Rule, which would permit in-kind transfers in connection with the creation or redemption of units issued by a UIT, another type of investment company registered under the 1940 Act. Although UITs operate differently than ETFs in certain respects, as described below, the anticipated potential benefits to UIT investors (i.e., greater tax efficiencies and transaction cost savings) from the proposed changes would be similar as discussed below.

⁵ An “authorized participant” is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.*, specified numbers of ETF shares). See Options 6, Section 7(a).

⁶ An “issuer of ETF shares” is an entity registered with the Commission as an open-ended management investment company under the Investment Company Act of 1940. See Options 6, Section 7(b).

⁷ These back-office transfers of options positions are in accordance with the rules of The Options Clearing Corporation (“OCC”), as the transferred positions are held in an account of an OCC member. Accordingly, all transfers pursuant to proposed Options 6, Section 7 would be required to comply with OCC rules. See Options 1, Section 1(b)(10) and Options 6, Section 8 (which, taken together, effectively requires all members and member organizations that are OCC members to comply with OCC’s rules).

Furthermore, allowing the Exchange to permit such in-kind transfers would enable the Exchange to compete more effectively with other options exchanges that already allow such transfers.⁸

Under the 1940 Act,⁹ a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.¹⁰ A UIT's investment portfolio is relatively fixed and, unlike an ETF, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including ETFs), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like ETFs, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as "units." A broker-dealer purchases a unit of UIT shares from the UIT trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by "in-kind" transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to

⁸ See supra note 3.

⁹ 15 U.S.C. 80a-4(2).

¹⁰ The Exchange also notes that although a majority of ETFs are structured as open-ended funds (i.e., those ETFs covered by Options 6, Section 7), some ETFs are structured as UITs, and currently represent a significant amount of assets within the ETF industry. These include, for example, SPDR S&P 500 ETF Trust ("SPY") and PowerShares QQQ Trust, Series 1 ("QQQ").

the aggregate NAV of the shares of the UIT comprising a unit.¹¹ The UIT then issues units that are publicly offered and sold. Unlike ETFs, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (i.e., the primary period, which may range from a single day to a few months). Similar to the process for ETFs, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of ETFs, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Although ETFs and UITs operate differently in certain respects, the ability to effect in-kind transfers is significant to both types of investment vehicles. Currently, in-kind transfers of options pursuant to Options 6, Section 7 protect ETF shareholders from certain undesirable tax consequences and improve the overall tax efficiency of the products. Indeed, by effecting redemptions on an in-kind basis, as permitted by Options

¹¹ The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. See §270.2a-4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of §270.2a-4(a), which provides for other events that would trigger computation of a UIT's NAV.

6, Section 7, there is no need for an ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. Additionally, by transacting on an in-kind basis, ETFs may currently avoid certain transaction costs they would otherwise incur in connection with the purchase and sale of securities and other assets (including options). Options 6, Section 7 does not currently permit these in-kind transfers for UITs as they are still generally required to sell options on an exchange to obtain the requisite cash when effecting redemption transactions with broker-dealers.

In light of the foregoing, the Exchange proposes to extend Options 6, Section 7 to UITs. As amended, Options 6, Section 7 will provide that positions in options listed on the Exchange may be transferred off the Exchange by a member or member organization in connection with transactions (1) to purchase or redeem creation units of ETF shares between an authorized participant and the issuer of such ETF shares or (2) to create or redeem units of a unit investment trust (“UIT”) between a broker-dealer and the issuer of such UIT units, which transfers would occur at the price(s) used to calculate the net asset value of such ETF shares or UIT units, respectively. An “issuer of UIT units” will be defined in new paragraph (c) of the Rule as a trust registered with the Commission as a unit investment trust under the Investment Company Act of 1940.

As described above, UITs and ETFs are situated in substantially the same manner; the key differences being a UIT’s fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implications and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, permitting off-Exchange in-kind transfers for UITs would

benefit investors by potentially providing tax efficiencies and transaction cost savings similar to those that investors in ETFs may enjoy today.

The Exchange does not believe that the proposed extension of Options 6, Section 7 will compromise price discovery or transparency. To note, this Rule is already applicable to options in connection with ETF creations and redemptions. Although options positions in connection with ETF and UIT (as proposed) creations and redemptions are transferred off the Exchange, they are not closed or “traded,” and instead, merely reside in a different clearing account until closed in a trade on the Exchange or until they expire. The Exchange also notes that just like the Cboe Rule, amended Options 6, Section 7 will continue to be clearly delineated and limited in scope, given that the Rule will continue to apply only to transfers of options effected in connection with the creation and redemption process, and for certain investment companies registered under the 1940 Act. Other than the transfers covered by the amended Rule, options transactions, whether held by an ETF or an authorized participant, or a UIT or a broker-dealer, would be fully subject to all applicable trading Rules on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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.

The Exchange believes that permitting off-Exchange transfers in connection with the in-kind UIT creation and redemption process promotes just and equitable principles of trade and helps remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is currently available for ETFs under Options 6, Section 7. Furthermore, the Exchange believes that permitting a comparable investment vehicle, also registered as an investment company under the 1940 Act, to be covered by Options 6, Section 7 removes impediments to and perfects the mechanism of a free and open market and national market system as it would enable UITs to compete more effectively with other investment vehicles that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. The Exchange notes that the ability to effect in-kind transfers is significant to both ETFs and UITs as investment vehicles. By permitting UITs that invest in options traded on the Exchange to benefit from potential tax efficiencies and transaction cost savings similar to those that ETFs may currently enjoy, the proposed rule change would protect investors and the public interest by passing along such potential benefits to investors that participate in UITs. The Exchange does not believe that the proposed rule change affects the protection of investors or the maintenance of a fair and orderly market because Options 6, Section 7, as amended, would continue to be clearly delineated and limited in scope. The Rule already applies to ETFs, which operate in a similar manner as UITs, and the proposed rule change to extend

the Rule to UITs is based on a similar rationale and does not raise any new or novel issues. In this regard, as with in-kind, off-exchange transfers of options in connection with ETFs, those transfers in connection with UITs would also occur at a price related to the NAV of the applicable UIT units, which removes the need for price discovery on an exchange. The Exchange expects that off-exchange options transfers in connection with the creation and redemption process for UITs will comprise a minimal percentage of average daily volume (“ADV”), just as such transfers currently permissible in connection with ETFs comprise a minimal percentage of ADV. Further, the general price at which UIT-related transfers are effected will be publicly available as they are based on the disseminated closing prices and are generally expected to include corresponding transactions by a broker-dealer that would occur on an exchange and be reported to OPRA.¹⁴

Finally, the proposed rule change would align the Exchange’s Rule with that of other options exchanges, thereby allowing the Exchange to compete on equal footing.¹⁵

¹⁴ The Exchange notes that in conjunction with depositing options with a UIT’s trustee and creating units, the necessary options positions will be acquired in an on-exchange transaction that is reported to OPRA. In conjunction with redemptions, the sponsor or other broker-dealer will generally acquire both the units redeemed by a redeeming unit holder and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position is likely acquired in an on-exchange transaction that would be reported to OPRA. Thus, while the transfer of options positions between the sponsor or other broker-dealer and the UIT would not necessarily be reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

¹⁵ See supra note 3.

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 does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed in-kind process under Options 6, Section 7 would be voluntary. The proposed rule change would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for UITs under the same specified circumstances currently applicable to the ETF creation and redemption process. The proposed expansion of Options 6, Section 7 to UITs would enable this investment vehicle, which is comparable to ETFs, to enjoy the benefits of off-Exchange, in-kind creations and redemptions already available to ETFs, and to pass these benefits along to investors. The proposed rule change would apply in the same manner to all broker-dealers that opt to invoke the proposed in-kind process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule would continue to provide a clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Furthermore, as indicated above, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed expansion may lead to further development of UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that proposed rule change is

based rules already in place on other options exchanges.¹⁶ As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for UITs that hold options to utilize the in-kind transfers proposed herein.

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 foregoing 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)(iii) of the Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

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

¹⁶ See supra note 3.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2021-30 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-2021-30. 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 Web site (<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-2021-30 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

Nasdaq PHLX LLC Rules

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Options 6 Options Trade Administration

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Section 7. In-Kind Exchange of Options Positions and ETF Shares and UIT Units

Positions in options listed on the Exchange may be transferred off the Exchange by a member or member organization in connection with transactions (1) to purchase or redeem creation units of ETF shares between an authorized participant and the issuer of such ETF shares or (2) to create or redeem units of a unit investment trust (“UIT”) between a broker-dealer and the issuer of such UIT units, which transfers would occur at the price(s) used to calculate the net asset value of such ETF shares or UIT units, respectively. For purposes of this Rule:

(a) an “authorized participant” is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.*, specified numbers of ETF shares); [and]

(b) an “issuer of ETF shares” is an entity registered with the Commission as an open-ended management investment company under the Investment Company Act of 1940[.]; and

(c) an “issuer of UIT units” is a trust registered with the Commission as a unit investment trust under the Investment Company Act of 1940.

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