

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98644; File No. SR-Phlx-2023-45]

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 With a Third-Friday-of-the-Month Expiration

September 29, 2023.

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 September 28, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the listing and trading of p.m.-settled Nasdaq-100 Index[®] options³ with a third-Friday-of-the-month expiration.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Phlx proposes to amend its rules to permit the listing and trading of p.m.-settled Nasdaq-100 Index options with a third-Friday-of-the-month expiration date. The Exchange notes that p.m.-settled options were recently approved and included a p.m.-settled third-Friday-of-the-month expiration for trading of options based on 1/100 the value of the Nasdaq-100 Index.⁴

By way of background, the Nasdaq-100 Index, a modified market capitalization-weighted index, includes 100 of the largest non-financial companies listed on The Nasdaq Stock Market LLC, based on market capitalization. It does not contain securities of financial companies including investment companies. Security types generally eligible for the Nasdaq-100 Index include common stocks, ordinary shares, American Depository Receipts, and tracking stocks. Security or company types not included in the Nasdaq-100 Index 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.⁵ Today, the Exchange may list a.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options. Previously, Phlx received approval to permit the listing and trading, on a pilot basis, of NASDAQ-100 options with p.m.-settled third-Friday-of-the-month expiration dates.⁶ The Exchange extended the pilot through May 6, 2019, and, subsequently through November 4, 2019, because p.m.-settled options on the Nasdaq-100 Index had not yet been listed by Phlx.⁷

⁴ See Securities Exchange Act Release No. 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR-Phlx-2023-07) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots).

⁵ A description of the Nasdaq-100 is available on Nasdaq’s website at https://indexes.nasdaqomx.com/docs/methodology_NDX.pdf.

⁶ See Securities Exchange Act Release No. 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (approving SR-Phlx-2017-04) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options on a Pilot Basis).

⁷ See Securities Exchange Act Release Nos. 84685 (November 29, 2019), 83 FR 62942 (December 6, 2018) (SR-Phlx-2018-76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pilot Period for the Listing of P.M.-Settled Nasdaq-100 Index Options Expiring on the

The Exchange did not renew this Pilot a third time and therefore the Pilot expired on November 4, 2019.⁸ Today, Cboe Exchange, Inc. (“Cboe”) lists third-Friday p.m.-settled options on the Standard & Poor’s 500 Index (“S&P 500 Index”) under the symbol “SPXW.”⁹

At this time, the Exchange proposes to amend Options 4A, Section 12 to permit the listing of p.m.-settled third-Friday-of-the-month Expiration Dates under the trading symbol “NDXP.” Today, the Exchange may list a.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options. With this proposal, the Exchange would have third-Friday-of-the-month expirations on Nasdaq-100 Index options that are both a.m.-settled and p.m.-settled on the same day. The conditions for listing p.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options will be similar to those for a.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options.

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.¹⁰ Strike price intervals would be set at no less than \$2.50.¹¹ Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months¹² as well as LEAPS.¹³ The

Third Friday of the Month) and 85692 (April 18, 2019), 84 FR 17213 (April 24, 2019) (SR-Phlx-2019-16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Listing of P.M.-Settled Nasdaq-100 Index Options Expiring on the Third Friday of the Month).

⁸ See Securities Exchange Act Release No. 87517 (November 13, 2019), 84 FR 63910 (November 19, 2023) (SR-Phlx-2019-49) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Rule Text From Phlx Rule 1101A).

⁹ Cboe also lists a.m.-settled S&P 500 Index options that have standard third-Friday expirations. See Cboe Rule 4.10(e). Cboe’s third-Friday-of-the-month pilot was recently approved. See Securities Exchange Act Release No. 98454 (September 20, 2023) (SR-CBOE-2023-005) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent the Operation of the Program that Allows the Exchange to List P.M.-Settled Third Friday-of-the-Month S&P 500 Stock Index Options (“SPX”) Series).

¹⁰ See Options 3, Section 3, Minimum Increments.

¹¹ See Options 4A, Section 12(a)(3).

¹² The Exchange proposes the same expiration month options for NDXP as are permitted for the Nasdaq-100 Index, since both options classes are derived from the Nasdaq-100 Index.

¹³ Options 4A, Section 12(b) 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

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq-100 Index options trade under the symbol (“NDX”).

product would have European-style exercise. Because the product is based on the Nasdaq-100 Index there would be no position limits. Also, today, the Exchange notes that it has the flexibility to open for trading additional series in response to customer demand.¹⁴

NDXP options are series of the NDX options class. Currently, these NDXP options may expire any day of the week, Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, as applicable (other than third-Friday-of-the-month), and the last trading day of the month.¹⁵ Third-Friday p.m.-settled options trading under the NDXP symbol will be a new type of series under the Nasdaq-100 Index options class and not a new options class, therefore all third-Friday p.m.-settled NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.¹⁶

index options and may also open for trading series of options having not less than twelve and up to 60 months to expiration (long-term options series) as provided in subparagraph (b)(2). Prior to the opening of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series. Further, Options 4A, Section 12(b)(2) provides that the Exchange may list, with respect to any class of stock index options or Nasdaq-100® Volatility Index options, series of options having not less than twelve 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 this rule. Strike price intervals and continuity rules shall not apply to such options series until the time to expiration is less than twelve months. Bid/ask differentials for long-term options contracts are specified within Options 2, Section 4(c)(1)(A).

¹⁴ Options 4A, Section 12(b)(1) provides that additional series of stock index options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying index moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an index may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on indexes until the fourth business day prior to the business day of expiration, or, in the case of an index option contract expiring on a day that is not a business day, up to the fifth business day prior to expiration.

¹⁵ See Options 3, Section 12(b)(5)(A).

¹⁶ Options 3, Section 6(e) provides, “Aggregation—Full value, reduced value, micro index value, long term and quarterly expiring options based on the same index shall be aggregated. Reduced value or mini-size and micro index contracts shall be aggregated with full value or full-size contracts and counted by the amount by which they equal a full value contract (e.g., a hundredth (1/100th)) value contracts equal one (1) full value contract). Positions in Short Term Options Series and Quarterly Options Series shall be aggregated with positions in options contracts of the same index. Nonstandard Expirations (as provided for in Options 4A, Section 5(b)(vii)) on a

As with the Nasdaq-100 Index, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXP option position, including third-Friday-of-the-month p.m.-settled NDXP, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority pursuant to under Exchange Rules Options 6E, Section 2. The trading hours for NDXP, including third-Friday-of-the-month p.m.-settled NDXP, will be from 9:30 a.m. to 4:15 p.m. Eastern Time.¹⁷

The Exchange proposes to amend Options 4A, Section 12(a)(6) to provide that in addition to a.m.-settled Nasdaq-100 Index options approved for trading on the Exchange, the Exchange may also list options on the Nasdaq-100 Index whose exercise settlement value is the closing value of the Nasdaq-100 Index on the expiration day.¹⁸

The Exchange does not believe that any market disruptions will be encountered with the introduction of Nasdaq-100 Index options with third-Friday-of-the-month p.m.-settled expiration dates. The Exchange will monitor for any such disruptions or the development of any factors that could cause such disruptions.

The adoption of trading third-Friday-of-the-month p.m.-settled options on the Nasdaq-100 Index on the same exchange that lists third-Friday-of-the-month 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 utilize 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 listing third-Friday-of-the-month p.m.-settled options, 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.

broad-based index shall be aggregated with option contracts on the same broad-based index and shall be subject to the overall position limit.”

¹⁷ The Exchange notes that NDXP will ordinarily cease at 4:00 p.m. on the day on which the exercise-settlement value is calculated.

¹⁸ The closing value of the Nasdaq-100 Index may change up until 17:15 Eastern Time due to corrections to prices of the underlying component securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁹ in general, and with Section 6(b)(5) of the Act,²⁰ 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 Act²¹ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

P.M.-settled options were recently approved and included a p.m.-settled third-Friday-of-the-month expiration for trading of options on XND.²² Previously, Phlx received approval to permit the listing and trading, on a pilot basis, of NASDAQ-100 options with p.m.-settled third-Friday-of-the-month expiration dates.²³ The Exchange extended the pilot through May 6, 2019, and, subsequently through November 4, 2019, because p.m.-settled options on the NASDAQ-100 Index had not yet been listed by Phlx.²⁴ The Exchange did not renew this Pilot a third time and therefore the Pilot expired on November 4, 2019.²⁵ Today, Cboe lists third-Friday p.m.-settled options on the S&P 500 Index under the symbol “SPXW.”²⁶ For these reasons, the Exchange desires to list a p.m.-settled third-Friday-of-the-month expiration for trading of options on the Nasdaq-100 Index. The Exchange believes that listing this expiry would not have any adverse effects or impact on market volatility and the operation of a fair and orderly markets on the underlying cash market at or near the

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78f(b)(8).

²² See *supra* note 4.

²³ See *supra* note 6.

²⁴ See *supra* note 7.

²⁵ See *supra* note 8.

²⁶ See *supra* note 9.

close of trading in its Nasdaq-100 Index options.

Specifically, the Exchange believes that the introduction of Nasdaq-100 Index options with third-Friday-of-the-month p.m.-settled expiration dates will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors. Further, the Exchange believes this proposal will ensure market participants, particularly retail customers, have seamless access to p.m.-settled Nasdaq-100 Index options expiring every Friday of the month, which helps to remove impediments to and perfect the mechanism of a free and open market. The Exchange believes the proposed rule change will help to protect investors and the public interest by allowing market participants to enter options positions with the same underlying in one symbol that spans every Friday expiration in a month, thus providing a more efficient way to gain exposure and hedge risk.

The adoption of trading third-Friday-of-the-month p.m.-settled options on the Nasdaq-100 Index on the same exchange that lists third-Friday-of-the-month 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 utilize 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.

Third-Friday p.m. settled options trading under the NDXP symbol will be a new type of series under the Nasdaq-100 Index options class and not a new options class, therefore all third-Friday p.m.-settled NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.²⁷

The Exchange does not believe that any market disruptions will be encountered with the introduction of Nasdaq-100 Index options with third-Friday-of-the-month expiration dates. The Exchange will monitor for any such disruptions or the development of any factors that could cause such disruptions.

Finally, 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.

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.

The Exchange does not believe the rule change will impose a burden on intramarket competition because all market participants would have access to p.m.-settled Nasdaq-100 Index options expiring every Friday of the month and would be able to trade them under the NDXP symbol. The proposal will not impose a burden on intermarket competition because the options affected by this proposal are exclusive to the Exchange. Other options exchange may elect to adopt a similar expiry for a product listed on their markets.

Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition as market participants on other exchanges are welcome to become members and trade at Phlx if they determine that this proposed rule change has made Phlx more attractive or favorable.

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 up to 90 days (i) as the Commission may designate 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 will:

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 (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-45 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-2023-45. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-45 and should be submitted on or before October 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,

Assistant Secretary.

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²⁸ 17 CFR 200.30-3(a)(12).

²⁷ See *supra* note 12.