

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.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-054 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-BX-2021-054. 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 (<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. 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-BX-2021-054 and should be submitted on or before January 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>59</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-00154 Filed 1-7-22; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93893; File No. SR-NYSEArca-2021-57]

##### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201-E**

January 4, 2022.

On June 30, 2021, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of the NYDIG Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on July 19, 2021.<sup>3</sup>

On August 23, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On September 29, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup>

<sup>59</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 92395 (July 13, 2021), 86 FR 38129. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nysearca-2021-57/srnysearca202157.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 92722, 86 FR 48268 (Aug. 27, 2021).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 93191, 86 FR 55090 (Oct. 5, 2021).

Section 19(b)(2) of the Act<sup>8</sup> provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on July 19, 2021.<sup>9</sup> The 180th day after publication of the proposed rule change is January 15, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> designates March 16, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEArca-2021-57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-00152 Filed 1-7-22; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93898; File No. SR-PHLX-2021-76]

##### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules**

January 4, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(57).

“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8.

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**

The Exchange proposes to amend Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the

Exchange proposes to make technical amendments to various rules within Options 7 and Options 8. Each change is described below.

##### **Hours of Business**

The Exchange proposes to state within new Options 3, Section 1(a), “General 3, Rule 1030 governs the days the Exchange will be open for business. This rule will govern the hours of such days during which transactions may be made on the Exchange.” Phlx recently filed to establish General 3, Section 1030.<sup>3</sup> This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, Options 3, Section 1 will describe Phlx’s trading hours by product.

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b). The Exchange modified the rule text to state, “Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.” The modified rule text provides citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes.

Next, the Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c). The Exchange modified the rule text to state, “Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.” The modified rule text amends “shall freely trade” to “may

be traded” and adds new rule text to account for p.m.-settled products<sup>4</sup> and the recently approved Nasdaq–100 Volatility Index Options.<sup>5</sup> The new rule text provides, “except that on the last trading day, transactions in expiring p.m.-settled broad-based index options and the Nasdaq–100 Volatility Index Options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).” The hours noted within proposed Options 3, Section 1(c) reflect the current hours for p.m.-settled products and the hours for Nasdaq–100 Volatility Index Options, as noted within the approval order for that product.<sup>6</sup>

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d). The Exchange modified the rule text to state, “Except under unusual conditions as may be determined by the Board (or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted at such times as the Board of Directors shall specify between 6:00 P.M. Eastern Time Sundays and 3:00 P.M. Eastern Time Fridays, provided that U.S. dollar-settled foreign currency options shall trade during the same hours as narrow-based index options.” The modified rule text removes the phrase, “The Board of Directors has resolved that” as this rule text is unnecessary. Of note, today, foreign currencies trade from 9:30 a.m. to 4:00 p.m. the same as narrow-based indexes.

Proposed new Options 3, Section 1(e) memorializes the current hours for sector indexes that are currently listed on Phlx. The Exchange proposes to provide, “Options on a sector index as provided for within Options 4A, Section 12 may be traded on the Exchange until 4:00 p.m. each business day.” This rule text will account for sector indexes, which are not currently mentioned within Options 3, Section 1. Adding

<sup>4</sup> Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. See Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

<sup>5</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-PHLX–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq–100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

<sup>6</sup> See note 5 above.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR-PHLX–2021–69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

sector index hours to Options 3, Section 1 will provide additional transparency to the rule.

The Exchange proposes to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within “Except as otherwise ordered by the Board of Directors.” Any future amendments to this rule would be filed with the Commission, therefore, this phrase is being removed. Because the first two sentences of current Options 3, Section 1(a) relate to the Trading Floor, the Exchange proposes to relocate this rule text within the Options 8 Rules related to the Trading Floor. The relocated rule text would be placed within new Options 8, Section 9(a). The Exchange also proposes to re-letter current Options 8, Section 9 paragraph “(a)” as “(b).” Finally, the Exchange proposes to amend the title of Options 8, Section 9 to “Trading Floor Hours of Business and Admittance” which is a more descriptive title.

The remainder of the rule text within current Options 3, Section 1(a) is being deleted as unnecessary.<sup>7</sup> Current Options 3, Section 1(b) would become Supplementary Material .01 to Options 3, Section 1, with a header added to conform to the Rulebook style. The Exchange believes that these proposed amendments will bring greater clarity to the Exchange’s Rules.

#### Index Options Values for Settlement

The Exchange proposes to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule “Index Options Values for Settlement.” Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange’s index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so all related rule text are within the same rule.

Proposed Options 4A, Section 4(a) rule text is being relocated from current rule text within Options 4A, Section 12(d). The rule text provides that where Exchange index options rules do not apply, Phlx index options would settle based on the current index value used to settle the exercise of an index options contract, which would 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 (“OCC”) or, if such day is not a business day, for the most recent business day. The rule text is being relocated without change.

Proposed Options 4A, Section 4(b) rule text is being relocated from current rule text within Options 4A, Section 12(g). The Exchange proposes to add the title “Pricing When Primary Market Does Not Open” to proposed Options 4A, Section 4(b). The rule text provides for the current index value in the instance the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day. In this case, the settlement price at expiration shall be the last reported sale price of the security from the previous trading day, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of OCC. The rule text is being relocated without change.

Proposed Options 4A, Section 4(c) rule text is being relocated from current rule text within Supplementary Material .01 of Options 4A, Section 2. The Exchange is proposing to add the title “Discretion” to proposed Options 4A, Section 4(c). The rule text provides that for any series of index options the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration. The rule text is being relocated without change.

The Exchange proposes to add new rule text within Options 4A, Section 4(c)(1) which states,

With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

This rule text is identical to the rule text within Cboe Exchange, Inc. (“Cboe”) Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange’s current practice.<sup>8</sup> The purpose of the proposed rule change is to clarify that the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at

expiration. Certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component’s “primary market” such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index’s value at expiration the Exchange proposes to adopt the same rule text as Cboe.<sup>9</sup> In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that Options 4A, Section 4 will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange’s rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.<sup>10</sup> The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.<sup>11</sup> The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange’s Rules.

#### Reporting Authority

The Exchange proposes to amend Options 4A, Section 2 to adopt a new

<sup>7</sup> The phrase in the fourth sentence, “The Board of Directors has resolved that no option series shall freely trade after 4:00 P.M. Eastern Time” is being removed as unnecessary as the Exchange is specifying the hours each product may trade in the new rule.

<sup>8</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

<sup>9</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

<sup>10</sup> See Options 4A, Section 2(a)(16).

<sup>11</sup> See Options 4A, Section 2(a)(7).

Supplementary Material .02 which provides, “The reporting authorities designated by the Exchange in respect of

each index underlying an index options contract traded on the Exchange are as provided in the chart below.” The

Exchange proposes to add the following chart to the rule text:

Underlying index	Reporting authority
Full Value Nasdaq 100 Index .....	The Nasdaq Stock Market.
Reduced Value Nasdaq 100 Index .....	The Nasdaq Stock Market.
Nasdaq-100 Micro Index .....	The Nasdaq Stock Market.
PHLX Oil Service Sector Index .....	The Nasdaq Stock Market.
PHLX Semiconductor Sector Index .....	The Nasdaq Stock Market.
PHLX Utility Sector Index .....	The Nasdaq Stock Market.
PHLX Gold/Silver Sector Index .....	The Nasdaq Stock Market.
PHLX Housing Sector Index .....	The Nasdaq Stock Market.
KBW Bank Index .....	Keefe, Bruyette & Woods, Inc.
Nasdaq-100® Volatility Index .....	The Nasdaq Stock Market.

The Exchange believes that the addition of the Reporting Authority for each index will add clarity to the rule. The proposed reporting authorities represent the current reporting authorities for each index without change. As noted above, a Reporting Authority represents the official source for calculating and determining the current value. The Exchange determines the Reporting Authority for each index listed on the Exchange.

#### Options 4A, Section 12

Generally, pursuant to Options 4A, Section 12(a)(2), index options listed on the Exchange are subject to strike price intervals of no less than \$5, provided that certain classes of index options have strike price intervals of no less than \$2.50 if the strike price is less than \$200. Today, those classes of strike price intervals that have strike price intervals of no less than \$2.50 if the strike price is less than \$200 are listed within Options 4A, Section 12(a)(2). The Exchange proposes to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 in 2021.<sup>12</sup> The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 if

the strike price is less than \$200 on Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”).<sup>13</sup> This amendment reflects current Exchange practice.

The Exchange also proposes to amend Options 4A, Section 12(a)(2)(F) to rename the “PHLX/KBW Bank Index” to “KBW Bank Index” to reflect the current name of the Index.

The Exchange proposes to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed. The Exchange is also adding a reference to the p.m.-settled indexes<sup>14</sup> which are proposed to be listed within proposed paragraph (f), described below, and relocating the Nasdaq-100 Micro Index Options, a p.m.-settled product, to new paragraph (f). The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and, today, have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.<sup>15</sup> All of the indexes listed within Options 4A, Section 12(a)(5) are European-style a.m.-settled options that are currently available on Phlx. The European-style p.m.-settled options, which are all currently listed on Phlx, are proposed to be listed within Options 4A, Section 12(f). Nasdaq-100 Micro Index Options is being relocated to proposed Options 4A, Section 12(f)

because it is a p.m.-settled product. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the manner in which these products trade.

The Exchange proposes to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d) with a minor change.<sup>16</sup> The Exchange proposes to remove the phrase “A.M.-settled” as this rule text for index levels applies to P.M.-settled as well. Options 4A, Section 12(g) was relocated to proposed Options 4A, Section 4(b). This amendment is non-substantive because it merely is clarifying in nature.

The Exchange proposes to add the phrase “on the following indexes” to the end of Options 4A, Section 12(e)(II) for clarity. The Exchange also proposes to remove the word “Options” within the list of indexes at Options 4A, Section 12(e)(II) and add the following indexes which were inadvertently not on the list: PHLX Utility Sector Index and PHLX Gold/Silver Sector Index as well as the recently approved Nasdaq-100® Volatility Index. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.<sup>17</sup>

The Exchange proposes to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options.<sup>18</sup> This new paragraph would provide:

<sup>16</sup> The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

<sup>17</sup> See Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>18</sup> The Nasdaq Options Market LLC (“NOM”) Rules at Options 4A, Section 12(a)(6) contain a paragraph describing p.m.-settled index options. See Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order); and 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR-Phlx-2017-79) (Order

<sup>12</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

<sup>13</sup> See ISE Options 4A, Section 12(c)(1). GEMX and MRX Options 4A is incorporated by reference to ISE Options 4A.

<sup>14</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>15</sup> See <https://www.nasdaq.com/solutions/phlx-sector-based-index-options>.

P.M.-Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on Phlx:

This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today.<sup>19</sup> As noted above, the Nasdaq-100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Options 4A, Section 12(b)(5). These are both pilot programs. Finally, dashes are added in a few places to conform the name of the “Nasdaq-100 Index.” These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

#### Disclaimers

The Exchange proposes to adopt a proposed rule at Options 4A, Section 14 entitled “Disclaimers.”<sup>20</sup> The rule text is identical to rule text within ISE and NOM at Options 4A, Section 14. Currently, Options 4A, Section 14 is reserved. The disclaimer provisions are applicable to the reporting authorities identified in proposed Supplementary Material .02 to Options 4A, Section 2. The proposed rule text would provide that no Reporting Authority or affiliate of a Reporting Authority (each such Reporting Authority, its affiliates, and any other entity identified in the rule

referred to collectively as a “Reporting Authority”) makes any warranty express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intra-day or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. Further, the rule text provides that the Reporting Authority shall obtain information to be used in the calculation of the index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, including any opening, intra-day or closing value therefore, or any date included therein or related thereto. Also, the Reporting Authority disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. Finally, the Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person’s use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC (“MIAX Pearl”) added a disclaimer to its rules in 2018.<sup>21</sup> The MIAX Pearl 2018 rule filing provided the following justification for the rule change, “The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person’s use of an index, any opening, intra-day or closing value therefore, any data

included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.”

The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

#### Technical Amendments

The Exchange proposes to remove the stray word “Rule” before Options 2, Section 12(a) with the description of the term “Lead Market Maker” within Options 7, Section 1. Also, the Exchange proposes to update the citation with the description of “Professional” within Options 7, Section 1 from “Exchange Rule 1000(b)(43)” to “Options 1, Section 1(b)(45).”<sup>22</sup>

The Exchange proposes to amend Options 7, Section 8, Membership Fees at Part A, Permit and Registration Fees. Specifically, the Exchange proposes to remove rule text regarding a waiver of the Inactive Nominee Fee which was in place from April 1, 2021 through September 30, 2021.<sup>23</sup> This rule text is now obsolete and removing the rule text will avoid confusion as to the effectiveness of the waiver.

The Exchange proposes to amend Options 7, Section 9, D, to add the phrase “General 5” before Rule 9216 to provide the complete citation. Also, the Exchange proposes to remove the stray word “Rule” from Options 7, Section 9, D.

The Exchange proposes a technical amendment within Options 8, Section 24, “Bids And Offer-Premium” to re-letter the current paragraphs. As a result of the changes to this section, the Exchange proposes to update citations to Options 8, Section 24 within E-11, “Two-Way, Three Way and Multi-Spread Transactions (FOREIGN CURRENCY OPTION ONLY)”.

<sup>22</sup> Exchange Rule 1000(b)(43) was relocated in a prior rule change. See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Nasdaq Phlx LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>23</sup> See Securities Exchange Act Release No. 91481 (April 6, 2021), 86 FR 19064 (April 12, 2021) (SR-Phlx-2021-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx’s Pricing Schedule at Options 7, Section 8, “Membership Fees”).

Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

<sup>19</sup> NOM Options 4A, Section 12(a)(6) contains an identical paragraph describing p.m.-settled index options listed on that market. See Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order); and 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR-Phlx-2017-79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

<sup>20</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR-ISE-2003-05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

<sup>21</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR-PEARL-2018-02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

The Exchange proposes technical amendments to Options 8, Section 28, “Responsibilities of Floor Brokers,” to update a citation to Rule 1084 to Options 5, Section 2. Similar updates are proposed to B–7, “Options Floor Based Management System,” and C–2, “Options Floor Based Management System”.

The Exchange proposes technical amendments to Options 8, Section 29, “Use of Floor Based Management System by Floor Market Makers and Lead Market Makers,” to update two citations. The first citation is to Supplementary Material .08 to Options 10, Section 6, the rule citation should be to Supplementary Material .01 to Options 10, Section 5.<sup>24</sup> The second citation is to Rule 1080, the rule citation should be to Options 3, Section 10.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>26</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

### Hours of Business

The Exchange’s proposal to amend Options 3, Section 1 is consistent with the Act as the proposed amendment will make clear the hours within which various products listed on Phlx currently trade. Phlx recently filed to establish General 3, Section 1030.<sup>27</sup> General 3, Section 1030 governs the days the Exchange will be open for business. Amended Options 3, Section 1 will describe the hours of trading. Further, the proposed text clearly addresses the hours for the products listed on Phlx in a transparent manner

for members and member organizations to reference.

The Exchange’s proposal to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b) and modify the rule text to provide citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes is consistent with the Act as the modifications add clarity to existing rule text.

The Exchange’s proposal to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c) and modify the rule text from “shall freely trade” to “may be traded” is consistent with the Act as that change is non-substantive. The addition of hours for p.m.-settled products<sup>28</sup> and the recently approved Nasdaq-100 Volatility Index Options,<sup>29</sup> does not represent a change from the current hours, rather the Exchange is noting these hours within this rule for ease of reference.

The Exchange’s proposal to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d) and modify the rule text to remove rule text that is unnecessary is a non-substantive change.

The addition of proposed new Options 3, Section 1(e) is consistent with the Act as the rule text memorializes the current hours for sector indexes that are currently listed on Phlx. This text is consistent with the Act as the rule text will specifically account for sector indexes for ease of reference, thereby providing additional transparency to the rule.

The Exchange’s proposal to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within “Except as otherwise ordered by the Board of Directors” is consistent with the Act as this text applies to the Trading Floor. The

Exchange’s proposal removes the current discretion permitted by the Board of Directors, thereby adding certainty to the rule text. Any changes to the rule text would be filed with the Commission. Amending the title of Options 8, Section 9 to “Trading Floor Hours of Business and Admittance” is a non-substantive change.

Clearly specifying the hours that each Phlx product trades within Options 3, Section 1 promotes just and equitable principles of trade by removing any confusion for members as to when the products are available.

### Index Options Values for Settlement

The Exchange’s proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule “Index Options Values for Settlement” is consistent with the Act. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange’s index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change, so all related rule text are within the same rule.

The relocation of certain rule text within Options 4A, without change, is non-substantive. The proposal to add rule text within Phlx’s Options 4A, Section 4(c)(1), which is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies,<sup>30</sup> that follows the Exchange’s current practice is consistent with the Act because the proposed rule text will clarify the Reporting Authority for a securities index on which options are traded. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. Today, certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component’s “primary market” such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index’s

<sup>24</sup> The Exchange relocated rule text from Supplementary Material .08 to Options 10, Section 6 to Supplementary Material .01 to Options 10, Section 5. See Securities Exchange Act Release No. 92986 (September 15, 2021), 86 FR 52536 (September 21, 2021) (SR–Phlx–2021–52) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Phlx Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing Rules).

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> See Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR–Phlx–2021–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

<sup>28</sup> Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. See Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

<sup>29</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR–PHLX–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

<sup>30</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR–CBOE–2004–42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

value at expiration the Exchange proposes to adopt rule text identical to Cboe.<sup>31</sup> In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.<sup>32</sup> The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.<sup>33</sup> The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

#### Options 4A, Section 12

Today, those classes of strike price intervals that have strike price intervals of no less than \$2.50 if the strike price is less than \$200 are listed within Options 4A, Section 12(a)(2). The Exchange's proposal to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 is

consistent with the Act. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 in 2021.<sup>34</sup> The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 on ISE, GEMX and MRX.<sup>35</sup> Aligning the strike prices to the manner in which the Nasdaq-100 Index trades avoids confusion for investors and the public.

The Exchange's proposal to amend Options 4A, Section 12(a)(2)(F) to rename the "PHLX/KBW Bank Index" to "KBW Bank Index" to reflect the current name of the Index is a non-substantive amendment.

The Exchange's proposal to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the sentence to make clear that the list which follows represents indexes on which options may be listed is consistent with the Act. The current language does not distinguish between a.m.-settled and p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes<sup>36</sup> and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index,

PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.<sup>37</sup> The European-style p.m.-settled options, which are all currently listed on Phlx, are listed within Options 4A, Section 12(f). The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive.

The Exchange's proposal to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d), with a minor change,<sup>38</sup> and amend Options 4A, Section 12(e)(II) are consistent with the Act as these amendments are non-substantive and clarifying in nature.

Removing the word "Options" within the list of indexes at Options 4A, Section 12(e)(II) and adding the sector indexes, which were inadvertently not listed, as well as the recently approved Nasdaq-100® Volatility Index is consistent with the Act and non-substantive in nature. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.<sup>39</sup>

The proposal to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options<sup>40</sup> is consistent with the Act and will bring greater clarity to the rule by describing the p.m.-settled products. This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today. As noted above, the Nasdaq 100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Phlx Options 4A, Section 12(b)(5). These are both pilot programs. These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

<sup>34</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

<sup>35</sup> See ISE Options 4A, Section 12(c)(1).

<sup>36</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>37</sup> See <https://www.nasdaq.com/solutions/phlx-sector-based-index-options>.

<sup>38</sup> The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

<sup>39</sup> See Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>40</sup> See NOM Options 4A, Section 12(a)(6) which contains an identical paragraph describing p.m.-settled index options.

<sup>31</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

<sup>32</sup> See Options 4A, Section 2(a)(16).

<sup>33</sup> See Options 4A, Section 2(a)(7).



## Disclaimers

The Exchange's proposal to adopt a proposed rule at Options 4A, Section 14 entitled "Disclaimers"<sup>41</sup> is consistent with the Act. The text is identical rule text within ISE and NOM at Options 4A, Section 14. The disclaimer provisions are applicable to the reporting authorities identified in Supplementary Material .02 to Options 4A, Section 2. Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC added a disclaimer to its rules in 2018.<sup>42</sup> The 2018 rule filing provided the following justification for the rule change, "The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index." The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

## Technical Amendments

The Exchange's proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B-7, C-2, and E-11 will bring greater clarity to these rules.

### *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.

## Hours of Business

The Exchange's proposal to amend Options 3, Section 1 to make clear the hours within which various products listed on Phlx currently trade does not impose an undue burden on competition. The addition of citations, and hours for p.m.-settled products, Nasdaq-100 Volatility Index Options and sector indexes will make clear when those products trade. The hours apply uniformly to all members and member organizations.

## Index Options Values for Settlement

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule "Index Options Values for Settlement" does not impose an undue burden on competition. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so that it may locate all the relevant rule text within the same rule.

The proposal to add new rule text within Options 4A, Section 4(c)(1) is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange's current practice.<sup>43</sup> The proposed rule text will clarify the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Also, by designating the Reporting Authority within Supplementary Material .02 to Options 4A, Section 2 the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

## Options 4A, Section 12

The Exchange's proposed amendments to Options 4A, Section 12 do not impose an undue burden on competition. The addition of the Nasdaq-100 Index to the list of strike price intervals of no less than \$2.50 if

the strike price is less than \$200 will make clear the manner in which the Nasdaq-100 Index trades today. The Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 on ISE, GEMX and MRX.<sup>44</sup>

Rewording Options 4A, Section 12(a)(5), related to European-style options, will make clear which indexes are a.m.-settled and those that are p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes<sup>45</sup> and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. Including the sector indexes will also bring greater clarity to the rules and identify those indexes as a.m.-settled. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity.

## Disclaimers

The Exchange's proposal to amend Options 4A, Section 14 to adopt a rule text, identical to ISE and NOM,<sup>46</sup> at Options 4A, Section 14, entitled "Disclaimers" does not impose an undue burden on competition. The disclaimer applies to all index products traded on Phlx.

## Technical Amendments

The Exchange's proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B-7, C-2, and E-11 will bring greater clarity to these rules.

### *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

<sup>41</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR-ISE-2003-05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

<sup>42</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR-PEARL-2018-02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

<sup>43</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

<sup>44</sup> See ISE Options 4A, Section 12(c)(1).

<sup>45</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Phlx Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>46</sup> See ISE and NOM Options 4A, Section 14.



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 Act<sup>47</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>48</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>49</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>50</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposal will increase transparency within Options 4A by referencing the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply, clarify that the Reporting Authority (identical to Cboe Rule 4.13 at .09 of Interpretations and Policies) for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value, add transparency by specifying the reporting authorities within proposed new Supplementary Material .02 to Options 4A, Section 2, and clarify which options may trade today on Phlx and the distinctions as between a.m.-settled and p.m.-settled products. The Exchange also states that proposed Options 4A, Section 12(f) is identical to NOM Options 4A, Section 12(a)(6) and proposed Options 4A, Section 14 is identical to ISE and NOM,<sup>51</sup> at Options 4A, Section 14. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day

operative delay and designates the proposal operative upon filing.<sup>52</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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-76 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-2021-76. 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 (<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. 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-2021-76 and should be submitted on or before January 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-00156 Filed 1-7-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, January 13, 2022.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

#### **MATTERS TO BE CONSIDERED:**

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

<sup>53</sup> 17 CFR 200.30-3(a)(12).

<sup>47</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>48</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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>49</sup> 17 CFR 240.19b-4(f)(6).

<sup>50</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>51</sup> See ISE and NOM Options 4A, Section 14.

<sup>52</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).