

fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”³⁰ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ and Rule 19b-4(f)(2)³² thereunder. 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.

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. Please include File Number SR-MIAX-2022-38 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-MIAX-2022-38. 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-MIAX-2022-38, and should be submitted on or before November 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-24143 Filed 11-4-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96194; File No. SR-Phlx-2022-42]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Standard Monthly Expirations for XND

November 1, 2022.

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 October 19, 2022, 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 Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 Phlx to list up to 12 standard monthly expirations for Nasdaq 100 Micro Index Options (“XND”).

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.

³⁰ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 24.19b-4(f)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 index listing rules at Options 4A, Section 12(a)(4) to allow it to list up to 12 standard monthly expirations for Nasdaq 100 Micro Index Options ("XND").

Currently, Options 4A, Section 12(a)(4) provides that the Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options.⁴ Today, the maximum number of monthly expirations permitted by Options 4A, Section 12(a)(4) for XND options is six (6) standard monthly expirations.

At this time, like Nasdaq-100 Index® options ("NDX"), the Exchange proposes to permit up to 12 standard (monthly) expirations in XND options. This would permit the Exchange to list the same number of monthly expirations (up to 12) for XND options as currently permitted for options on the corresponding full-value index, Nasdaq-100 Index.

Today, XND options trade independently of and in addition to NDX options, and the XND options are subject to the same rules that presently govern the trading of NDX options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Like NDX, XND options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror in all respects those of the NDX options contract already listed on the Exchange, except that XND options are based on 1/100th of the value of the Nasdaq-100

Index, and are P.M.-settled pursuant to Options 4A, Section 12(a)(5).⁵

Market participants may use XND options as a hedging vehicle to meet their investment needs in connection with the Nasdaq-100 Index. Since both products are used to hedge exposure to the Nasdaq-100 Index, the Exchange believes it is appropriate to permit the Exchange to be able to list the same number of monthly expirations for XND options as it does today for NDX options.

The Exchange notes that Cboe Exchange, Inc.'s ("Cboe") rules permit it to list up to 12 standard monthly expirations for Mini-Russell 2000 Index ("Mini-RUT" or "MRUT") and Mini S&P 500 Index ("Mini-SPX" or "XSP").⁶ Mini-SPX is p.m.-settled and subject to a pilot program similar to XND.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Allowing Phlx to list up to 12 standard monthly expirations for XND options will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will allow the Exchange to be able to list the same number of expirations for options on a micro index (XND) as it currently lists for NDX options, which are options on the corresponding full-value index, Nasdaq-100 Index. The Exchange notes that because the same components comprise XND as the Nasdaq-100 Index, market participants may use XND options as a hedging vehicle to meet their investment needs in connection with the corresponding full-value index-related product. Therefore, by allowing the Exchange to be able to list a consistent number of expirations between options on the full-value and micro index, the proposed rule change will benefit investors by assisting them in more effectively using options that track the same index to meet their investment needs.

The Exchange notes that today, Cboe rules permit it to list up to 12 standard monthly expirations for Mini-Russell 2000 Index ("Mini-RUT" or "MRUT") and Mini S&P 500 Index ("Mini-SPX" or "XSP").⁹

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 that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act as all monthly expirations listed for XND options will be equally available, or continue to be equally available, to all market participants who trade such options. Also, the proposed number of expirations will apply, or continue to apply, in the same manner to all XND options. The proposed rule change makes it possible for the same expirations to be listed for options on the micro index (XND) that are currently available for XND [sic] options, which are options on the full-value index, Nasdaq-100 Index.

The Exchange does not believe that the proposed rule change regarding the number of standard monthly expirations permissible for XND options will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because XND is a proprietary Exchange product. To the extent that allowing up to 12 standard monthly expirations for XND options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on Phlx. As noted above, the Exchange believes that being able to list a consistent number of monthly expirations of options on both the full-value and micro index may permit investors to more effectively use options that track the same index to meet their investment needs.

This proposal enhances intermarket competition because it permits Phlx's proprietary product, XND, the same flexibility to trade, and hedge, with 12 standard monthly expirations as certain Cboe proprietary products.

⁴ Options 4A, Section 12(a)(4) states, "Expiration Months and Weeks. Index options contracts may expire at three (3)-month intervals or in consecutive weeks or months. The Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options."

⁵ The Exchange notes that NDX options are both a.m.-settled and p.m.-settled while XND options are only p.m.-settled.

⁶ See Cboe Rule 4.13(a)(2).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Cboe Rule 4.13(a)(2).

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 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay will protect investors because it will allow the Exchange to be able to list expirations for XND options that are consistent with the expirations for related NDX options, and assist market participants in more effectively utilizing both the full-value index and reduced-value option as hedging vehicles to meet their investment needs in connection with the Nasdaq-100 Index product as soon as feasible. Further, the Exchange states that there is investor demand to be able to transact in the same number of expirations for XND options as the Exchange currently lists for NDX options (that is, 12 standard monthly expirations). For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving

the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁴

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.

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. Please include File Number SR-Phlx-2022-42 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-2022-42. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2022-42 and should be submitted on or before November 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022-24141 Filed 11-4-22; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0703]

RF Investment Partners SBIC II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that RF Investment Partners SBIC II, L.P. 501 Madison Avenue, 14th Floor, New York, NY 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and 13 CFR 107.730, Financings which constitute conflicts of interest of the Small Business Administration ("SBA") regulations. RF Investment Partners SBIC II, L.P., is seeking a written exemption from SBA for a proposed financing to SPATCO Energy Solutions, LLC, 8303 University Executive Park Dr. Suite 400, Charlotte, NC 28262.

The financing is brought within the purview of 13 CFR 107.730(a)(1) of the regulations because RF Investment Partners SBIC II, L.P. will provide financing to its Associate under Common Control in the company, SPATCO Energy Solutions, LLC therefore this transaction is considered *Provide financing to any of your Associates* requiring SBA's prior written exemption. RF Investment Partners SBIC II, L.P. has not made its investment in SPATCO Energy

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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, 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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).

¹⁵ 17 CFR 200.30-3(a)(12).