2(a)(20) of the Act.[8] The Adviser would retain overall responsibility for the management and investment of the assets of each Subadvised Series.

III. Applicable Law

6. Section 15(c) of the Act prohibits a registered investment company having a board from entering into, renewing or performing any contract or agreement whereby a person undertakes regularly to act as an investment adviser (including a sub-adviser) to the investment company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of the investment company's board members who are not parties to such contract or agreement, or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

IV. Arguments in Support of the Requested Relief

8. Applicants assert that boards of registered investment companies, including the Board, typically hold in-person meetings on a quarterly basis. Applicants state that during the three to four month period between board meeting dates, market conditions may change or investment opportunities may arise such that the Adviser may wish to make a Sub-Adviser Change. Applicants also state that at these moments it may be impractical, and/or costly to hold an additional in-person Board meeting, especially given the geographic diversity of Board members and the additional cost of holding in-person meetings.

9. As a result, Applicants believe that the requested relief would allow the Subadvised Series to operate more efficiently. In particular, Applicants assert that without the delay inherent in holding in-person Board meetings (and the attendant difficulty of obtaining the necessary quorum for, and the additional costs of, an unscheduled in-person Board meeting), the Subadvised Series would be able to act quicker and with less expense to add or replace sub-advisers when the Board and the Adviser believe that a Sub-Adviser Change would benefit the Subadvised Series.

10. Applicants also note that the in-person meeting requirement in Section 15(c) of the Act was designed to prohibit absentee approval of advisory agreements. Applicants state that condition 1 to the requested relief is designed to avoid such absentee approval by requiring that the Board approve a Sub-Adviser Change at a meeting where all participating Board members can hear each other and be heard by each other during the meeting.[9]

11. Applicants, moreover, represent that the Board would conduct any such non-in-person consideration of a Sub-Advisory Agreement in accordance with its typical process for approving Sub-Advisory Agreements. Consistent with Section 15(c) of the Act, the Board would request and evaluate such information as may reasonably be necessary to evaluate the terms of any Sub-Advisory Agreement, and the Adviser and sub-adviser would provide such information.

12. Finally, Applicants note that that if one or more Board members request that a Sub-Adviser Change be considered in-person, then the Board would not be able to rely on the relief and would have to consider the Sub-Adviser Change at an in-person meeting.

V. Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Independent Board Members will approve the Sub-Adviser Change at a non-in-person meeting in which Board members may participate by any means of communication that allows those Board members participating to hear each other simultaneously during the meeting.

2. Management will represent that the materials provided to the Board for the non-in-person meeting include the same information the Board would have received if approval of a Sub-Adviser Change were sought at an in-person Board meeting.

3. The notice of the non-in-person meeting will explain the need for considering the Sub-Adviser Change at a non-in-person meeting. Once notice of the non-in-person meeting to consider a Sub-Adviser Change is sent, Board members will be given the opportunity to object to considering the Sub-Adviser Change at a non-in-person Board meeting. If a Board member requests that the Sub-Adviser Change be considered in-person, the Board will consider the Sub-Adviser Change at an in-person meeting, unless such request is rescinded.

4. A Subadvised Series' ability to rely on the requested relief will be disclosed in the Subadvised Series' registration statement.

5. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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[8] Each sub-adviser would be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration.

[9] Applicants state that technology that includes visual capabilities will be used unless unanticipated circumstances arise. Applicants also state that the Board could not rely upon the relief to approve a Sub-Advisory Agreement by written consent or another form of absentee approval by the Board.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91178; File No. SR–Phlx–2021–07]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index®

February 22, 2021.

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 February 10, 2021, 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 amend the Exchange's rules to permit the listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and trading of index options on 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.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's rules to permit the listing and trading of index options on Nasdaq 100 Micro Index Options (''XND''). The XND options contract will be the same in all respects as the current Nasdaq-100 Index options (''NDX'')[3] contract listed on the Exchange, except that it will be based on 1/100th of the value of the Nasdaq-100 Index, and will be P.M.-Settled with an exercise settlement value based on the closing index value of the Nasdaq-100 Index on the day of expiration.[4] The Exchange believes that the proposed contract will be valuable for retail and other investors that wish to trade micro options on the Nasdaq-100 Index.

I. Nasdaq-100 Index

The Nasdaq-100 Index is a modified market capitalization-weighted index that includes 100 of the largest non-financial companies listed on The Nasdaq Stock Market LLC (''Nasdaq''),[5] based on market capitalization.[6] 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.[7]

II. XND Options Contract

Currently, the Exchange lists and trades NDX options that are based on the full value of the Nasdaq-100 Index. In an effort to attract additional interest in index options based on the Nasdaq-100 Index, the Exchange now proposes to list and trade a new micro option contract based on this index. XND options will trade independently of and in addition to NDX options, and the XND options will be subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, XND options will be European-style and cash-settled, and will have a contract multiplier of 100. The contract specifications for XND options will mirror in all respects those of the NDX options contract already listed on the Exchange, except that the Exchange proposes that XND options will be based on 1/100th of the value of the Nasdaq-100 Index, and will be P.M.-settled pursuant to proposed Options 4A, Section 12(a)(5).

Similar features are available with other index options contracts listed and/or approved for trading on the Exchange and other options exchanges, including the Exchange's affiliate, Nasdaq ISE, LLC (''ISE''), which lists options on NQX (a reduced value index based on ⅕ of the value of the Nasdaq-100 Index).[8]

The value of the Nasdaq-100 Index has increased significantly in recent years such that the value of the index stood at 12,112.11, as of the opening of trading on November 25, 2020. As a result of the increase in the value of the underlying Nasdaq-100 Index, the premium for NDX options has also increased. The Exchange believes that this has caused NDX options to trade at a level that may be uncomfortably high for certain retail and other investors. The Exchange believes that listing options at a micro value will attract a greater source of retail customer business. Further, listing options on a micro index will provide an opportunity for investors to trade and hedge the market risk associated with the Nasdaq-100 Index.

With an exercise settlement value based on 1/100th of the Nasdaq-100 Index, the Exchange believes that retail and other investors would be able to use this trading vehicle while extending a smaller outlay of capital. Furthermore, the proposed micro index will have a notional value at a level that is comparable to similar products that have been successful in the market, including the S&P 500 Mini SPX Options Index (XSP), which had an index value of (363.55) as of the opening of trading on November 25th, 2020. The Exchange therefore believes that basing the proposed XND options contract on 1/100 of the value of the Nasdaq-100 Index should attract additional investors, and, in turn, create a more active and liquid trading environment.

XND options will also be P.M.-settled as the Exchange believes that market participants, and in particular, retail investors, who are the target audience for this product, prefer P.M.-settled index options. P.M.-settlement is preferred by retail investors as it allows market participants to hedge their exposure for the full week. A.M.-settled options by contrast are based on opening prices on the day of expiration and therefore stop trading on the day prior, leaving residual risk on the day of expiration. Feedback from Members that handle retail order flow has indicated that P.M.-settlement is needed to garner retail investor support for this product. In this regard, the Exchange notes that there is ample precedent for P.M.-settlement of broad-based index options as described in various P.M.-settled pilot filings.[9] In addition, Cboe offers P.M.-settled index options based on both the Standard & Poor's 500 index

[3] *See* Options 4A, Section 12(e)(II).

[4] In addition to the current Nasdaq-100 Index value, Nasdaq will disseminate an Index value for XND that is 1/00 of the value of the Nasdaq-100 Index.

[5] Nasdaq is an affiliate of the Exchange.

[6] The Nasdaq-100 Index is a broad-based index, as defined in Options 4A, Section 3.

[7] A description of the Nasdaq-100 Index is available on Nasdaq's website at *https://indexes.nasdaqomx.com/docs/methodology_NDX.pdf.*

[8] *See* ISE Options 4A, Section 12(a)(6). NQX is P.M.-settled and a European-style and cash-settled, with a contract multiplier of 100.

[9] *See* Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28); and 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR–ISE–2020–17). *See also* Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR–Phlx–2018–80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR–Phlx–2019–13); 87381 (October 22, 2019), 84 FR 57788 (October 28, 2019) (SR–Phlx–2019–43); and 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR–Phlx–2020–24).

(''SPXW''),[10] and the Quarterly Russell 2000 Index *Options* [sic] (''RUTW'').

Pursuant to Phlx Options 4A, Section 12(b)(5), XND would become part of the Nonstandard Expirations Pilot Program. Pursuant to the provisions of this pilot which currently is set to expire on May 4, 2021, the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations shall be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration. Further, the Exchange may open for trading EOMs on any broad-based index eligible for standard options trading to expire on last trading day of the month. EOMs shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that EOMs shall be P.M.-settled and new series in EOMs may be added up to and including on the expiration date for an expiring EOM.[11]

The Exchange does not believe that the introduction of a new P.M.-settled Nasdaq-100 Index contract will cause any market disruptions. The Exchange will monitor for any disruptions caused by P.M.-settlement of the proposed XND options contract or the development of any factors that could cause such disruptions. P.M.-settled options predominate in the over-the-counter (''OTC'') market, and the Exchange is not aware of any adverse effects in the OTC market attributable to the P.M.-settlement feature. The Exchange is merely proposing to offer a P.M.-settled product in an exchange environment, which offers the additional benefits of added transparency, price discovery, and stability.

III. Trading Hours, Minimum Increments, Expirations and Strike Prices

XND options will be available for trading during the Exchange's standard trading hours for index options, *i.e.,* from 9:30 a.m. to 4:15 p.m. New York time.[12]

XND options will trade with a minimum trading increment of $0.01 for options for all other series.[13] Today, Cboe lists a reduced-value contract on the S&P 500 Index in the form of XSP options with minimum increments of $0.01 for all option series, regardless of price.[14] The minimum increments for bids and offers for SPDR options (''SPY''), an exchange-traded fund that also tracks the performance of 1/10th the value of the S&P 500 Index, is $0.01, regardless of whether the options series is quoted above, at, or below $3. Cboe noted in their Approval Filing for XSP that since the prices of both XSP options and SPY options are based, in a similar manner, on 1/10th the size of the S&P 500 Index, CBOE proposes to amend Interpretation and Policy .03 to Rule 6.42 to state that for so long as SPY options participate in the Penny Pilot program (now Penny Interval Program), the minimum increments for XSP options shall be the same as SPY for all options series (including LEAPS). Likewise, XND options are similar in size to the INVESCO QQQ Trust™, Series 1 (''QQQ''),[15] which is the ETF on the Nasdaq-100 Index (roughly 1/40th of the Nasdaq-100 Index). Phlx proposes to adopt a new Supplementary Material .03 to Options 3, Section 3 to state that for so long as QQQ options participate in the Penny Interval Program, the minimum increments for XND options shall be the same as QQQ for all options series (including LEAPS), which shall be $0.01 for options for all other series. The Exchange also proposes to renumber current Supplementary Material .03 to Options 3, Section 3 as .04.

The Exchange proposes that XND options will have monthly expiration dates on the third Friday of each month (*i.e.,* Expiration Friday), and the

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[10] *See* Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091) (Approval Order).

[11] XND is a broad-based index. Options 4A, Section 12(b)(5) provides,

Nonstandard Expirations Pilot Program

(A) Weekly Expirations. The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations shall be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Wednesday expiration, or Friday expiration, as applicable) in a given class is the maximum number of expirations permitted for standard index options in Options 4A, Section 12(a)(4). Weekly Expirations need not be for consecutive Monday, Wednesday, or Friday expirations as applicable; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are initially listed in a given class may expire up to four weeks from the actual listing date. If the last trading day of a month is a Monday, Wednesday, or Friday and the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for a broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day.

(B) End of Month (''EOM'') Expirations. The Exchange may open for trading EOMs on any broad-based index eligible for standard options trading to expire on last trading day of the month. EOMs shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that EOMs shall be P.M.-settled and new series in EOMs may be added up to and including on the expiration date for an expiring EOM.

The maximum number of expirations that may be listed for EOMs in a given class is the same as the maximum number of expirations permitted for standard options on the same broad-based index. EOM expirations need not be for consecutive end of month expirations; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. EOMs that are first listed in a given class may expire up to four weeks from the actual listing date. Other expirations in the same class are not counted as part of the maximum numbers of EOM expirations for a broad-based index class.

(C) Duration of Nonstandard Expirations Pilot Program. The Nonstandard Expirations Pilot Program shall be through May 4, 2021.

(D) Weekly Expirations and EOM Trading Hours. Transactions in Weekly Expirations and EOMs may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time), except that on the last trading day, transactions in expiring Weekly Expirations and EOMs may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).

[12] *See* Options 4A, Section 12(b)(5)(D).

[13] These increments differ from the minimum increments within Phlx Options 3, Section 3(a), which provides, ''Except as provided in Supplementary Material to Options 3, Section 3 below, all options on stocks, index options, and Exchange Traded Fund Shares trading at a price of $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options trading at a price under $3.00 shall have a minimum increment of $.05.'' While XND options have a minimum increment of a penny, these options are not within the Penny Interval Program.

[14] *See* Securities Exchange Act Release No. 70087 (August 6, 2013), 78 FR 47809 (July 31, 2013) (SR–Cboe–2013–055) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade a P.M.-settled Mini-SPX Index Option Product) (''Approval Filing for XSP'').

[15] QQQ is an exchange-traded fund based on the Nasdaq-100 Index.

Exchange proposes to list XND options in expiration months consistent with those of other index option products available on the Exchange.[16] In addition, the Exchange may list long term index options series (''LEAPS'') that expire from twelve (12) to sixty (60) months from the date of issuance.[17] XND options would also be eligible to be added to the Short Term Option Series Program (''Weeklies'') and/or Quarterly Options Series Program (''Quarterlies'') if designated by the Exchange pursuant to Options 4A, Section 12(b)(4) and (b)(3), respectively.[18]

Further, the Exchange proposes to permit XND options to be listed and traded in accordance with the Nonstandard Expirations Pilot Program. This would permit the Exchange to open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an End of Month (''EOM'') expiration). Weekly Expirations would be subject to all provisions of Options 4A, Section 12 and would be treated the same as options on the same underlying index that expire on the third Friday of the expiration month. New series in Weekly Expirations could be added up to and including on the expiration date for an expiring Weekly Expiration. The maximum number of expirations that could be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Wednesday expiration, or Friday expiration, as applicable) in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index.[19] Further, the Exchange could open for trading EOMs on any broad-based index eligible for standard options trading to expire on last trading day of the month. EOMs would be subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOMs would be P.M.-settled and new series in EOMs could be added up to and including on the expiration date for an expiring EOM.[20]

Generally, pursuant to Options 4A, Section 12(a)(2), except as provided in Supplementary Material .04 to Options 4A, Section 12,[21] the exercise (strike) price intervals will be no less than $5, provided that the Exchange may determine to list strike prices at no less than $2.50 intervals for options on the following indexes (which may also be known as sector indexes). The Exchange proposes to amend Options 4A, Section 12(a)(2) to add XND options to the list of classes where strike price intervals of no less than $2.50 are generally permitted and note, ''if the strike price is less than $200.'' The Exchange proposes to adopt the same strike price intervals for XND options as currently approved for Reduced Value Nasdaq 100 Options within Supplementary Material .02 to Options 4A, Section 12. Thus, notwithstanding Options 4A, Section 12(a)(2), the interval between strike prices of series of XND options will be $1 or greater, subject to the conditions described in Supplementary Material .02 to Options 4A, Section 12. The Exchange will not list LEAPS on XND options at intervals less than $5. If the Exchange determines to add XND options to the Weeklies or Quarterlies programs such options will be listed with expirations and strike prices described in Supplementary Material .02 to Options 4A, Section 12.

IV. Position and Exercise Limits; Margin

As with NDX, in determining compliance with Options 4A, Section 6, Position Limits, there will be no position limits for broad-based index option contracts in the XND class.[22] Although there will be no position limits for XND options, the Exchange proposes to amend Options 4A, Section 6 to include XND. Options 4A, Section 6(e) provides,

Full value, reduced value, long term and quarterly expiring options based on the same index shall be aggregated. Reduced value or mini-size 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.,* ten (10) one tenth (1/10th) 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 broad-based index shall be aggregated with option contracts on the same broad-based index and shall be subject to the overall position limit.

Since the Exchange is proposing to list a micro index contract that is based on 1/100 of the value of the Nasdaq-100 Index, Options 4A, Section 6(e) would apply. In addition, as with NDX, there would be no exercise limits for XND.[23] Finally, the Exchange proposes to apply broad-based index margin requirements for the purchase and sale of XND options that are the same as margin requirements currently in place for NDX options.

V. Other Amendments

The Exchange proposes to add a new Options 4A, Section 12(a)(5) titled ''European-Style Exercise'' similar to ISE Rules at Options 4A, Section 12(a)(4). The rule would provide,

[16] Options 4A, Section 12(a)(4) currently 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.

[17] *See* Options 4A, Section 12(b)(2).

[18] The Exchange expects that it will add XND options to the Weeklies program.

[19] Weekly Expirations would not need to be for consecutive Monday, Wednesday, or Friday expirations as applicable. However, the expiration date of a non-consecutive expiration would not be permitted beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class could expire up to four weeks from the actual listing date. If the last trading day of a month were a Monday, Wednesday, or Friday and the Exchange were to list EOMs and Weekly Expirations as applicable in a given class, the Exchange would list an EOM instead of a Weekly Expiration in the given class. Other expirations in the same class would not be counted as part of the maximum number of Weekly Expirations for a broad-based index class. If the Exchange were not open for business on a respective Monday, the normally Monday expiring Weekly Expirations would expire on the following business day. If the Exchange were not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations would expire on the previous business day. *See* Options 4A, Section 12(b)(5)(A).

[20] The maximum number of expirations that could be listed for EOMs in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index. EOM expirations would not need to be for consecutive end of month expirations. However, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. EOMs that are first listed in a given class could expire up to four weeks from the actual listing date. Other expirations would not be counted as part of the maximum numbers of EOM expirations for a broad-based index class. *See* Options 4A, Section 12(b)(5)(B).

[21] Supplementary Material .04 to Options 4A, Section 12 provides, ''Supplementary Notwithstanding subsection (a) to this Options 4A, Section 12, the interval between strike prices of series of Alpha Index options will be $1 or greater. The Exchange will list at least two strike prices above and two strike prices below the current value of each Alpha Index option at about the time a series is opened for trading on the Exchange. The Exchange may also list additional strike prices at any price point, with a minimum of a $1.00 interval between strike prices, as required to meet the needs of customers.''

[22] The Exchange is amending Options 4A, Section 6(a)(ii) to reflect this proposed change.

[23] *See* Options 4A, Section 10 which provides that exercise limits for index options contracts shall be equivalent to the position limits described in Options 4A, Section 6.

''*European-Style Exercise.*'' The following European-style index options, some of which may be A.M.-settled as provided in subparagraph (e), are approved for trading on the Exchange:

(i) Full-size Nasdaq 100 Index; and

(ii) Nasdaq 100 Micro Index Options.

The addition of this rule text will bring greater clarity to the Exchange's rules regarding which index options will trade European-Style Exercise.

The Exchange also proposes to add rule text within Options 4A, Section 12(b)(2) which describes LEAPS. This rule text is similar to rule text within ISE Options 4A, Section 12(b). The Exchange proposes to provide,

(i) Index long-term options series may be based on either the full or micro index value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than twelve (12) months.

(ii) When a new index long-term options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

(iii) *Micro Index Long Term Options Series.* Micro index Long Term Options Series on the following stock indices are approved for trading on the Exchange:

(A) Nasdaq 100 Index

(1) Expiration Months. Micro index long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

Similar to ISE, the Exchange proposes to provide within the rule text that Index LEAPS may be based on either the full or micro index value of the underlying index.[24] The Exchange proposes to permit up to ten (10) expiration months, however not further out than sixty (60) months, similar to ISE. Finally, the Exchange proposes to state that strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than twelve (12) months, similar to ISE.

With respect to new index LEAPS, the Exchange proposes to permit such series to be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first, similar to ISE. Also, similar to ISE, no quotations will be posted for such options series until they are opened for trading.

Finally, the Exchange proposes to note the expiration months for Micro index LEAPS. Micro index LEAPS may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent. These proposed changes are similar to ISE.

VI. Surveillance and Capacity

The Exchange represents that it has sufficient capacity to handle additional quotations and message traffic associated with the proposed listing and trading of XND options. Further, the Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any additional traffic associated with the listing of the maximum number nonstandard expirations permitted pursuant to Options 4A, Section 12(b)(5).

Index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange represents that it has adequate surveillance procedures to monitor trading in XND options thereby aiding in the maintenance of a fair and orderly market.

The Exchange notes that it is amending Options 4A, Section 12 to include the Nasdaq 100 Micro Index Options within the Rule to conform to the amendments proposes herein.

VII. Pilot Program Reports

The Exchange proposes to list and trade XND options on a pilot basis for a pilot period expiring on May 4, 2021 (''Pilot Program''). If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in an XND options series that expires beyond the conclusion of the pilot period could be established during the pilot. If the Pilot Program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

The Exchange proposes to submit a Pilot Program report to the Commission at least two months prior to the expiration date of the Pilot Program (the ''annual report''). The annual report would contain an analysis of volume, open interest, and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the Nasdaq-100. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange would provide the Commission with periodic interim reports while the pilot is in effect that would contain some, but not all, of the information contained in the annual report. The annual report would be provided to the Commission on a confidential basis. The annual report would contain the following volume and open interest data:[25]

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis.

Finally, the annual report would contain the following analysis of trading patterns in Expiration Friday, P.M.-settled XND option series in the pilot: (1) A time series analysis of open interest; and (2) an analysis of the distribution of trade sizes. Also, for series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays: a comparison of index price changes at the close of trading on a given Expiration Friday

[24] ISE Rules do not reference a micro index product but rather a reduced value index.

[25] Based on the data elements to be provided to the Commission for the NDXPM pilot. *See* supra note 7.

with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. The Exchange would provide a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange, would be provided. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period. The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.

The Exchange proposes to add rule text at Options 4A, Section 12(a)(6) which provides, ''In addition to A.M.-settled Nasdaq-100 Index options approved for trading on the Exchange pursuant to Options 4A, Section 12(a)(5), the Exchange may also list options on the Nasdaq 100 Micro Index Options (''XND'') whose exercise settlement value is derived from closing prices on the expiration day (''P.M.-settled''). XND options will be listed for trading for a pilot period expiring on May 4, 2021.''

Implementation

The Exchange intends to begin implementation of the proposed rule change in Q1 2021. The Exchange will issue an Options Trader Alert to Participants with the date of implementation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] 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. Specifically, the Exchange believes that the listing and trading of a micro index P.M.-settled index option contract based on the Nasdaq-100 Index will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors.

The Exchange believes that the proposed rule change will further the Exchange's goal of introducing new and innovative products to the marketplace. Specifically, the Exchange believes that XND options would provide additional opportunities for market participants to trade and hedge exposure to the Nasdaq-100 Index. The proposed XND options product is similar to NDX options that are currently listed and traded on the Exchange with two important differences: (1) XND options will be based on 1/100 the value of the Nasdaq-100 Index, and (2) XND options will be P.M.-settled. These differences are based on the Exchanges experience listing NDX options, and are designed to attract additional participation from retail and other investors. Based on feedback received from members, the Exchange believes that the proposed contract specifications will be attractive to market participants, and will remove impediments to and perfect the mechanism of a free and open market and a national market system. The nonstandard expirations would expand the ability of investors to hedge risks against market movements stemming from economic releases or market events that occur during the month and at the end of the month. Accordingly, the Exchange believes that weekly expirations and EOMs should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor their investment objectives.

Currently, the Exchange believes that there continues to be unmet market demand for exchange-listed index options on the Nasdaq-100 Index. This unmet demand stems in part from the high value of the Nasdaq-100 Index and the consequently higher cost of purchasing NDX options. As noted above, the value of the Nasdaq-100 was 12,112.11 as of the opening of trading on November 25, 2020, and this high value has made it more difficult for retail and other investors to comfortably purchase options on the index. The Exchange believes that a micro index option would allow additional participation from these investors. Specifically, the Exchange believes that basing the contract on a micro value of the Nasdaq-100 Index will encourage additional participation by retail and other investors due to the reduced capital outlay needed to trade these options. The ISE NQX product has attracted retail trading volume to a certain point given that the NQX product represents ⅕ the value of the Nasdaq-100 Index. The Exchange believes that XND options, which represent 1/100 of the Nasdaq-100 Index, may strike a more appropriate balance for other retail investors with its reduced size. This value is more similar to other competitive index option products.

Furthermore, based on member feedback, the Exchange believes that providing P.M.-settlement will make this product more attractive to market participants and help garner additional support for this new index options product. Specifically, the Exchange believes that P.M.-settlement will be attractive to retail and other investors that want to use these options to hedge an entire week of risk without leaving residual risk on the day of expiration, and without having to actively manage these positions, for example, by rolling their hedge into the next expiration. For this reason, other popular index option products have been transitioning to P.M.-settlement. For example, due to market demand for P.M.-settlement, Cboe Exchange, Inc. (''Cboe'') transitioned its heavily traded SPX index options to P.M.-settlement, and removed related A.M.-settled products.[28] The Exchange believes that market participants similarly desire P.M.-settlement for index options on the Nasdaq-100 Index, and proposes to offer such a product so that it can compete effectively with similar index option products offered by options markets such as Cboe which offers SPXW and OEX.

When cash-settled index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.,* P.M.-settlement). Due to concerns raised by the Commission on the impact of P.M.-settlement on market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading on expiration day, however, exchanges moved to A.M.-settlement for these products. As discussed in the recent approval of the NDXP product,[29] however, the Commission has recognized that these risks may be mitigated today by the enhanced closing procedures that are now employed by the primary equity markets. The Exchange believes that the concerns that led to the transition to a.m.-settlement for index derivatives have been largely mitigated today. Opening procedures in the 1990s were

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* Cboe Regulatory Circular RG10–112.

[29] *See* supra note 9.

deemed acceptable to mitigate one-sided order flow driven by index option expiration. Nasdaq now has an automated closing cross that that facilitates orderly closings by aggregating a large pool of liquidity, across a variety of order types, in a single venue. The Exchange believes that Nasdaq's closing procedures are well-equipped to mitigate imbalance pressure at the close. Furthermore, the Exchange believes that the proposal is designed to mitigate any potential concerns regarding P.M. settlement. Specifically, the Exchange believes that the proposal will provide additional trading and hedging opportunities for investors.

XND options will be subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. The Exchange therefore believes that the rules applicable to trading in XND options are consistent with the protection of investors and the public interest. Furthermore, the Exchange represents that it has sufficient systems capacity and adequate surveillance procedures to handle trading in XND options.

With respect to the Exchange's proposal to adopt new Supplementary Material .03 to Options 3, Section 3 to provide that minimum increments for bids and offers for XND options be the same as those for QQQ, regardless of the value at which the option series is quoted, may promote competition and benefit investors. This proposal aligns the minimum increments for XND options with those for QQQ options in order to allow market participants to quote in minimum increments of $0.01 is consistent with the Act because allowing participants to quote in smaller increments may provide the opportunity for reduced spreads, thereby lowering costs to investors. In addition, because both XND and QQQ are based on Nasdaq-100 Index it would be reasonable for the minimum increments of bids and offers to be the same for both types of options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. XND options would be available for trading to all market participants. The proposed rule change will facilitate the listing and trading of a new option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100 Index. Furthermore, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with the Nasdaq-100 Index and seek Commission approval to list and trade options on such an index.

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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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 (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–07 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–2021–07. 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–2021–07, and should be submitted on or before March 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–34199]

Commission Statement on Insurance Product Fund Substitution Applications

February 23, 2021.

AGENCY: Securities and Exchange Commission.

ACTION: Commission statement.

The Commission is issuing a statement regarding applications for orders approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended, (the ''Act'') (and

[30] 17 CFR 200.30–3(a)(12).