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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96411; File No. SR–Phlx–2022–38]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq 100 Micro Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program

November 30, 2022.

I. Introduction

On October 4, 2022, Nasdaq PHLX LLC (“Phlx” or the Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to expand the Exchange’s Nonstandard Expirations Pilot Program (“Pilot Program”) to permit the listing and trading of P.M.-settled Nasdaq 100 Micro Index Options (“XND”) that expire on Tuesday or Thursday. The proposed rule change was published for comment in the **Federal Register** on October 21, 2022. ³ No comments were received. The Commission is approving the proposed rule change.

II. Description of the Proposal

The Exchange proposes to expand the Pilot Program by amending Options 4A, Section 12(b)(5) to permit the listing and trading of XND options that expire on any Tuesday or Thursday. The Pilot Program permits the listing and trading

of P.M.-settled options on broad-based indexes with nonstandard expirations dates. ⁴ Under the Pilot Program, the Exchange may open for trading P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday and, with respect to options on the Nasdaq–100 Index (“NDX”), ⁵ any Tuesday or Thursday (“Weekly Expirations”) ⁶ and (2) the last trading day of the month (“EOMs”). ⁷ The Exchange notes that permitting XND options with Tuesday and Thursday expirations, as proposed, would be in addition to the XND options with Monday, Wednesday and Friday expirations that the Exchange currently lists, as they are permissible Weekly Expirations for options on a broad-based index pursuant to Options 4A, Section 12(b)(5)(A). ⁸

The Exchange states that the Pilot Program will apply to XND options with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to Nasdaq–100 Index options with Tuesday and Thursday expirations. ⁹ Options with Tuesday and Thursday expirations, including the proposed XND Tuesday and Thursday expirations, would be subject to all provisions within Options 4A, Section 12(b)(5) 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 are 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. ¹⁰

The Exchange states that the maximum number of XND options expirations that may be listed for each Weekly Expiration (*i.e.*, a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as

applicable) in a given class would be the same as the maximum number of expirations permitted in Options 4A, Section 12(a)(4) ¹¹ for standard options on the same broad-based index. ¹²

Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, 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 Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. ¹³

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. ¹⁴ If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. ¹⁵ The proposed rule change also adds that if two different Weekly Expirations on XND options would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. Transactions in Weekly Expirations 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 P.M.-settled broad-based index options may be effected on the Exchange

⁴ See Securities Exchange Act Release No. 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) (“Pilot Program Approval Order”).

⁵ 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 index options based on the Nasdaq–100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. See Notice, *supra* note 3, at 64119.

⁶ See Options 4A, Section 12(b)(5)(A).

⁷ See Options 4A, Section 12(b)(5)(B).

⁸ See Notice, *supra* note 3, at 64119.

⁹ See *id.*

¹⁰ See Notice, *supra* note 3, at 64119–64120.

¹¹ Options 4A, Section 12(a)(4) provides, “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 and XND options.”

¹² See Notice, *supra* note 3, at 64120.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.*

²⁴ 17 CFR 200.30–3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 96090 (October 17, 2022), 87 FR 64119 (“Notice”).

between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).¹⁶

Pilot Report

The Exchange states that it intends to submit a rule change proposing permanency of the Pilot Program to the Commission and would include data regarding XND options that expire on Tuesdays or Thursdays as it does for current Weekly Expirations on any broad-based index option either by providing additional data in such proposal or in an annual report regarding XND options that expire on each trading day of the week, as proposed.¹⁷ The Exchange would also continue to provide the Commission with ongoing data regarding XND options that expire on Tuesdays or Thursdays unless and until the Pilot Program is made permanent or discontinued.¹⁸

As provided in the Pilot Program Approval Order,¹⁹ the annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.²⁰ Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program, including XND options with Tuesday and Thursday expirations as proposed, is consistent with the Act.²¹ As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with XND options with Tuesday and Thursday expirations it submits to the Commission under the Pilot Program.²² Going forward, the Exchange will include the same areas of analysis for XND options with Tuesday and Thursday expirations. The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for XND options (XND and standard NDX options) as part of the annual reports going forward: (1) time-weighted relative quoted spreads; (2) relative effective spreads;

and (3) time-weighted bid and offer sizes.²³

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b) of the Act.²⁴ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,²⁵ which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Commission noted in its recent order approving the listing and trading of P.M.-settled options on the S&P 500 Index that expire on Tuesday or Thursday, the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.²⁶ The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

The Exchange's proposal to add Tuesday and Thursday XND expirations to the existing Pilot Program would offer additional investment options to investors and may be useful for their

investment or hedging objectives while providing the Commission with data to monitor the effects of Tuesday and Thursday XND expirations and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of Tuesday and Thursday XND expirations on the options markets as well as the underlying cash equities markets, the Exchange will be required to submit data to the Commission in connection with the Pilot Program.²⁷ Further, including the proposed Tuesday and Thursday XND expirations in the Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects of allowing Tuesday and Thursday XND expirations, including on the underlying component stocks. In particular, the data collected from the Pilot Program will help inform the Commission's consideration of whether the Pilot Program, as amended to include Tuesday and Thursday XND expirations, should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the Pilot Program should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-Phlx-2022-38), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Proposed Collection; Comment Request; Extension: Regulation SBSR

Upon Written Request, Copies Available From: Securities and Exchange

²⁷ See Notice, *supra* note 3, at 64120-64121.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹⁶ See *id.*; see also, Options 4A, Section 12(b)(5)(D).

¹⁷ See Notice, *supra* note 3, at 64120.

¹⁸ See *id.*

¹⁹ See *supra* note 5.

²⁰ See Notice, *supra* note 3, at 64120.

²¹ See *id.*

²² See Notice, *supra* note 3, at 64120-64121.

²³ See Notice, *supra* note 3, at 64121.

²⁴ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE-2022-005).