

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93464; File No. SR-Phlx-2021-65)

October 29, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Exchange's Nonstandard Expirations Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 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 extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on November 4, 2021.

The Exchange also proposes a technical amendment to Options 4, Section 5, Series of Options Contracts Open for Trading.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On December 15, 2017, the Commission approved a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates (“Program”).³ The Program permits both Weekly Expirations and End of Month (“EOM”) expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. This pilot was extended various times and is currently extended through November 4, 2021.⁴

³ 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).

⁴ See 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); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR-Phlx-2020-24); 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR-Phlx-2020-48); and 91484 (April 6, 2021), 86 FR 19050 (April 12, 2021) (SR-Phlx-2021-21).

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) 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 are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are 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 EOM expirations are p.m.-settled.

The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the Program for these nonstandard expirations will be through May 4, 2022. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Program.

The Exchange will be submitting a rule change to request that the pilot program become permanent. In lieu of submitting any additional annual reports, the Exchange would provide additional information requested by the Commission in connection with the permanency rule

change for this Program. The Exchange would continue to provide the Commission with ongoing data unless and until the Program is made permanent or discontinued.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

Technical Amendment

The Exchange proposes a technical amendment to Options 4, Section 5, Series of Options Contracts Open for Trading. Specifically, the Exchange proposes to amend the second sentence of Supplementary Material .03 to Options 4, Section 5, related to the Short Term Options Series Program, which states, “The Exchange may have no more than a total of five Short Term Option Expiration Dates, not including any Monday or Wednesday SPY Expirations as provided below.” The Exchange proposes to amend the sentence to instead provide, “The Exchange may have no more than a total of five Short Term Option Expiration Dates, not including any Monday or Wednesday SPY, QQQ and IWM Expirations as provided below.” The Exchange previously filed to permit Monday and Wednesday expirations for options listed pursuant to the Short Term Options Program on the Invesco QQQ TrustSM Series ETF Trust (“QQQ”),⁵ and recently filed and was approved to permit Monday and Wednesday expirations for options listed pursuant to the Short Term Options Program on the iShares Russell 2000 ETF (“IWM”).⁶ The Exchange inadvertently omitted the references to “QQQ” and “IWM” in the rule text for those filings. At this time, the

⁵ See Securities Exchange Act Release No. 91614 (April 20, 2021), 86 FR 22082 (April 26, 2021) (SR-Phlx-2021-10) (Order Approving a Proposed Rule Change To Permit Monday and Wednesday Expirations for Options Listed Pursuant to the Short Term Options Program on the Invesco QQQ TrustSM Series ETF Trust).

⁶ See Securities Exchange Act Release No. 93157 (September 28, 2021), 86 FR 54749 (October 4, 2021) (SR-PHLX-2021-43) (Order Approving a Proposed Rule Change To Permit Monday and Wednesday Expirations for Options Listed Pursuant to the Short Term Options Program on the iShares Russell 2000 ETF (IWM)).

Exchange proposes to add “QQQ and IWM” to the rule text within Supplementary Material .03 to Options 4, Section 5 for clarity. This amendment is non-substantive as it proposes to make clear that Monday and Wednesday expirations are not included in determining the maximum number of Short Term Option Expiration Dates that may be listed on the Exchange. Short Term Options Series expire, by definition, on Friday. To avoid any confusion, the proposed amendment makes clear which Monday and Wednesday expirations are specifically being excluded by the Exchange.

2. Statutory Basis

The Exchange believes that its proposal 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. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Program has been successful to date. The Exchange has not encountered any problems with the Program. By extending the Program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

Technical Amendment

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

The Exchange’s proposal to amend Supplementary Material .03 to Options 4, Section 5, related to the Short Term Options Series Program, to add rule text related to Monday and Wednesday expirations for options listed pursuant to the Short Term Options Program on QQQ and IWM, which was inadvertently omitted, is consistent with the Act. Adding references to “QQQ” and “IWM” within the second sentence of Supplementary Material .03 to Options 4, Section 5 will bring greater clarity to the Exchange’s rules by explicitly stating which Monday and Wednesday expirations are specifically being excluded by the Exchange. This amendment is non-substantive and is intended to promote clarity and avoid investor confusion.

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. Options with nonstandard expirations would be available for trading to all market participants.

Technical Amendment

The Exchange’s proposal to amend Supplementary Material .03 to Options 4, Section 5, related to the Short Term Options Series Program, to add rule text related to Monday and Wednesday expirations for options listed pursuant to the Short Term Options Program on QQQ and IWM, which was inadvertently omitted, does not impose an undue burden on competition as adding references to “QQQ” and “IWM” within the second sentence of Supplementary Material .03 to Options 4, Section 5 will bring greater clarity to the Exchange’s rules by explicitly stating which Monday and Wednesday expirations are specifically being excluded by the Exchange. This amendment is non-substantive and is intended to promote clarity and avoid investor confusion.

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 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 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) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to 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 it may immediately extend the Program prior to the current expiration date so that the pilot may continue uninterrupted. In addition, the Exchange states the non-substantive technical amendment to Supplementary Material .03 to Options 4, Section 5, will promote clarity and avoid investor confusion. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

interest as it will allow the Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Program, and will allow the Exchange to immediately update its rules to reflect the technical amendment. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹³

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 change 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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-65 on the subject line.

¹³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-65. This file number should be included on the subject line if e-mail 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-2021-65, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).