

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-GEMX-2022-11, and should be submitted on or before December 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96412; File No. SR-NASDAQ-2022-066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Short Term Option Series

November 30, 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 November 18, 2022, The Nasdaq Stock Market LLC ("Nasdaq" 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 certain rule text within General 2, Organization and Administration. Additionally, the Exchange proposes to amend The Nasdaq Options Market LLC ("NOM") rules at Options 1, General Provisions; Options 4A, Options Index Rules; and Options 10, Doing Business with the Public.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the description of the term "Short Term Option Series" within NOM Options 1, Section 1, Definitions, to conform the term to Nasdaq ISE, LLC's ("ISE") term of Short Term Option Series which was recently amended.³ The Exchange also proposes to amend certain rule text within NOM Options 4A, Section 12, Terms of Index Options Contracts, related to the Short Term Option Series Program. Finally, the Exchange propose certain other non-substantive amendments. Each change is described below.

Short Term Option Series

Options 1, Section 1(a)(57) describes the term "Short Term Option Series" as follows:

The term "Short Term Option Series" means a series in an option class that is

³ See Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR-ISE-2022-18) (Order Granting Approval of a Proposed Rule Change to Amend the Short Term Option Series Program).

approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

ISE's Options 4 rules were recently amended to expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.⁴ In conjunction with that change, ISE amended its definition of Short Term Option Series, within Options 1, Section 1(a)(49), to accommodate the listing of options series that expire on Tuesdays and Thursdays.⁵ Specifically, the Exchange added Tuesday and Thursday to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open for trading.

At this time, the Exchange proposes to amend the term "Short Term Option Series" at Options 1, Section 1(a)(57) to provide,

The term "Short Term Option Series" means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

Today, NOM's listing rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed

⁴ See note 3 above. NOM's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules.

⁵ See note 3 above.

¹⁷ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

pursuant to the Short Term Option Series Program.⁶

Options 4A, Section 12

In 2014, NOM amended the Short Term Option Series Program for equity options within Chapter IV, Section 6 (currently Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.⁷ Further, NOM also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.⁸ At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options.

Today, Options 4A, Section 12(h)(1)(A) provides,

The Exchange may select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the 30 option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to 30 Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.

At this time, the Exchange proposes to amend Options 4A, Section 12(h)(1)(A) to increase the number of currently listed options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes for index options. Additionally, the Exchange proposes to amend the number of Short Term Option Series the Exchange may open on index options

⁶ NOM's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules and therefore the approval of ISE's Options 4 rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ on NOM.

⁷ See Securities Exchange Act Release Nos. 72699 (July 29, 2014), 79 FR 45506 (August 5, 2014) (SR-NASDAQ-2014-074) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Term Option Series).

⁸ *Id.*

for each expiration date in that class from twenty to thirty. These amendments would align the limitations within Options 4A, Section 12(h)(1)(A) with those currently within Supplementary .03 to Options 4, Section 5. The Exchange also proposes to add certain titles before Options 4A, Section 12(h)(1)(A)–(E) to indicate the subject matter of the paragraphs. Those non-substantive amendments are intended to bring clarity to the rule text.

As noted above, this amendment will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Amending Options 4A, Section 12(h)(1)(A) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Today, ISE, Nasdaq Phlx LLC (“Phlx”) and Cboe Exchange, Inc. (“Cboe”) have similar limitations within their equity and index Short Term Option Series Program.⁹

Other Non-Substantive Amendments

The Exchange proposes to make other amendments to reserve certain sections of the Rulebook. These sections contain content in other Nasdaq affiliated rulebooks. To harmonize the section numbers across the Nasdaq affiliated markets, the Exchange proposes to reserve General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27. These amendments are non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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.

⁹ See ISE and Phlx Options 4A, Section 12(b)(4) and Cboe Exchange, Inc. Rules 4.5 and 4.13. See also Securities Exchange Act Release No. 95077 (June 9, 2022), 87 FR 36188 (June 15, 2022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A, Section 12, Terms of Index Options Contracts).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Short Term Option Series

The Exchange's proposal to amend the term “Short Term Option Series” at Options 1, Section 1(a)(57) to reflect the recent change¹² to NOM's listing rules to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is consistent with the Exchange Act. This proposal will align the description of Short Term Option Series within Options 1, Section 1(a)(57) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Options 4A, Section 12

In 2014, NOM amended the Short Term Option Series Program for equity options within Chapter IV, Section 6 (currently Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.¹³ Further, NOM also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.¹⁴ At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Amending Options 4A, Section 12(h)(1)(A) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(h)(1)(A) with those currently within Supplementary .03 to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Today, ISE, Phlx and Cboe have similar limitations within their equity and

¹² See note 3 above.

¹³ See note 6 above.

¹⁴ See note 6 above.

index Short Term Option Series Program.¹⁵

Other Non-Substantive Amendments

The Exchange's proposal to make other amendments to reserve certain sections of the Rulebook, namely General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27, to harmonize section numbers across the Nasdaq affiliated markets are non-substantive.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Short Term Option Series

The Exchange's proposal to amend the term "Short Term Option Series" at Options 1, Section 1(a)(57) to reflect the recent change¹⁶ to NOM's listing rules to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program does not impose an undue burden on competition, rather this proposal will align the description of Short Term Option Series within Options 1, Section 1(a)(57) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Options 4A, Section 12

Amending Options 4A, Section 12(h)(1)(A) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(h)(1)(A) with those currently within Supplementary .03 to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Today, ISE, Phlx and Cboe has similar limitations within its equity and index Short Term Option Series Program.¹⁷

Other Non-Substantive Amendments

The Exchange's proposal to make other amendments to reserve certain

sections of the Rulebook, namely General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27, to harmonize section numbers across the Nasdaq affiliated markets are non-substantive.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹ The Exchange has stated that the Options 4 listing rules were recently amended to expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program,²² and that waiver of the 30-day operative delay will allow the Exchange to conform the definition of a Short Term Option Series to the Options 4 listing rules. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²³

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 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.

²² See *supra* note 4.

²³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

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-NASDAQ-2022-066 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-NASDAQ-2022-066. 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

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ See note 8 above.

¹⁶ See note 3 above.

¹⁷ See note 8 above.

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–NASDAQ–2022–066, and should be submitted on or before December 27, 2022.

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”).