

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 45

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 70

Amendment No. (req. for Amendments *)

Filing by Nasdaq PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Increase Position Limits for Options on Certain Exchange-Traded Funds

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax


Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 11/19/2021 (Title *)

By John Zecca EVP and Chief Legal Officer
(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2021.11.19 12:50:04 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

SR-Phlx-2021-70 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

SR-Phlx-2021-70 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-Phlx-2021-70 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to increase position limits for options on certain exchange-traded funds (“ETFs”).

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) The proposed rule change does not amend the text of Options 9, Section 15, Exercise Limits. If, approved, the proposed rule change would, however, increase the exercise limits for the options that are subject to this proposed rule change, because Options 9, Section 15(a) provides that the exercise limits for exchange-traded products are equivalent to their position limits within Options 9, Section 13.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
(215) 496-5692

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Phlx proposes to increase certain position and exercise limits within Options 9, Section 13 and 15, respectively, similar to the Cboe Options Exchange, Inc. (“Cboe”).³

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand, for both trading and hedging purposes, in options on the following exchange-traded funds (“ETFs”): (1) iShares iBoxx \$ Investment Grade Corporate Bond ETF (“LQD”); and (2) VanEck Vectors Gold Miners ETF (“GDX”), (collectively “Underlying ETFs”). Though the demand for these options appears to have increased, position limits for options on the Underlying ETFs have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating

³ See Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR-Cboe-2021-029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).

strategies (e.g., buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (“OTC”) markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs, ETF components, as well as the highly liquid markets for each, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits.

Proposed Position Limits for Options on the Underlying ETFs

Proposed Position Limits for options on ETFs are determined pursuant to Options 9, Section 13 and vary according to the number of outstanding shares and the trading volumes of the underlying equity security (which includes ETFs) over the past six months. Pursuant to Options 9, Section 13, the largest in capitalization and the most frequently traded ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the

market. Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Options 9, Section 13. Options 9, Section 13(a) sets forth separate, higher position limits for specific equity options (including options on specific EFFs).⁴ The Exchange proposes to amend Options 9, Section 13(a) to increase the position limits and, as a result, exercise limits, for options on each of LQD and GDX.⁵ The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

Product	Current Position Limit	Proposed Position Limit
LQD	250,000	500,000
GDX	250,000	500,000

The Exchange notes that the proposed position limit for options on LDQ and GDX are consistent with current position limits for options on the iShares MSCI Brazil Capped ETF (“EWZ”), iShares 20+ Year Treasury Bond Fund ETF (“TLT”), iShares MSCI Japan ETF (“EWJ”), and iShares iBoxx High Yield Corporate Bond Fund (“HYG”). The Exchange represents that the Underlying ETFs qualify for either (1) the

⁴ Adjusted option series, in which one option contract in the series represents the delivery of other than 100 shares of the underlying security as a result of a corporate action by the issuer of the security underlying such option series, do not impact the notional value of the underlying security represented by those options. When an underlying security undergoes a corporate action resulting in adjusted series, the Exchange lists new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally actively traded for a short period of time following adjustment, but orders to open options positions in the underlying security are almost exclusively placed in the new standard option series contracts.

⁵ By amending the position limits for LQD and GDX options within Options 9, Section 13, the exercise limits are also being amended pursuant to Options 3, Section 15(a). Exercise limits have been established for the corresponding options at the same levels as the corresponding security’s position limits.

initial listing criteria set forth in Options 4, Section 3(h) for ETFs holding non-U.S. component securities, (2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (“CSA”) is not required, as well as (3) the continued listing criteria in Options 4, Section 4(b) (for ETFs).⁶ In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (“CSA”) do not, in the aggregate, represent more than more than 50% of the weight of any of the Underlying ETFs.⁷

Composition and Growth Analysis for Underlying ETPs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used to or potentially create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.⁸ The Underlying ETFs, as well as the ETF components, are highly liquid and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. To support the

⁶ The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. See Options 4, Section 3(h); Options 4, Section 4(b).

⁷ See Options 4, Section 3(h).

⁸ See Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29).

proposed position limit increases, the Exchange considered the liquidity of the Underlying ETFs, the value of the Underlying ETFs, their components and the relevant marketplace, the share and option volume for the Underlying ETFs, and, where applicable, the availability or comparison of economically equivalent products to options on the Underlying ETFs.

Cboe demonstrated the below trading statistics regarding shares of and options on the Underlying ETFs and the values of the Underlying ETFs and their components:

Product	ADV⁹ (ETF shares millions)	ADV (options contracts)	Shares Outstanding (millions)¹⁰	Fund Market Cap (USD millions)¹¹	Share Value¹² (USD)
LQD	14.1	30,300	308.1	54,113.7	130.13 (NAV)
GDX	39.4	166,000	419.8	16,170.5	33.80 (NAV)

Cboe collected the same trading statistics as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to its Rule 13.07, to draw comparisons in support of the proposed position limit increases for options on the Underlying ETFs (see further discussion below).

⁹ Average daily volume (ADV) data for ETF shares and option contracts, as well as for ETF shares and options on the comparative ETFs presented below, are for all of 2020. Additionally, reference to ADV in ETF shares and ETF options, and indexes herein this proposal are for all of calendar year 2020, unless otherwise indicated.

¹⁰ Shares Outstanding and Net Asset Values (“NAV”), as well as for the comparative ETFs presented below, are as of April 5, 2021 for all ETFs.

¹¹ Fund Market Capitalization data, as well as for the comparative ETFs presented below, are as of January 14, 2021.

¹² See note 10 above.

Product	ADV (ETF shares millions)	ADV (options contract)	Shares Outstanding (millions)	Fund Market Cap (USD millions)	Share Value (USD)	Current Position Limits
EWZ	29.2	139,400	173.8	6,506.8	33.71 (NAV)	500,000
TLT	11.5	111,800	103.7	17,121.3	136.85 (NAV)	500,000
EWJ	8.2	15,500	185.3	13,860.7	69.72 (NAV)	500,000
HYG	30.5	261,600	254.5	24,067.5	86.86 (NAV)	500,000

The Exchange believes that, overall, the liquidity in the shares of the Underlying ETFs and in their overlying options, the larger market capitalizations for each of the Underlying ETFs, and the overall market landscape relevant to each of the Underlying ETFs support the proposal to increase the position limits for each option class. Given the robust liquidity in and value of the Underlying ETFs and their components, the Exchange does not anticipate that the proposed increase in position limits would create significant price movements as the relevant markets are large enough to adequately absorb potential price movements that may be caused by larger trades.

LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade (“IBOXIG”) Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market which can be used as a basis for tradable products, such as ETFs, and is comprised of over 8,000 bonds.¹³ Cboe noted that from 2019 through 2020, ADV has grown significantly in shares of LQD and in options on LQD, from approximately 9.7 million shares in 2019 to 14.1 million through 2020, and from approximately 8,200 option contracts in 2019 to 30,300 through 2020. LQD also

¹³ See Markit iBoxx USD Liquid Investment Grade Index, available at <https://cdn.ihsmarkit.com/www/pdf/MKT-iBoxx-USD-Liquid-Investment-GradeIndex-factsheet.pdf> (January 14, 2021).

continued to experience significant growth in ADV in the first quarter of 2021 with an ADV of approximately 140,200 option contracts. Further, LQD generally experiences higher ADV in shares than both TLT (11.5 million shares) and EWJ (8.2 million shares) and almost double the ADV in option contracts than EWJ (15,500 option contracts). Options on each EWZ, TLT and EWJ are currently subject to a position limit of 500,000 contracts—the proposed limit for options on LQD. The NAV of LQD is also higher than, or comparable to, that of the NAV of the ETFs underlying the options that are currently subject to a position limit of 500,000 option contracts (as presented in the table above), which is indicative that the total value of its underlying components is generally higher or comparable. Per the tables above, LQD’s total market capitalization of approximately \$54.1 billion is also higher than or comparable to the total market capitalization of the ETFs underlying the options currently subject to a position limit of 500,000 contracts. In addition to this, Cboe noted that, although there are currently no options listed for trading on the IBOXIG Index, the components¹⁴ of the IBOXIG Index, which can be used in creating a basket of securities that equate to the LQD ETF, are made up of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to \$2 billion.¹⁵ The Exchange believes that the total value of the bonds in the IBOXIG Index, coupled with LQD’s share and option volume, total market capitalization, and NAV price indicates that the market is large enough to absorb potential price movements caused by a large trade in LQD. Also, as evidenced above, trading volume in LQD shares has increased over the past few years and the Exchange understands that market

¹⁴ Investment grade corporate bonds.

¹⁵ See note 13 above.

participants' need for options have continued to grow alongside the ETF. Particularly, the Exchange notes that in the last year, market participants have sought more cost-effective hedging strategies through the use of LQD options as a result of the borrow on other fixed income ETFs, such as HYG. Therefore, the Exchange believes that because LQD options are being increasingly utilized as an alternative to similar products, such as HYG options, then it is appropriate that options on LQD be subject to the same 500,000 contract position limit that currently exists for options on HYG.

GDX seeks to replicate as closely as possible the price and yield performance of the NYSE Arca Gold Miners ("GDMNTR") Index, which is intended to track the overall performance of companies involved in the gold mining industry.¹⁶ Cboe noted ADV in GDX options increased from 2019 through 2020, with an ADV of approximately 117,400 option contracts in 2019 to an ADV of approximately 166,000 option contracts in 2020. Cboe noted that ADV in GDX shares did not increase from 2019 to 2020. GDX options also experienced an ADV of approximately 287,800 option contracts in the first quarter of 2021. Cboe noted that the ADV in GDX shares (39.4 million) and options on GDX (166,000 option contracts) are greater than the ADV in EWZ (29.2 million shares and 139,300 option contracts), TLT (11.5 million shares and 111,800 option contracts), EWJ (8.2 million shares and 15,500 option contracts) and HYG (30.5 million shares and 261,600 option contracts), each of which is currently subject to a position limit of 500,000 option contracts – the proposed limit for options on GDX. GDX also experiences a comparable, or higher, market capitalization (approximately \$16.2 billion)

¹⁶ See VanEck Vectors Gold Miners ETF, available at <https://www.vaneck.com/library/vaneck-vectors-etfs/gdx-fact-sheet-pdf/> (January 14, 2021).

than EWZ, TLT and EWZ. Cboe noted that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, which tracks the investment results of an index composed of Brazilian equities, and that Cboe had not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options. Additionally, like that of LDQ above, there is currently no index option analogue for the GDX ETF on the GDMNTR Index approved for options trading, however, the components of the GDMNTR Index, which can be used to create the GDX ETF, currently must each have a market capitalization greater than \$750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least \$1 million in order to be eligible for inclusion in the GDMNTR Index. The Exchange believes that the GDMNTR Index component inclusion requirements, as well as GDX's share and option volume and total market capitalization, indicate that the GDX market is sufficiently large and liquid enough to absorb price movements as a result of potentially oversized trades.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for the ETFs subject to this proposal will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant ("AP") (generally a market maker or other large financial institution) to acquire the underlying components the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the AP can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the AP a block of equally valued

ETF shares, on a one-for-one fair value basis. The price is based on the NAV, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption processes for the Underlying ETFs creates a direct link to the underlying components of the ETF and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the options on the Underlying ETFs.

The Exchange understands that the ETF creation and redemption processes seek to keep an ETF's share price trading in line with the product's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, an ETF's share price might rise above the value of its underlying components. When this happens, the AP or issuer believes the ETF may now be overpriced, so it may buy shares of the component securities or assets and then sell ETF shares in the open market. This may drive the ETF's share price back toward the underlying net asset value. Likewise, if an ETF share price starts trading at a discount to the component securities or assets it holds, the AP or issuer can buy shares of the ETF and redeem them for the underlying components. Buying undervalued ETF shares may drive the share price of an ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits (and exercise limits) for

the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each member organization that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers¹⁷ would continue to be exempt from this reporting requirement, however, the

¹⁷ A "Market Maker" means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28). A "Streaming Quote Trader" or "SQT" means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A "Remote Streaming Quote Trader" or "RSQT" means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker ("RMM") pursuant to Options 2, Section 11. A Remote Streaming Quote Organization ("RSQTO") or Remote Market Maker Organization ("RMO") are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49). A "Lead Market Maker" means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 1, Section 1(b)(27).

Exchange may access Market Maker position information.¹⁸ Moreover, the Exchange's requirement that member organizations file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.¹⁹

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.²⁰ The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D

¹⁸ The Options Clearing Corporation ("OCC") through the Large Option Position Reporting ("LOPR") system acts as a centralized service provider for compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. ("FINRA"), acting as its agent pursuant to a regulatory services agreement ("RSA") with the Exchange.

¹⁹ See Options 9, Section 13(f).

²⁰ The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to employ them.

or 13G,²¹ which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member organization must maintain for a large position held by itself or by its customer.²² In addition, Rule 15c3-1²³ imposes a capital charge on member organizations to the extent of any margin deficiency resulting from the higher margin requirement.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)²⁴ of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

²¹ 17 CFR 240.13d-1.

²² See Options 6C, Section 3, Margin Requirements.

²³ 17 CFR 240.15c3-1.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (e.g., there are other exchange-traded products (“ETPs”) that use options on the ETFs subject to this proposal as part of their investment strategy, and the applicable position limits as they stand today may inhibit these other ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the process

²⁷ 15 U.S.C. 78f(b)(5).

of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds and underlying components, and the liquidity of the markets for the applicable options and underlying components will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of the underlying components do not lead to manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization and trading volume and liquidity in shares of and options on the Underlying ETFs (as described above), and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.²⁸

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options is not novel and the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on

²⁸ See Securities Exchange Act Release No. 62147 (October 28, 2005) (SR-CBOE-2005-41), at 62149.

similar, highly liquid and actively traded ETPs.²⁹ Furthermore, the Exchange again notes that that the proposed position limits for options on LQD and GDX are consistent with existing position limits for options on comparable ETFs in Options 9, Section 13.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

²⁹ See Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR-CBOE-2020-015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR-CBOE-2018-042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.³⁰ The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange notes that other options exchanges may choose to file similar proposals with the Commission to increase position limits on options on the Underlying ETFs.

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its

³⁰ Additionally, several other options exchanges have the same position limits as the Exchange, as they incorporate by reference to the Exchange’s position limits, and as a result the position limits for options on the Underlying ETFs will increase at those exchanges. For example, The Nasdaq Options Market LLC (“NOM”) and Nasdaq BX, Inc. (“BX”) position limits are determined by the position limits established by Cboe. See NOM and BX Options 9, Section 13, Position Limits.

terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the date of filing the proposed rule change as required by Rule 19b-4(f)(6).³¹ The proposed rule change is substantially similar in all material respects to a proposal submitted by Cboe that was recently approved by the Commission.³² The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the Cboe filing.

The Exchange requests that the Commission waive the 30 day operative delay period. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to increase these position limits. Furthermore, waiver of the operative delay will allow the Exchange to immediately increase the position limits which will provide consistency for Phlx members and member organizations that are also members at Cboe where these increased position limits are currently in place. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 of the Act. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

³¹ 17 CFR 240.19b-4(f)(6).

³² See note 3 above.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposal is similar to a recent Cboe proposal.³³

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Rule text.

³³ See note 3 above.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2021-70)

November __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase Position Limits for Options on Certain Exchange-Traded Funds

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 19, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, 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 increase position limits for options on certain exchange-traded funds (“ETFs”).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Phlx proposes to increase certain position and exercise limits within Options 9, Section 13 and 15, respectively, similar to the Cboe Options Exchange, Inc. ("Cboe").³

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand, for both trading and hedging purposes, in options on the following exchange-traded funds ("ETFs"): (1) iShares iBoxx \$ Investment Grade Corporate Bond ETF ("LQD"); and (2) VanEck Vectors Gold Miners ETF ("GDX"), (collectively "Underlying ETFs"). Though the demand for these options appears to have increased, position limits for options on the

³ See Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR-Cboe-2021-029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).

Underlying ETFs have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (e.g., buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (“OTC”) markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs, ETF components, as well as the highly liquid markets for each, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits.

Proposed Position Limits for Options on the Underlying ETFs

Proposed Position Limits for options on ETFs are determined pursuant to Options 9, Section 13 and vary according to the number of outstanding shares and the trading volumes of the underlying equity security (which includes ETFs) over the past six months. Pursuant to Options 9, Section 13, the largest in capitalization and the most frequently traded ETFs have an option position limit of 250,000 contracts (with

adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Options 9, Section 13. Options 9, Section 13(a) sets forth separate, higher position limits for specific equity options (including options on specific EFFs).⁴ The Exchange proposes to amend Options 9, Section 13(a) to increase the position limits and, as a result, exercise limits, for options on each of LQD and GDX.⁵ The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

Product	Current Position Limit	Proposed Position Limit
LQD	250,000	500,000
GDX	250,000	500,000

The Exchange notes that the proposed position limit for options on LDQ and GDX are consistent with current position limits for options on the iShares MSCI Brazil

⁴ Adjusted option series, in which one option contract in the series represents the delivery of other than 100 shares of the underlying security as a result of a corporate action by the issuer of the security underlying such option series, do not impact the notional value of the underlying security represented by those options. When an underlying security undergoes a corporate action resulting in adjusted series, the Exchange lists new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally actively traded for a short period of time following adjustment, but orders to open options positions in the underlying security are almost exclusively placed in the new standard option series contracts.

⁵ By amending the position limits for LQD and GDX options within Options 9, Section 13, the exercise limits are also being amended pursuant to Options 3, Section 15(a). Exercise limits have been established for the corresponding options at the same levels as the corresponding security's position limits.

Capped ETF (“EWZ”), iShares 20+ Year Treasury Bond Fund ETF (“TLT”), iShares MSCI Japan ETF (“EWJ”), and iShares iBoxx High Yield Corporate Bond Fund (“HYG”). The Exchange represents that the Underlying ETFs qualify for either (1) the initial listing criteria set forth in Options 4, Section 3(h) for ETFs holding non-U.S. component securities, (2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (“CSA”) is not required, as well as (3) the continued listing criteria in Options 4, Section 4(b) (for ETFs).⁶ In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (“CSA”) do not, in the aggregate, represent more than more than 50% of the weight of any of the Underlying ETFs.⁷

Composition and Growth Analysis for Underlying ETPs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used to or potentially create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid

⁶ The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. See Options 4, Section 3(h); Options 4, Section 4(b).

⁷ See Options 4, Section 3(h).

classes.⁸ The Underlying ETFs, as well as the ETF components, are highly liquid and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. To support the proposed position limit increases, the Exchange considered the liquidity of the Underlying ETFs, the value of the Underlying ETFs, their components and the relevant marketplace, the share and option volume for the Underlying ETFs, and, where applicable, the availability or comparison of economically equivalent products to options on the Underlying ETFs.

Cboe demonstrated the below trading statistics regarding shares of and options on the Underlying ETFs and the values of the Underlying ETFs and their components:

Product	ADV⁹ (ETF shares millions)	ADV (options contracts)	Shares Outstanding (millions)¹⁰	Fund Market Cap (USD millions)¹¹	Share Value¹² (USD)
LQD	14.1	30,300	308.1	54,113.7	130.13 (NAV)
GDX	39.4	166,000	419.8	16,170.5	33.80 (NAV)

⁸ See Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29).

⁹ Average daily volume (ADV) data for ETF shares and option contracts, as well as for ETF shares and options on the comparative ETFs presented below, are for all of 2020. Additionally, reference to ADV in ETF shares and ETF options, and indexes herein this proposal are for all of calendar year 2020, unless otherwise indicated.

¹⁰ Shares Outstanding and Net Asset Values (“NAV”), as well as for the comparative ETFs presented below, are as of April 5, 2021 for all ETFs.

¹¹ Fund Market Capitalization data, as well as for the comparative ETFs presented below, are as of January 14, 2021.

¹² See note 10 above.

Cboe collected the same trading statistics as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to its Rule 13.07, to draw comparisons in support of the proposed position limit increases for options on the Underlying ETFs (see further discussion below).

Product	ADV (ETF shares millions)	ADV (options contract)	Shares Outstanding (millions)	Fund Market Cap (USD millions)	Share Value (USD)	Current Position Limits
EWZ	29.2	139,400	173.8	6,506.8	33.71 (NAV)	500,000
TLT	11.5	111,800	103.7	17,121.3	136.85 (NAV)	500,000
EWJ	8.2	15,500	185.3	13,860.7	69.72 (NAV)	500,000
HYG	30.5	261,600	254.5	24,067.5	86.86 (NAV)	500,000

The Exchange believes that, overall, the liquidity in the shares of the Underlying ETFs and in their overlying options, the larger market capitalizations for each of the Underlying ETFs, and the overall market landscape relevant to each of the Underlying ETFs support the proposal to increase the position limits for each option class. Given the robust liquidity in and value of the Underlying ETFs and their components, the Exchange does not anticipate that the proposed increase in position limits would create significant price movements as the relevant markets are large enough to adequately absorb potential price movements that may be caused by larger trades.

LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade (“IBOXIG”) Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market which can be used as a basis for tradable products.,

such as ETFs, and is comprised of over 8,000 bonds.¹³ Cboe noted that from 2019 through 2020, ADV has grown significantly in shares of LQD and in options on LQD, from approximately 9.7 million shares in 2019 to 14.1 million through 2020, and from approximately 8,200 option contracts in 2019 to 30,300 through 2020. LQD also continued to experience significant growth in ADV in the first quarter of 2021 with an ADV of approximately 140,200 option contracts. Further, LQD generally experiences higher ADV in shares than both TLT (11.5 million shares) and EWJ (8.2 million shares) and almost double the ADV in option contracts than EWJ (15,500 option contracts). Options on each EWZ, TLT and EWJ are currently subject to a position limit of 500,000 contracts—the proposed limit for options on LQD. The NAV of LQD is also higher than, or comparable to, that of the NAV of the ETFs underlying the options that are currently subject to a position limit of 500,000 option contracts (as presented in the table above), which is indicative that the total value of its underlying components is generally higher or comparable. Per the tables above, LQD’s total market capitalization of approximately \$54.1 billion is also higher than or comparable to the total market capitalization of the ETFs underlying the options currently subject to a position limit of 500,000 contracts. In addition to this, Cboe noted that, although there are currently no options listed for trading on the IBOXIG Index, the components¹⁴ of the IBOXIG Index, which can be used in creating a basket of securities that equate to the LQD ETF, are made up of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to

¹³ See Markit iBoxx USD Liquid Investment Grade Index, available at <https://cdn.ihsmarkit.com/www/pdf/MKT-iBoxx-USD-Liquid-Investment-GradeIndex-factsheet.pdf> (January 14, 2021).

¹⁴ Investment grade corporate bonds.

\$2 billion.¹⁵ The Exchange believes that the total value of the bonds in the IBOXIG Index, coupled with LQD's share and option volume, total market capitalization, and NAV price indicates that the market is large enough to absorb potential price movements caused by a large trade in LQD. Also, as evidenced above, trading volume in LQD shares has increased over the past few years and the Exchange understands that market participants' need for options have continued to grow alongside the ETF. Particularly, the Exchange notes that in the last year, market participants have sought more cost-effective hedging strategies through the use of LQD options as a result of the borrow on other fixed income ETFs, such as HYG. Therefore, the Exchange believes that because LQD options are being increasingly utilized as an alternative to similar products, such as HYG options, then it is appropriate that options on LQD be subject to the same 500,000 contract position limit that currently exists for options on HYG.

GDX seeks to replicate as closely as possible the price and yield performance of the NYSE Arca Gold Miners ("GDMNTR") Index, which is intended to track the overall performance of companies involved in the gold mining industry.¹⁶ Cboe noted ADV in GDX options increased from 2019 through 2020, with an ADV of approximately 117,400 option contracts in 2019 to an ADV of approximately 166,000 option contracts in 2020. Cboe noted that ADV in GDX shares did not increase from 2019 to 2020. GDX options also experienced an ADV of approximately 287,800 option contracts in the first quarter of 2021. Cboe noted that the ADV in GDX shares (39.4 million) and options on GDX

¹⁵ See note 13 above.

¹⁶ See VanEck Vectors Gold Miners ETF, available at <https://www.vaneck.com/library/vaneck-vectors-etfs/gdx-fact-sheet-pdf/> (January 14, 2021).

(166,000 option contracts) are greater than the ADV in EWZ (29.2 million shares and 139,300 option contracts), TLT (11.5 million shares and 111,800 option contracts), EWJ (8.2 million shares and 15,500 option contracts) and HYG (30.5 million shares and 261,600 option contracts), each of which is currently subject to a position limit of 500,000 option contracts – the proposed limit for options on GDX. GDX also experiences a comparable, or higher, market capitalization (approximately \$16.2 billion) than EWZ, TLT and EWJ. Cboe noted that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, which tracks the investment results of an index composed of Brazilian equities, and that Cboe had not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options. Additionally, like that of LDQ above, there is currently no index option analogue for the GDX ETF on the GDMNTR Index approved for options trading, however, the components of the GDMNTR Index, which can be used to create the GDX ETF, currently must each have a market capitalization greater than \$750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least \$1 million in order to be eligible for inclusion in the GDMNTR Index. The Exchange believes that the GDMNTR Index component inclusion requirements, as well as GDX's share and option volume and total market capitalization, indicate that the GDX market is sufficiently large and liquid enough to absorb price movements as a result of potentially oversized trades.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for the ETFs subject to this proposal will lessen the potential for manipulative activity with options on

the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (“AP”) (generally a market maker or other large financial institution) to acquire the underlying components the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the AP can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the AP a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the NAV, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption processes for the Underlying ETFs creates a direct link to the underlying components of the ETF and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the options on the Underlying ETFs.

The Exchange understands that the ETF creation and redemption processes seek to keep an ETF’s share price trading in line with the product’s underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, an ETF’s share price might rise above the value of its underlying components. When this happens, the AP or issuer believes the ETF may now be overpriced, so it may buy shares of the component securities or assets and then sell ETF shares in the open market. This may drive the ETF’s share price back toward the underlying net asset value. Likewise, if an ETF share price starts trading at a discount to the component securities or assets it

holds, the AP or issuer can buy shares of the ETF and redeem them for the underlying components. Buying undervalued ETF shares may drive the share price of an ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits (and exercise limits) for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each member organization that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers¹⁷ would continue to be exempt from this reporting requirement, however, the

¹⁷ A "Market Maker" means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28). A "Streaming Quote Trader" or "SQT" means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A "Remote Streaming Quote Trader" or "RSQT" means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker ("RMM") pursuant to Options 2, Section 11.

Exchange may access Market Maker position information.¹⁸ Moreover, the Exchange's requirement that member organizations file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.¹⁹

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual

A Remote Streaming Quote Organization ("RSQTO") or Remote Market Maker Organization ("RMO") are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49). A "Lead Market Maker" means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 1, Section 1(b)(27).

¹⁸ The Options Clearing Corporation ("OCC") through the Large Option Position Reporting ("LOPR") system acts as a centralized service provider for compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. ("FINRA"), acting as its agent pursuant to a regulatory services agreement ("RSA") with the Exchange.

¹⁹ See Options 9, Section 13(f).

activity in both options and the underlyings, as applicable.²⁰ The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,²¹ which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member organization must maintain for a large position held by itself or by its customer.²² In addition, Rule 15c3-1²³ imposes a capital charge on member organizations to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)²⁴ of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act. Specifically,

²⁰ The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to employ them.

²¹ 17 CFR 240.13d-1.

²² See Options 6C, Section 3, Margin Requirements.

²³ 17 CFR 240.15c3-1.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b).

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (e.g., there are other exchange-traded products (“ETPs”) that use options on the ETFs subject to this proposal as part of their investment strategy, and the applicable position limits as they stand today may inhibit these other ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78f(b)(5).

provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds and underlying components, and the liquidity of the markets for the applicable options and underlying components will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of the underlying components do not lead to manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization and trading volume and liquidity in shares of and options on the Underlying ETFs (as described above), and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.²⁸

²⁸ See Securities Exchange Act Release No. 62147 (October 28, 2005) (SR-CBOE-2005-41), at 62149.

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options is not novel and the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on similar, highly liquid and actively traded ETPs.²⁹ Furthermore, the Exchange again notes that that the proposed position limits for options on LQD and GDX are consistent with existing position limits for options on comparable ETFs in Options 9, Section 13.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market

²⁹ See Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR-CBOE-2020-015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR-CBOE-2018-042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.³⁰ The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange notes that other options exchanges may choose to file similar proposals with the Commission to increase position limits on options on the Underlying ETFs.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

³⁰ Additionally, several other options exchanges have the same position limits as the Exchange, as they incorporate by reference to the Exchange's position limits, and as a result the position limits for options on the Underlying ETFs will increase at those exchanges. For example, The Nasdaq Options Market LLC ("NOM") and Nasdaq BX, Inc. ("BX") position limits are determined by the position limits established by Cboe. See NOM and BX Options 9, Section 13, Position Limits.

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 Act³¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³²

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-70 on the subject line.

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

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-2021-70. 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2021-70 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.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ PHLX LLC Rules

* * * * *

Options Rules

* * * * *

Options 9 Business Conduct

* * * * *

Section 13. Position Limits

(a) Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, an opening transaction (whether on the Exchange or on another participating exchange) in an option contract of any class of options dealt in on the Exchange if the member or member organization has reason to believe that, as a result of such transaction, the member or member organization or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly control an aggregate position: (a) of more than 25,000, 50,000, 75,000, 200,000 or 250,000 option contracts (whether long or short), put or call option contracts on the same side of the market relating to the same underlying security, which limit is determined in accordance with section (g)(1)(a) herein, in the case of options on a stock or Exchange-Traded Fund Share, (except with respect to put or call option contracts overlying:

- INVESCO QQQ TrustSM, Series 1 ("QQQ")[®] for which the position limit shall be 1,800,000 contracts on the same side of the market;
- SPDR[®] S&P 500[®] ETF Trust ("SPY") for which the position limit shall be 3,600,000 contracts on the same side of the market;
- iShares[®] Russell 2000[®] ETF ("IWM"), for which the position limit shall be 1,000,000 contracts;
- Diamonds Trust ("DIA"), for which the position limit shall be 300,000 contracts on the same side of the market;
- iShares MSCI Emerging Markets ETF ("EEM"), for which the position limit shall be 1,000,000 contracts on the same side of the market;
- iShares China Large-Cap ETF ("FXI"), for which the position limit shall be 1,000,000 contracts on the same side of the market;
- iShares MSCI EAFE ETF ("EFA"), for which the position limit shall be 1,000,000 contracts on the same side of the market;
- iShares MSCI Brazil Capped ETF ("EWZ"), for which the position limit shall be 500,000 contracts on the same side of the market;

- iShares 20+ Year Treasury Bond Fund ETF ("TLT"), for which the position limit shall be 500,000 contracts on the same side of the market;
- iShares MSCI Japan ETF ("EWJ"), for which the position limit shall be 500,000 contracts on the same side of the market;
- iShares iBoxx High Yield Corporate Bond Fund ("HYG"), for which the position limit shall be 500,000 contracts on the same side of the market;
- Financial Select Sector SPDR Fund ("XLF"), for which the position limit shall be 500,000 contracts on the same side of the market;
- Standard and Poor's Depository Receipts ("SPDRs"), which shall have no position limits[];
- iShares iBoxx \$ Investment Grade Corporate Bond ETF ("LQD"), for which the position limit shall be 500,000 contracts on the same side of the market;
- VanEck Vectors Gold Miners ETF ("GDX"), for which the position limit shall be 500,000 contracts on the same side of the market;

or (b) with respect to a stock or Exchange-Traded Fund Share option not dealt in on the Exchange, exceeding the applicable position limit established by the exchange on which the option contract is transacted, when the member or member organization is not a member of that other exchange, or such other number of option contracts as may be fixed from time to time by the Exchange as the position limit for one or more classes or series. Position limits for foreign currency options shall be determined in accordance with section (j) herein.

* * * * *