

Required fields are shown with yellow backgrounds and asterisks.

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

File No. \* SR 2021 - \* 76

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"/>
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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 \*).

Proposal to Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules

### 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 12/23/2021 (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: 2021.12.23 11:16:28 -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 EDFS website.

**Form 19b-4 Information \***

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SR-PHLX-2021-76 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 \***

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SR-PHLX-2021-76 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 \***

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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**

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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**

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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**

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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**

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SR-PHLX-2021-76 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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8.

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) Not applicable.

(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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The Exchange proposes to amend Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8. Each change is described below.

Hours of Business

The Exchange proposes to state within new Options 3, Section 1(a), “General 3, Rule 1030 governs the days the Exchange will be open for business. This rule will govern the hours of such days during which transactions may be made on the Exchange.” Phlx recently filed to establish General 3, Section 1030.<sup>3</sup> This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, Options 3, Section 1 will describe Phlx’s trading hours by product.

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b). The Exchange modified the rule text to state, “Options on any series of Exchange-Traded

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<sup>3</sup> See Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR-Phlx-2021-69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.” The modified rule text provides citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes.

Next, the Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c). The Exchange modified the rule text to state, “Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.” The modified rule text amends “shall freely trade” to “may be traded” and adds new rule text to account for p.m.-settled products<sup>4</sup> and the recently approved Nasdaq-100 Volatility Index Options.<sup>5</sup> The new rule text provides, “except that on the last trading day, transactions in expiring p.m.-settled broad-based index options and the Nasdaq-100

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<sup>4</sup> Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. See Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

<sup>5</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-PHLX-2020-41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

Volatility Index Options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).” The hours noted within proposed Options 3, Section 1(c) reflect the current hours for p.m.-settled products and the hours for Nasdaq-100 Volatility Index Options, as noted within the approval order for that product.<sup>6</sup>

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d). The Exchange modified the rule text to state, “Except under unusual conditions as may be determined by the Board (or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted at such times as the Board of Directors shall specify between 6:00 P.M. Eastern Time Sundays and 3:00. P.M. Eastern Time Fridays, provided that U.S. dollar-settled foreign currency options shall trade during the same hours as narrow-based index options.” The modified rule text removes the phrase, “The Board of Directors has resolved that” as this rule text is unnecessary. Of note, today, foreign currencies trade from 9:30 a.m. to 4:00 p.m. the same as narrow-based indexes.

Proposed new Options 3, Section 1(e) memorializes the current hours for sector indexes that are currently listed on Phlx. The Exchange proposes to provide, “Options on a sector index as provided for within Options 4A, Section 12 may be traded on the Exchange until 4:00 p.m. each business day.” This rule text will account for sector indexes, which are not currently mentioned within Options 3, Section 1. Adding sector index hours to Options 3, Section 1 will provide additional transparency to the rule.

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<sup>6</sup> See note 5 above.

The Exchange proposes to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within “Except as otherwise ordered by the Board of Directors.” Any future amendments to this rule would be filed with the Commission, therefore, this phrase is being removed. Because the first two sentences of current Options 3, Section 1(a) relate to the Trading Floor, the Exchange proposes to relocate this rule text within the Options 8 Rules related to the Trading Floor. The relocated rule text would be placed within new Options 8, Section 9(a). The Exchange also proposes to re-letter current Options 8, Section 9 paragraph “(a)” as “(b).” Finally, the Exchange proposes to amend the title of Options 8, Section 9 to “Trading Floor Hours of Business and Admittance” which is a more descriptive title.

The remainder of the rule text within current Options 3, Section 1(a) is being deleted as unnecessary.<sup>7</sup> Current Options 3, Section 1(b) would become Supplementary Material .01 to Options 3, Section 1, with a header added to conform to the Rulebook style. The Exchange believes that these proposed amendments will bring greater clarity to the Exchange’s Rules.

#### Index Options Values for Settlement

The Exchange proposes to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule “Index Options Values for Settlement.” Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange’s index rules would not otherwise apply. The

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<sup>7</sup> The phrase in the fourth sentence, “The Board of Directors has resolved that no option series shall freely trade after 4:00 P.M. Eastern Time” is being removed as unnecessary as the Exchange is specifying the hours each product may trade in the new rule.

Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so all related rule text are within the same rule.

Proposed Options 4A, Section 4(a) rule text is being relocated from current rule text within Options 4A, Section 12(d). The rule text provides that where Exchange index options rules do not apply, Phlx index options would settle based on the current index value used to settle the exercise of an index options contract, which would be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of The Options Clearing Corporation (“OCC”) or, if such day is not a business day, for the most recent business day. The rule text is being relocated without change.

Proposed Options 4A, Section 4(b) rule text is being relocated from current rule text within Options 4A, Section 12(g). The Exchange proposes to add the title “Pricing When Primary Market Does Not Open” to proposed Options 4A, Section 4(b). The rule text provides for the current index value in the instance the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day. In this case, the settlement price at expiration shall be the last reported sale price of the security from the previous trading day, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of OCC. The rule text is being relocated without change.

Proposed Options 4A, Section 4(c) rule text is being relocated from current rule text within Supplementary Material .01 of Options 4A, Section 2. The Exchange is proposing to add the title “Discretion” to proposed Options 4A, Section 4(c). The rule text provides that for any series of index options the Exchange may, in its discretion,



provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration. The rule text is being relocated without change.

The Exchange proposes to add new rule text within Options 4A, Section 4(c)(1) which states,

With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

This rule text is identical to the rule text within Cboe Exchange, Inc. (“Cboe”) Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange’s current practice.<sup>8</sup> The purpose of the proposed rule change is to clarify that the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component’s “primary market” such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index’s value at expiration the Exchange proposes

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<sup>8</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

to adopt the same rule text as Cboe.<sup>9</sup> In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that Options 4A, Section 4 will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.<sup>10</sup> The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.<sup>11</sup> The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

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<sup>9</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

<sup>10</sup> See Options 4A, Section 2(a)(16).

<sup>11</sup> See Options 4A, Section 2(a)(7).

### Reporting Authority

The Exchange proposes to amend Options 4A, Section 2 to adopt a new Supplementary Material .02 which provides, “The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.” The Exchange proposes to add the following chart to the rule text:

<b>Underlying Index</b>	<b>Reporting Authority</b>
Full Value Nasdaq 100 Index	The Nasdaq Stock Market
Reduced Value Nasdaq 100 Index	The Nasdaq Stock Market
Nasdaq-100 Micro Index	The Nasdaq Stock Market
PHLX Oil Service Sector Index	The Nasdaq Stock Market
PHLX Semiconductor Sector Index	The Nasdaq Stock Market
PHLX Utility Sector Index	The Nasdaq Stock Market
PHLX Gold/Silver Sector Index	The Nasdaq Stock Market
PHLX Housing Sector Index	The Nasdaq Stock Market
KBW Bank Index	Keefe, Bruyette & Woods, Inc.
Nasdaq-100® Volatility Index	The Nasdaq Stock Market

The Exchange believes that the addition of the Reporting Authority for each index will add clarity to the rule. The proposed reporting authorities represent the current reporting authorities for each index without change. As noted above, a Reporting Authority represents the official source for calculating and determining the current value. The Exchange determines the Reporting Authority for each index listed on the Exchange.

### Options 4A, Section 12

Generally, pursuant to Options 4A, Section 12(a)(2), index options listed on the Exchange are subject to strike price intervals of no less than \$5, provided that certain classes of index options have strike price intervals of no less than \$2.50 if the strike price

is less than \$200. Today, those classes of strike price intervals that have strike price intervals of no less than \$2.50 if the strike price is less than \$200 are listed within Options 4A, Section 12(a)(2). The Exchange proposes to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 in 2021.<sup>12</sup> The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 if the strike price is less than \$200 on Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”).<sup>13</sup> This amendment reflects current Exchange practice.

The Exchange also proposes to amend Options 4A, Section 12(a)(2)(F) to rename the “PHLX/KBW Bank Index” to “KBW Bank Index” to reflect the current name of the Index.

The Exchange proposes to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the current rule text to make clear

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<sup>12</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

<sup>13</sup> See ISE Options 4A, Section 12(c)(1). GEMX and MRX Options 4A is incorporated by reference to ISE Options 4A.

that the list which follows represents indexes on which options may be listed. The Exchange is also adding a reference to the p.m.-settled indexes<sup>14</sup> which are proposed to be listed within proposed paragraph (f), described below, and relocating the Nasdaq-100 Micro Index Options, a p.m.-settled product, to new paragraph (f). The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and, today, have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.<sup>15</sup> All of the indexes listed within Options 4A, Section 12(a)(5) are European-style a.m.-settled options that are currently available on Phlx. The European-style p.m.-settled options, which are all currently listed on Phlx, are proposed to be listed within Options 4A, Section 12(f). Nasdaq 100 Micro Index Options is being relocated to proposed Options 4A, Section 12(f) because it is a p.m.-settled product. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the manner in which these products trade.

The Exchange proposes to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d) with a minor change.<sup>16</sup> The Exchange

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<sup>14</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>15</sup> See <https://www.nasdaq.com/solutions/phlx-sector-based-index-options>.

<sup>16</sup> The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

proposes to remove the phrase “A.M.-settled” as this rule text for index levels applies to P.M.-settled as well. Options 4A, Section 12(g) was relocated to proposed Options 4A, Section 4(b). This amendment is non-substantive because it merely is clarifying in nature.

The Exchange proposes to add the phrase “on the following indexes” to the end of Options 4A, Section 12(e)(II) for clarity. The Exchange also proposes to remove the word “Options” within the list of indexes at Options 4A, Section 12(e)(II) and add the following indexes which were inadvertently not on the list: PHLX Utility Sector Index and PHLX Gold/Silver Sector Index as well as the recently approved Nasdaq-100® Volatility Index. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.<sup>17</sup>

The Exchange proposes to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options.<sup>18</sup> This new paragraph would provide:

P.M. - Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at

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<sup>17</sup> See Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>18</sup> The Nasdaq Options Market LLC (“NOM”) Rules at Options 4A, Section 12(a)(6) contain a paragraph describing p.m.-settled index options. See Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order); and 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).

expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on Phlx:

This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today.<sup>19</sup> As noted above, the Nasdaq 100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Options 4A, Section 12(b)(5). These are both pilot programs. Finally, dashes are added in a few places to conform the name of the “Nasdaq-100 Index.” These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

#### Disclaimers

The Exchange proposes to adopt a proposed rule at Options 4A, Section 14 entitled “Disclaimers.”<sup>20</sup> The rule text is identical to rule text within ISE and NOM at Options 4A, Section 14. Currently, Options 4A, Section 14 is reserved. The disclaimer provisions are applicable to the reporting authorities identified in

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<sup>19</sup> NOM Options 4A, Section 12(a)(6) contains an identical paragraph describing p.m.-settled index options listed on that market. See Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order); and 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).

<sup>20</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR-ISE-2003-05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

proposed Supplementary Material .02 to Options 4A, Section 2. The proposed rule text would provide that no Reporting Authority or affiliate of a Reporting Authority (each such Reporting Authority, its affiliates, and any other entity identified in the rule referred to collectively as a “Reporting Authority”) makes any warranty express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intra-day or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. Further, the rule text provides that the Reporting Authority shall obtain information to be used in the calculation of the index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, including any opening, intra-day or closing value therefore, or any data included therein or related thereto. Also, the Reporting Authority disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. Finally, the Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.



Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC (“MIAX Pearl”) added a disclaimer to its rules in 2018.<sup>21</sup> The MIAX Pearl 2018 rule filing provided the following justification for the rule change, “The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.”

The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

#### Technical Amendments

The Exchange proposes to remove the stray word “Rule” before Options 2, Section 12(a) with the description of the term “Lead Market Maker” within Options 7, Section 1. Also, the Exchange proposes to update the citation with the description of

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<sup>21</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR-PEARL-2018-02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

“Professional” within Options 7, Section 1 from “Exchange Rule 1000(b)(43)” to “Options 1, Section 1(b)(45).”<sup>22</sup>

The Exchange proposes to amend Options 7, Section 8, Membership Fees at Part A, Permit and Registration Fees. Specifically, the Exchange proposes to remove rule text regarding a waiver of the Inactive Nominee Fee which was in place from April 1, 2021 through September 30, 2021.<sup>23</sup> This rule text is now obsolete and removing the rule text will avoid confusion as to the effectiveness of the waiver.

The Exchange proposes to amend Options 7, Section 9, D, to add the phrase “General 5” before Rule 9216 to provide the complete citation. Also, the Exchange proposes to remove the stray word “Rule” from Options 7, Section 9, D.

The Exchange proposes a technical amendment within Options 8, Section 24, “Bids And Offer-Premium” to re-letter the current paragraphs. As a result of the changes to this section, the Exchange proposes to update citations to Options 8, Section 24 within E-11, “Two-Way, Three Way and Multi-Spread Transactions (FOREIGN CURRENCY OPTION ONLY)”.

The Exchange proposes technical amendments to Options 8, Section 28, “Responsibilities of Floor Brokers,” to update a citation to Rule 1084 to Options 5,

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<sup>22</sup> Exchange Rule 1000(b)(43) was relocated in a prior rule change. See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>23</sup> See Securities Exchange Act Release No. 91481 (April 6, 2021), 86 FR 19064 (April 12, 2021) (SR-Phlx-2021-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx’s Pricing Schedule at Options 7, Section 8, “Membership Fees”).

Section 2. Similar updates are proposed to B-7, “Options Floor Based Management System,” and C-2, “Options Floor Based Management System”.

The Exchange proposes technical amendments to Options 8, Section 29, “Use of Floor Based Management System by Floor Market Makers and Lead Market Makers,” to update two citations. The first citation is to Supplementary Material .08 to Options 10, Section 6, the rule citation should be to Supplementary Material .01 to Options 10, Section 5.<sup>24</sup> The second citation is to Rule 1080, the rule citation should be to Options 3, Section 10.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>26</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Hours of Business

The Exchange’s proposal to amend Options 3, Section 1 is consistent with the Act as the proposed amendment will make clear the hours within which various products

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<sup>24</sup> The Exchange relocated rule text from Supplementary Material .08 to Options 10, Section 6 to Supplementary Material .01 to Options 10, Section 5. See Securities Exchange Act Release No. 92986 (September 15, 2021), 86 FR 52536 (September 21, 2021) (SR-Phlx-2021-52) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Phlx Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing Rules).

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

listed on Phlx currently trade. Phlx recently filed to establish General 3, Section 1030.<sup>27</sup>

General 3, Section 1030 governs the days the Exchange will be open for business.

Amended Options 3, Section 1 will describe the hours of trading. Further, the proposed text clearly addresses the hours for the products listed on Phlx in a transparent manner for members and member organizations to reference.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b) and modify the rule text to provide citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes is consistent with the Act as the modifications add clarity to existing rule text.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c) and modify the rule text from "shall freely trade" to "may be traded" is consistent with the Act as that change is non-substantive. The addition of hours for p.m.-settled products<sup>28</sup> and the

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<sup>27</sup> See Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR-Phlx-2021-69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

<sup>28</sup> Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. See Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

recently approved Nasdaq-100 Volatility Index Options,<sup>29</sup> does not represent a change from the current hours, rather the Exchange is noting these hours within this rule for ease of reference.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d) and modify the rule text to remove rule text that is unnecessary is a non-substantive change.

The addition of proposed new Options 3, Section 1(e) is consistent with the Act as the rule text memorializes the current hours for sector indexes that are currently listed on Phlx. This text is consistent with the Act as the rule text will specifically account for sector indexes for ease of reference, thereby providing additional transparency to the rule.

The Exchange's proposal to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within "Except as otherwise ordered by the Board of Directors" is consistent with the Act as this text applies to the Trading Floor. The Exchange's proposal removes the current discretion permitted by the Board of Directors, thereby adding certainty to the rule text. Any changes to the rule text would be filed with the Commission. Amending the title of Options 8, Section 9 to "Trading Floor Hours of Business and Admittance" is a non-substantive change.

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<sup>29</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-PHLX-2020-41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

Clearly specifying the hours that each Phlx product trades within Options 3, Section 1 promotes just and equitable principles of trade by removing any confusion for members as to when the products are available.

#### Index Options Values for Settlement

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule "Index Options Values for Settlement" is consistent with the Act. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change, so all related rule text are within the same rule.

The relocation of certain rule text within Options 4A, without change, is non-substantive. The proposal to add rule text within Phlx's Options 4A, Section 4(c)(1), which is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies,<sup>30</sup> that follows the Exchange's current practice is consistent with the Act because the proposed rule text will clarify the Reporting Authority for a securities index on which options are traded. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. Today, certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's "primary

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<sup>30</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

market” such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index’s value at expiration the Exchange proposes to adopt rule text identical to Cboe.<sup>31</sup> In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange’s rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.<sup>32</sup> The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.<sup>33</sup> The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the

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<sup>31</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

<sup>32</sup> See Options 4A, Section 2(a)(16).

<sup>33</sup> See Options 4A, Section 2(a)(7).

official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

Options 4A, Section 12

Today, those classes of strike price intervals that have strike price intervals of no less than \$2.50 if the strike price is less than \$200 are listed within Options 4A, Section 12(a)(2). The Exchange's proposal to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 is consistent with the Act. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 in 2021.<sup>34</sup> The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 on ISE, GEMX and MRX.<sup>35</sup> Aligning the strike prices to the manner in which the Nasdaq-100 Index trades avoids confusion for investors and the public.

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<sup>34</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

<sup>35</sup> See ISE Options 4A, Section 12(c)(1).



The Exchange's proposal to amend Options 4A, Section 12(a)(2)(F) to rename the "PHLX/KBW Bank Index" to "KBW Bank Index" to reflect the current name of the Index is a non-substantive amendment.

The Exchange's proposal to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the sentence to make clear that the list which follows represents indexes on which options may be listed is consistent with the Act. The current language does not distinguish between a.m.-settled and p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes<sup>36</sup> and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.<sup>37</sup> The European-style p.m.-settled options, which are all currently listed on Phlx, are listed within Options 4A, Section 12(f). The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive.

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<sup>36</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>37</sup> See <https://www.nasdaq.com/solutions/phlx-sector-based-index-options>.

The Exchange's proposal to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d), with a minor change,<sup>38</sup> and amend Options 4A, Section 12(e)(II) are consistent with the Act as these amendments are non-substantive and clarifying in nature.

Removing the word "Options" within the list of indexes at Options 4A, Section 12(e)(II) and adding the sector indexes, which were inadvertently not listed, as well as the recently approved Nasdaq-100® Volatility Index is consistent with the Act and non-substantive in nature. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.<sup>39</sup>

The proposal to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options<sup>40</sup> is consistent with the Act and will bring greater clarity to the rule by describing the p.m.-settled products. This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today. As noted above, the Nasdaq 100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Phlx Options 4A, Section 12(b)(5). These are both pilot

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<sup>38</sup> The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

<sup>39</sup> See Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>40</sup> See NOM Options 4A, Section 12(a)(6) which contains an identical paragraph describing p.m.-settled index options.

programs. These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

### Disclaimers

The Exchange's proposal to adopt a proposed rule at Options 4A, Section 14 entitled "Disclaimers"<sup>41</sup> is consistent with the Act. The text is identical rule text within ISE and NOM at Options 4A, Section 14. The disclaimer provisions are applicable to the reporting authorities identified in Supplementary Material .02 to Options 4A, Section 2. Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC added a disclaimer to its rules in 2018.<sup>42</sup> The 2018 rule filing provided the following justification for the rule change, "The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or

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<sup>41</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR-ISE-2003-05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

<sup>42</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR-PEARL-2018-02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

disseminating such index.” The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

#### Technical Amendments

The Exchange’s proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B-7, C-2, and E-11 will bring greater clarity to these rules.

#### 4. Self-Regulatory Organization’s Statement on Burden on Competition

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

#### Hours of Business

The Exchange’s proposal to amend Options 3, Section 1 to make clear the hours within which various products listed on Phlx currently trade does not impose an undue burden on competition. The addition of citations, and hours for p.m.-settled products, Nasdaq-100 Volatility Index Options and sector indexes will make clear when those products trade. The hours apply uniformly to all members and member organizations.

#### Index Options Values for Settlement

The Exchange’s proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule “Index Options Values for Settlement” does not impose an undue burden on competition. Proposed Options 4A, Section 4 would specify

the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so that it may locate all the relevant rule text within the same rule.

The proposal to add new rule text within Options 4A, Section 4(c)(1) is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange's current practice.<sup>43</sup> The proposed rule text will clarify the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Also, by designating the Reporting Authority within Supplementary Material .02 to Options 4A, Section 2 the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

#### Options 4A, Section 12

The Exchange's proposed amendments to Options 4A, Section 12 do not impose an undue burden on competition. The addition of the Nasdaq-100 Index to the list of strike price intervals of no less than \$2.50 if the strike price is less than \$200 will make clear the manner in which the Nasdaq-100 Index trades today. The Nasdaq-100 Index is

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<sup>43</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

currently permitted to trade in strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 on ISE, GEMX and MRX.<sup>44</sup>

Rewording Options 4A, Section 12(a)(5), related to European-style options, will make clear which indexes are a.m.-settled and those that are p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes<sup>45</sup> and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. Including the sector indexes will also bring greater clarity to the rules and identify those indexes as a.m.-settled. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity.

#### Disclaimers

The Exchange's proposal to amend Options 4A, Section 14 to adopt a rule text, identical to ISE and NOM,<sup>46</sup> at Options 4A, Section 14, entitled "Disclaimers" does not impose an undue burden on competition. The disclaimer applies to all index products traded on Phlx.

#### Technical Amendments

The Exchange's proposal to make technical amendments within Options 2,

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<sup>44</sup> See ISE Options 4A, Section 12(c)(1).

<sup>45</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Phlx Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>46</sup> See ISE and NOM Options 4A, Section 14.

Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B-7, C-2, and E-11 will bring greater clarity to these rules.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>47</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>48</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its 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 believes that this proposal does not significantly affect the protection of investors or the public interest nor does it impose any significant burden on competition. The Exchange's proposal to amend Options 3, Section 1 provides transparency as to the hours within which various products listed on Phlx currently trade and is applicable to all members and member organizations. The

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<sup>47</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>48</sup> 17 CFR 240.19b-4(f)(6).

Exchange's proposal to relocate certain rule text within proposed new Options 4A, Section 4 and adopt a rule, identical to Cboe,<sup>49</sup> within proposed Options 4A, Section 4 will make clear the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The adoption of proposed Options 4A, Section 4(c)(1) would clarify that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. Those reporting authorities are proposed to be specified within proposed new Supplementary Material .02 to Options 4A, Section 2 thereby making them more transparent. Clarifying which products are a.m.-settled and which products are p.m.-settled will bring greater transparency to the rules. Adding new paragraph (f) within Options 4A, Section 12 to describe the p.m.-settled index options will bring greater clarity to the Exchange's rules and provide some context regarding the trading of p.m.-settled options as compared to a.m.-settled options which both trade today on Phlx. The Exchange's proposal to amend Options 4A, Section 14 to adopt a rule text identical to ISE and NOM,<sup>50</sup> at Options 4A, Section 14, entitled "Disclaimers" should encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby

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<sup>49</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

<sup>50</sup> See ISE and NOM Options 4A, Section 14.



providing investors with new investment opportunities. Finally, the technical amendments will bring greater clarity to the Exchange's rules.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>51</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may immediately amend its hours of business to reflect the hours within which various products currently trade on Phlx. Also, the Exchange proposes to immediately relocate rules within Options 4A to provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply, and adopt Options 4A,

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<sup>51</sup> 17 CFR 240.19b-4(f)(6)(iii).

Section 4(c)(1), identical to Cboe,<sup>52</sup> which would clarify that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. Specifying the reporting authorities within proposed new Supplementary Material .02 to Options 4A, Section 2 would add transparency to the Exchange's rules. Amending Options 4A, Section 12 will also bring greater clarity to the indexes on which options may trade today on Phlx and the distinctions as between a.m.-settled and p.m.-settled products which will benefit members and member organizations trading options on these indexes. Proposed Options 4A, Section 12(f) is identical to NOM Options 4A, Section 12(a)(6). The Exchange's proposal to amend Options 4A, Section 14 to adopt a rule text, identical to ISE and NOM,<sup>53</sup> at Options 4A, Section 14, entitled "Disclaimers" should encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities. The technical amendments will bring greater clarity to the Exchange's rules.

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

Proposed Options 4A, Section 4(c)(1) is identical to Cboe Rule 4.13 at .09 of Interpretations and Policies. Proposed Options 4A, Section 12(f) is identical to

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<sup>52</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

<sup>53</sup> See ISE and NOM Options 4A, Section 14.

NOM Options 4A, Section 12(a)(6). Also, proposed Options 4A, Section 14 is identical to ISE and NOM Options 4A, Section 14.

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. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2021-76)

December \_\_, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 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 amend Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

The Exchange proposes to amend Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8. Each change is described below.

Hours of Business

The Exchange proposes to state within new Options 3, Section 1(a), "General 3, Rule 1030 governs the days the Exchange will be open for business. This rule will govern the hours of such days during which transactions may be made on the Exchange."

Phlx recently filed to establish General 3, Section 1030.<sup>3</sup> This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, Options 3, Section 1 will describe Phlx's trading hours by product.

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b). The Exchange modified the rule text to state, "Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day." The modified rule text provides citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes.

Next, the Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c). The Exchange modified the rule text to state, "Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business

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<sup>3</sup> See Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR-Phlx-2021-69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

day.” The modified rule text amends “shall freely trade” to “may be traded” and adds new rule text to account for p.m.-settled products<sup>4</sup> and the recently approved Nasdaq-100 Volatility Index Options.<sup>5</sup> The new rule text provides, “except that on the last trading day, transactions in expiring p.m.-settled broad-based index options and the Nasdaq-100 Volatility Index Options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).” The hours noted within proposed Options 3, Section 1(c) reflect the current hours for p.m.-settled products and the hours for Nasdaq-100 Volatility Index Options, as noted within the approval order for that product.<sup>6</sup>

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d). The Exchange modified the rule text to state, “Except under unusual conditions as may be determined by the Board (or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted at such times as the Board of Directors shall specify between 6:00 P.M. Eastern Time Sundays and 3:00. P.M. Eastern Time Fridays, provided that U.S. dollar-settled foreign currency options shall trade

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<sup>4</sup> Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. See Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

<sup>5</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-PHLX-2020-41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

<sup>6</sup> See note 5 above.

during the same hours as narrow-based index options.” The modified rule text removes the phrase, “The Board of Directors has resolved that” as this rule text is unnecessary. Of note, today, foreign currencies trade from 9:30 a.m. to 4:00 p.m. the same as narrow-based indexes.

Proposed new Options 3, Section 1(e) memorializes the current hours for sector indexes that are currently listed on Phlx. The Exchange proposes to provide, “Options on a sector index as provided for within Options 4A, Section 12 may be traded on the Exchange until 4:00 p.m. each business day.” This rule text will account for sector indexes, which are not currently mentioned within Options 3, Section 1. Adding sector index hours to Options 3, Section 1 will provide additional transparency to the rule.

The Exchange proposes to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within “Except as otherwise ordered by the Board of Directors.” Any future amendments to this rule would be filed with the Commission, therefore, this phrase is being removed. Because the first two sentences of current Options 3, Section 1(a) relate to the Trading Floor, the Exchange proposes to relocate this rule text within the Options 8 Rules related to the Trading Floor. The relocated rule text would be placed within new Options 8, Section 9(a). The Exchange also proposes to re-letter current Options 8, Section 9 paragraph “(a)” as “(b).” Finally, the Exchange proposes to amend the title of Options 8, Section 9 to “Trading Floor Hours of Business and Admittance” which is a more descriptive title.



The remainder of the rule text within current Options 3, Section 1(a) is being deleted as unnecessary.<sup>7</sup> Current Options 3, Section 1(b) would become Supplementary Material .01 to Options 3, Section 1, with a header added to conform to the Rulebook style. The Exchange believes that these proposed amendments will bring greater clarity to the Exchange's Rules.

#### Index Options Values for Settlement

The Exchange proposes to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule "Index Options Values for Settlement." Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so all related rule text are within the same rule.

Proposed Options 4A, Section 4(a) rule text is being relocated from current rule text within Options 4A, Section 12(d). The rule text provides that where Exchange index options rules do not apply, Phlx index options would settle based on the current index value used to settle the exercise of an index options contract, which would be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of The Options Clearing Corporation ("OCC") or, if such day is not a business day, for the most recent business day. The rule text is being relocated without change.

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<sup>7</sup> The phrase in the fourth sentence, "The Board of Directors has resolved that no option series shall freely trade after 4:00 P.M. Eastern Time" is being removed as unnecessary as the Exchange is specifying the hours each product may trade in the new rule.

Proposed Options 4A, Section 4(b) rule text is being relocated from current rule text within Options 4A, Section 12(g). The Exchange proposes to add the title “Pricing When Primary Market Does Not Open” to proposed Options 4A, Section 4(b). The rule text provides for the current index value in the instance the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day. In this case, the settlement price at expiration shall be the last reported sale price of the security from the previous trading day, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of OCC. The rule text is being relocated without change.

Proposed Options 4A, Section 4(c) rule text is being relocated from current rule text within Supplementary Material .01 of Options 4A, Section 2. The Exchange is proposing to add the title “Discretion” to proposed Options 4A, Section 4(c). The rule text provides that for any series of index options the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration. The rule text is being relocated without change.

The Exchange proposes to add new rule text within Options 4A, Section 4(c)(1) which states,

With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

This rule text is identical to the rule text within Cboe Exchange, Inc. (“Cboe”) Rule 4.13

at .09 of Interpretations and Policies and follows the Exchange's current practice.<sup>8</sup> The purpose of the proposed rule change is to clarify that the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's "primary market" such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration the Exchange proposes to adopt the same rule text as Cboe.<sup>9</sup> In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that Options 4A, Section 4 will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting

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<sup>8</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

<sup>9</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.

Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.<sup>10</sup> The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.<sup>11</sup> The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

#### Reporting Authority

The Exchange proposes to amend Options 4A, Section 2 to adopt a new Supplementary Material .02 which provides, "The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below." The Exchange proposes to add the following chart to the rule text:

<b>Underlying Index</b>	<b>Reporting Authority</b>
Full Value Nasdaq 100 Index	The Nasdaq Stock Market
Reduced Value Nasdaq 100 Index	The Nasdaq Stock Market
Nasdaq-100 Micro Index	The Nasdaq Stock Market
PHLX Oil Service Sector Index	The Nasdaq Stock Market
PHLX Semiconductor Sector Index	The Nasdaq Stock Market
PHLX Utility Sector Index	The Nasdaq Stock Market
PHLX Gold/Silver Sector Index	The Nasdaq Stock Market

<sup>10</sup> See Options 4A, Section 2(a)(16).

<sup>11</sup> See Options 4A, Section 2(a)(7).

PHLX Housing Sector Index  
KBW Bank Index  
Nasdaq-100® Volatility Index

The Nasdaq Stock Market  
Keefe, Bruyette & Woods, Inc.  
The Nasdaq Stock Market

The Exchange believes that the addition of the Reporting Authority for each index will add clarity to the rule. The proposed reporting authorities represent the current reporting authorities for each index without change. As noted above, a Reporting Authority represents the official source for calculating and determining the current value. The Exchange determines the Reporting Authority for each index listed on the Exchange.

#### Options 4A, Section 12

Generally, pursuant to Options 4A, Section 12(a)(2), index options listed on the Exchange are subject to strike price intervals of no less than \$5, provided that certain classes of index options have strike price intervals of no less than \$2.50 if the strike price is less than \$200. Today, those classes of strike price intervals that have strike price intervals of no less than \$2.50 if the strike price is less than \$200 are listed within Options 4A, Section 12(a)(2). The Exchange proposes to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 in 2021.<sup>12</sup> The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the

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<sup>12</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Order Approving a Proposed Rule Change,

Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 if the strike price is less than \$200 on Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”).<sup>13</sup> This amendment reflects current Exchange practice.

The Exchange also proposes to amend Options 4A, Section 12(a)(2)(F) to rename the “PHLX/KBW Bank Index” to “KBW Bank Index” to reflect the current name of the Index.

The Exchange proposes to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed. The Exchange is also adding a reference to the p.m.-settled indexes<sup>14</sup> which are proposed to be listed within proposed paragraph (f), described below, and relocating the Nasdaq-100 Micro Index Options, a p.m.-settled product, to new paragraph (f). The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and, today, have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility

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as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

<sup>13</sup> See ISE Options 4A, Section 12(c)(1). GEMX and MRX Options 4A is incorporated by reference to ISE Options 4A.

<sup>14</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.<sup>15</sup> All of the indexes listed within Options 4A, Section 12(a)(5) are European-style a.m.-settled options that are currently available on Phlx. The European-style p.m.-settled options, which are all currently listed on Phlx, are proposed to be listed within Options 4A, Section 12(f). Nasdaq 100 Micro Index Options is being relocated to proposed Options 4A, Section 12(f) because it is a p.m.-settled product. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the manner in which these products trade.

The Exchange proposes to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d) with a minor change.<sup>16</sup> The Exchange proposes to remove the phrase “A.M.-settled” as this rule text for index levels applies to P.M.-settled as well. Options 4A, Section 12(g) was relocated to proposed Options 4A, Section 4(b). This amendment is non-substantive because it merely is clarifying in nature.

The Exchange proposes to add the phrase “on the following indexes” to the end of Options 4A, Section 12(e)(II) for clarity. The Exchange also proposes to remove the word “Options” within the list of indexes at Options 4A, Section 12(e)(II) and add the following indexes which were inadvertently not on the list: PHLX Utility Sector Index and PHLX Gold/Silver Sector Index as well as the recently approved Nasdaq-100® Volatility Index. These sector indexes are a.m.-

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<sup>15</sup> See <https://www.nasdaq.com/solutions/phlx-sector-based-index-options>.

<sup>16</sup> The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

settled products. The only indexes that are p.m.-settled are part of a pilot program.<sup>17</sup>

The Exchange proposes to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options.<sup>18</sup> This new paragraph would provide:

P.M. - Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on Phlx:

This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today.<sup>19</sup> As

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<sup>17</sup> See Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

<sup>18</sup> The Nasdaq Options Market LLC (“NOM”) Rules at Options 4A, Section 12(a)(6) contain a paragraph describing p.m.-settled index options. See Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order); and 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).

<sup>19</sup> NOM Options 4A, Section 12(a)(6) contains an identical paragraph describing p.m.-settled index options listed on that market. See Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order); and 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).



noted above, the Nasdaq 100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Options 4A, Section 12(b)(5). These are both pilot programs. Finally, dashes are added in a few places to conform the name of the “Nasdaq-100 Index.” These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

#### Disclaimers

The Exchange proposes to adopt a proposed rule at Options 4A, Section 14 entitled “Disclaimers.”<sup>20</sup> The rule text is identical to rule text within ISE and NOM at Options 4A, Section 14. Currently, Options 4A, Section 14 is reserved. The disclaimer provisions are applicable to the reporting authorities identified in proposed Supplementary Material .02 to Options 4A, Section 2. The proposed rule text would provide that no Reporting Authority or affiliate of a Reporting Authority (each such Reporting Authority, its affiliates, and any other entity identified in the rule referred to collectively as a “Reporting Authority”) makes any warranty express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intra-day or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. Further, the rule text provides that the Reporting Authority shall obtain information to be used in the calculation of the index from sources it believes to

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<sup>20</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR-ISE-2003-05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, including any opening, intra-day or closing value therefore, or any date included therein or related thereto. Also, the Reporting Authority disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. Finally, the Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC (“MIAX Pearl”) added a disclaimer to its rules in 2018.<sup>21</sup> The MIAX Pearl 2018 rule filing provided the following justification for the rule change, “The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether

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<sup>21</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR-PEARL-2018-02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.”

The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

#### Technical Amendments

The Exchange proposes to remove the stray word “Rule” before Options 2, Section 12(a) with the description of the term “Lead Market Maker” within Options 7, Section 1. Also, the Exchange proposes to update the citation with the description of “Professional” within Options 7, Section 1 from “Exchange Rule 1000(b)(43)” to “Options 1, Section 1(b)(45).”<sup>22</sup>

The Exchange proposes to amend Options 7, Section 8, Membership Fees at Part A, Permit and Registration Fees. Specifically, the Exchange proposes to remove rule text regarding a waiver of the Inactive Nominee Fee which was in place from April 1, 2021

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<sup>22</sup> Exchange Rule 1000(b)(43) was relocated in a prior rule change. See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

through September 30, 2021.<sup>23</sup> This rule text is now obsolete and removing the rule text will avoid confusion as to the effectiveness of the waiver.

The Exchange proposes to amend Options 7, Section 9, D, to add the phrase “General 5” before Rule 9216 to provide the complete citation. Also, the Exchange proposes to remove the stray word “Rule” from Options 7, Section 9, D.

The Exchange proposes a technical amendment within Options 8, Section 24, “Bids And Offer-Premium” to re-letter the current paragraphs. As a result of the changes to this section, the Exchange proposes to update citations to Options 8, Section 24 within E-11, “Two-Way, Three Way and Multi-Spread Transactions (FOREIGN CURRENCY OPTION ONLY)”.

The Exchange proposes technical amendments to Options 8, Section 28, “Responsibilities of Floor Brokers,” to update a citation to Rule 1084 to Options 5, Section 2. Similar updates are proposed to B-7, “Options Floor Based Management System,” and C-2, “Options Floor Based Management System”.

The Exchange proposes technical amendments to Options 8, Section 29, “Use of Floor Based Management System by Floor Market Makers and Lead Market Makers,” to update two citations. The first citation is to Supplementary Material .08 to Options 10, Section 6, the rule citation should be to Supplementary Material .01 to Options 10, Section 5.<sup>24</sup> The second citation is to Rule 1080, the rule citation should be to Options 3,

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<sup>23</sup> See Securities Exchange Act Release No. 91481 (April 6, 2021), 86 FR 19064 (April 12, 2021) (SR-Phlx-2021-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx’s Pricing Schedule at Options 7, Section 8, “Membership Fees”).

<sup>24</sup> The Exchange relocated rule text from Supplementary Material .08 to Options 10, Section 6 to Supplementary Material .01 to Options 10, Section 5. See Securities Exchange Act Release No. 92986 (September 15, 2021), 86 FR 52536 (September

## Section 10.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>26</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Hours of Business

The Exchange's proposal to amend Options 3, Section 1 is consistent with the Act as the proposed amendment will make clear the hours within which various products listed on Phlx currently trade. Phlx recently filed to establish General 3, Section 1030.<sup>27</sup> General 3, Section 1030 governs the days the Exchange will be open for business. Amended Options 3, Section 1 will describe the hours of trading. Further, the proposed text clearly addresses the hours for the products listed on Phlx in a transparent manner for members and member organizations to reference.

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21, 2021) (SR-Phlx-2021-52) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Phlx Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing Rules).

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> See Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR-Phlx-2021-69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b) and modify the rule text to provide citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes is consistent with the Act as the modifications add clarity to existing rule text.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c) and modify the rule text from "shall freely trade" to "may be traded" is consistent with the Act as that change is non-substantive. The addition of hours for p.m.-settled products<sup>28</sup> and the recently approved Nasdaq-100 Volatility Index Options,<sup>29</sup> does not represent a change from the current hours, rather the Exchange is noting these hours within this rule for ease of reference.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d) and modify the rule text to remove rule text that is unnecessary is a non-substantive change.

The addition of proposed new Options 3, Section 1(e) is consistent with the Act as the rule text memorializes the current hours for sector indexes that are currently listed on

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<sup>28</sup> Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. See Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

<sup>29</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-PHLX-2020-41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

Phlx. This text is consistent with the Act as the rule text will specifically account for sector indexes for ease of reference, thereby providing additional transparency to the rule.

The Exchange's proposal to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within "Except as otherwise ordered by the Board of Directors" is consistent with the Act as this text applies to the Trading Floor. The Exchange's proposal removes the current discretion permitted by the Board of Directors, thereby adding certainty to the rule text. Any changes to the rule text would be filed with the Commission. Amending the title of Options 8, Section 9 to "Trading Floor Hours of Business and Admittance" is a non-substantive change.

Clearly specifying the hours that each Phlx product trades within Options 3, Section 1 promotes just and equitable principles of trade by removing any confusion for members as to when the products are available.

#### Index Options Values for Settlement

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule "Index Options Values for Settlement" is consistent with the Act. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change, so all related rule text are within the same rule.

The relocation of certain rule text within Options 4A, without change, is non-substantive. The proposal to add rule text within Phlx's Options 4A, Section 4(c)(1),

which is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies,<sup>30</sup> that follows the Exchange's current practice is consistent with the Act because the proposed rule text will clarify the Reporting Authority for a securities index on which options are traded. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. Today, certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's "primary market" such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration the Exchange proposes to adopt rule text identical to Cboe.<sup>31</sup> In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the

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<sup>30</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

<sup>31</sup> See Cboe Rule 4.13 at .09 of Interpretations and Policies.



Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.<sup>32</sup> The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.<sup>33</sup> The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

#### Options 4A, Section 12

Today, those classes of strike price intervals that have strike price intervals of no less than \$2.50 if the strike price is less than \$200 are listed within Options 4A, Section 12(a)(2). The Exchange's proposal to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 is consistent with the Act. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200

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<sup>32</sup> See Options 4A, Section 2(a)(16).

<sup>33</sup> See Options 4A, Section 2(a)(7).

in 2021.<sup>34</sup> The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 on ISE, GEMX and MRX.<sup>35</sup> Aligning the strike prices to the manner in which the Nasdaq-100 Index trades avoids confusion for investors and the public.

The Exchange's proposal to amend Options 4A, Section 12(a)(2)(F) to rename the "PHLX/KBW Bank Index" to "KBW Bank Index" to reflect the current name of the Index is a non-substantive amendment.

The Exchange's proposal to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the sentence to make clear that the list which follows represents indexes on which options may be listed is consistent with the Act. The current language does not distinguish between a.m.-settled and p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes<sup>36</sup> and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. The Exchange also proposes to list the following indexes within Options

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<sup>34</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

<sup>35</sup> See ISE Options 4A, Section 12(c)(1).

<sup>36</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

4A, Section 12(a)(5) which were inadvertently not listed in the rule today and have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.<sup>37</sup> The European-style p.m.-settled options, which are all currently listed on Phlx, are listed within Options 4A, Section 12(f). The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive.

The Exchange's proposal to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d), with a minor change,<sup>38</sup> and amend Options 4A, Section 12(e)(II) are consistent with the Act as these amendments are non-substantive and clarifying in nature.

Removing the word "Options" within the list of indexes at Options 4A, Section 12(e)(II) and adding the sector indexes, which were inadvertently not listed, as well as the recently approved Nasdaq-100® Volatility Index is consistent with the Act and non-substantive in nature. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.<sup>39</sup>

The proposal to add a new paragraph (f) within Options 4A, Section 12

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<sup>37</sup> See <https://www.nasdaq.com/solutions/phlx-sector-based-index-options>.

<sup>38</sup> The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

<sup>39</sup> See Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

which describes the p.m.-settled index options<sup>40</sup> is consistent with the Act and will bring greater clarity to the rule by describing the p.m.-settled products. This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today. As noted above, the Nasdaq 100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Phlx Options 4A, Section 12(b)(5). These are both pilot programs. These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

#### Disclaimers

The Exchange's proposal to adopt a proposed rule at Options 4A, Section 14 entitled "Disclaimers"<sup>41</sup> is consistent with the Act. The text is identical rule text within ISE and NOM at Options 4A, Section 14. The disclaimer provisions are applicable to the reporting authorities identified in Supplementary Material .02 to Options 4A, Section 2. Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX

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<sup>40</sup> See NOM Options 4A, Section 12(a)(6) which contains an identical paragraph describing p.m.-settled index options.

<sup>41</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR-ISE-2003-05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

Pearl LLC added a disclaimer to its rules in 2018.<sup>42</sup> The 2018 rule filing provided the following justification for the rule change, “The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.” The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

#### Technical Amendments

The Exchange’s proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B-7, C-2, and E-11 will bring greater clarity to these rules.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the

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<sup>42</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR-PEARL-2018-02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

Act.

#### Hours of Business

The Exchange's proposal to amend Options 3, Section 1 to make clear the hours within which various products listed on Phlx currently trade does not impose an undue burden on competition. The addition of citations, and hours for p.m.-settled products, Nasdaq-100 Volatility Index Options and sector indexes will make clear when those products trade. The hours apply uniformly to all members and member organizations.

#### Index Options Values for Settlement

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule "Index Options Values for Settlement" does not impose an undue burden on competition. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so that it may locate all the relevant rule text within the same rule.

The proposal to add new rule text within Options 4A, Section 4(c)(1) is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange's current practice.<sup>43</sup> The proposed rule text will clarify the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Also, by designating the Reporting Authority within Supplementary Material

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<sup>43</sup> See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

.02 to Options 4A, Section 2 the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

#### Options 4A, Section 12

The Exchange's proposed amendments to Options 4A, Section 12 do not impose an undue burden on competition. The addition of the Nasdaq-100 Index to the list of strike price intervals of no less than \$2.50 if the strike price is less than \$200 will make clear the manner in which the Nasdaq-100 Index trades today. The Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than \$2.50 are generally permitted if the strike price is less than \$200 on ISE, GEMX and MRX.<sup>44</sup>

Rewording Options 4A, Section 12(a)(5), related to European-style options, will make clear which indexes are a.m.-settled and those that are p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes<sup>45</sup> and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. Including the sector indexes will also bring greater clarity to the rules and identify those indexes as a.m.-settled. The proposed amendments merely

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<sup>44</sup> See ISE Options 4A, Section 12(c)(1).

<sup>45</sup> Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Phlx Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity.

#### Disclaimers

The Exchange's proposal to amend Options 4A, Section 14 to adopt a rule text, identical to ISE and NOM,<sup>46</sup> at Options 4A, Section 14, entitled "Disclaimers" does not impose an undue burden on competition. The disclaimer applies to all index products traded on Phlx.

#### Technical Amendments

The Exchange's proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B-7, C-2, and E-11 will bring greater clarity to these rules.

#### 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 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

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<sup>46</sup> See ISE and NOM Options 4A, Section 14.



to Section 19(b)(3)(A)(iii) of the Act<sup>47</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>48</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-76 on the subject line.

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<sup>47</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>48</sup> 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-2021-76. 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-2021-76 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.<sup>49</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>49</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Nasdaq PHLX LLC Rules**

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**Options Rules**

\* \* \* \* \*

**Options 3 Options Trading Rules****Section 1. Hours of Business**

(a) General 3, Rule 1030 governs the days the Exchange will be open for business. This rule will govern the hours of such days during which transactions may be made on the Exchange.

(b) Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.

(c) Options on a broad-based index, as defined in Options 4A, Section 12, Supplementary Material .01, may be traded on the Exchange until 4:15 p.m. each business day, except that on the last trading day, transactions in expiring p.m.-settled broad-based index options and the Nasdaq-100 Volatility Index Options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).

(d) Except under unusual conditions as may be determined by the Board (or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted at such times as the Board of Directors shall specify between 6:00 P.M. Eastern Time Sundays and 3:00. P.M. Eastern Time Fridays, provided that U.S. dollar-settled foreign currency options shall trade during the same hours as narrow-based index options.

(e) Options on a sector index as provided for within Options 4A, Section 12 may be traded on the Exchange until 4:00 p.m. each business day.

[Except as otherwise ordered by the Board of Directors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 A.M. Eastern Time. The Exchange shall conform with daylight savings time when effective in the City of Philadelphia. The Board of Directors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Directors has resolved that no option series shall freely trade after 4:00 P.M. Eastern Time, except that broad-based (market) index options shall freely trade until 4:15 P.M. Eastern Time each business day, as specified in Options 4A, Section 12, Supplementary Material .01. The Board of Directors has resolved that except under unusual conditions as may be determined by the Board (or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted at such times as the Board of Directors shall specify between 6:00 P.M. Eastern Time Sundays and 3:00. P.M. Eastern Time

Fridays, provided that U.S. dollar-settled foreign currency options shall trade during the same hours as narrow-based index options.]

*Supplementary Material .01 to Options 3, Section 1*

[(b)].**01 Options Trading after 4:00 P.M. Eastern Time.** A trading rotation in any class of option contracts may be effected even though employment of the rotation will result in the transaction on the Exchange after 4:00 P.M. Eastern Time provided such rotation is conducted pursuant to Options 3, Section 9 or Options 4A, Section 18. [Options on any series of Exchange-Traded Fund Shares so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities and options on Alpha Indexes may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.] The Exchange may close trading at an early time to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when a related futures contract closes earlier than 4:15 P.M. Eastern Time.

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**Options 4A Options Index Rules**

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**Section 2. Definitions.**

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*Supplementary Material to Options 4A, Section 2*

[.01 For any series of index options the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration.]

.0[2]1 The term "narrow-based index" includes indices the constituents of which are all headquartered within a single country.

.02 The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.

**Underlying Index**

Full Value Nasdaq 100 Index

Reduced Value Nasdaq 100 Index

Nasdaq-100 Micro Index

PHLX Oil Service Sector Index

PHLX Semiconductor Sector Index

PHLX Utility Sector Index

PHLX Gold/Silver Sector Index

PHLX Housing Sector Index

**Reporting Authority**

The Nasdaq Stock Market

The Nasdaq Stock Market

The Nasdaq Stock Market

The Nasdaq Stock Market

The Nasdaq Stock Market

The Nasdaq Stock Market

The Nasdaq Stock Market

The Nasdaq Stock Market

KBW Bank IndexKeefe, Bruyette & Woods, Inc.Nasdaq-100® Volatility IndexThe Nasdaq Stock Market

\* \* \* \* \*

**Section 4. [Reserved]Index Options Values for Settlement**

**(a) Index Values for Settlement.** The Rules of The Options Clearing Corporation specify that, unless the Rules of the Exchange provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of The Options Clearing Corporation or, if such day is not a business day, for the most recent business day.

**(b) Pricing When Primary Market Does Not Open.** When the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for the purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used. This procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation.

**(c) Discretion.** For any series of index options the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration.

(1) With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

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**Section 12. Terms of Index Options Contracts****(a) *General.***

\* \* \* \* \*

**(2) *Exercise Prices.*** The Exchange shall determine fixed point intervals of exercise prices for index options (options on indexes). Generally, except as provided in Supplementary Material .04 below, the exercise (strike) price intervals will be no less than \$5, provided that the Exchange may determine to list strike prices at no less than \$2.50 intervals for options on the following indexes (which may also be known as sector indexes):

(A) PHLX Gold/Silver Index, if the strike price is less than \$200,

\* \* \* \* \*

(F) [PHLX/]KBW Bank Index, if the strike price is less than \$200,

\* \* \* \* \*

(XX) Reduced Value Russell Small Cap Completeness® Growth Index, if the strike price is less than \$200; [and]

(YY) Nasdaq 100 Micro Index Options, if the strike price is less than \$200[.];

(ZZ) Nasdaq-100 Index, if the strike price is less than \$200.

\* \* \* \* \*

(5) "*European-Style Exercise.*" [The following ]European-style index options, some of which may be A.M.-settled as provided in subparagraph (e) or P.M.-settled as provided for in paragraph (f), are approved for trading on the Exchange on the following indexes:

(i) Full-size Nasdaq 100 Index; [and]

(ii) PHLX Oil Service Sector Index;

(iii) PHLX Housing Sector Index;

(iv) PHLX Gold/Silver Sector Index;

(v) PHLX Utility Sector Index;

(vi) KBW Bank Index; and

(vii) Nasdaq-100® Volatility Index.

[(ii) Nasdaq 100 Micro Index Options.]

\* \* \* \* \*

(c) On the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day prior to the expiration date of a particular series of index options, such option shall freely trade until 4:00 P.M., unless the Board of Directors has established different hours of trading for certain index options.

(d) Index Level. The reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities. [Index Values for Settlement. The Rules of The Options Clearing Corporation specify that, unless the Rules of the Exchange provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index value for

the day on which the index options contract is exercised in accordance with the Rules of The Options Clearing Corporation or, if such day is not a business day, for the most recent business day.]

(e) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day preceding the last day of trading in the underlying securities prior to the expiration date. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of The Options Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(I) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Options 4A, Section 12(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation; and

(II) in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security. The following A.M.-settled index options are approved for trading on the Exchange on the following indexes:

- (i) PHLX Semiconductor Sector Index;
- (ii) PHLX Housing Sector Index;
- (iii) PHLX Oil Service Sector Index;
- (iv) KBW Bank Index;
- (v) Full Value Nasdaq-100 Index[Options];
- (vi) Reduced Value Nasdaq-100 Index[Options]; [and]
- (vii) Nasdaq 100 Micro Index [Options.];
- (viii) PHLX Utility Sector Index;
- (ix) PHLX Gold/Silver Sector Index; and
- (x) Nasdaq-100® Volatility Index.



(f) P.M. - Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on Phlx:

(i) Nasdaq 100 Micro Index Options (“XND”).

[(f) Index Level. The reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities.

(g) Pricing When Primary Market Does Not Open. When the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for the purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used. This procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation.]

\* \* \* \* \*

#### **Section 14.[Reserved]Disclaimers**

(a) Applicability of Disclaimers. The disclaimers in paragraph (b) below shall apply to the reporting authorities identified in Supplementary Material .02 to Options 4A, Section 2.

(b) Disclaimer. No reporting authority, and no affiliate of a reporting authority (each such reporting authority, its affiliates, and any other entity identified in this Rule are referred to collectively as a "Reporting Authority"), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intra-day or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. The Reporting Authority shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefore, or any data included therein or related thereto. The Reporting Authority hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. The Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or

closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

\* \* \* \* \*

## Options 7 Pricing Schedule

### Section 1 General Provisions

\* \* \* \* \*

The term “**Lead Market Maker**” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to [Rule] Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11.

\* \* \* \* \*

The term “**Professional**” applies to transactions for the accounts of Professionals, as defined in [Exchange Rule 1000(b)(43)]Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

\* \* \* \* \*

## Section 8. Membership Fees

### A. Permit and Registration Fees

\* \* \* \* \*

[Phlx waives the Inactive Nominee Fee from April 1, 2021 through September 30, 2021.]

Inactive Nominee Fee	\$600 for 6 months
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\* \* \* \* \*

### Section 9. Other Member Fees

\* \* \* \* \*

#### D. Appeal Fees

Review/Process Subordinated Loans	\$25
Forum Fee Pursuant to <u>General 5, Rule 9216</u>	\$100
Review Fee Pursuant to Options 8, Section 35	\$250
Obvious Error and Catastrophic Error Fee Pursuant to [Rule ]Options 3, Section 20(I)	\$500

\* \* \* \* \*

**Options 8 Floor Trading**

\* \* \* \* \*

**Section 2. Definitions**

(a) The following terms as used in the Rules shall, unless the context otherwise indicates, have the meanings herein specified:

\* \* \* \* \*

(10) **Remote FBMS Transaction.** The term “Remote FBMS Transaction” is a transaction effected by a Floor Broker, while not physically present on the Trading Floor, by submitting limit, market or stop orders pursuant to Options 8, Section 28(g) and Floor Qualified Contingent Cross Orders pursuant to Options 8, Section 30(e) to the electronic order book, through FBMS.[.] In order to conduct [r]Remote FBMS [t]Transactions, unless exempt from such requirements in accordance with Supplementary Material .0[8]1 to Options 10, Section [6]5 or Phlx General 4, Rule 1230, Floor Brokers are subject to the following regulatory requirements: (1) compliance with branch office requirements as described in Supplementary Material .0[8]1 to Options 10, Section [6]5, as well as supervision of such branch office as described in Phlx General 9, Section 20; and (2) compliance with applicable registration requirements described in Phlx General 4. All uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor.

\* \* \* \* \*

**Section 9. Trading Floor Hours of Business and Admittance**

(a) The Exchange’s Trading Floor shall be open for the entrance of members upon every business day, at 8:00 A.M. Eastern Time. The Exchange shall conform with daylight savings time when effective in the City of Philadelphia.

([a]b) No employee of a member or member organization shall be admitted to the trading floor unless that person is registered with and approved by the Exchange, which may in its discretion require the payment of a fee with respect to each employee so approved, and may at any time in its discretion withdraw any approval so given. Notwithstanding the foregoing, Options 8, Section 39, Options Regulation 5 describes the procedures for non-member visitors.

\* \* \* \* \*

**Section 24. Bids And Offers-Premium**

\* \* \* \* \*

(e) *Spread Priority.* When a member holding a multi-leg order, as defined in Options 8, Section 32 and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a multi-leg order at the total

credit or debit with one other member with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising such total credit or debit, provided that at least one option leg is executed at a better price than established bid or offer for that option contract AND no option leg is executed at a price outside of the established bid or offer for that option contract.

([e]f) *Synthetic Option Orders*. When a member holding a synthetic option order, as defined in Options 8, Section 32, and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a synthetic option order at the total credit or debit with one other member, provided that the option leg is executed at a better price than the established bid or offer for that option contract, in accordance with Options 8, Section 25. Synthetic option orders in open outcry, in which the option component is for a size of 100 contracts or more, have priority over bids (offers) of crowd participants who are bidding (offering) only for the option component of the synthetic option order, but not over bids (offers) of Public Customers on the limit order book, and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price.

([f]g) *Three-Way Spread Type Priority*. When a member holding a three-way order for foreign currency options determines that the order will be best served by bidding or offering on the basis of a total net credit or debit, the member may, after seeking bids and offers for the three-way order, seek to execute the order at a total credit or debit with one other member provided that at least one of the individual legs to the order is effected at a price better than the established bid or offer for that option contract and that no option leg is executed at a price outside of the established bid or offer for that option contract. For purposes of this Rule, three-way orders include spread, straddle and combination orders of three individual series in the same foreign currency options where (i) the order size for each of the three individual series are equal to each other, or (ii) the combined order size of any two series on the same side of the market is either equal to the order size of the third series by a or differs from the order size of the third series by a permissible ratio. For purposes of this paragraph, a permissible ratio is any one of the following: one-to-one, one-to-two, one-to-three and two-to-three.

([g]h) *Ratio Spread Type Priority*. A spread order may consist of different numbers of contracts so long as the number of contracts differ by a permissible ratio (a "Ratio Spread"). Similarly, the legs to a straddle or combination order may consist of different numbers of puts and calls so long as the number of contracts differ by a permissible ratio. For the purposes of this paragraph, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

([h]i) *Multi-Spread Priority*. When a member holding two spread type orders (spreads, straddles or combinations, as defined in Options 8, Section 32) for the same account determines that the orders will be best served by bidding or offering on the basis of a total net credit or debit, the member may, after seeking bids and offers for the total of the two spread type orders, seek to

execute both orders as a single transaction at a total net credit or debit with one other member, provided that at least one of the individual legs of each individual spread is executed at a better price than the established bid or offer for that option contract and that no option leg is executed at a price outside of the established bid or offer for that option contract.

([i]i) *Spread Type Priority*. Through FBMS, Spread Type Orders consisting of a conforming ratio may be executed at a total credit or debit price with priority over individual bids or offers established in the marketplace (including Public Customers) that are not better than the bids or offers comprising such total credit or debit, provided that at least one option leg is executed at a better price than the established bid or offer for that option contract and no option leg is executed at a price outside of the established bid or offer for that option contract.

\* \* \* \* \*

## **Section 28. Responsibilities of Floor Brokers**

\* \* \* \* \*

(e)(1) *Options Floor Based Management System*. In order to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Based Management System ("FBMS") (as described in Options 3, Section 7(a)(i)(C)). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) the order type (i.e., Public Customer, firm, broker-dealer, Professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Option 8, Section 32; (v) number of contracts; (vi) limit price or market order or, in the case of a multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information"). A Floor Broker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered on behalf of Exchange Registered Option Traders. Any additional information with respect to the order shall be inputted into the Options Floor Based Management System contemporaneously upon receipt, which may occur after the representation and execution of the order. In the event of a malfunction in the Options Floor Based Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets also shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall ensure the required information that is recorded on such trade tickets is entered into the Exchange's electronic trading system by DETs for inclusion in the electronic audit trail.

\* \* \* \* \*

(4) Execution. FBMS is designed to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after representation in the trading crowd. When a Floor Broker submits an order for execution through FBMS, the order will be executed based on market conditions at the time of execution and in accordance with Exchange rules. FBMS execution functionality will assist the Floor Broker in clearing the Exchange book, consistent with Exchange priority rules. If the order cannot be executed, the System will attempt to execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced by Options Trader Alert, after which it will be returned to the Floor Broker on the FBMS. The Floor Broker may resubmit the order for execution, as long as the quotes/orders that comprise the cross have not been withdrawn. Floor Brokers are responsible for handling all FBMS orders in accordance with Exchange priority and trade-through rules, including Options 8, Sections 24 and 25 and [1084]Options 5, Section 2.

\* \* \* \* \*

## **Section 29. Use of Floor Based Management System by Floor Market Makers and Lead Market Makers**

(a) *Options Floor Based Management System.* In order to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders negotiated by Floor Market Makers and Lead Market Makers on the Exchange's Options Floor, a Floor Market Maker, a Lead Market Maker, or their respective employees shall, prior to the negotiation of such an order in the trading crowd, record all options orders negotiated by such Floor Market Maker or Lead Market Maker onto the electronic Options Floor Based Management System ("FBMS") (as described in [Rule 1080]Options 3, Section 10(a)(i)(C)). The following specific information with respect to orders negotiated by a Floor Market Maker or Lead Market Maker shall be recorded by such Floor Market Maker, Lead Market Maker, or their respective employees: (i) the order type (i.e., market maker) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle) or contingency order as described in Options 8, Section 32; (v) number of contracts; (vi) limit price or Market Order or, in the case of a multi-leg order, net debit or credit, if applicable; and (vii) whether the transaction is to open or close a position, as applicable (collectively, the "required information"). A Floor Market Maker or Lead Market Maker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered. Any additional information with respect to the order shall be inputted into the Options Floor Based Management System contemporaneously upon receipt, which may occur after the negotiation and execution of the order. In the event of a malfunction in the Options Floor Based Management System, a Floor Market Maker or Lead Market Maker shall record the required information on trade tickets, and shall not negotiate an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets also shall be time stamped upon the execution of such an order. Floor Market Makers, Lead Market Makers, or their employees shall ensure the required information that is recorded on such trade tickets is entered into the Exchange's electronic trading system by DETs for inclusion in the electronic audit trail.

\* \* \* \* \*

**B-7 Options Floor Based Management System**

\* \* \* \* \*

FBMS is designed to execute orders entered by Floor Market Makers, including multi-leg orders up to 15 legs, after negotiation in the trading crowd. When a Floor Market Makers submits an order for execution through FBMS, the order will be executed based on market conditions at the time of execution and in accordance with Exchange rules. FBMS execution functionality will assist the Floor Market Maker in clearing the Exchange book, consistent with Exchange priority rules. If the order cannot be executed, the System will attempt to execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced by Options Trader Alert, after which it will be returned to the Floor Market Maker on the FBMS. The Floor Market Maker may resubmit the order for execution, as long as the quotes that comprise the order have not been withdrawn. Floor Market Makers are responsible for handling all FBMS orders in accordance with Exchange priority and trade-through rules, including Options 3, Section 10 and Option 8, Section 24 and [1084]Options 5, Section 2.

\* \* \* \* \*

**C-2 Options Floor Based Management System**

\* \* \* \* \*

FBMS is also designed to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after representation in the trading crowd. When a Floor Broker submits an order for execution through FBMS, the order will be executed based on market conditions at the time of execution and in accordance with Exchange rules. FBMS execution functionality will assist the Floor Broker in clearing the Exchange book, consistent with Exchange priority rules. If the order cannot be executed, the System will attempt to execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced by Options Trader Alert, after which it will be returned to the Floor Broker on the FBMS. The Floor Broker may resubmit the order for execution, as long as the quotes/orders that comprise the cross have not been withdrawn. Floor Brokers are responsible for handling all FBMS orders in accordance with Exchange priority and trade-through rules, including Options 3, Section 10 and Option 8, Section 24 and [1084]Options 5, Section 2.

\* \* \* \* \*

**E-11 Two-Way, Three Way and Multi-Spread Transactions (FOREIGN CURRENCY OPTION ONLY)**

Execution of spread type orders (spread, straddle and combination orders, as defined in Options 8, Section 32(f) in foreign currency options must be effected in accordance with the provisions of Options 8, Section 24(d), which requires that a foreign currency options participant holding a spread type order must first determine that the order is best served by bidding or offering on the

basis of a total credit or debit before executing the order as a single transaction. Options 8, Section 24(d), also requires the participant to ensure that at least one leg of the order is executed at a better price than the established bid/offer for that option and that no leg is executed at a price outside of the established bid/offer for that option.

Options 8, Section 24([g]h) governing ration spread type orders in foreign currency options permits the size of the respective legs of such orders to be either equal in size or related by a permissible ratio (two-to-one, three-to-one, and three-to-two). In addition, spread type orders may be comprised of two or more legs, as described below:

### **Two-Way Transaction**

(a) A two-way transaction is comprised of two legs, which can be either equal in size or differ by a permissible ratio (two-to-one, three-to-one, and three-to two), forming one spread type. See Options 8, Section 24(d)

### **Three-Way Transaction**

(b) A three-way transaction is comprised of three legs forming one spread type where (1) the order sizes of each of the three legs are equal to each other, or (2) the combined order size of any two legs on the same side of the market is either equal to the order size of the third leg or differs from the order size of the third leg by a permissible ratio (two-to-one, three-to-one, and three-to-two). See Options 8, Section 24([f]g).

### **Multi-Spread Transaction**

(c) A multi-spread transaction, as defined in Options 8, Section 32(e), combines two of the same spread type orders for execution at a total net credit or debit, such as: a two-way order with another two-way order of the same spread type; a three-way order with another three-way order of the same spread type; or a two-way order with a three-way order of the same spread type. In addition, a multi-spread transaction may combine a spread type order with a ratio spread type order of the same spread type. In combining spread type orders to create a multi-spread transaction, each individual spread must meet the execution requirements of Options 8, Section 24([h]i) at least one leg of each spread must be executed at a price better than the established bid/offer for that option and no leg of any spread may be executed at a price outside of the established market for that option.

\* \* \* \* \*