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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88460; File No. SR-Phlx-2020-10]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 4A, Section 12, Terms of Option Contracts

March 23, 2020.

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 March 18, 2020, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 4A, Section 12, Terms of Option Contracts.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, 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

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

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

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 Options 4A, Section 12, Terms of Option Contracts. Specifically, the Exchange proposes to amend Options 4A, Section 12(b) and (b)(2) to change the number of expirations that the Exchange may open for trading in series of options related to Long-Term Options Series of index options. The Exchange also proposes to change the title of Options 4A, Section 12 from "Terms of Option Contracts" to "Terms of Index Options Contracts."

Long-Term Options Series

The current rule text provides within Phlx Options 4A, Section 12(b):

After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and may also open for trading series of options having not less than nine and up to 60 months to expiration (long-term options series) as provided in subparagraph (b)(2). Prior to the opening of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

The Exchange proposes to also amend the current text of Phlx Options 4A, Section 12(b)(2) which states the below with respect to Long-term<sup>3</sup> Option Series:

The Exchange may list, with respect to any class of stock index options, series of options having not less than nine and up to 60 months to expiration, adding up to ten expiration months. Such series of options may be opened for trading simultaneously with series of options trading pursuant to this rule. Strike price interval, bid/ask differential and

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<sup>3</sup> The Exchange proposes to amend this title to capitalize "Term."

continuity rules shall not apply to such options series until the time to expiration is less than nine months.

Similar, in part, to Cboe Exchange, Inc. (“Cboe”) Rule 4.13(b),<sup>4</sup> the Exchange proposes to amend the current rule text to provide “the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and may also open for trading series of options having not less than **twelve** and up to 60 months to expiration (long-term options series) within Options 4A, Section 12(b) and, similarly, within Options 4A, Section 12(b)(2) amend the language to provide, “[t]he Exchange may list, with respect to any class of stock index options, series of options having not less than **twelve** and up to 60 months to expiration...”. This would change Phlx’s current expiration for index options from those series not having less than nine and up to 60 months to expirations to a number of expirations not having less than twelve and up to 60 months to expiration with respect to Long-Term Options Series. The Exchange is aligning its Rules, in part, to match those of Cboe with respect to the lower monthly limit of acceptable months for Long-Term Option Series in index options.

In addition, the Exchange proposes to internally harmonize its Rules with respect to Long-Term Options Series. In 2013, Phlx amended Rule 1101(A), currently Options 4A, Section 12, to make its rule consistent with Cboe’s rule.<sup>5</sup> The 2013 Rule Change amended the

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<sup>4</sup> Cboe Rule 4.13(b) provide for Long-Term Index Option Series, “Notwithstanding the provisions of subparagraph (a)(2) above, the Exchange may list long-term index option series that expire from 12 to 180 months from the date of issuance.”

<sup>5</sup> See Securities Exchange Act Release No. 69031 (March 4, 2013), 78 FR 15073 (March 8, 2013) (SR-Phlx-2013-18) (“2013 Rule Change”). The 2013 Rule Change stated that, “The purpose of the proposed rule change is to amend subsection (b) of Rule 1101A to clarify that long-term options series must have a term of not less than nine months to expiration, and to reflect that certain rules will not apply to such long-term options series until the time to expiration is less than nine months. These changes are proposed to the limited extent needed to make subsection (b) regarding long-term options series consistent with the established rule language of Chicago Board Options Exchange, Inc. (“CBOE”) (e.g. CBOE Rule 24.9 regarding LEAPS), as well as with the established rule

Phlx rule text at then Rule 1101A(b)(iii) from a maximum term of up to 60 months to expiration to an established minimum term of not less than nine months to expiration for long-term options series. The 2013 Rule Change established a floor for long-term options series which was not identical to CBOE Rule 24.9; Cboe's minimum floor was twelve months while Phlx established the floor at nine months. The Exchange noted in that filing that the intent of the 2013 Rule Change was to harmonize the Exchange's rules internally with Phlx Rule 1012,<sup>6</sup> which is currently Phlx Options 4, Section 5, (regarding long-term equity and exchange traded fund options) as well as with the rules of another options exchange, namely CBOE. The 2013 Rule Change stated, "The Exchange believes this would eliminate potential confusion about competitive long term-index options listing opportunities on the Exchange, would allow better hedging and trading opportunities and efficiency, and would be beneficial to the Exchange and its traders, market participants, and public investors in general."<sup>7</sup>

Subsequent to the 2013 Rule Change, Phlx amended then Rule 1012(a)(i)(D)<sup>8</sup> to change the expiration timeframe to twelve to thirty-nine months until expiration stating that this change was consistent with the proposed rule change filings which adopted it.<sup>9</sup> The Rule 1012 Rule

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language of the Exchange (e.g. Rule 1012 regarding long-term equity and exchange traded fund ("ETF") options)."

<sup>6</sup> Phlx Rule 1012(a)(i)(D) contained language that was being harmonized. The Exchange noted that intervals, differentials, and continuity rules are equally not germane to long-term index options as to long-term equity and ETF options. That is, index options are no different from equity and ETF options in respect of the non-applicability of these three items until expiration time is less than nine months, and should, therefore, have similar rules. Phlx Rule 1012 was since relocated to current Options 4A, Section 5.

<sup>7</sup> Id.

<sup>8</sup> See Securities Exchange Act Release No. 80769 (June 1, 2017), 82 FR 25472 (May 25, 2017) (SR-Phlx-2017-41) ("Rule 1012 Rule Change").

<sup>9</sup> See Securities Exchange Act Release Nos. 28910 (February 22, 1991), 56 FR 9032 (March 4, 1991) (SR-Phlx-90-38) (adopting Rule 1012 Commentary .03), and 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (SR-Phlx-91-18). The provision was

Change resulted in current Phlx Options 4, Section 5(a)(i)(D) Long-Term Option Series having an expiration timeframe of twelve to thirty-nine months while the 2013 Rule Change resulted in current Phlx Options 4A, Section 12 having an expiration of nine to 60 months. At this time, the Exchange proposes to harmonize Phlx Options 4, Section 12 to Phlx Option 4, Section 5(a)(i)(D) and also mirror the lower monthly limit within Cboe's Rule 4.13(b).

#### Rulebook Correction

In addition, the Exchange proposes to correct rule text which was not correctly copied into the Phlx Rulebook from a prior rule change.<sup>10</sup> Specifically, the Prior Rule Change adopted a new section (a)(2) which was not properly copied into the Rulebook before it was relocated into the new Rulebook as part of the Phlx Rulebook Relocation Rule Change.<sup>11</sup> The rule text, as adopted, stated, "The Exchange shall determine fixed point intervals of exercise prices for index options (options on indexes). Generally, except as provided in Commentary .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):". At this time, the Exchange proposes to restore the correct rule text into Phlx Options 4A, Section 12(a)(2) and amend the term "Commentary" to reflect the new term "Supplementary Material" as stated within the Phlx Rulebook Relocation Rule Change.

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subsequently relocated to subsection (a)(i)(D) of Rule 1012. See Securities Exchange Act Release No. 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR-Phlx-2011-04).

<sup>10</sup> See Securities Exchange Act Release No. 85210 (February 27, 2019), 84 FR 7958 (March 5, 2019) (SR-Phlx-2019-02) ("Prior Rule Change").

<sup>11</sup> See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) ("Phlx Rulebook Relocation Rule Change").

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending its rules, in part, to align them to Cboe's Rule,<sup>14</sup> as well Phlx Rules at Options 4, Section 12(a)(i)(D) with respect to Long-Term Option Series in index options. Harmonizing Phlx's index options and equity and ETF options rules, with respect to Long-Term Option Series in index options, will allow Phlx to list these options in the same manner. The Exchange notes that this rule change will allow Phlx to list more non-Long-Term Option Series expirations as the front-months for Long-Term Options expirations would begin with month twelve instead of month nine. The Exchange believes that there is greater customer demand for a greater number of non-Long-Term Option Series expirations.

The remainder of the Rulebook changes are intended to restore the proper rule text from a prior rule change<sup>15</sup> into the Rulebook and other non-substantive amendments.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposal will impose any burden on intra-market competition as all market participants will be treated in the same manner with respect to expirations of Long-Term Options Series in index options. Additionally, the Exchange does not believe the proposal

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Cboe Rule 4.13(b).

<sup>15</sup> See note 10 above.

will impose any burden on inter-market competition as market participants are welcome to become Phlx Members and trade at Phlx if they determine that this proposed rule change has made Phlx more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading their own broad-based index options with similar expirations. This proposal will harmonize Phlx's index options and equity and ETF options rules, with respect to Long-Term Option Series in index options.

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 to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>18</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>19</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As the proposed rule change raises no novel issues and allows Phlx, with respect to Long-Term Option Series in index options, to harmonize its index options and equity and ETF options rules, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>20</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 change should be approved or disapproved.

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<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2020-10 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2020-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting

comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2020-10, 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>21</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

