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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Phlx Options Rules at Options 4 Under the Options 4 Title in the Exchanges Rulebooks Shell Structure

April 6, 2021.

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 24, 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 the Phlx Options Rules (“Phlx Options”) at Options 4 (Options Listing Rules) under the Options 4 title in the Exchange’s rulebook’s (“Rulebook”) shell structure.<sup>3</sup> This proposal also creates a new Options 4C entitled “U.S. Dollar-Settled Foreign Currency Options.”

The proposal also amends the rules as relocated to conform primarily to the equivalent options rules of Nasdaq ISE, LLC, Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC

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

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

<sup>3</sup> In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC (“Nasdaq”); Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (“Affiliated Exchanges”). The shell structure currently contains eight (8) General sections which, once complete, will apply a common set of rules to the Affiliated Exchanges. See Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR-BX-2017-054).

(“MRX”) (collectively “ISE”).<sup>4</sup> The proposal also amends Section 1 of Options 1 of the Options Listing Rules to add several definitions and adds Supplementary Material to Options 8, Section 30.

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 the rule text in Options 4 (Options Listing Rules) under the Options 4 title in the Exchange’s Rulebook’s shell structure. For ease of reference and the purposes of this filing, the relocated rules are herein described as the “Options Listing Rules.”

The amending of the Options Listing Rules is part of the Exchange’s continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges,<sup>5</sup> and its goal of harmonizing and uniformizing its rules.<sup>6</sup>

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<sup>4</sup> The rules of Nasdaq GEMX, LLC and Nasdaq MRX, LLC are incorporated by reference into the rules of Nasdaq ISE, LLC.

<sup>5</sup> Supra note 3.

<sup>6</sup> This proposal is similar to the relocation of options rules at Chapter IV (Securities Traded on NOM) under the Options 4 title in the Nasdaq rulebook. See Securities Exchange Act Release No. 86022 (June 4, 2019), 84 FR 26912 (June 10, 2019) (SR-NASDAQ-2019-047).

This proposed change is of a non-substantive nature. Moreover, the amending of the Options Listing Rules will facilitate the use of the Rulebook by Members<sup>7</sup> of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. These rules will be amended to reflect the equivalent options rules in the ISE rulebook, but the changes are of a non-substantive nature.

The overarching goal is to align Phlx Options rules with those of ISE. The Exchange is proposing to amend the rules for Phlx Options, most notably the rule text in the Options Listing Rules concerning securities traded on Phlx Options, but also adding several definitions to Section 1 of Options 1. The Exchange desires to align Phlx's Rules to those of ISE and then, separately, in another rule change seek to incorporate ISE's rules by reference to Phlx.

The vast majority of the changes are technical changes and made throughout the Options Listing Rules. These minor changes are designed to conform the Phlx Options rules to the equivalent ISE rules, as well as to increase the clarity of the rules. This includes some reorganization and renumbering within the Options Listing Rules' subsections to ensure they remain consistent.

The proposed changes that do not fit within the description above are listed below, beginning with changes to Options 1 General Provisions and followed by global changes to the Options Listing Rules. The changes are then broken down by section within the Options Listing Rules.

Unlike ISE, Phlx has listing rules for U.S. Dollar Settled Foreign Currency Options or "FCOs." Phlx proposes to relocate the listing rules related to U.S. Dollar Settled Foreign Currency Options to new Options 4C in order that it may identically align the remaining rules to ISE's Options 4 Rules.

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<sup>7</sup> As defined by Exchange Rule GENERAL 1 GENERAL PROVISIONS Section 1(16).

### Proposed Changes to Options 1 General Provisions

The Exchange is proposing to add definitions to “Options 1 Section 1. Applicability, Definitions and References”. Specifically, the terms “class” “series” and “underlying security” will be added to Section 1(b) as (9), (51), and (60), respectively.<sup>8</sup> The Exchange is deleting the definitions for “class of options” and “series of options and replacing them with the new definition of “class and “series”. The Exchange believes that using the definitions for these terms as defined in the By-Laws of The Options Clearing Corporation (“OCC”) uniformly across Nasdaq, Inc.’s exchanges will help to align them. Providing uniform, clear and precise definitions for these terms will provide consistency, lessen potential confusion and add clarity for market participants.

### Proposed Changes to the Options Listing Rules

#### Proposed Changes to Section 1 of Options 1. Applicability, Definitions and References

This section will be amended to clarify that the Exchange trades options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month or expiration date, exercise price and type (put or call) and to conform the Phlx Options rules to the equivalent ISE rules.<sup>9</sup> The second sentence of this rule related to foreign currency option contracts is being relocated to new Options 4C, Section 2(a) without amendment.

#### Proposed Changes to Section 2. Rights And Obligations Of Holders And Writers

This section will be amended with a number of minor changes to update the numbering and to increase the clarity of the language and to conform the Phlx Options rules to the equivalent ISE rules.<sup>10</sup>

#### Proposed Changes to Section 3. Criteria for Underlying Securities

Options 4, Section 3 of the Options Listing Rules is being updated by modifying the

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<sup>8</sup> See OCC By-Laws Article I – Definitions C.(11); S.(12); and U.(3), respectively.

<sup>9</sup> See ISE Options Listing Rule Section 1.

<sup>10</sup> See ISE Options Listing Rule Section 2.

existing Rulebook language to reflect the language of the ISE version of the rule.<sup>11</sup> Most of the changes in Section 3 simply result from minor changes and reorganization within the section done to mirror the ISE rule and for greater clarity.

Options 4, Section 3(b) of the Options Listing Rules will also change “Board of Directors” to “the Exchange” as to who may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions.

Current Section 3(c) is being relocated to new Options 4C, Section 3(a) without amendment.

New Options 4, Section 3(c), which address securities of restructured companies, reflects the language of the ISE version of the rule.<sup>12</sup> This section will now define “Restructuring Transaction” as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction, “Restructure Security” as an equity security that a company issues, or anticipates issuing, as the result of a Restructuring Transaction of the company, “Original Equity Security” as a company’s equity security that is issued and outstanding prior to the effective date of a Restructuring Transaction of the company. “Relevant Percentage” will be defined as either: (i) twenty-five percent (25%), when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; or (ii) thirty-three and one-third percent (33-1/3%), when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security. Additionally, proposed Section 3(c) will include the “Share” and “Number of Shareholder” guidelines to mirror the equivalent ISE Options Listing Rule. Also, the current rules related to “Restructure Security” in Supplementary Material .05 to Options 4, Section 3 are being deleted.

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<sup>11</sup> See ISE Options Listing Rule Section 3.

<sup>12</sup> Id.

Proposed Options 4, Section 3(c)(2) will address determining whether a Restructure Security satisfies the share guideline set forth in this Rule. Proposed Options 4, Section 3(c)(3) adds a “Trading Volume” guideline, proposed Options 4, Section 3(c)(4) adds a “Market Price” guideline, and proposed Options 4, Section 3(c)(5) adds a “Substantiality Test” for a “Restructure Security”. Proposed Options 4, Section 3(c)(6) says that a Restructure Security’s aggregate market value may be determined from “when issued” prices, if available, while proposed Options 4, Section 3(c)(7) says that in calculating comparative aggregate market values for the purpose of assessing whether a Restructure Security qualifies to underlie an option, the Exchange will use the Restructure Security’s closing price on its primary market on the last business day prior to the selection date or the Restructure Security’s opening price on its primary market on the selection date and shall use the corresponding closing or opening price of the related Original Equity Security.

Proposed Options 4, Section 3(c)(8) addresses calculating comparative asset values and revenues while proposed Options 4, Section 3(c)(9) says that except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, the Exchange may not rely upon the trading volume or market price history of an Original Equity Security, unless it relies upon both of those measures for that trading day. Proposed Options 4, Section 3(c)(10) says that once the Exchange commences to rely upon a Restructure Security’s trading volume and market price history for any trading day, the Exchange may not rely upon the trading volume and market price history of the security’s related Original Equity Security for any trading day thereafter. Proposed Options 4, Section 3(c)(11) addresses “When Issued” trading is prohibited.

Options 4, Section 3(e) will be amended to say that “security” will be broadly interpreted to mean any equity security, as defined in Rule 3a11-1 under the Exchange Act, which is appropriate for options trading, and the word “shares” will mean the unit of trading of such security. This will replace Supplementary Material .03 to Options 4, Section 3, which is being deleted. The remainder of Supplementary Material .03 to Options 4, Section 3 is being relocated

to paragraph (a) (“the word “shares” shall mean the unit of trading such security”) and paragraph (f) (ADRs). The remainder of Section 3(e) will be deleted because these provisions relating to determining whether to list an option that otherwise meets objective listing criteria are unnecessary and will now be in line with ISE rules<sup>13</sup> and those of other affiliated markets. The Exchange needs to be competitive with other markets and their ability to list options and these other markets do not have these requirements. Simply put, the Exchange is harmonizing and uniformizing Phlx’s Options Listing Rules with those of ISE and other affiliated markets so that it can list securities on its markets in the same fashion as these other markets.

Proposed Options 4, Section 3(f) will add introductory language for clarity and say that securities deemed appropriate for options trading shall include nonconvertible preferred stock issues and American Depositary Receipts (“ADRs”) if they meet the criteria and guidelines set forth in the Rule. This rule text is currently in Supplementary Material .03 to Options 4, Section 3.

Proposed Options 4, Sections 3(g) and (h) both deal with securities deemed appropriate for options trading, contain changes reflecting reorganization and clarifications, including the deletion of language included elsewhere and language no longer necessary, and copy the language of the ISE version of the rule.<sup>14</sup> Proposed Options 4, Section 3(h)(1) adds language stating that subparagraph (2) applies to the extent the Exchange-Traded Fund Share is based on international or global indexes. This language is intended to clarify that subparagraph (2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index. The phrase “if not available or applicable” added to Proposed Options 4, Section 3(h)(2)(B), (C), and (D) is intended to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

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<sup>13</sup> Id.

<sup>14</sup> Id.

Proposed Section 3(i) will define “market information sharing agreement” by referring back to subparagraph (g)(2), which defines it as an agreement that would permit the Exchange to obtain trading information relating to the securities held by the fund including the identity of the Member of the foreign exchange executing a trade.

Proposed Section 3(j) will contain changes reflecting reorganization and clarifications, including the deletion of the definition of “Partnership Unit” as set forth in current Supplementary Material .08 to Options 4, Section 3, since it is a remnant from the legacy Exchange exchange-traded fund (“ETF”) listing rule and is unnecessary since it has never been listed or traded on the Exchange. It also is not reflected in the ISE rule version being adopted for this section.<sup>15</sup>

Proposed Section 3(k) will include non-substantive changes and is intended to reflect the ISE rule version being adopted for this section.<sup>16</sup>

#### Proposed Changes to Section 4. Withdrawal of Approval of Underlying Securities

Options 4, Section 4 of the Options Listing Rules is being updated by modifying the existing Rulebook language to reflect the language of the ISE version of the rule.<sup>17</sup> Overall, the changes in Section 4 are minor and reorganization within the section is done to mirror the ISE rule and for greater clarity.

Current Supplementary Material .04 to Options 4, Section 4 is being relocated to Options 4C, Section 4(a) without amendment as this rule text relates to foreign currency options. Subparagraph (ii) is being relocated to new Supplementary Material to Options 8, Section 30. The phrase “of publicly held principal amount” is being deleted because it is extraneous and also not included in the ISE version of the rule.

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> See ISE Options Listing Rule Section 4.

Options 4, Section 4(e) is being added, but is not a substantive change. Aside from the change being consistent with the ISE version of the rule, Options 4, Section 4(e) memorializes the current practice regarding notice to customers of withdrawals that is consistent across all Nasdaq affiliated exchanges. Options 4, Section 4(f) is being revised to match the corresponding ISE rule and the change is not substantive and reflects language already included in Options 4, Section 3(f)(2) and (3).

In Options 4, Section 4(g) the deletion of “cease to be an “NMS stock” and the addition of “are halted or suspended from trading on their primary market” does not reflect a substantive change and matches the corresponding ISE rule. Additionally, it is more descriptive since it takes into account that this may be temporary and not permanent.

Current Supplementary Material .09 to Options 4, Section 3 .09 describes inadequate volume delisting, is being deleted. The provision currently provides,

**.09 Inadequate volume delisting.**

(1) Absent exceptional circumstances, a security initially approved for options trading may be deemed by the Exchange not to meet the requirements for continued approval, in which case the Exchange will not open for trading any additional series of equity option contracts of the class of options and may determine to delist the class of options if it meets the following criteria:

- (a) The option has been trading on the Exchange not less than six (6) months; and
- (b) The Exchange average daily volume (“ADV”) of the entire class of options over the last six (6) month period was less than twenty (20) contracts.

If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest;

(2) Should the Exchange determine to delist an equity option pursuant to this Supplementary Material .09, it will notify the Lead Market Maker to whom the affected option is allocated of the determination to delist such option not less than ten (10) days prior to the scheduled delisting date (the “options delisting letter”).

(a) Within two (2) days of receiving an options delisting letter the affected Lead Market Maker may in writing submit to the person designated by the Exchange in the options delisting letter the Lead Market Maker’s justification for and/or explanation of the low ADV in such option and reasons why the Exchange should continue to list the option (the “justification letter”);

(b) The Exchange may, but is not required to, take into account the information provided in the justification letter in its determination to delist the option, and will indicate its determination to delist in writing to the affected Lead Market Maker that provided the justification letter to the Exchange. The Exchange's decision to delist the option is exclusively its own and is not appealable.

In order to remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe Exchange, Inc. ("Cboe").<sup>18</sup> This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that Phlx's requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE, GEMX, MRX and Cboe in order to remain competitive and list similar options as the other markets.

While the Exchange may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that "If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest." This rule text does not exist on ISE, GEMX, MRX and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

#### Proposed Changes to Section 5. Series of Options Contracts Open for Trading

Options 4, Section 5 of the Options Listing Rules is being updated by modifying the existing Rulebook language to reflect the language of the ISE version of the rule.<sup>19</sup> Most of the

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<sup>18</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

<sup>19</sup> See ISE Options Listing Rule Section 5.

changes in Options 4, Section 5 simply result from minor changes and reorganization within the section done to mirror the ISE rule and for greater clarity.

Options 4, Section 5(a) of the Options Listing Rules will be amended to add to note that exercise-price setting parameters adopted as part of the Options Listing Procedures Plan. In order to mirror the equivalent ISE rules,<sup>20</sup> Options 4, Section 5 will be amended to relocate current rule text to be identical to ISE, Nasdaq Phlx LLC (“Phlx”) and Nasdaq BX, Inc. (“BX”) rule text. The Exchange proposes to harmonize its rules to the identical rules of the five Nasdaq affiliated markets.

The Exchange proposes to amend the rule text currently within Phlx Options 4, Section 5(a)(i) to mirror ISE. The Exchange proposes to amend the existing sentence which provides, “At the commencement of trading on the Exchange of a particular class of stock or Exchange-Traded Fund Share options, the Exchange shall open a minimum of one expiration month and series for each class of options open for trading on the Exchange.” The Exchange proposes to instead provide, “At the commencement of trading on the Exchange of a particular class of options, the Exchange shall open a minimum of one (1) series of options in that class.” The proposed amendments are non-substantive and seek to align Phlx’s text with ISE’s text. The Exchange also proposes to add a sentence that currently exists within ISE Options 4, Section 5(a)(i) which provides, “The exercise price of that series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on the Exchange.” Similar language exists within current Options 4, Section 5(a)(i)(C). The text of Options 4, Section 5(a)(i)(C) is being relocated and modified added to remove the phrase “of stock or Exchange-Traded Fund Share options opened for trading on the Exchange” and otherwise modified to mirror ISE rule text. The Exchange notes that today, BX and The Nasdaq Options Market LLC (“NOM”) rules do not contain references to

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Id.

Exchange-Traded Fund shares. The language as amended is broadly read to include all options listed on the Exchange.

The Exchange proposes to amend current Options 4, Section 5(a)(i)(B), which is proposed to be re-lettered as Options 4, Section 5(c), to remove the phrase “stock or Exchange-Traded Fund Share” similar to other proposed changes herein. Finally, the rule text within current Options 4, Section 5(a)(i)(D) is being relocated to new Options 4, Section 8(a) with some amendments discussed in that section.

Current Options 4, Section 5(a)(ii), which is reserved, is being deleted.

Current Options 4, Section 5(a)(iii) and subparagraphs (A)-(E) are being relocated to proposed new Options 4C, Section 5 without amendment.<sup>21</sup>

The Exchange proposes to relocate current Options 4, Section 5(a)(iv) to proposed Options 4, Section 5(k) and update the rule citation to Supplementary Material .10 to proposed Options 4, Section 6(b) as that rule text is proposed to be relocated as well.

The Exchange proposes to relocate and amend rule text within current Supplementary Material .05 (a)(iii) of Options 4, Section 5 to proposed Options 4, Section 5(d) to mirror ISE. The Exchange proposes to instead provide,

(d) Except as otherwise provided in the Supplementary Material hereto, the interval between strike prices of series of options on individual stocks will be:

- (1) \$2.50 or greater where the strike price is \$25.00 or less;
- (2) \$5.00 or greater where the strike price is greater than \$25.00; and
- (3) \$10.00 or greater where the strike price is greater than \$200.00.

The interval between strike prices of series of options on Exchange-Traded Fund Shares approved for options trading pursuant to Section 3(h) of this Options 4 shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange.

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<sup>21</sup> The Exchange notes that Supplementary .06 of Options 4, Section 5 is also being relocated into proposed new Options 4C, Section 5 without amendment.

The Exchange notes that the examples are unnecessary. The exception for \$2.50 below \$50 will be covered within the \$2.50 Strike Program rules, which are being relocated into proposed Supplementary Material .02 to Options 4, Section 5. The Exchange also proposes to note, similar to ISE the intervals between strike prices for Exchange-Traded Fund shares are noted within proposed new Section 3(h) of Options 4. This cross citation will provide greater information as to the criteria for Exchange-Traded Fund shares.

The Exchange proposes to relocate the rule text within current Supplementary Material .05 (a)(iv)(C) of Options 4, Section 5 to proposed Options 4, Section 5(e) without change.

The Exchange proposes to relocate the rule text within current Supplementary Material .12 of Options 4, Section 5 to proposed Options 4, Section 5(f) and proposes to add references to Supplementary .01, .05 and subparagraph (e).

The Exchange proposes to add rule text within proposed Options 4, Section 5(g) identical to ISE, which provides, “The Exchange will open at least one expiration month for each class of options open for trading on the Exchange.” This proposed new sentence will add more clarity to current listing rules. Today, the Exchange opens at least one expiration month for each class of options open for trading on the Exchange.

The Exchange proposes to relocate the rule text within current Supplementary Material .05 (a)(v) and (vi) of Options 4, Section 5 to proposed Options 4, Sections 5(h) and (i), respectively. The rule text is being moved without change except that within Options 4, Sections 5(h) a citation is being added to Options 4, Section 3(k) for reference.

The rule text proposed within Options 4, Section 5(j) is identical to ISE Options 4, Section 5(j) and provides, “The interval of strike prices may be \$2.50 in any multiply-traded option class to the extent permitted on the Exchange by the Commission or once another exchange trading that option lists strike prices of \$2.50 on such options class.” The Exchange proposes to adopt similar language to ISE. The \$2.50 Strike Program was adopted in 1995 as a

joint pilot program of the options exchanges<sup>22</sup> and expanded and permanently approved in 1998.<sup>23</sup> As part of that program, each options exchange, however, is permitted to list options with \$2.50 strike price intervals on any option class that another exchange selects as part of the Program. This rule text is non-substantive as Phlx may today list options with \$2.50 strike price intervals on any option class that another exchange. This rule text will bring greater clarity to Phlx's listing rules.

The Exchange described above the relocation of Options 4, Section 5(a)(iv) to proposed Options 4, Section 5(k).

The Exchange proposes to delete the following current rule text from Options 4, Section 5, which does not appear in ISE or BX Options 4, Section 5.

(b) Rotation. On 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 business day prior to the expiration date of a particular series of options, a closing rotation (as defined in Supplementary Material .01 to Options 3, Section 9) for such series shall commence at 4:00 p.m. in the case of options on stocks or 4:15 p.m. in the case of options on designated Exchange-Traded Fund Shares.

(c) Adjustments. The unit of trading and the exercise price initially established for option contracts of a particular series are subject to adjustment in accordance with the rules of The Options Clearing Corporation. When such adjustment or adjustments have been determined, announcement thereof shall be made by the Exchange and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series of options.

(d) Option contracts shall be subject to adjustments in accordance with the rules of The Options Clearing Corporation.

The Exchange notes within Options 4, Section 2 that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set

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<sup>22</sup> See Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR-Phlx-95-08, SR-Amex-95-12, SR-PSE-95-07, SR-CBOE-95-19, and SR-NYSE-95-12).

<sup>23</sup> See Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR-Amex-98-21, SR-CBOE-98-29, SR-PCX-98-31, and SR-Phlx-98-26).

forth in the rules of The Options Clearing Corporation, which contemplates an option contract expiring on a day that is not a business day and adjustments.

The Exchange proposes to delete current Supplementary Material .01 to Options 4, Section 5 as each program details the manner in which series of options may be open. Also, the relocated foreign currency rules detail how foreign currency may open. This language within current Supplementary Material .01 to Options 4, Section 5 is unnecessary.

The Exchange proposes to relocate Supplementary Material .02 to Options 4, Section 5 to new Options 4C, Section 5(c) without change.

Supplementary Material .03 and .04 of Options 4, Section 5, which are reserved, are being deleted.

The Exchange proposes to renumber Supplementary Material .05 of Options 4, Section 5 as .01. The Exchange proposes to re-letter and renumber this section to conform to ISE's Options 4, Section 5 at Supplementary Material .01.

The following changes are being proposed to the \$1 Strike Price Interval Program so that the language mirrors ISE's Options 4, Section 5 at Supplementary Material .01. At new (a) of Options 4, Section 5 at Supplementary Material .01, the Exchange proposes to add "Program Description. The interval between strike prices of series of options on individual stocks may be \$1.00" to introduce the material which follows. In a few places "Strike Program" is proposed to be changed to "Strike Price Interval Program," or "Strike Price Program" to mirror ISE rule text. Also, the term "national" is added before "securities exchange" and the remainder of the proposed amendments are technical in nature.

Similar changes are proposed at new (b) of Options 4, Section 5 at Supplementary Material .01 including the word "stock" being changed to "security." A citation to relocated rule text was made within new (b)(iii) of Options 4, Section 5 at Supplementary Material .01.

The Exchange proposes to add "Long-Term Options Series" or "LEAPs" before new (b)(v) of Options 4, Section 5 at Supplementary Material .01. Finally, the Exchange proposes to

remove “the Exchange may grant” and add the phrase “may be granted” to the end of new (d) of Options 4, Section 5 at Supplementary Material .01 to mirror ISE rule text in the same location. This change is non-substantive.

The Exchange proposes to relocate current Supplementary Material .05(a)(ii) to Options 4, Section 5 to new Supplementary Material .05 to Options 4, Section 5. The relocation will be explained below.

The Exchange proposes to delete the phrase “..., except that strike prices of \$2 and \$3 shall be permitted within \$0.50 of a \$2.50 strike price for classes also selected to participate in the \$0.50 Strike Program.” The Exchange separately describes the \$0.50 and \$2.50 Programs within .05 and .02 of the proposed Supplementary Material to Options 4, Section 5, respectively. The clause is not necessary within the \$1 Strike Program and currently not contained within the ISE rules wherein the \$1 Strike Program operates in the same manner.

The Exchange explained above that current Supplementary Material .05(a)(iii) to Options 4, Section 5 was relocated to Options 4, Section 5(d).

The Exchange proposes to delete Supplementary Material .05(a)(iv)(A) to Options 4, Section 5 as proposed Options 4, Section 5(h) will detail the interval between strike prices of series of options on Index-Linked Securities, as defined in Options 4, Section 3(k)(1), that will be \$1 or greater when the strike price is \$200 or less and \$5 or greater when the strike price is greater than \$200 and will be consistent with the equivalent ISE rule.

The Exchange proposes to delete Supplementary Material .05(a)(iv)(B) to Options 4, Section 5 related to the listing of “SLV”<sup>24</sup> and “USO”<sup>25</sup> Exchange-Traded Fund Shares which currently provides, “The interval of strike prices of series of options on SLV and USO Exchange-Traded Fund Shares will be \$.50 or greater where the strike price is less than \$75.” The Exchange is removing this rule text as SLV and USO are currently listed pursuant to current

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<sup>24</sup> The symbol “SLV” refers to iShares Silver Trust.

<sup>25</sup> The symbol “USO” refers to the United States Oil Fund LP.

Supplementary Material .12 to Options 4, Section 5, which is being relocated to new Options 4, Section 5(f). SLV and USO both are used to calculate volatility indexes (“OVX”<sup>26</sup> and “VXSLV,”<sup>27</sup> respectively) and therefore subject to the listing provisions of new Options 4, Section 5(f). Supplementary Material .05(a)(iv)(B) to Options 4, Section 5 is therefore unnecessary as SLV and USO would trade according to these rules.

The Exchange noted above that Supplementary Material .05(a)(iv)(C) to Options 4, Section 5 was relocated to proposed Options 4, Section 5(e). The Exchange also noted that Supplementary Material .05(a)(v) and (vi) were relocated to Options 4, Section 5(h) and (i), respectively.

The Exchange proposes to relocate rule text from current Supplementary Material .05(b) and (b)(i) of Options 5, Section 4 to new Supplementary Material .02 to Options 4, Section 5 with the title “\$2.50 Strike Price Interval Program”. The Exchange proposes to delete Supplementary Material .05(b)(ii) of Options 4, Section 5 as that language is not necessary and provided for within The Options Clearing Corporation Rules.

The Exchange proposes to relocate rule text from current Supplementary Material .11 of Options 5, Section 4 to new Supplementary Material .03 to Options 4, Section 5 with the title “Short Term Options Series Program”. The Exchange proposes to add the following titles, “Classes,” “Expiration,” “Initial Series,” “Additional Series,” and “Strike Interval,” before Supplementary Material .03(a)-(e) of Options 5, Section 4. The Exchange proposes to amend the rule text to mirror ISE rule text. Within proposed .03(a) the Exchange proposes to replace the word “fifty” with the number “50” and the word “thirty” with the number “30”. The Exchange also proposes to relocate the word “may” in the second sentence. Within proposed .03(b) the Exchange proposes to remove the words “on the same class” at the end of the paragraph. Within proposed .03(c) the Exchange proposes to add a sentence at the beginning which provides, “The

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<sup>26</sup> The symbol “OVX” refers to the Cboe Crude Oil Volatility Index.

<sup>27</sup> The symbol “VXSLV” refers to the CBOE Silver ETF Volatility Index.

Exchange may open up to 30 initial series for each options class that participates in the Short Term Options Series Program.” The Exchange also proposes to replace the number “7” with the word “seven” and the number “3” in two places with the word “three”. Within proposed .03(d) the Exchange proposes to add a new sentence to the end of Supplementary Material .11(d) of Options 4, Section 5 that provides, “Notwithstanding any other provisions in this Rule, Short Term Option Series may be added up to and including on the Short Term Option Expiration Date for that options series.” This sentence appears in ISE’s rule in the same location. Finally, rule text from current Supplementary Material .05(a)(vii) to Options 4, Section 5 is being relocated to the beginning of proposed .03(e) to provide, “During the month prior to expiration of an option class that is selected for the Short Term Option Series Program pursuant to this Rule (“Short Term Option”), the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.”<sup>28</sup>The Exchange also removes the last sentence of current Supplementary Material .11(e) of Options 5, Section 4 as that language is repetitive of the first new sentence.

The Exchange proposes to relocate rule text from Supplementary Material .08 to Options 4, Section 5 to proposed Supplementary Material .04 to Options 4, Section 5. The Exchange proposes to add the title “Expiration” before current Supplementary Material .08(a) to Options 4, Section 5. The Exchange proposes new language within Supplementary Material .08(b) to Options 4, Section 5, which is reserved, that provides, “The Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.” This rule text is identical to ISE rule text in the same

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<sup>28</sup> This change is non-substantive as the current rule text within Supplementary Material .11 indicates that Related non-Short Term Options series shall be opened during the month prior to expiration of such Related non-Short Term Options series in the same manner as permitted in Supplementary Material .11 to this Options 4, Section which is the Short Term Options Series rule text. The Exchange’s amendments are not modifying the Short Term Options Series rules in any substantive way and Related non-Short Term Options series will continue to be subject to the same rules.

location. The Exchange proposes to add the title “Strike Interval” before Supplementary Material .04(e) to Options 4, Section 5 which is being related from Supplementary Material .11(e) of Options 4, Section 5. The Exchange proposes to delete the word “Reserved” after (f) and instead relocate the Delisting Policy within current Supplementary Material .04(g) to Options 4, Section 5 to “f.” The remainder of the changes to this new Supplementary Material .04 are technical renumbering changes and Supplementary Material .04(h) to Options 4, Section 5, which is reserved, is being deleted.

As noted above, current Supplementary Material .05(a)(ii) to Options 4, Section 5 is being relocated to new Supplementary Material .05 to Options 4, Section 5 with the title “\$0.50 Strike Program.” The Exchange proposes to add rule text to the beginning of the rule, which provides, “The interval of strike prices of series of options on individual stocks may be” to introduce the text that follows, otherwise there are no changes proposed to the current rule text. This rule text is identical to ISE’s rule text in the same location.

The Exchange proposes to amend current Supplementary Material .05(c) to Options 4, Section 5 to new Supplementary Material .06 with the title “\$5 Strike Program.” The Exchange proposes to begin this section with new text, which provide, “The interval of strike prices may be” which introduces the rule text. This rule text is identical to ISE’s rule text in the same location.

The Exchange proposes to relocate current Supplementary Material .06 to Options 4C, Section 5(a)(1) without change. The Exchange proposes to relocate current Supplementary Material .07 to Options 4, Section 5 to the beginning of new Options 4C, Section 5(b) without change.

The Exchange noted above that current Supplementary Material .08 to Options 4, Section 5 was relocated to Supplementary Material .04 to Options 4, Section 5.

The Exchange proposes to delete current Supplementary Material .09 to Options 4, Section 5 as the intervals for indexes are noted within Options 4A and do not need to be discussed in Options 4 which concerns multiply-listed options.

The Exchange discusses the relocation of current Supplementary Material 10 to Options 4, Section 5 within the next section.

The Exchange relocated current Supplementary Material 11 to Options 4, Section 5 to new Supplementary Material .03 to Options 4, Section 5.

The Exchange relocated current Supplementary Material 12 to Options 4, Section 5 to new Options 4, Section 5(f).

#### Proposed Section 6. Select Provisions of Options Listing Procedures Plan

Proposed Section 6 of the Options Listing Rules is adopting the language of the ISE version of the rule<sup>29</sup> with the revised rule text not being new, but largely relocated from Supplementary Material .10 of Options 4, Section 5. This aligns with the goal of harmonizing and uniformizing Phlx's Options Listing Rules with those of ISE and providing greater information to market participants.

Proposed Section 6 of the Options Listing Rules will include Select Provisions of Options Listing Procedures Plan ("OLPP") that will mirror the language in the ISE rules.<sup>30</sup> Proposed Section 6(a) of the Options Listing Rules references the quote mitigation strategy that is codified in the OLPP at [http://www.optionsclearing.com/products/options\\_listing\\_procedures\\_plan.pdf](http://www.optionsclearing.com/products/options_listing_procedures_plan.pdf).

Specifically, proposed Section 6(b) states that the exercise price of each options series listed by the Exchange is fixed at a price per share that is reasonably close to the price of the underlying equity security, ETF or Trust Issued Receipt at or about the time the Exchange determines to list such series. Proposed subsection (b)(i) says that except as provide in subparagraphs (ii) - (iv), if the price of the underlying security is less than or equal to \$20, the

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<sup>29</sup> See ISE Options Listing Rule Section 6.

<sup>30</sup> Id.

Exchange will not list new options series with an exercise price more than 100% above or below the price of the underlying security. However, the foregoing restriction will not prohibit the listing of at least three exercise prices per expiration month in an options class. Except as provided in Supplementary Material .02(d) to Options 3, Section 5, if the price of the underlying security is greater than \$20, the Exchange will not list new options series with an exercise price more than 50% above or below the price of the underlying security. Subsection (b)(i) also details how to measure the price of the underlying security.

Proposed subsection (b)(ii) of Options 4, Section 6 explains that the series exercise price range limitations contained in subparagraph (i) above do not apply with regard to the listing of \$1 strike prices in options classes participating in the \$1 Strike Program, as well as the listing of series of Flexible Exchange Options. The Exchange proposes to add additional rule text to proposed (b)(ii)(1) which provides, “Instead, the Exchange shall be permitted to list \$1 strike prices to the fullest extent as permitted under its Rules for the \$1 Strike Program...”<sup>31</sup> This additional rule text is identical to ISE Options 4, Section 6(b)(ii)(1) and serves to make clear that Phlx may list \$1 strikes pursuant to its rules.

Proposed subsection (b)(iii) says that the Exchange may designate up to five options classes to which the series exercise price range may be up to 100% above and below the price of the underlying security and that such designations will be made on an annual basis and will not be removed during the calendar year unless the options class is delisted by the Exchange, in which case it may designate another options class to replace the delisted class. If a designated options class is delisted by the Exchange but continues to trade on at least one options exchange, the options class shall be subject to the limitations on listing new series set forth in subparagraph (i) above unless designated by another exchange.

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<sup>31</sup> Current Phlx Supplementary Material .10(b) of Options 4, Section 5 provides, “The series exercise price range limitations contained in subparagraph (a) above do not apply with regard to: (i) the listing of \$1 strike prices in option classes participating in the \$1 Strike Program or (ii) the listing of series of FLEX options.”

Proposed subsection (b)(iv) says that if the Exchange that has designated five options classes pursuant to subparagraph (iii) above requests that one or more additional options classes be excepted from the limitations on listing new series set forth in subparagraph (i) above, the additional options class(es) will be designated upon the unanimous consent of all exchanges that trade the options class(es). In addition, at the Exchange's request, the percentage range for the listing of new series may be increased to more than 100% above and below the price of the underlying security for an options class, by the unanimous consent of all exchanges that trade the designated options class. Exceptions for an additional class or for an increase of the exercise price range will apply to all standard expiration months existing at the time of the vote, plus the next standard expiration month to be added, and also to any non-standard expirations that occur prior to the next standard monthly expiration.

Proposed subsection (b)(v) is not being relocated, rather this provision is new to Phlx.<sup>32</sup> The provisions of this subparagraph (b) will not permit the listing of series that are otherwise prohibited by the Rules of the Exchange or the OLPP. To the extent the Rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP will govern.

Proposed subsection (b)(vi) says that the Exchange may list an options series that is listed by another options exchange, provided that at the time such series was listed it was not prohibited under the provisions of the OLPP or the rules of the exchange that initially listed the series.

#### Proposed Section 7. Adjustments

Proposed Options 4, Section 7 of the Options Listing Rules is adopting the language of

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<sup>32</sup> Proposed Options 4, Section 6(b)(v) provides, "(v) The provisions of this subparagraph (b) shall not permit the listing of series that are otherwise prohibited by the Rules of the Exchange or the OLPP. To the extent the Rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP shall govern."

the ISE version of the rule.<sup>33</sup> Phlx currently does not have a similar rule, however Phlx members and member organizations are subject to the rules of The Options Clearing Corporation (“OCC”) today as all options are cleared at OCC. Proposed Section 7 will be amended to say that options contracts will be subject to adjustments in accordance with the Rules of the Clearing Corporation that such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

#### Proposed Changes to Section 8. Long-Term Options Contracts

Proposed Options 4, Section 8 of the Options Listing Rules is adopting the language of the ISE version of the rule.<sup>34</sup> Current Options 4, Section 5(a)(i)(D)<sup>35</sup> is being relocated to new Options 4, Section 8(a) with some amendments.

Proposed Options 4, Section 8(a) of the Options Listing Rules says that notwithstanding conflicting language in Options 3, Section 5, the Exchange may list long-term options contracts that expire from twelve to thirty-nine months from the time they are listed, this is consistent with current rule text within Options 4, Section 5(a)(i)(D) but accounts for Options 3, Section 5 which describes entry of orders. It also specifies that there may be up to ten expiration months for options on the SPDR® S&P 500® ETF and up to six expiration months for options on all other securities. The new language utilizes the term “securities” instead of stocks or Exchange Traded

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<sup>33</sup> See ISE Options Listing Rule Section 7. Proposed Options 4, Section 7 provides, “Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. When adjustments have been made, the Exchange will announce that fact, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.”

<sup>34</sup> See ISE Options Listing Rule Section 8.

<sup>35</sup> Current Options 4, Section 5(a)(i)(D) provides, “Long Term Options. The Exchange may list, with respect to any class of stock or Exchange-Traded Fund Share options series, options having from twelve up to thirty-nine months from the time they are listed until expiration. There may be up to ten expiration months for options on the SPDR® S&P 500® exchange-traded fund (the “SPY ETF”) and up to six expiration months for options on all other stocks or Exchange Traded Fund Shares. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.”

Fund Shares. The remainder of proposed Section 8(a) remains the same.

Proposed Options 4, Section 8(b) is new. The proposed provision states that after a new long-term options contract series is listed, that series will be opened for trading either when there is buying or selling interest, or forty minutes prior to the close, whichever occurs first and that no quotations will be posted for such options series until they are opened for trading. This is the case today, however this specificity is not currently noted in the rules. The addition of this provision will bring greater specificity to Phlx's Rule and align the rule text with ISE rule text.

#### Section 9. Limitation on the Liability of Index Licensors for Options on Fund Shares

Proposed Options 4, Section 9 of the Options Listing Rules is adopting the language of the ISE version of the rule<sup>36</sup> since it is not in the current Exchange Rulebook and it will now be consistent with the ISE rulebook. Proposed Section 9(a) defines the term "index licensor" as any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

Proposed Options 4, Section 9(b) says that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor will obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor disclaims all warranties of

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<sup>36</sup> See ISE Options Listing Rule Section 9.

merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor will 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 or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

#### Proposed Changes to Section 10. Back-up Trading Arrangements

Except as noted otherwise, the proposed changes to Options 4, Section 10 are minor changes that are designed to conform the Phlx Options rules to the equivalent ISE rules,<sup>37</sup> as well as to increase the clarity of the rules, which includes some reorganization and renumbering within the Options Listing Rules' subsections to ensure they remain consistent. It is in the interest of the Exchange to have similar back-up trading arrangements that are harmonized with ISE and the other affiliated markets in the event that Phlx needs to be hosted, which are fair and representative of a common understanding.

For Exchange Exclusively Listed Options, in subsection (a)(iii) a clarification is made that Phlx members that are trading on Phlx's facility at the Back-up Exchange (not including members of the Back-up Exchange who become temporary Members of Phlx pursuant to paragraph (a)(1)(vi)) will be subject to Phlx rules governing or applying to the maintenance of a person's or a firm's status as a Member of Phlx.

Additionally, subsection (a)(v) will be amended to clarify that Phlx will have the right to

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<sup>37</sup> See ISE Options Listing Rule Section 10.

designate its Members that will be authorized to trade Phlx exclusively listed options on Phlx's facility at the Back-up Exchange and, if applicable, its Member(s) that will be a lead market maker in those options.

For Singly Listed Options, proposed Options 4, Section 10(a)(2) is being amended to make clarifying changes.

For Multiply Listed Options, proposed Options 4, Section 10(a)(3) has been added to clarify that the Exchange may enter into arrangements with a Back-up Exchange to permit Phlx members to conduct trading on a Back-up Exchange of some or all of the Exchange's multiply listed options in the event of a Disabling Event. The revised language is consistent with current Exchange procedures. Such options will trade as a listing of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Such options shall be traded by members of the Back-up Exchange and by Phlx members selected by Phlx to the extent the Back-up Exchange can accommodate Exchange members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all Phlx members that desire to trade multiply listed options at the Back-up Exchange, Phlx may determine which members will be eligible to trade such options at the Back-up Exchange. Proposed Section 10(a)(3) also covers the factors to be considered in making such determinations.

For Disabled Exchange Exclusively Listed Options, proposed Options 4, Section 10(b)(1) is being amended to make clarifying changes.

For Disabled Exchange Singly Listed Options, proposed Options 4, Section 10(b)(2) is being amended to make clarifying changes and to delete language pertaining to granting temporary access to any member of a Disabled Exchange under certain conditions because the Exchange now addresses this in proposed Options 4, Section 10(b)(3). For Multiply Listed Options, proposed Options 4, Section 10(b)(3) is new and is consistent with current Phlx procedures and will clarify that Phlx may enter into arrangements with a Disabled Exchange to permit the Disabled Exchange's members to conduct trading on Phlx of some or all of the

Disabled Exchange's multiply listed options in the event of a Disabling Event.<sup>38</sup> Such options will trade as a listing of Phlx and in accordance with Phlx Rules and will be traded by Phlx members and by members of the Disabled Exchange to the extent Phlx can accommodate members of the Disabled Exchange in the capacity of temporary members of Phlx. Options 4, Section 10(b)(2) and (3) will govern in the case of an unanticipated event and addresses both singly and multiply listed options. The Exchange believes it is important that the governing rules are identical across all exchanges for business continuity planning purposes and it is also intended to discourage the potential for "shopping" across the exchanges by a Disabled Exchange's members.

Proposed Options 4, Sections 10(c) - (e) are being amended to conform to ISE and to provide clarity.

Finally, .01 of the Supplementary Material to Options 4, Section 10 is new and is consistent with Phlx procedures and says that this Rule reflects back-up trading arrangements that Phlx has entered into or may enter into with one or more other exchanges and that to the extent that this Rule provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with Phlx, but the Rule itself is not binding upon the other exchange.

#### Proposed Changes to Section 11. U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value

The Exchange is relocating Section 11 of Options 4 to new Options 4C, Section 6 without change.

#### Proposed Section Options 4C U.S. Dollar-Settled Foreign Currency Options

Proposed Section Options 4C of the Options Listing Rules covers U.S. Dollar-Settled Foreign Currency Options and is comprised of language relocated from Options 4, along with some added introductory language added in Section 1 of Options 4C.

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<sup>38</sup> All options exchanges may list options once they are made available by the OCC.

## Proposed Supplementary Material to Options 8, Section 30

Proposed .04 to Supplementary Material to Options 8, Section 30 is new, but is simply text relocated from current Options 4, Section 4(a) and is not a substantive change.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>39</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>40</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the relocation of its Options Listing Rules is a non-substantive change and is consistent with similar filings by the Exchange for the relocation of its rules.<sup>41</sup> As noted above, the relocation of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the structural conformity of its processes with those of the Affiliated Exchanges,<sup>42</sup> and its goal of harmonizing and uniformizing its rules.<sup>43</sup> Additionally, the relocation of the Options Listing Rules will facilitate the use of the Rulebook by Members of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general.

The majority of the changes are also consistent with the ISE rulebook and the overarching goal is to align the Phlx Options rules with those of the ISE.

The Exchange believe that adding definitions for the terms "class", "series", and "underlying security" to Options 1, Section 1 of the Phlx rulebook from the OCC By-Laws will help remove impediments to and perfect the mechanism of a free and open market and a national

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<sup>39</sup> 15 U.S.C. 78f(b).

<sup>40</sup> 15 U.S.C. 78f(b)(5).

<sup>41</sup> See supra footnote 3.

<sup>42</sup> Id.

<sup>43</sup> See supra footnote 6.

market system, and, in general to protect investors and the public interest through providing uniform, clear and precise definitions for these terms and increase consistency, lessen potential confusion and add clarity for market participants.<sup>44</sup>

The Exchange believes that amending Options 4, Section 1 to clarify that the Exchange trades options contracts and to relocate a sentence dealing with foreign currency option contracts to Options 4C, Section 2(a) will help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest through providing clear and precise language and through relocating certain language will increase consistency, lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to Options 4, Section 2, Section 3(a), and Section 3(b) are non-substantive in nature and removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest since the changes are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

New Options 4, Section 3(c), which address securities of restructured companies, reflects the language of the ISE version of the rule.<sup>45</sup> The section adds guidelines and definitions, including "Restructuring Transaction", "Restructure Security", "Original Equity Security", "Relevant Percentage", "market information sharing agreement", and deletes the definition of "Partnership Unit" since it is a remnant from the legacy Exchange ETF listing rule since it is unnecessary because it has never been used and also is not reflected in the ISE rule version being adopted for this section.<sup>46</sup> The definitional additions coupled with changes reflecting

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<sup>44</sup> See supra footnote 8.

<sup>45</sup> See ISE Options Listing Rule Section 3.

<sup>46</sup> Id.

reorganization and clarifications, including the deletion of language included elsewhere and language no longer necessary, and to reflect the language of the ISE version of the rule, the Exchange believes removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest since the changes are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the clarification to the term "security" in Options 4, Section 3(e) and the deletion of the remainder of Section 3(e) removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because these changes add clarity for market participants and removes unnecessary language that will make this section consistent with the rules of ISE rules and of other affiliated markets.

The Exchange believes that the changes to proposed Options 4, Section 3(f) - (k) (excluding Options 4 Sections (g) and (h) that is a new and reflects the language of the ISE version of the rule and is discussed below), which include changes are of a non-substantive nature that reflect reorganization, definitions and clarifications, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because these changes are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

Proposed Options 4, Sections 3(g) and (h) both deal with securities deemed appropriate for options trading, contain changes reflecting reorganization and clarifications, including the deletion of language included elsewhere and language no longer necessary, and copy the language of the ISE version of the rule. Proposed Options 4, Section 3(h)(1) is consistent with the Act because it adds language stating that subparagraph (2) applies to the extent the

Exchange-Traded Fund Share is based on international or global indexes. This language is intended to clarify that subparagraph (2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index. The phrase “if not available or applicable” added to Proposed Options 4, Section 3(h)(2)(B), (C), and (D) is intended to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange believes the update to Options 4, Sections 4 and 5 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest. Overall, these changes are of a non-substantive nature and either modify, clarify or relocate the existing Rulebook language to reflect the language of the ISE version of the rule and are intended to ease the Members’, market participants’, and the general public’s navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

With respect to the removal of current Supplementary Material .09 to Options 4, Section 3, which describes inadequate volume delisting, the Exchange believes these amendments are consistent with the Act. In order to remain competitive with other options markets the Exchange proposes to adopt the same obligations for continuance of trading. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.<sup>47</sup> This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that Phlx’s requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE, GEMX, MRX and Cboe in order to remain competitive and list similar options as the other markets. While the Exchange

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<sup>47</sup> See ISE Options 4, Section 3 and Cboe Rule 4.4.

may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that “If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest.” This rule text does not exist on ISE, GEMX, MRX and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange. The Exchange believes that the requirements noted within Options 4, Section 4(b) review various requirements when determining whether an options should continue to be listed. Among the criteria are: number of shares, number of holders, trading volume, and whether the underlying security is an NMS stock, among others. The Exchange believes that this criteria, which is the same as the criteria on ISE, GEMX and MRX, will ensure that the Exchange continues to list options which are in demand and have adequate liquidity.

Specifically, the Exchange’s proposal within proposed .03(c) of Options 4, Section 5 to add a sentence at the beginning which provides, “The Exchange may open up to 30 initial series for each options class that participates in the Short Term Options Series Program” is consistent with the Act as this is not a change to Phlx’s current rules. This provision exists today with Phlx’s rule within Supplementary Material .11(a) of Options 4, Section 5.<sup>48</sup> Also, ISE has this

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<sup>48</sup> Supplementary Material .11(a) of Options 4, Section 5 provides, with emphasis added, “The Exchange may select up to fifty (50) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the fifty-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. **For each option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to thirty (30) Short Term Option Series for each expiration date in that class.** The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.”

provision in its rules today. This provision permits Phlx to remain competitive with listings of other options exchanges with respect to Short Term Options Series listings.

The Exchange believes the update to Options 4, Section 6 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from Supplementary Material .10 of Options 4, Section 5, including Select Provisions of OLPP that will mirror the language in the ISE rules, and is intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants. The Exchange's proposal to add additional rule text to proposed (b)(ii)(1) which provides, "Instead, the Exchange shall be permitted to list \$1 strike prices to the fullest extent as permitted under its Rules for the \$1 Strike Program..." will bring greater clarity to Phlx's rule. This additional rule text is identical to ISE Options 4, Section 6(b)(ii)(1) and serves to make clear that Phlx may list \$1 strikes pursuant to its rules, which amendment is non-substantive as that is the case today. Proposed subsection (b)(v) is new to Phlx. The provisions of this subparagraph (b) will not permit the listing of series that are otherwise prohibited by the Rules of the Exchange or the OLPP. To the extent the Rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP will govern. While new, this amendment is non-substantive as this is the case today as Phlx is subject to OLPP.

The Exchange believes that the changes to proposed Options 4, Section 7 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are of a non-substantive nature and intended to reflect the language of the ISE version of the rule and provide greater information to market participants about adjustments and is intended to ease the

Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to proposed Options 4, Section 8 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments and is intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

Specifically with respect to OLPP, proposed Section 8(a) of the Options Listing Rules states that notwithstanding conflicting language in Options 3, Section 5, the Exchange may list long-term options contracts that expire from twelve to thirty-nine months from the time they are listed, this is consistent with current rule text within Options 4, Section 5(a)(i)(D) but accounts for Options 3, Section 5 which describes entry of orders. It also specifies that there may be up to ten expiration months for options on the SPDR® S&P 500® ETF and up to six expiration months for options on all other securities. The new language utilizes the term "securities" instead of stocks or Exchange Traded Fund Shares. The remainder of proposed Section 8(a) remains the same. Proposed Section 8(b) is new. The proposed provision states that after a new long-term options contract series is listed, that series will be opened for trading either when there is buying or selling interest, or forty minutes prior to the close, whichever occurs first and that no quotations will be posted for such options series until they are opened for trading. This is the case today, however this specificity is not currently noted in the rules. The addition of this provision is consistent with the Act as it will bring greater specificity to BX's Rule and align the rule text with ISE rule text.

The Exchange believes that the changes to proposed Options 4, Section 9 removes

impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the Exchange is adopting the language of the ISE version of the rule so it will now be consistent with the ISE rulebook and, as with ISE, the Exchange does not itself do the calculation. Proposed Section 9 of the Options Listing Rules is adopting the language of the ISE version of the rule<sup>49</sup> since it is not in the current Exchange Rulebook and it will now be consistent with the ISE rulebook. Proposed Section 9(a) defines the term “index licensor.” Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The disclaimers within proposed Section 9 are consistent with the Act in that these disclaimers provide market participants with relevant information as to the liabilities on option contracts on Exchange-Traded Fund Shares. ISE has the identical language within Options 4, Section 9.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>50</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the changes to proposed Options 4, Section 10 are mainly of a non-substantive nature that are designed to modernize and conform the Phlx Options rules to the equivalent ISE rules and remove impediments to and perfect the mechanism of a free and

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<sup>49</sup> See ISE Options Listing Rule Section 9.

<sup>50</sup> 15 U.S.C. 78f(b).

open market and a national market system, and, in general protects investors and the public interest because it is in the interest of the Exchange to have similar back-up trading arrangements that are harmonized with the ISE and the other affiliated markets, which are fair and representative of a common understanding. The Exchange believes it is critical that the governing rules are identical across all exchanges for business continuity planning purposes and to discourage the potential for “shopping” across the exchanges by a Disabled Exchange’s members.

The Exchange believes that the relocation of Options 4, Section 11 to new Options 4C, Section 6 without change, as well as the addition of Options 4C (U.S. Dollar-Settled Foreign Currency Options) in its entirety which is comprised of language relocated from Options 4 with some added introductory language, will help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest through non-substantive changes and reorganization to mirror the ISE rule and for greater clarity.

The Exchange believes that the relocation of a portion of Options 4, Section 4(a) to proposed .04 to Supplementary Material to Options 8, Section 30 will help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest through non-substantive changes and reorganization to mirror the ISE rule and for greater clarity.

As a result, the Exchange believes that the changes included in this filing serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest since the changes are intended to organize the Rulebook in a way that it will ease the Members’, market participants’, and the general public’s navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations and defunct rule text.

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. The proposed change does not impose a burden on competition because, as previously stated, it (i) is of a non-substantive nature, (ii) is intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) is intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules.

Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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)(iii) of the Act<sup>51</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>52</sup>

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<sup>51</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>52</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.

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-2021-14 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-2021-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying

information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2021-14 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>53</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>53</sup> 17 CFR 200.30-3(a)(12).