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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102293; File No. SR-PHLX-2024-51]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend FLEX Floor Trading

January 27, 2025

I. Introduction

On October 8, 2024, Nasdaq PHLX LLC filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to: (i) amend Options 8, Section 34, FLEX Trading to clarify certain functionality; (ii) list p.m.-settled FLEX Index Options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration that expire on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (“FLEX PM Third Friday Options”); (iii) permit FLEX Options on certain Exchange-Traded Funds (“ETFs”) to be settled by delivery in cash if the underlying security meets prescribed criteria and set forth the applicable position and exercise limits for these options; and (iv) require that position and exercise limits for FLEX Options be aggregated with non-FLEX

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

options in certain circumstances. The proposed rule change was published for comment in the *Federal Register* on October 29, 2024.³ On December 12, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change⁷

In 2023, the Exchange filed a rule change to amend the manner in which FLEX Options are transacted on Phlx's Trading Floor.⁸ Prior to the implementation of SR-Phlx-

³ See Securities Exchange Act Release No. 101413 (October 23, 2024), 89 FR 86007 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 101889, 89 FR 103002 (December 18, 2024). The Commission designated January 27, 2025, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ For a complete description of the Exchange's proposal, see the Notice, supra note 3.

⁸ See Securities Exchange Act Release No. 97658 (June 7, 2023), 88 FR 38562 (June 13, 2023) (SR-Phlx-2023-22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 8 Rules). SR-Phlx-2023-22 amended FLEX Orders in 3 ways. First, the Exchange amended the rules to require FLEX Orders to be reported into Phlx's Options Floor Based Management System or "FBMS," thereby further automating the execution and reporting of FLEX Options. All executed FLEX contracts will be reported to OPRA and sent to the OCC for clearing, similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange's trading floor. Second, the Exchange removed its RFQ process including the BBO Improvement Interval Process, with the rule change. Third, the Exchange reorganized Options 8, Section 34 to restructure the rule to include additional information which describes current FLEX trading on Phlx. With respect to Cabinet Orders, SR-Phlx-2023-22 amended Options 8, Section 33 to require Cabinet Orders to be reported into FBMS. With this change, members and member organizations will be required to record all Cabinet Orders represented in the trading crowd into FBMS. All executed contracts will be reported to OPRA and sent to OCC for clearing similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange's trading floor.

2023-22, the Exchange filed a rule change to amend FLEX Options rules and further delay SR-Phlx-2023-22.⁹ The Exchange proposes to further amend the rules proposed in SR-Phlx-2023-22 and SR-Phlx-2024-24, and proposes to implement the changes in this proposal, as well as SR-Phlx-2023-22 and SR-Phlx-2024-24, at the same time.

Specifically, the Exchange proposes to: (i) amend Options 8, Section 34, FLEX Trading to clarify certain functionality; (ii) permit the listing of FLEX PM Third Friday Options; (iii) permit FLEX Options on certain ETFs to be settled by delivery in cash if the underlying security meets prescribed criteria and set forth the applicable position and exercise limits for these options; and (iv) require that position and exercise limits for FLEX Options be aggregated with non-FLEX options in certain circumstances.

The following proposed changes are described in more detail in the Notice. The Exchange proposes to amend Options 8, Section 34, related to FLEX Options, to provide greater detail to FLEX Options rules, including sections relating to characteristics, exclusions, and exercise price.¹⁰ The Exchange also proposes to amend language related to the settlement style of FLEX Options to align the Exchange’s rule text with those of Cboe Exchange, Inc. (“Cboe”).¹¹ The Exchange also proposes to allow the listing of FLEX PM Third Friday Options. The Exchange notes that Cboe received approval of its pilot program that permitted the listing of FLEX PM Third Friday Options.¹² The

⁹ See Securities Exchange Act Release No. 100321 (June 12, 2024), 89 FR 51580 (June 18, 2024) (SR-Phlx-2024-24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of Certain Exchange Options 8 Rules and Amend Options 8, Section 34(b)). Phlx further delayed the implementation so that it could implement SR-Phlx-2023-22 while also completing an OCC industry rule change prior.

¹⁰ See Notice, *supra* note 3 at 86008.

¹¹ See *id.*

¹² See Securities Exchange Act Release No. 99222 (December 21, 2023), 88 FR 89771 (December 28, 2023) (SR-CBOE-2023-018) (“FLEX Settlement Pilot Approval”). In support of making the pilot a permanent program, Cboe cited to its own review of pilot data during the course of the pilot

Exchange also proposes corresponding changes to describe the index values of P.M.-settled and A.M.-settled FLEX Index Options.¹³ The Exchange also proposes to introduce FLEX Equity Options that are cash-settled, along with corresponding changes to describe FLEX Options that are settled with physical delivery.¹⁴ Finally, the Exchange proposes to require that position and exercise limits for FLEX Options be aggregated with non-FLEX options in certain circumstances, as well as provide further detail to exercise limits.¹⁵

III. Proceedings to Determine Whether to Approve or Disapprove SR-Phlx-2024-51 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁷ the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange

program and a study by the Commission's Division of Economic and Risk Analysis ("DERA") staff. See FLEX Settlement Pilot Approval, notes 18 and 35.

¹³ See Notice, supra note 3 at 86008-86009.

¹⁴ See Notice, supra note 3 at 86009-86011.

¹⁵ See id. at 86009.

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ Id.

has proposed to adopt rules that will govern the listing and trading of FLEX Options. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act, and in particular, Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.¹⁸

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the self-regulatory organization ['SRO'] that proposed the rule change."¹⁹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁰ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.²¹

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

²⁰ Id.

²¹ Id.

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act²² to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) of the Act²³ or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁴ any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by **[INSERT DATE 35 DAYS AFTER DATE OF**

²² 15 U.S.C. 78s(b)(2)(B).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 17 CFR 240.19b-4.

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-51 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-2024-51. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-51 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,

Assistant Secretary.

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²⁶ 17 CFR 200.30-3(a)(57).