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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102669; File No. SR-PHLX-2024-72]

Self-Regulatory Organizations; Nasdaq Phlx, LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Permit the Trading of FLEX Options on Shares of the iShares Bitcoin Trust ETF

March 14, 2025.

I. Introduction

On December 26, 2024, Nasdaq Phlx, LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Options 8, Section 34, FLEX Trading, to permit options on shares of the iShares Bitcoin Trust ETF (“IBIT”) to trade as cash-settled and physically settled FLEX equity options. The proposed rule change was published for comment in the Federal Register on January 14, 2025.<sup>3</sup>

On February 27, 2025, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to disapprove the proposal.<sup>5</sup> The Commission received a comment regarding the proposed rule change.<sup>6</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.

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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> See Securities Exchange Act Release No. 102132 (Jan. 7, 2025), 90 FR 3266 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 102497 (Feb. 27, 2025), 90 FR 11334 (Mar. 5, 2025) (designating April 14, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change).

<sup>6</sup> Comments received on the proposal are available at <https://www.sec.gov/comments/sr-phlx-2024-72/srphlx202472.htm>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

## II. Description of the Proposed Rule Change

As described in detail in the Notice, the Exchange proposes to amend its rules to permit the trading of FLEX equity options on IBIT.<sup>8</sup> The Commission approved Nasdaq ISE LLC's ("ISE") proposal to list and trade options on IBIT.<sup>9</sup> Because the Exchange's listing rules incorporate ISE's listing rules by reference, the Exchange may list IBIT options.<sup>10</sup> The Exchange's rules currently establish position and exercise limits of 25,000 contracts on the same side of the market for IBIT options.<sup>11</sup> The Exchange proposes to amend Options 8, Section 34(e) to apply these position and exercise limits to the proposed IBIT FLEX options and to provide that positions in IBIT FLEX options will be aggregated with positions in non-FLEX IBIT options for purposes of calculating position and exercise limits.<sup>12</sup> Accordingly, the proposal limits the position and exercise limits for all IBIT options—FLEX and non-FLEX—to 25,000 contracts.<sup>13</sup> The Exchange states that capping the aggregated position limit at 25,000 contracts will be sufficient to address concerns related to manipulation and the protection of investors.<sup>14</sup> In addition, the Exchange states that in approving the 25,000-contract position and exercise limit for IBIT options, the Commission concluded, based on its review of the data and analysis provided by ISE, that the proposed position and exercise limits for IBIT options were designed to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security, and to prevent the establishment of options positions

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<sup>8</sup> See supra note 3.

<sup>9</sup> See Securities Exchange Act Release No. 101128 (Sept. 20, 2024), 89 FR 78942 (Sept. 26, 2024) (order approving File No. SR-ISE-2024-03) ("IBIT Order").

<sup>10</sup> See Options 4 and Securities Exchange Act Release No. 101613 (Nov. 13, 2024), 89 FR 91470 (Nov. 19, 2024) (notice of filing and immediate effectiveness of File No. SR-Phlx-2024-53)

<sup>11</sup> See Options 9, Section 13(a) and Option 9, Section 15(a).

<sup>12</sup> See proposed Options 8, Section 34(e).

<sup>13</sup> See Notice, 90 FR at 3267.

<sup>14</sup> See proposed Options 8, Section 34(e).

that could be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.<sup>15</sup>

The Exchange states that FLEX options on ETFs are currently traded in the over-the-counter (“OTC”) market by a variety of market participants, including hedge funds, proprietary trading firms, and pension funds.<sup>16</sup> The Exchange states that the proposed FLEX options could provide a useful risk management and trading vehicle for market participants and their customers.<sup>17</sup> The Exchange further states that FLEX options serve two primary client types in the capital markets: (1) ETF and structured return issuers who seek European-style options with bespoke strike and expirations, such that they can tailor their returns more precisely than they could with standard American-style options; and (2) with respect to stock lending, certain investors (e.g., banks and hedge funds) that seek to align their contract durations for calls and puts, and thereby prefer options with European-style exercise, which can be exercised only at expiration.<sup>18</sup> The Exchange states that FLEX IBIT options traded on the Exchange would have several advantages over contracts traded in the OTC market, including the potential for greater liquidity because each exchange-traded FLEX option can be closed with a liquidating transaction, while OTC FLEX contracts must be held until expiration; reduced counterparty credit risk because exchange-traded contracts are issued and guaranteed by The Options Clearing Corporation (“OCC”); and the price discovery and dissemination provided by exchange trading.<sup>19</sup>

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<sup>15</sup> See Notice, 90 FR at 3267 (citing the IBIT Order, 89 FR at 78946). The Exchange states that the Commission considered and reviewed the Exchange’s analysis that the exercisable risk associated with a position limit of 25,000 contracts represented only 0.4% of the outstanding shares of IBIT. The Exchange states that the Commission also considered and reviewed the Exchange’s statement that with a position limit of 25,000 contracts on the same side of the market and 611,040,00 shares of IBIT outstanding, 244 market participants would have to simultaneously exercise their positions to place IBIT under stress. See Notice, 90 FR at 3267 (citing the IBIT Order, 89 FR at 78946),

<sup>16</sup> See Notice, 90 FR at 3268.

<sup>17</sup> See id.

<sup>18</sup> See id.

<sup>19</sup> See id.

The Exchange states that the same surveillance procedures applicable to other options products listed and traded on the Exchange, including non-FLEX IBIT options, will apply to the proposed FLEX IBIT options, and that the Exchange has the necessary systems capacity to support the proposed options.<sup>20</sup> The Exchange further states that FLEX options products (and their respective symbols) are integrated into the Exchange’s existing surveillance system architecture and are thus subject to the relevant surveillance processes.<sup>21</sup> The Exchange states that its market surveillance staff (including staff of the Financial Industry Regulatory Authority who perform surveillance and investigative work on behalf of the Exchange pursuant to a regulatory services agreement) conduct surveillances with respect to IBIT (the underlying ETF) and, as appropriate, would review activity in IBIT when conducting surveillances for market abuse or manipulation in IBIT options.<sup>22</sup> In addition, the Exchange states that it is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement, and that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.<sup>23</sup> For surveillance purposes, the Exchange states that it would therefore have access to information regarding trading activity in the pertinent underlying securities.<sup>24</sup> The Exchange states that it will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of IBIT options.<sup>25</sup>

### III. Summary of Comment Received

The Commission received one comment, which expressed support for the proposal.<sup>26</sup>

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<sup>20</sup> See id.

<sup>21</sup> See id. The Exchange states that FLEX trading occurs on the Exchange’s trading floor in an open outcry environment. The Exchange states that surveillance staff monitors FLEX trading in open outcry. See id. at footnote 24.

<sup>22</sup> See Notice, 90 FR at 3268.

<sup>23</sup> See id.

<sup>24</sup> See id.

<sup>25</sup> See id. at 3269.

<sup>26</sup> See letter from Matt McFarland, Senior Vice President, Capital Markets, Vest Financial, dated January 27, 2025.

The commenter states that FLEX options on IBIT would permit the creation of products with precise payoff terms, which would provide investors with hedged exposure to IBIT.<sup>27</sup> The commenter states that these products allow investors to participate in the underlying reference asset in a manner that is less risky than taking a long position in the reference asset outright.<sup>28</sup> In addition, the commenter states that the customizable features of FLEX options allow asset managers to create precise buffer levels, cash settlement (for qualifying ETFs), and outcome periods that cannot be achieved using standardized listed options.<sup>29</sup>

IV. Proceedings to Determine Whether to Approve or Disapprove SR-PHLX-2024-72 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>30</sup> 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 comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>31</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,<sup>32</sup> 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

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<sup>27</sup> See id. at 1.

<sup>28</sup> See id. at 2.

<sup>29</sup> See id. at 3.

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>31</sup> Id.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

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.

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 that proposed the rule change.”<sup>33</sup> 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,<sup>34</sup> and any failure of a self-regulatory organization 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 Act and the applicable rules and regulations.<sup>35</sup> The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act. In particular, the Commission asks commenters to address whether the proposal includes sufficient analysis to support a conclusion that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

#### V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, 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 proposal is consistent with Section 6(b)(5) or any other provision of the Act, and 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

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<sup>33</sup> 17 CFR 201.700(b)(3).

<sup>34</sup> See id.

<sup>35</sup> See id.

presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>36</sup>

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 PUBLICATION IN THE *FEDERAL REGISTER*].

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](mailto:rule-comments@sec.gov). Please include file number SR-PHLX-2024-72 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-2024-72. 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

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<sup>36</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants 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).

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-2024-72 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.<sup>37</sup>

**Vanessa A. Countryman,**

*Secretary.*

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